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## المجلس الاقتصادي والاجتماعي



لجنة حقوق الإنسان

الدورة الثانية والستون

البند ١٥ من جدول الأعمال المؤقت

### قضايا السكان الأصليين

حقوق الإنسان وقضايا السكان الأصليين

تقرير المقرر الخاص المعني بحالة حقوق الإنسان والحريات الأساسية

للسكان الأصليين، السيد رودولفو ستافنهاغن\*

إضافة

البعثة التي قام بها إلى نيوزيلندا\*\*

\* سبب التأخير في تقديم هذا التقرير هو الحاجة إلى أن يتضمن أحدث المعلومات.

\*\* يُعَمَّم هذا الملخص بجميع اللغات. أما التقرير نفسه، المرفق بهذا الملخص، فيُعَمَّم باللغة التي قُدِّم بها

فقط.

## موجز

يُقدّم هذا التقرير وفقاً لقرار لجنة حقوق الإنسان ٥١/٢٠٠٥ وهو يشير إلى الزيارة الرسمية التي قام بها إلى نيوزيلندا المقرر الخاص المعني بحالة حقوق الإنسان والحريات الأساسية للسكان الأصليين في الفترة من ١٦ إلى ٢٦ تشرين الثاني/نوفمبر ٢٠٠٥، عملاً بالدعوة الدائمة الموجهة من حكومة نيوزيلندا إلى المقرر الخاص الخاصين التابعين للأمم المتحدة. وينوه المقرر الخاص بالفرصة التي أتاحت له للتداول مع مسؤولين حكوميين رفيعي المستوى وزعماء من قبائل ماوري، ومنظمات للسكان الأصليين وللمجتمع المدني ومع ممثلين لمراكز بحوث ومؤسسات تعليمية، وهو يعرب عن امتنانه لشعب وحكومة نيوزيلندا على حفاوتهم وتعاونهم.

والعلاقات بين شعب ماوري، وهم السكان الأصليون لنيوزيلندا، والحكومة تركز على معاهدة "وايتانغي" الموقع عليها في عام ١٨٤٠. ونتيجةً لعمليات بيع الأراضي وخروق المعاهدة من جانب التاج، فإن شعب "ماوري" قد فقد معظم أراضيه وموارده وحكمه الذاتي وهويته الثقافية. وقد أدى نهج جديد يُتبع منذ عام ١٩٧٥ إلى إيجاد تسويات عديدة للمطالبات المتعلقة بأراضي "ماوري" وسن تشريعات جديدة.

ويشكل الماوريون، الذين يمتلكون تقاليد ثقافية تتسم بالشراء والحيوية، نحو ١٥ في المائة من مجموع السكان الذين يبلغون نحو أربعة ملايين نسمة. وفي حين أن معظم الماوريين يعيشون في مراكز حضرية، فإنهم يحافظون على علاقة روحية وثيقة مع الأرض والبحر، ولا سيما في المناطق التي تركز فيها قبائلهم "إيوي".

ويجد المقرر الخاص تشجيعاً في التزام الحكومة بالحد من أوجه انعدام المساواة القائمة حالياً بين الماوريين وغير الماوريين وبضمان أن تتقاسم جميع الجماعات في مجتمع نيوزيلندا ثمار عملية التنمية.

وعلى الرغم من التقدم الحرز، فإن الماوريين يشعرون بنفاد الصبر إزاء وتيرة تصحيح الخروق التي وقعت لمعاهدة "وايتانغي". ومما يقلقهم بصورة خاصة قانون "مقدمة الشاطئ وقاع البحر" الذي يزيل ما للماوريين من حقوق ملكية تقليدية على المناطق الساحلية ويتيح عملية قانونية للاعتراف بسندات الملكية العرفية أو الخاصة بالسكان الأصليين. وتطبق الحكومة استراتيجيات شتى للحد من أوجه انعدام المساواة بين الماوريين وغير الماوريين فيما يتعلق بمؤشرات اجتماعية عديدة مثل الصحة والتعليم والإسكان والعمالة والدخل.

ويختتم المقرر الخاص تقريره بعدد من التوصيات التي يُقصد بها مساعدة الأطراف المعنية في سد الفجوات القائمة وتدعيم الإنجازات المتحققة حتى الآن بغية الحد من أوجه انعدام المساواة وحماية حقوق الماوريين.

## Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION  
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF  
INDIGENOUS PEOPLE, RODOLFO STAVENHAGEN,  
ON HIS MISSION TO NEW ZEALAND  
(16 to 26 November 2005)**

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## **Introduction**

1. Pursuant to Commission on Human Rights resolution 2001/57 of 24 April 2001, which established his mandate, and to the standing invitation of New Zealand to United Nations special procedures, the Special Rapporteur visited New Zealand from 16 to 26 November 2005. The purpose of the visit was to gain a better understanding of the situation of indigenous people in New Zealand through discussions with the relevant parties on issues such as the treaty settlements process, the implications of the Foreshore and Seabed Act, public policies designed to reduce social inequalities between indigenous people and others, the provision of basic social services such as education, housing and health care to indigenous people, and the cultural revitalization of Maori.

2. The Special Rapporteur would like to express his gratitude to the Government of New Zealand, and especially to Te Puni Kohiri (the Ministry of Maori Development), for its invitation and cooperation, as well as to the Treaty Tribes Coalition and the numerous indigenous organizations and communities for their support, warm hospitality and the useful information provided.

