



Peace Movement Aotearoa

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Government foreshore and seabed policy breaches basic international human rights standards and conventions

“Almost all Maori and many non-Maori considered that the principles and related proposals constituted a major breach of the Treaty of Waitangi, and would give rise to a new round of Treaty grievances if implemented.” (Analysis of submissions on the proposals for the foreshore and seabed, NZ Government, December 2003, 17).

On 17 December 2003 the government released its policy framework for the foreshore and seabed which, as anticipated, is somewhat problematic on a number of levels. The policy framework does, as referred to in the above quote, constitute a major breach of the Treaty of Waitangi; and also of international human rights conventions. The inconsistency between the government’s foreshore and seabed proposals and their obligations as one party to the Treaty of Waitangi has been covered in previous Peace Movement Aotearoa alerts and updates since June 2003 - this paper focuses on the framework in relation to international human rights standards and conventions.

There are four main sections below:

- ◆ Background information on international human rights standards and conventions,
- ◆ An outline of the breaches of international human rights standards and conventions which are inherent in the government’s policy framework, specifically: a) the right of access to, and protection of, the law, b) the right to own property and not be deprived of it, c) the right to freedom from racial discrimination, including issues raised in the 1999 Committee on the Elimination of Racial Discrimination’s decision against the Australian government; d) the right to enjoy culture;
- ◆ ‘Guided by the feedback’? the creation of a new myth; and
- ◆ Where you can get more information and resources.

The conclusion is reached that in relation to these four basic human rights, the government’s foreshore and seabed framework is clearly in breach of international human rights standards and conventions.

International human rights standards and conventions

There are a number of international human rights documents which could be referred to in the context of the foreshore and seabed framework.

However, as this update is a guide to some of the human rights breaches inherent in the framework, rather than a comprehensive examination of them all, it will refer to three documents in particular -

- ◆ the 1948 Universal Declaration of Human Rights (UDHR),
- ◆ the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) ratified by NZ in 1972, and
- ◆ the International Covenant on Civil and Political Rights (CCPR) ratified by NZ in 1978.

ICERD and CCPR, together with the International Covenant on Economic, Social and Cultural Rights, are reflected (in part) in domestic legislation in the Human Rights Amendment Act 2001 (which amended the 1993 Human Rights Act) and the NZ Bill of Rights Act 1990.

The UDHR is a declaration and thus not enforceable in a legal sense, although some states have incorporated the UDHR into their written constitutions, and some jurisdictions around the world take the UDHR into account when ruling on matters of human rights. The UDHR carries considerable moral weight as a basic statement of minimal human rights standards, is considered to be generally declaratory of customary international law, and any breach of it is a cause for international concern and condemnation.

The CCPR and ICERD are conventions which means that signatory state parties are legally obliged to comply with their provisions. Compliance with, and breaches of, the provisions of CCPR is monitored by the UN Human Rights Committee; and similarly the Committee on the Elimination of Racial Discrimination monitors compliance with, and breaches of, ICERD.

Both the UN Human Rights Committee and the Committee on the Elimination of Racial Discrimination have applied their respective conventions to the human rights and fundamental freedoms of indigenous peoples.

Both are involved with clarifying and progressing international norms and standards relating to the human rights of indigenous peoples - partly in the context of the International Decade of the World's Indigenous People (1995 to 2004), and also in the context of judgments against erring governments. Space constraints do not permit an outline of the developments in relation to indigenous peoples human rights by these and other UN bodies, but if you are interested in finding out more, see [1] at the end of this paper.

Aside from the UDHR, CCPR and ICERD, another document which is of particular relevance is the 1997 Committee on the Elimination of Racial Discrimination General Recommendation XXIII: Indigenous Peoples (GR23) - this is used by the Committee on the Elimination of Racial Discrimination in their judgments regarding state parties compliance with the Convention, and is quoted from below.

Breaches of international human rights standards and conventions

◆ The right of access to, and protection of, the law

The crucial importance of the 'rule of law' is laid out in the preamble of the UDHR:

"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". A useful reminder of the ultimate outcome when any government persistently refuses to acknowledge, or denies, basic human rights.

In the Court of Appeal's judgment in respect of *Ngati Apa and Others v Attorney-General and Others*, 19 June 2003, the judges were unanimous in their decision that the eight Iwi at the top of the South Island could have the extent and nature of their claim to customary title and rights in the Marlborough foreshore and seabed considered by the Maori Land Court; and that Maori customary title to seabed and foreshore had never been legally extinguished. On 23 June 2003, the government responded by announcing that they would legislate to assert the Crown's ownership of seabed and foreshore, and thus extinguish Maori customary title. They have moved inexorably towards that point over the past six months.

