Women's International League for Peace and Freedom

United Nations Consultative Status with ECOSOC, UNESCO and UNCTAD; Special relations with the ILO, FAO, UNICEF, and other organisations and agencies

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Submission to the Ministerial Review Panel on the Foreshore and Seabed Act 2004

The Women's International League for Peace and Freedom (WILPF) has three branches in Aotearoa and we are part of a much wider international organisation which works for peace, justice, human rights and the rights of indigenous peoples, locally, regionally and internationally.

WILPF has Consultative Status with United Nations agencies such as ECOSOC, UNESCO, UNCTAD, FAO, ILO and UNICEF. In Aotearoa / New Zealand we are a mainly Pakeha/Tauiwi organisation but we do have a number of Maori members who are involved in our activities and support our aims. We believe that it is not possible to have a peaceful world when there is injustice, oppression, exploitation and inequality.

In our submission on the Foreshore and Seabed Bill in 2004, WILPF stated that we strongly opposed the legislation because we believed that it would create and impose a massive injustice for Maori. This legislation was unfair, unjust, discriminatory and unnecessary. We still hold that view.

We request that the Act be repealed and a more positive way forward be set in place, which fully respects the rights of Maori.

The Act includes substantial breaches of the Treaty of Waitangi, of human rights protected in domestic legislation and international law, and it removes the possibility of common law recognition of the full extent of Maori title and rights in foreshore and seabed areas.

Alternatives to the legislation which would not have discriminated against hapu and iwi were not even considered, let alone explored by the government in 2003/04. For this to happen, the Act must first be repealed and the process must be based on the assumption that the foreshore and seabed areas belong to hapu and iwi, rather than an assumption of Crown ownership. That is the reverse of the situation created by the present Act whereby Maori must prove ownership. It should be the Crown that has to do this. As the Waitangi Tribunal stated in 2004 when considering the government's policy, 'a government whose intention was to give full expression to Maori rights under the Treaty would recognize that where Maori did not give up ownership of the foreshore and seabed, they should now be confirmed as its owners.'

The Waitangi Tribunal's first recommendation about the foreshore and seabed was the need for a longer conversation. The time constraints put on the Review Panel do not allow enough time to consult adequately with hapu and iwi. It is essential that a just and durable resolution is reached. The recommendations from hapu and iwi need to be given careful consideration. We need to remember that during all the time that Maori believed they still retained ownership of the foreshore and seabed, access for the rest of the population of New Zealand was not denied, unless there were breaches of care and respect.

The issues WILPF raised in its submission to the Foreshore and Seabed Bill will continue to concern us until the Act is repealed. These are, in brief :-

- That the Act vests ownership of the foreshore and seabed in the Crown and this will allow it to be sold by a simple Act of Parliament. Soon after the Act was passed the Crown sold mineral rights in some areas.

- That the Act does not affect those areas of foreshore and seabed or adjacent land that are in private ownership.

- That the Act extinguishes Maori customary title and replaces it with a set of new rights which are restrictive and difficult to prove.

- If the land was unjustly confiscated in the past, the Act prevents whanau, hapu and iwi from pursuing customary rights orders.

- The Act is a serious breach of Article II of the Treaty of Waitangi which affirms to Maori the tino rangatiratanga of their lands, and Article III because it fails to treat Maori and non-Maori citizens equally because only private property rights of Maori are affected. This is a violation of the rule of law.

- The Act puts one form of ownership above another and treats the associated rights differently. Those who have private ownership are not affected by the Act.

- The Act violates human rights protected in domestic legislation such as the Bill of Rights Act and the Human Rights Amendment Act which provide for freedom from racial discrimination.

- The Act violates human rights protected by international standards and conventions.

- The Act does not guarantee public access and local ownership.

- The Act overrides common law and removes one path to correct an historical injustice The Court of Appeal ruling which gave the Government the excuse to formulate and pass the Act, opened the possibility of Maori pursuing common law claims to the foreshore and seabed through the Courts.

- The Act freezes cultural practices in time and codifies them.

WILPF recommends

1. That the Act be repealed and that the process going forward should be the reverse of what has happened to date, that is, it must be based on the assumption that the foreshore and seabed areas belong to hapu and iwi, rather than an assumption of Crown ownership.

2. That the recommendation of the Waitangi Tribunal be heeded that a longer conversation needs to take place over an extended period. There must be dialogue with hapu and iwi to seek ways to mitigate the discriminatory effects of the Act.

A longer time taken for all to have input is more likely to achieve a satisfactory outcome for all. Rushing through another Act could create even more problems.

3. That the recommendations and models from hapu and iwi, for positive ways forward should be supported. They are more likely to be better for all New Zealanders.

4. That this process of reviewing the Act be used as an opportunity for the Government to honour the Treaty of Waitangi and give consideration to the constitutional changes needed to give full effect to its provisions.

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