## **I. SCHEDULE OF THE VISIT**

3. The Special Rapporteur visited Auckland, Christchurch, Lake Taupo, New Plymouth, Parihaka, Rotorua and Wellington. He met, among others, with the Deputy Prime Minister, Michael Cullen; the Minister of Maori Affairs, Parekura Horomia; and the Minister of Customs and Youth Affairs, Nanaia Mahuta.

4. He held talks with a number of chief executives and senior officials of the Ministry of Maori Development, the Department of the Prime Minister and Cabinet, the Treasury, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Ministry of Economic Development, the Ministry of Health, the Ministry of Education, the New Zealand Corporation, the State Service Commission, the Office of Treaty Settlements and the Crown Law Office. He met with the authorities of the Human Rights Commission, the Waitangi Tribunal and the Maori Land Court, as well as with the leadership of the Maori Party and academics from institutions of higher learning.

5. During his visit, the Special Rapporteur was hosted, among others, by Paramount Chief Tumu Te Heu Heu of Ngati Tuwharetoa at Lake Taupo. In Parihaka he attended a national *hui* (meeting) with leaders and representatives from all over the country. In Christchurch, he met with representatives of South Island *iwi* (tribes), including Kai Tahu, who hosted him at Tuahiwi Marae. In Hauraki he participated in a regional *hui* at Ngahutoitoi Marae, ending his regional visits in Rotorua at a *hui* hosted by Te Arawa at Tamatekapua Marae. He also met with members of the Maori Studies Department at the University of Auckland and with the Maori Women's Development Corporation. At Ngati Whatua Corporation he was briefed on Maori economic development activities.

## **II. HISTORICAL BACKGROUND AND CONTEXT**

6. New Zealand (Aotearoa) is historically a bicultural country made up basically of two ethnic components, the Maori, who trace their ancestry to the original Polynesian inhabitants, and the descendants of the European colonists and settlers, known as Pakeha, who arrived in increasing numbers beginning in the nineteenth century. New Zealand is becoming a more multicultural society due to recent immigration from the Pacific Islands, Asia, Eastern Europe and Africa. Out of a total population of about four million, Maori, whose numbers dropped precipitously due to

contact with Europeans, currently represent around 15 percent, most of whom currently live in urban centres. Maori possess a rich and vibrant cultural tradition, expressed through their close spiritual links with the land and the sea, a carefully maintained oral history, distinct forms of social organization and cultural values, as well as a variety of material and performing arts. Much of this was destroyed and diminished during the colonial period but has, in recent decades, undergone a significant rebirth, greatly enriching New Zealand society.

7. Britain annexed New Zealand in 1840 and signed an international treaty with a number of tribes *iwi* of the then sovereign Maori people of Aotearoa. The Treaty of Waitangi is considered a founding document of New Zealand, whereby the British Crown established its sovereignty and the Maori were guaranteed “full exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries, and other properties which they may collectively or individually possess”. The Crown thus recognized Maori’s inherent property rights, customary use of lands and resources, cultural heritage and traditional chieftainship authority. There is a continuing controversy regarding the interpretation of the text in its two distinct language versions, English and Maori, which has led to disputed meanings of the notion of “sovereignty” in the Treaty. To this day there is no agreement on a commonly understood meaning of the Treaty text.

8. During most of the nineteenth and part of the twentieth century Governments paid little attention to the Treaty of Waitangi. Historically, much legislation had a negative impact on Maori rights, including land legislation since 1862 that functioned to individualize Maori land to make it available for sale and as a result they lost most of their land. Most land in New Zealand was out of Maori ownership by 1900. Much of this legislation is now considered as breaching the Treaty of Waitangi.

9. In 1987 a landmark decision by the Court of Appeal described the Treaty as “part of the fabric of New Zealand society” and as “the country’s founding constitutional instrument”, based on legislation that prohibited “the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.” Whereas this decision did not seek to clarify the legal status of the Treaty within the overall constitutional framework of the nation, the Court of Appeal and the Crown have determined the general Treaty principles, which are referred to in recent legislation. While some Maori consider them as the clearest statement of their rights, others regard the Treaty itself, not the “Principles,” as the source of their rights. Over 45 Acts of Parliament and other official documents refer to the Treaty and/or its principles, including references to the partnership between Maori and the Crown.

10. Not being directly enforceable under New Zealand law unless its provisions are explicitly incorporated into legislation, the Treaty is not a formal part of New Zealand domestic law. This makes it more difficult for Maori to invoke the Treaty provisions in defence of their rights before the courts and in negotiations with the Government. In view of the importance of the Treaty as a founding constitutional document and its unenforceability as a constitutional guarantee of human rights, the Special Rapporteur considers that the entrenchment of the Treaty of Waitangi in constitutional law is long overdue.

### **III. THE HUMAN RIGHTS SITUATION OF INDIGENOUS PEOPLE (MAORI) IN NEW ZEALAND: PRIORITY ISSUES**

11. The Constitution Act of 1986 brings together some of the more important statutory constitutional provisions, but New Zealand does not have a written constitution. Over the years, the country has adopted a broad range of domestic human rights legislation to comply with international conventions to which it is a party. Among them are the New Zealand Bill of Rights Act 1990 (BORA) and the Human Rights Act 1993. The Government of New Zealand defines its

international presence as a principled defender of human rights, and it cooperates closely with United Nations human rights bodies. It has also occasionally contributed to the United Nations Voluntary Fund for Indigenous Populations.