That the government is interfering in due legal process, and removing the right of *Tangata Whenua* to be heard in the courts in relation to the foreshore and seabed, is implicit and explicit in the policy framework - see for example, *"The government considers that it is no longer appropriate to argue these issues through the Courts."* (Foreshore and seabed: frequently asked questions, NZ government, December 2003, 26).

The paper 'Government decisions on the foreshore and seabed framework' says:

"[the government] agreed that the new legislation should state that ... 120.2: the High Court will no longer have the jurisdiction to hear claims based on common law customary rights in the foreshore and seabed;" and *"120.3: the Maori Land Court does not have jurisdiction to consider that the foreshore and seabed is customary land"*. (Government decisions on the foreshore and seabed framework, NZ government, December 2003). Clearly political interference in the legal process given that this all started precisely because the Court of Appeal ruled the Maori Land Court does have that jurisdiction.

Additionally, according to the framework, when *Tangata Whenua* go to the Maori Land Court (as revised) to have their customary rights recorded, if the Maori Land Court finds their *"customary right existed at common law"* but not in the new legislation, it will be referred back to the government for resolution. This places the decisions of a Court under the direct control of politicians, how much further away from the rule of law could you get?

Amongst the international human rights instruments breached by denying access to, and the protection of, the law are: UDHR, Article 7: *"All are equal before the law and are entitled without any discrimination to equal protection of the law"*; CCPR, Article 26: *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law"*; and ICERD, Article 5: *"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or*

ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice.”

In addition, from the government’s framework it seems that the proposed legislation will deny any access to an effective remedy for those whose human rights have been affected, for example, by extinguishment of customary title, as there appears to be no appeal process.

Further to this point, ‘Government decisions on the foreshore and seabed framework’ specifically states:

*“121 [the government] agreed that further consideration be given, as the legislation is drafted, to whether these provisions are sufficient to make clear the government’s intention that the new framework will be **the only avenue** for the legal recognition of the customary rights of whanau, hapu and iwi in the foreshore and seabed”.* (Government decisions on the foreshore and seabed framework, NZ government, December 2003, our emphasis.)

This breaches UDHR, Article 8: *“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”*; and CCPR, Article 2 (3): *“Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State ...”*

Similar points are covered in ICERD, Article 6: *“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”* More information about breaches of ICERD are covered in section 2c below.

◆ **The right to own property and not be deprived of it**

The intention of the government to extinguish Maori customary title (as in what was being considered by the Court of Appeal), and replace it with a new government defined and limited ‘customary title’ is implicit throughout the policy framework. It is explicit in statements by government politicians such as: *“Maori have lost the right to seek customary land status”* (Michael Cullen, Deputy Prime Minister, speaking on Mana Report, 18 December 2003), and *“The only things they [Maori] haven’t got is ownership and that was never on the table from day one”* (John Tamihere, Associate Minister of Maori Affairs, quoted in the Dominion Post, 20 December 2003).

The paper ‘Government decisions on the foreshore and seabed framework’, in addition to points 120.2 and 120.3 referred to above, also states: [the government]

“agreed that the following three objectives should form the basis of the government’s approach to clarifying the status of the foreshore and seabed ... Court processes for considering claims of customary rights must not result in effective ownership of the foreshore and seabed.” (Government decisions on the foreshore and seabed framework, NZ government, December 2003, 10.3).

Amongst the international human rights instruments breached in this respect are: UDHR, Article 17: *"Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property"*; and ICERD, Article 5: *"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights ... (d): Other civil rights, in particular ... (v) The right to own property alone as well as in association with others; and (vi) The right to inherit."*

With regard to other breaches of ICERD, the extinguishment of indigenous title was the subject of the 1999 Committee on the Elimination of Racial Discrimination decision against the Australian government; that decision is covered in the next section.

◆ **The right to freedom from racial discrimination**

It is clear from the government's policy framework that only one sector of the community is to have their property rights denied in relation to the foreshore and seabed. On the whole, the rights of other property holders in the coastal marine area will be unaffected - where recognised title exists over foreshore and seabed, a process of negotiation and compensation through time to move the area into public domain will be followed; this also appears to be the case where access to coastal areas is prevented because of recognised title on surrounding land. Certainly in neither of these cases will property rights be extinguished as is being done with indigenous title.