12. The Human Rights Commission is responsible for advocating and promoting respect for, and an understanding and appreciation of, human rights in New Zealand society and for encouraging the maintenance and development of harmonious relationships between individuals and among the diverse groups in New Zealand society. The Commission is charged with promoting better understanding of the human rights dimensions of the Treaty of Waitangi. Although its decisions are not judicially enforceable, the Commission can also resolve disputes relating to unlawful discrimination.

13. The Special Rapporteur considers that New Zealand's human rights legislation does not provide sufficient protection mechanisms regarding the collective rights of Maori that emanate from article 2 of the Treaty of Waitangi (their *tino rangatiratanga*). He also considers that the underlying legal and political fragility of Maori rights translates into a human rights protection gap that seems not to be sufficiently covered by existing legislation. For example, the Legal Services Act 2000 prevents any body of persons from obtaining funding under the Act to defend their rights in court, except under specified circumstances.

14. The inherent rights of indigenous peoples are referred to in New Zealand common law as customary rights and/or aboriginal title. Some Maori contend that their inherent rights (Treaty of Waitangi, art. 2) are more comprehensive than any limited legal expression thereof in English common law. The Waitangi Tribunal has in several of its reports acknowledged this perspective and some of the recent settlement of Maori claims acts passed by Parliament also refer to such a wider conception of rights, which indeed coincides with the concept of indigenous rights currently evolving at the international level.

15. In New Zealand it is through the courts, parliamentary statute or administrative decision that aboriginal title and customary rights of Maori have been legally recognized and registered, very often in the form of individual fee simple ownership titles. Most Maori property rights to land are in fact acknowledged in this way, and there is extensive recognition of wider rights in addition to the land tenure system. The Te Ture Whenua Maori Act 1993 preserves the capacity of Maori to hold land collectively. Approximately 1.3 million hectares (of a total land area of 27 million hectares) is held on this basis. On the other hand, it has also been through the courts, parliamentary statute and administrative decisions that Maori have been dispossessed over the years of their inherent rights and that their aboriginal titles have been extinguished. It is precisely this process which led to increasing discontent and the well-known protest movements of recent decades, which led to the Government's establishment of the Waitangi Tribunal claims inquiries and then to the negotiated settlement processes that are currently taking place.

16. The Special Rapporteur considers that from a human rights perspective, Governments cannot unilaterally extinguish indigenous rights (whether they are referred to as aboriginal or customary title) through any means without the free, prior and informed consent of the concerned indigenous peoples. In the view of the Special Rapporteur, replacing an inherent right with a difficult judicial and administrative procedure leading possibly to the issuing of a "customary rights order," may amount to less than the full protection of human rights that the Government is duty-bound to comply with.

### **A. Political representation**

17. Maori, who are full and equal citizens of New Zealand, have been represented in Parliament since the nineteenth century when four seats were reserved for them. Later, Maori were able to become members of Parliament on the general list as representatives of the various political parties. Currently, Parliament has 21 Maori members of Parliament (about 17.3 per cent of the total seats). In the Mixed Member Proportional (MMP) system, in existence since 1993, there are seven Maori seats, elected only by Maori electors on the Maori roll. Fifty-five per cent of declared Maori voters are currently on the Maori roll. A recent development is the emergence of the Maori Party, which at its first poll in September 2005 won four seats in Parliament. In the current Government there are six ministers of Maori descent. The Special Rapporteur considers that the MMP system, whatever its limitations, has broadened democracy in New Zealand and should continue governing the electoral process in the country to ensure a solid Maori voice in Parliament and guarantee democratic pluralism.

18. Whereas *iwi* and *hapu* (tribes and sub-tribes) are acknowledged traditional units of Maori social organization with whom the Government is settling Treaty claims, they have no formally recognized governance powers. In relation to historical Treaty settlements the Government's policy is to settle with large natural groups that include *iwi*, *hapu* and *whanau* (families). Some Maori political movements have advocated for *tino rangatiratanga*, that is, a degree of self-determination consistent with the Treaty of Waitangi.

19. New forms of Maori governance bodies have emerged from the settlement of claims process through the establishment, among others, of Trust Boards by the Government. A range of bodies currently participate in Treaty of Waitangi settlement negotiations, political decision-making and consultation with local and central government, for instance Te Runanga o Ngai Tahu, a governance body established at the request of the Ngai Tahu *iwi*. They also participate in the successful management of any monies or assets that arise from the settlement of claims. In consultation with Maori, both central Government and the Law Commission are considering options for improving the forms of legal entities available to Maori for governance purposes.

20. Local government includes regional, city and district councils. Little more than five per cent of members elected to local councils are Maori. The Local Electoral Act 2001 opens the possibility of establishing Maori wards or constituencies for electoral purposes, intended to encourage Maori representation at the local level, which is still rather low. The Local Government Act 2002 requires that local authorities must take into account the relationship of Maori and their culture and traditions when making significant decisions and provide opportunities for Maori to contribute to decision-making processes.

21. As other indigenous peoples elsewhere, Maori contend that political rights embrace levels of citizenship, which move beyond individual rights to collective rights. Although they note issues arising with respect to individual participation in political processes, they emphasize their aspiration to retain or reclaim their decision-making capacity over certain intrinsic matters, including social and political organization, lands and resources, wider way of life, and their relationships as specific collectives with the Crown and the wider multi cultural polity.

### **B. Land rights, claims and settlements**

22. One of the more pressing current human rights concerns for Maori relates to land issues. In 2005, approximately 6 per cent of land remained in Maori ownership and 94 per cent of Maori ancestral land base has been appropriated by a variety of historical processes, including voluntary sale, fraudulent purchase, confiscation or alienations of land under the various Native Land Acts,

and the individualization and fragmentation of title resulting from the Native Land Court. The Maori Land Act 1993, recognizes that Maori land is a *taonga* (treasure) of special significance to Maori people. It is intended to promote the retention of land in the hands of Maori owners and to provide them with more management, use and development options, for which purpose it establishes the Maori Land Court, which deals with the contemporary consequences of the fragmentation of land ownership.

23. In the 1860s, the Government confiscated, by illegitimate military action, around 2 million acres of land belonging to the people of Taranaki, and persecuted those who resisted. The land was then sold or leased by the Government to non-Maori individual owners until well into the twentieth century. Taranaki was left with around 3 per cent of its original lands, many of the people becoming destitute and living in poverty.

24. In 1996 the Waitangi Tribunal published a report on the claims relating to these land confiscations, which found that eight Taranaki iwi were dispossessed of their land, leadership, means of livelihood, personal freedom, social structure and values. The result was the loss of both social and economic development opportunities. The Crown has reached settlements with four of the eight iwi, whereas one of the iwis was still working out a settlement in 2004. The people of Parihaka in Taranaki, who have been struggling for a just settlement of their losses and damages provided the Special Rapporteur with their story and complaints during a hui arranged for that purpose. The Special Rapporteur saw that some of them live in poverty and have lost hope. Others are still engaged in a struggle for redress and compensation from the Government for past injustices and are hopeful that they will finally be heard. The Government informed the Special Rapporteur that it has held pre-negotiation discussions with one of the remaining Taranaki iwi.

25. The Waitangi Tribunal has registered 1,236 claims in 30 years, of which 49 have been settled by the Government, and another 35 partially settled. They include historical claims that cover half the land area of the country. The Government notes that 18 historical settlements have been reached, that another 25 groups are in negotiations with the Crown, and that at the present rate of progress it is possible to settle all historical claims by 2020. The Tribunal has reported so far on 428 claims, and has issued 90 reports.

26. Recommendations made by the Waitangi Tribunal are not generally binding on the Crown. The process is not therefore adjudicative, in the judicial sense, and whether it results in any redress at all depends on both the Government's and the claimants' willingness to reach an agreement. In relation to some Government-held forest land and State-owned enterprises, the Tribunal has binding "adjudicative" powers. In the view of the Special Rapporteur, such redress as may be negotiated in the historical claims process seems, on the basis of experience so far, to fall short of "just and adequate reparation or satisfaction for any damage suffered" (within the meaning of article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination). The Government of New Zealand does not consider that historical injustices, which largely occurred in the nineteenth century, fall within the scope of the obligation under the Convention to provide reparation for contemporary discrimination. In recent years the Crown has not always accepted the findings of the Waitangi Tribunal reports.

27. The overall land returned by way of redress through settlements is a small percentage of the land claims, and cash paid out is usually less than 1 per cent of the current value of the land. Total Crown expenditure on the settlement of Treaty breach claims over the last decade (approximately NZ\$ 800 million) is about 1.6 per cent of the government budget for a single year. The Special Rapporteur considers that the notion that Maori have received undue privileges from Treaty settlements, which has been floated in the media and by some politicians, lacks any substance whatsoever. As it continues to play a significant role in the recovery of Maori human



rights, the Tribunal should receive more funding to bring hundreds of outstanding claims to a satisfactory conclusion. Moreover, its findings should be judicially recognized and become binding on the Crown. Therefore, the Special Rapporteur is concerned about statements disqualifying the work of the Tribunal and demanding its dissolution.

28. Hauraki's original land area in the Auckland region was around 750,000 hectares, of which now there is only 2.6 per cent left. Hauraki Maori told the Special Rapporteur that various Acts and court decisions have been used by the Government since the end of the nineteenth century to dispossess them of their customary rights, appropriating them for itself and then selling or leasing the resource to private non-Maori enterprises. The Crown understands that Hauraki Maori were generally willing sellers of their land. Hauraki sociodemographic indicators (health, education, housing, incomes) are consistently lower than those for other New Zealanders. They also complain about their marginalization from local governance.

29. Hauraki Maori, represented by a Trust Board that includes around 14,000 members of 12 local *iwi*, have filed a number of claims against the Crown with the Waitangi Tribunal, which has not yet finalized its report. The Board provides a range of health, social and education services to its members, and also engages in economic activities such as fisheries, aquaculture and broadcasting. The Trust Board continues to seek a satisfactory settlement with the Government and hopes to achieve collective benefits for all its people. The Office of Treaty Settlements is in pre-negotiation discussions with other groups as well as with the Trust Board concerning a possible negotiation of a settlement of Hauraki Maori claims.