This is clearly racial discrimination as defined in ICERD, Article 1:

"the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

Among the international human rights instruments breached by racial discrimination are: UDHR, Article 2: *"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"*; CCPR, Article 2 (1): *"Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"*; and ICERD, Article 2: *"(1a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation."* Racial, and other forms of discrimination, are prohibited by the NZ Bill of Rights Act and the Human Rights Amendment Act.

The Committee on the Elimination of Racial Discrimination has made a particular point of consistently *"affirming that discrimination against indigenous peoples falls under the scope of the Convention [ICERD] and that all appropriate means must be taken to combat and eliminate such discrimination."* The things that need to be taken into account to combat and eliminate discrimination against indigenous peoples are elaborated in the 1997 Committee on the Elimination of Racial Discrimination General Recommendation XXIII: Indigenous Peoples (GR23):

“3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardised.

4. The Committee calls in particular upon States parties to: (a) Recognise and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation; (b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity; (c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics; (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent; (e) Ensure that indigenous communities can exercise their rights to practise and revitalise their cultural traditions and customs and to preserve and to practise their languages.

5. The Committee especially calls upon States parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.”

GR23 is used by the Committee on the Elimination of Racial Discrimination as a basis on which to make judgments on state parties compliance with ICERD in relation to indigenous peoples. Of particular relevance to the government's foreshore and seabed framework is the 1999 Committee decision (CERD A/54/18, para 21(2)) against the Australian government's amendments to the Native Title Act. There are a number of points raised in the Committee's decision which have crucial relevance to the government's foreshore and seabed framework:

i) on the issue of protection of indigenous title, the decision says:

“6. The Committee, having considered a series of new amendments to the Native Title Act, as adopted in 1998, expresses concern over the compatibility of the Native Title Act, as currently amended, with the State party's international obligations under the Convention. While the original Native Title Act recognises and seeks to protect indigenous title, provisions that extinguish or impair the exercise of indigenous title rights and interests pervade the amended Act.”

An indication that impairment of the exercise of indigenous title is regarded with the same seriousness in this day and age as extinguishment. The government's foreshore and seabed policy seems to qualify as both impairment and extinguishment.

ii) on the issue of certainty, the decision says:

“6. The Committee, having considered a series of new amendments to the Native Title Act, as adopted in 1998, expresses concern over the compatibility of the Native Title Act, as currently amended, with the State party's international obligations under the Convention. ... While the original 1993 Native Title Act was delicately balanced between the rights of indigenous and non-indigenous title holders, the amended Act appears to create legal certainty for Governments and third parties at the expense of indigenous title.”

An indication that it is not acceptable to provide certainty for the majority at the expense of an indigenous minority.

In the ‘Statement of the net benefit of this proposal’ within the government’s foreshore and seabed framework, it is stated that the framework:

“provides certainty to private property holders that their rights and interests in the foreshore and seabed will generally be upheld; provides certainty for relevant local government and central government decision makers that they can continue to proceed to make decisions concerning the use of the foreshore and seabed; provides certainty that all New Zealanders will have the right to access the foreshore and seabed that is held in the public domain title; and provides certainty to all New Zealanders about what will happen once a customary right has been identified and protected by the Maori Land Court”. (Foreshore and seabed: a framework, NZ government, December 2003, Appendix C, 5).

The word ‘certainty’ is not used in relation to Tangata Whenua at all in the ‘Statement of the net benefit of this proposal’ - vague words such as “enhanced opportunities”, “enables”, “recognition” and “involvement” are used when referring to Whanau, Hapu and Iwi. If that doesn’t qualify as *“legal certainty for Governments and third parties at the expense of indigenous title”*, then it is hard to imagine what would.

iii) on the issues of effective participation in decision making and informed consent, the decision says:

“9. The lack of effective participation by indigenous communities in the formulation of the amendments also raises concerns with respect to the State party's compliance with its obligations under article 5(c) of the Convention. Calling upon States parties to "recognise and protect the rights of indigenous peoples to own, develop, control and use their common lands, territories and resources," the Committee, in its general recommendation XXIII, stressed the importance of ensuring "that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.”

The government’s ‘consultation’ hui would hardly qualify as “effective participation” in decisions relating to Tangata Whenua rights and interests as they were problematic for a number of reasons including the disgracefully short six week time period, the inappropriateness of a schedule of hui run to a rigid government timetable, and the arrogance of both this process and some government ministers attending the hui. Furthermore, “effective participation” implies that the viewpoints of those consulted are actually taken into account, not ignored.

Additionally, it is clear that the government is not going to be getting consent from Tangata Whenua for the foreshore and seabed framework. The response of Hapu and Iwi to the initial proposals was unambiguous - statements that the foreshore and seabed have always been under the jurisdiction of Iwi and Hapu as part of the authority of Tino Rangatiratanga (that jurisdiction being acknowledged in Article II of the Treaty of Waitangi as part of the exclusive and undisturbed possession of lands and taonga); that neither the jurisdiction nor authority have ever been given away; and that the Court of Appeal ruling merely affirmed what Tangata Whenua have always said on this matter. From the statements made since the policy was released, that position (except maybe with a couple of local exceptions) has not changed.

(iv) on the issue of acceptability to indigenous people, the decision says:

“11. The Committee calls on the State party to address these concerns as a matter of utmost urgency. Most importantly, in conformity with the Committee's general recommendation XXIII concerning indigenous peoples, the Committee urges the State party to suspend implementation of the 1998 amendments and reopen discussions with the representatives of the Aboriginal and Torres Strait Islander peoples with a view to finding solutions acceptable to the indigenous peoples and which would comply with Australia's obligations under the Convention.”

Directions which could be usefully applied to the government's approach to the foreshore and seabed - suspension of the current policy, reopening discussion, finding a solution which is acceptable to Tangata Whenua, and ensuring that the outcome complies with NZ's obligations under the Convention.

◆ **The right to enjoy culture**

The right “to enjoy their own culture” is specified in CCPR, Article 27: *“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”* This Article was put into the NZ Bill of Rights Act 1990, Section 20, as: *“Rights of minorities - A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.”*

Although Article 27 refers to minority peoples rather than indigenous peoples, the UN Human Rights Committee applies it to their consideration of, and decisions on, the human rights of indigenous peoples where they are also a minority population. Communications on breaches of Article 27 to the UN Human Rights Committee under the CCPR Optional Protocol are made by individuals, but for obvious reasons every individual affected does not need to take a case to the Committee as a judgment that the rights of one of more individuals in a group have been breached relates by extension to everyone in the group.

There are a number of ways in which the government's foreshore and seabed policy breaches Article 27 - for example the linkage between the enjoyment of culture and land has been made explicit in the Committee on the Elimination of Racial Discrimination GR23: *“the land rights of indigenous peoples are unique and encompass a traditional and cultural identification of the indigenous peoples with their land that has been generally recognised.”* The UN Human Rights

Committee has taken into account this linkage in various cases heard by it, and in General Comment 23 (50) states: *“With regard to the exercise of cultural rights protected under Article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples.”* Putting that linkage together with the previously mentioned issues around impairment and extinguishment of indigenous title, it can be argued that such impairment and extinguishment breaches the right to enjoy culture.

An absolutely fundamental breach of Article 27 relates to the government intention to define customary rights in the foreshore and seabed legislation. According to the framework, Tangata Whenua are to apply to the Maori Land Court (as revised) for a declaration as to the nature, extent and existence of their customary rights which, if the applicant is successful, will be annotated by the Court. What will be permissible, and what will not be, will be determined by a restrictive definition of customary rights in the legislation. That the government intends to have total control over how customary rights are defined is evident from the provision that if the Maori Land Court *“finds that a customary right existed at common law but is not able to be recognised by the new framework, the Court will refer the matter to the government for resolution.”* (Summary of foreshore and seabed framework, NZ government, December 2003). Furthermore, to get a customary right annotated, the applicant must establish that it existed prior to 1840 and continues up to the present day.

This is a bizarre concept that contains the most peculiar notions about culture - the crucial words in the phrase in Article 27 *“to enjoy their own culture”* are **“their own”**. Culture belongs to those who are part of it. Culture simply cannot be defined by statute, nor by politicians - culture is not owned by them in any instance; and certainly they have no authority to define tikanga Maori. Culture is constantly evolving; it is qualitative, not quantitative; it is not something that is amenable to annotation.