30. Once a claim under the Treaty of Waitangi has been lodged, there ensues a process of negotiation seeking to achieve a fair and just settlement of Crown historical breaches of the Treaty. Participation in negotiations is voluntary and all groups are free to withdraw at any time. The process is currently managed by the Office of Treaty Settlements within the Ministry of Justice, established in 1995. Treaty settlements return to tribes some of the economic and other resources needed for community development including, for example, forestry assets and farms and commercial buildings. The negotiation process involves several stages, and key elements of the final settlement are an apology by the Crown for unconscionable actions committed against Maori and various forms of cultural and financial redress involving either cash or Crown assets. The Government does not provide full compensation for losses suffered historically by Maori, but negotiates a compromise. Settlements remove the jurisdiction of the courts and the Waitangi Tribunal in respect of the claims of a group. The Treaty settlement process is intended to be reparative and to provide redress for historical misconduct. It is therefore intimately connected to the right to a remedy for breaches of legal rights. Successive New Zealand Governments have accepted that Maori have a moral and political right to redress under the Treaty, but not a legal right.

31. Ngai Tahu lost most of their extensive landholdings and assets during the nineteenth century and were never given the resources and services that the Government had promised them. After filing unsuccessful claims against the Crown for many decades, a Waitangi Tribunal claim in 1986 led to a negotiated settlement in 1997 and the passage of the Ngai Tahu Claims Settlement Act in 1998. In addition to an apology from the Crown and cultural redress, Ngai Tahu accepted a payment of NZ\$ 170 million (much less than the real value of what the Government actually owed them according to informed sources), recognizing the limitations on the amount of redress available. This allowed the tribe to establish an economic corporation which currently has interests in tourism, fishing and property. This financial security enables the tribe to deliver social benefits back to *iwi* members who are all the tribal descendants from the official census of 1848, wherever they may live today.

32. Treaty settlements that have been negotiated so far involve quantities of reparation that represent merely a fraction of the value of the land and resources lost by Maori during the colonial period. As at December 2005, \$748 million has been committed to final and comprehensive settlements with 18 claimant groups and several part settlements. Settlements currently cover more than half of New Zealand's land area, and more than half of the iwi that suffered confiscation, recognized as the most serious Treaty breach. The average settlement received by claimants is estimated to correspond to approximately one per cent of real value. Two of the groups who negotiated a settlement (Ngai Tahu and Tainui) received NZ\$170 million each, an amount that some Maori consider as insufficient to provide economic well-being for several thousand registered tribal members, and successive generations to follow. Other settlements involve much lower figures.

33. Maori argue that the cultural redress is equally insufficient, because the mechanisms involved in the settlements do not always restore either symbolically or in actuality ancestral homelands to the claimant group. In the Special Rapporteur's view, it would be more practical to include management regimes according to customary precepts, as some of them do, acknowledging that Maori possess primary decision-making capacity over appropriate sites, thus enabling greater expression of Maori cultural and spiritual relationships.

34. Maori legal authorities told the Special Rapporteur that they consider it constitutionally improper to force claimants to waive their entitlement to the protection of the courts when they negotiate settlements, especially as it is achieved through coercion; until the claimants have waived their rights, the negotiations will not be finalized. They feel that the result is a largely imposed settlement package, which claimants cannot bring before an independent or judicial body for rigorous qualitative testing. The Government notes that settlements do not affect any ongoing rights of claimants, although their historical claims cannot be reopened. Claimants are not in any way coerced to accept a settlement, and are free at any point to end negotiations.

35. Claimants must incorporate as "Trust Boards" or similar bodies in order to receive and administer the assets of a settlement. This decision has met with some criticism from Maori who feel that it is more appropriate for Maori themselves to decide who is to represent them and how they are to be represented in negotiations. The New Zealand Law Commission, an independent publicly funded entity devoted to legal reform, is currently designing a new form of Maori legal entity to administer communally owned assets, particularly those received from Treaty of Waitangi land and fisheries settlements. Te Puni Kokiri (the Ministry of Maori Development) is carrying out similar work on behalf of the Government.

36. Under the Resource Management Act the protection of recognized customary activities on the foreshore and seabed is considered a matter of national importance. New Zealanders also attach the highest importance to environmental issues. The Special Rapporteur received a number of complaints regarding concerns about resource management in relation to the environment. For example, in Kawerau a private paper mill was established in the 1950s which over the years not only was able to transform the local environment into a large forest plantation despite the opposition of numerous local Maori residents, but later began contaminating the local river with toxic waste disposal. The Ahu Whenua Trust lodged a complaint under the Resource Management Act and the Environment Act but has not yet received satisfaction. At the coastal site of Maketu a similar waste disposal built up in an estuary where the river had been diverted. Despite a Planning Court decision in 1990, the river has not yet been redirected.

37. Fisheries have been a major issue of concern to Maori. For over one hundred years, Maori had argued before the Crown, the Waitangi Tribunal and the courts that the guarantee of "full, exclusive possession...of their fisheries" contained in the Treaty of Waitangi had never been given

effect. Both the Waitangi Tribunal and the Government agreed there was some form of redress required. After complex negotiations, the Treaty of Waitangi Fisheries Deed of Settlement was signed in 1992.

38. As part of the 1992 settlement, the Crown agreed to a settlement amount for the development and involvement of Maori in the New Zealand fishing industry. The Settlement Act includes provisions for the Crown to pay \$150 million to enable Maori to purchase a half share in Sealord Products Ltd (New Zealand's biggest fishing company), holding 27 of the per cent New Zealand fishing quota. Twenty per cent of any new species quota was also promised as well as greater representation of Maori on statutory bodies on fisheries management. The Maori Fisheries Commission was restructured and renamed, making it more accountable to Maori and giving it more input to fisheries management.

39. In return, Maori agreed that all their current and future claims in respect of all sea or inland commercial fishing rights and interests were fully satisfied and discharged. It was also agreed that customary fishing rights would be recognized, protected and enforced by regulations and that the Fisheries Commission would develop a procedure to determine how the assets would be distributed.

40. In 1998 the Privy Council held that the obligations of the trust imposed by the Fisheries Settlement required the benefits of the settlement to be allocated to iwi (tribes) for the benefit of all Maori. A revised model for allocation was subsequently enacted as the Maori Fisheries Act 2004. A minimum of 40 per cent of net profit of the fishing company is to be distributed, 80 per cent going to mandated iwi organizations in proportion to their populations and 20 per cent to the corporate trustee (Te Ohu Kai Moana) to fund its work on behalf of iwi.

41. In response to Maori claims regarding aquaculture, the Maori Commercial Aquaculture Claims Settlement Act 2004 commits the Crown to provide Maori with the equivalent of 20 per cent of aquaculture space in the coastal marine area.

42. During his conversations with Maori organizations, the Special Rapporteur was told that Maori constantly have to renegotiate their collective self-governance rights through the Treaty settlement process, which does not restore actual decision-making capacity and does not recognize collective citizenship. Short of the recognition of self-determination or even self-governance, Treaty settlement packages could meet Maori aspirations halfway by awarding tribal collectives actual decision-making capacity over ancestral or culturally significant sites and resources through unencumbered fee simple title being transferred over such sites. The Crown could recognize in such settlements that it has legally enforceable obligations to tribal collectives as citizens who possess a distinct composite of inherent and inalienable rights. Existing settlement acts could be amended so as to enable iwi to self-determine an appropriate corporate structure for receipt of assets.

### **C. Human rights implications of the Foreshore and Seabed Act**

43. Over the past two years, an important human rights issue for Maori and all New Zealanders has been the controversy surrounding the adoption of the Foreshore and Seabed Act of 2004. The United Nations Committee on the Elimination of Racial Discrimination (CERD), which had carefully analysed the case after hearing Maori complainants and the Government of New Zealand, found in March 2005 that "... the legislation appears to the Committee, on balance, to contain discriminatory aspects against ... Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress." (CERD/C/DEC/NZL/1, para.6): Furthermore, the Committee expressed concern "at the apparent haste with which the legislation was enacted and

that insufficient consideration may have been given to alternative responses...” (ibid., para. 4). It also noted “the scale of opposition to the legislation among the group most directly affected by its provisions, the Maori, and their very strong perception that the legislation discriminates against them” (ibid., para. 5).

44. On his mission to New Zealand the Special Rapporteur was briefed extensively by the Government, by numerous Maori organizations and members of the Waitangi Tribunal and by the Human Rights Commission about the background, complexities and implications of this legislation and has had the opportunity to study the documentation and weigh the different arguments.

45. Both foreshore (the area of land between the low and high tide marks) and seabed have long been a part of Maori environment, culture, economic activity and way of life, basically for marine farming and small-scale sand mining, more recently for tourism. Maori customary ownership, occupation and use of the foreshore and seabed, according to the Treaty of Waitangi, were never legally challenged in the courts. New Zealand’s submission to CERD states that the “Government understood that foreshore and seabed in New Zealand was generally owned by the Crown”. The government’s understanding was based on existing legislation which provided for vesting of the foreshore and seabed in the Crown, and existing domestic case law, notably the 1963 *Ninety Mile Beach* decision of the Court of Appeal.

46. It was on this basis that the public right of access to the beaches was assumed and the development of certain private commercial activities occurred on the foreshore and seabed within the framework of existing statutes and regulations such as the Resource Management Act and its predecessors. Customary rights only become “aboriginal title” at common law, which requires a court decision or a specific statute. The Maori Land Court had not generally dealt with these issues under its jurisdiction. In 2003 the Court of Appeal (*Ngati Apa* case), overturning *Ninety Mile Beach* of 1963, ruled that it was arguable that customary title had not been extinguished either directly or by implication. The Court also declared that the Maori Land Court could determine whether defined areas of foreshore and seabed had the status of “Maori customary land.” Maori tribes could also apply to the High Court for determinations on customary title to particular areas of the foreshore and seabed.

47. These developments prompted the Government to announce its foreshore and seabed policy in 2003, which became the subject of an urgent inquiry by the Waitangi Tribunal. The Tribunal, expressing its disagreement with the Crown’s proposal, concluded that this policy would remove the ability of Maori to go to the High Court and the Maori Land Court for definition and declaration of their legal rights in the foreshore and seabed. The Tribunal considered that in removing the means by which the rights would be declared, it effectively removed the rights themselves, whatever their number and quality. The Tribunal also concluded that the proposal would remove property rights, which amounts to expropriation; not guarantee compensation; enact a regime that recognizes lesser and fewer Maori rights in place of the property rights to be declared by the courts; and exchange property rights for the opportunity to participate in an administrative process.

48. Early in the debate on the foreshore and seabed issue, the Chief Commissioner of the Human Rights Commission stated that there are human rights dimensions to the issues of both customary rights and public access to the foreshore and seabed. The Government made some changes to the original bill, which in November 2004 was enacted by Parliament as the Foreshore and Seabed Act. According to the Government’s submission to CERD in February 2005, the purpose of the Act is to preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders and to recognize the rights and interests of individuals and groups in those areas. It does this by vesting the full legal and beneficial ownership of the public

foreshore and seabed in the Crown, and by instituting a mechanism for the identification and protection of customary uses, activities and practices by order of the Maori Land Court or High Court.