As for having to prove that a customary right existed prior to 1840 and continues to the present day, that is an unacceptable fossilising of rights, an archaic view of culture, and is contrary to Treaty jurisprudence. Cultural beliefs, customs and practices do not freeze and remain unchanged through time. Try for a moment to imagine having your cultural beliefs, customs and practices all defined and restricted by legislation, and having the right to exercise them contingent on your proving their pre-1840 origins. It simply does not make sense.

The unacceptability of others attempting to define and control indigenous peoples culture has been described by the Office of the UN High Commissioner for Human Rights thus:

“For indigenous peoples all over the world the protection of their cultural and intellectual property has taken on growing importance and urgency. They cannot exercise their fundamental human rights as distinct nations, societies and peoples without the ability to control the knowledge they have inherited from their ancestors.” (The Rights of Indigenous Peoples Fact Sheet).

One of the objectives of the International Decade of the World’s Indigenous Peoples (1995 to 2004) is:

“the promotion and protection of the rights of indigenous people and their empowerment to make choices which enable them to retain their cultural identity while participating in political, economic and social life, with full respect for their cultural values, languages, traditions and forms of social organisation.”

Note the use of the words ‘their’ cultural identity, ‘their’ cultural values, languages, traditions and so on. Clearly this is an objective of the Decade the government is intent on failing.

In the interests of brevity, this update has focussed on the four rights mentioned above as they are human rights the government has supported in other contexts, as opposed to the other rights breached by the foreshore and seabed framework (such as the right to development and the right to self-determination) which are rights the government generally does not support. The lack of detail on these other rights in no way implies approval for the government’s lack of support for them - indeed, if the basic right to self-determination (which is referred to in a range of international standard setting documents and conventions including the United Nations Charter, the UDHR, the ICCPR, and the Draft Declaration on Indigenous Peoples) were respected and implemented, then the breaches of that and other human rights would be avoided.

As outlined above in relation to just four basic human rights, the government’s foreshore and seabed framework is clearly in breach of international human rights standards and conventions. When considered in the light of present day fundamental freedoms and human rights of indigenous peoples, the government is apparently fixed in some kind of nineteenth century colonial time warp.

And from the government published analysis of submissions on the initial proposals, there is not as much domestic support for the framework as they would have us believe ...

‘Guided by the feedback’? the creation of a new myth

The government has said that the policy framework was ‘guided by the feedback’ received on the original proposals and the four principles, the creation of a new myth to go with the others created in recent months - that Tangata Whenua will deny public access to beaches unless the government extinguishes their title and limits their rights; that the moral and legal legitimacy of the government to decide ownership is not open to challenge; that the foreshore and seabed is owned by the Crown (or the ‘people of NZ’ which is essentially the same in practice); and that Tangata Whenua in asserting their rights through the court process are somehow taking from others rather than those who are being taken from.

Along with the other myths, ‘guided by feedback’ does not stand up to much scrutiny. Certainly it is very clear that the policy framework was not guided by feedback from Tangata Whenua, as the message from several national meetings as well as the government ‘consultation’ hui was total rejection of the proposals.

What is equally clear from the analysis of submissions on the proposals, is that there is not a unified non-Maori position on them - despite the attempts by government and other politicians, as well as the mainstream media, to pretend that there is:

“Slightly less than 30 percent of written submissions endorsed the four principles.”

“Many respondents were strongly opposed to the four principles, including almost all Maori and many non-Maori.”

“Many were concerned that the principles and related proposals had been developed without the participation of Maori and accordingly represented a very mono-cultural perspective on the issues and possible solutions.”

“Almost all Maori and many non-Maori considered that the principles and related proposals constituted a major breach of the Treaty of Waitangi, and would give rise to a new round of Treaty grievances if implemented.” (Analysis of submissions on the proposals for the foreshore and seabed, NZ Government, December 2003, 17).

If, as portrayed by the government, the voting public (which somehow seems to exclude Maori) finds the prospect of the re-affirmation by the courts of Maori interests in the foreshore and seabed as unpalatable as the government seems to, then that would surely have been evident in the public submissions.

The rejection of the proposals by ‘many’ non-Maori perhaps marks some forward progress in terms of public understanding both of what is at stake and the importance of the government actually honouring the Treaty of Waitangi. However, it has to be said that one of the deeply depressing aspects of the government’s intentions to just push ahead with the policy (regardless it seems of domestic feedback, the Treaty of Waitangi, and international human rights alike) has been the opportunity they have missed not only to resolve this in a just manner, but also to use the opportunity to educate and dispel ignorance and fear to ensure a peaceful future for us all.