49. Although the New Zealand Human Rights Commission had expressed concern over the unjustifiable extinguishment of Maori customary title to the foreshore and seabed and the absence of a guaranteed right of redress, it nevertheless noted a number of positive aspects in the Act, namely recognition of the strong cultural connection with the foreshore and seabed felt by all New Zealanders, the protection of public access, and rights of navigation, and the importance of non-alienation of areas of New Zealand's coastline.

50. The Act provides for the protection of important cultural sites by limiting access to the foreshore and seabed by way of ministerial decision. It also defines "territorial customary rights" as pertaining only to judicially determined customary/aboriginal title and not to any group or individual claiming such a right. Nonetheless, the Human Rights Commission points out that potential Maori customary title over parts of the foreshore and seabed and fee simple title for Maori land under existing legislation have now been removed, without equivalent replacement.

51. There remains no guarantee of equitable redress for Maori groups for loss of customary title or criteria to guide compensation calculations and given that the Act is in its early stages of implementation, the nature of the negotiated redress is yet to be determined. In addition, the establishment of potential foreshore and seabed reserves, which is a positive development, must also be negotiated and in essence fails to provide Maori groups with an appropriate recompense for loss of customary title. By excluding existing freehold interests in the foreshore and seabed from the vesting of the foreshore and seabed in Crown ownership, the Commission considers that the Act limits the right to freedom from discrimination. The Commission also considers that parts of the legislation may also infringe the right not to be arbitrarily deprived of property, and the right to development. In fact, New Zealand's Attorney General recognizes that the Act provides differential treatment and that this might entail *prima facie* breach of New Zealand's Bill of Rights Act, yet she still considers this differential treatment justified.

52. The Treaty Tribes Coalition considers that the Act exacerbates the prejudice that Maori have historically experienced, particularly in that redress for rights expropriated by the Act are not susceptible to judicial review; and that the Act extinguishes customary Maori property rights (as protected under the Treaty of Waitangi) and replaces them with the possibility to apply for "orders" from the courts to protect customary uses and practices if the claimant fulfils a number of difficult and potentially costly requirements. According to information received by the Special Rapporteur, six groups have applied to the Maori Land Court for customary rights orders.

53. The publication of the Foreshore and Seabed Bill triggered a controversial public debate in the country and the almost unanimous rejection of a vast majority of Maori organizations, which culminated in the autumn of 2004 with a protest march (*hikoi*) on the country's capital, Wellington, by an estimated 30,000 to 50,000 people. The debate was taken up by the media and became a political issue during the 2005 elections. It polarized public opinion and brought to the surface a number of underlying racial tensions in the country. CERD felt compelled to state that "the Committee remains concerned about the political atmosphere that developed in New Zealand" (*ibid.*) and expressed its hope "that all actors in New Zealand will refrain from exploiting racial tensions." The Government of New Zealand rejects the view that the ongoing debate involves "escalating racial hatred and violence" and finds no factual basis for such a claim.

54. The "struggle without end" for Maori rights, as one author calls it, has found its latest expression in the human rights implications of the Foreshore and Seabed Act. On the other hand,

some New Zealanders appear to approve of the view of “One law for all” (that is, no more special laws on Maori rights, understood as meaning Government should stop the alleged “pampering” of Maori). The political media have taken up these arguments and have reflected the view of those who would like to see an end to the alleged “privileges” accorded by the Government to Maori. The Special Rapporteur was asked several times whether he agreed that Maori had received special privileges. He answered that he had not been presented with any evidence to that effect, but that, on the contrary, he had received plenty of evidence concerning the historical and institutional discrimination suffered by the Maori people, evidence that he is concerned with in the present report.

55. Many Maori consider that through the Foreshore and Seabed Act the Crown, while arguing in favour of the interests of the general public in New Zealand, has breached the Treaty of Waitangi once again. Even as it includes certain mechanisms for a declaration of existing “customary rights”, the Act clearly extinguishes the inherent property rights of Maori to the foreshore and seabed without sufficient redress or compensation, but excludes certain properties already held in individual freehold. The Government states that there are basic distinctions between the very limited existing freehold titles and the claimed customary interests. The Act provides a statutory process for the recognition of customary or aboriginal title founded on exclusive use and occupation, which the common law would have recognized. In the view of the Special Rapporteur, the Act can be seen as a step backward for Maori in relation to the progressive recognition of their rights through the Treaty Settlement Process over recent years.

#### **D. Administration of justice**

56. Everyone charged with an offence has a right, under the New Zealand Bill of Rights Act 1990, to language interpretation if needed which includes the use of indigenous language, having documents served and filed in Maori. This right is also recognized in the Maori Language Act 1987. The courts must also have regard to the different traditions of ethnic groups who use the system. New legislation has been adopted following a report in 2000, by the Ministry of Justice, which found that this provision was underutilized, with only 14 per cent of survey respondents perceiving that it was used as frequently as it could be.