In the case of the proposed settlement with Te Arawa that includes the return of title to lakes in their rohe, the government has published a series of web pages explaining what they are doing, and how public and business access will be protected under the terms of the settlement. This seems to indicate that the current government does have the capability to educate and inform when it suits them - a capability which is sadly missing in their reaction to the Court of Appeal ruling on the foreshore and seabed.

When questioned in parliament about the proposed Te Arawa settlement, Margaret Wilson stated that the government believes *“in settling historical grievances with fairness and finality.”* Whether or not it is a fair settlement is of course for Te Arawa to decide; but certainly a government commitment to fairness in relation to historical oppression and loss is to be admired.

What a tragedy that there is apparently no similar commitment to acting fairly in the present time to prevent the formulation of new entirely justified grievances.

Where to get more information and resources

◆ A valuable new information resource is ‘The Devil and the Deep Blue Sea: an analysis of the government framework for the foreshore and seabed’ by Moana Jackson, which is available at <http://www.converge.org.nz/pma/fs201203.htm> Tom Scott’s comment on the foreshore and seabed (published in the Dominion Post, 18 December 2003) is available at <http://www.converge.org.nz/pma/tomscott.jpg>

◆ The PMA foreshore and seabed information index page has articles and statements on the government proposals, including some by Moana Jackson, Te Hau Tikanga / the Maori Law

Commission, Tariana Turia, Jeanette Fitzsimons, Jock Brookfield, David Williams, the CTU Affiliates meeting, and others; Alerts and Updates from Peace Movement Aotearoa; media releases from various individuals and groups; Pakeha submissions on the government's proposals; and assorted media reports. The index page is at <http://www.converge.org.nz/pma/fsinfo.htm>

◆ Reports from, and submissions to, the government's 'consultation' hui; statements from the national Maori hui; and reaction to the foreshore and seabed framework release are available on the Te Ope Mana a Tai web site at <http://www.teope.co.nz>

◆ The government's foreshore and seabed framework and related documents are available online at <http://www.beehive.govt.nz/foreshore/home.cfm>

◆ **'No raupatu in our time'! campaign** - information about the campaign is at <http://www.converge.org.nz/pma/fs281003.htm> Wear the 'No raupatu in our time' badge to show what you think about the government's foreshore and seabed plans; badges are: \$2 each (for orders of up to 20) + 50c p&p per order; \$1-75 each (for orders of 20 to 50) + \$2 p&p per order; or \$1-50 each (for orders of 50 or more) + \$3 p&p per order. You can get yours by using the print off order form at <http://www.converge.org.nz/pma/fsbadge.htm> or by sending a note with your name, address, and how many badges you want with your cheque (made payable to 'Peace Movement Aotearoa') to PMA, PO Box 9314, Wellington.

◆ **Foreshore and seabed postcard campaign** - the front has a cartoon by Moana Maniapoto, and the back reads:

"To the Prime Minister. Over the past 163 years, the Crown has used the law to take Maori land. Now, when there a suggestion that Maori rights might be recognised you want to change the law again. I support a just and lasting solution to this controversy. I expect the Government to respect the inherent rights of Tangata Whenua over the foreshore and seabed, as affirmed in te Tiriti o Waitangi, and strongly condemn any move to interfere with those rights. I cannot accept any move by the NZ Government to extinguish those rights. I also believe it is the Government's responsibility to dispel the false and divisive perception that Maori, in demanding recognition of their rights, are seeking to deny public access to the beaches. Please reply, informing me of the Government's position on these issues."

You can get copies of the postcard from Arena, PO Box 2450, Christchurch (please include a stamped self-addressed envelope if you can, to help keep costs down) or email arena.nz@clear.net.nz and say how many you would like.

◆ **'Maori seabed - for shore' bumper stickers** - with a Tino Rangatiratanga flag and the text in red, black and white, are \$3 each, or \$2 each for ten or more. Send your name and postal address, with a note indicating how many stickers you want, together with your cheque made payable to 'Network Waitangi Whangarei', to NWW, c/o Pete Maguire, 24 Pah Rd, Onerahi, Whangarei.

[1] Information on the UN Working Group on Indigenous Populations, the International Decade of the World's Indigenous Peoples, the Permanent Forum on Indigenous Issues, the Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous Peoples, and the Draft Declaration on Indigenous Peoples Rights is available on the UN High Commissioner for Human Rights web site at <http://www.unhchr.ch>