57. According to information provided to the Special Rapporteur, Maori are three times more likely to be apprehended for an offence than non-Maori, and four times more likely to be apprehended for violent crime. Prosecution rates are considerably higher for Maori than for non-Maori (88 against 18 per 1,000). Conviction rates are 50 per 1,000 for Maori compared to 12 per 1,000 for non-Maori. Although they represent 13 per cent of the population over 14 years of age, in 1988 Maori accounted for 40 per cent of all arrests, 41 per cent of all prosecuted cases, and 44 per cent of all people convicted, Maori make up around 50 per cent of the prison population. This pattern arguably represents the underlying institutional and structural discrimination that Maori have long suffered.

58. The Ministry of Justice and the Department of Corrections have initiated a number of programmes to address this issue. In partnership with Maori, these programmes have focused on engaging with local communities and Kaitiaki, groups that are recognized Maori guardians of resources in the geographical region of a prison. Reducing youth offending, and the over-representation of young Maori in the youth justice system, continues to be a priority for the Government. Though the Ministry of Justice does not believe that ethnicity is a main cause for crime, it considers that the current disparities justify targeted programmes and recommends that increased emphasis be placed on evaluation of ethnically targeted crime prevention and reduction programmes.

### **E. Language, culture and education**

59. During the nineteenth and most of the twentieth century, cultural and educational policy was based on the premise that Maori would and should assimilate into the dominant English culture. A Maori cultural revivalist movement in the early part of the century had limited impact on the overall society. Only as a result of the social protest movements by Maori in the 1970s and 1980s did human rights issues become politically relevant and led to important changes in legislation, government policies and social awareness among the rest of society. In 1985 the Waitangi Tribunal declared the Maori language to be a treasure (*taonga*), to be protected under the terms of the Treaty of Waitangi. Maori was first recognized as an official language in the Maori Language Act 1987, which established the Maori Language Commission to promote Maori as a living language. It enables any witness, lawyer or party to speak Maori in courts, commissions of inquiry and tribunals.

60. During most of the last century, the use of the Maori language in schools was actively discouraged, in order to promote instead assimilation of the Maori into European culture as rapidly as possible. As a result of intense activity carried out by Maori women's organizations, the first language-nest (*kohanga reo*) pre-school Maori language immersion programme was established in 1981. The aim was to make every Maori child bilingual by the age of 5 years. By 1994 the programme had 809 schools, and it had 31 per cent of all Maori enrolments in 2003 but still suffers from an insufficient number of professional Maori teachers. In 2003 there were 61 Maori in total language immersion State schools (with almost 6000 students and 415 Maori teachers), 83 bilingual schools and numerous others with immersion classes and bilingual classes. The Government, through Te Puni Kokiri, provides ongoing financial support.

61. Thanks to efforts by Maori leaders, the Maori language became a university subject in 1951. Later, courses in Maori language were included in the curriculum of five universities and eight training school colleges. In 1990, three *wananga* (Maori education providers) were recognized under statute as tertiary education institutions and since 1999 have been provided with capital support from the Crown, following a Waitangi Tribunal claim. In 2004 there were 70,000 students enrolled in the three *wananga*. Maori participation in certificate (lower) level tertiary education has grown rapidly over recent years. There were 94,400 Maori students in tertiary education in 2004, up 250 per cent from 1994. Maori students are moving to further study at higher rates than non-Maori, especially Maori women students, whose numbers increased fourfold between 1994 and 2004. Participation by Maori remains lower than the average for the tertiary education sector.

62. The Maori Students in Tertiary Education of Aotearoa complained to the Special Rapporteur that a limitation to their progress to higher programmes in tertiary education is the high burden of student debt and decreasing public funding to support Maori students. The recent policy change to remove interest from student loan repayments will be of significant help to Maori students.

63. Maori organizations acknowledge that Maori culture has been rapidly and pervasively revived. Maori education providers now operate at all levels, delivering instruction in Maori, and teaching Maori customary philosophies, rituals and laws. The defining feature is that cultural revitalization has been driven by Maori, for Maori, with State support, particularly in funding. Maori culture is also promoted to the wider community, including in broadcasting, the arts and national ceremonial occasions.

64. The Government currently has a strategy for involving *iwi* and Maori in the provision of quality service that meets their aspirations, increasing Maori participation and achievement across

the educational sectors, and supporting the provision of Maori language and cultural education. Despite progress thus far, the schooling system has been performing on average less well for Maori than for non-Maori students, a problem which points to as yet unresolved issues concerning culturally appropriate educational methodologies. A major challenge for the educational system is to improve teacher training in the area of Maori education, including Maori teachers, and mainstream classrooms with Maori students.

65. The Maori Broadcasting Agency funds broadcasting services to promote Maori language and culture, including funding for a network of 21 iwi radio stations and radio news services in the Maori language. The Maori Television Service began broadcasting to the whole of New Zealand in March 2004. The State-owned Television New Zealand is required to ensure in its programmes the participation of Maori and the presence of a significant Maori voice. NZ On Air also supports Maori broadcasting by funding Maori mainstream television programming and Maori language and culture programming on National Radio.

66. A 2004 study on Maori and the media found that newspaper and television are fairly unbalanced in their treatment of Maori people and issues. A minority of newspapers as well as television programmes included themes relevant to Maori. Often programmes portray Maori as unfairly having benefits which are denied to others. Some of the most prominent media often highlight the potential or actual Maori control over significant resources as a threat to non-Maori. Another recurrent issue is the portrait of Maori as poor managers, either corrupt or financially incompetent. In general, the study reported that “bad” news about Maori predominated over “good” news. In some media denigrations and insulting comments about Maori were reported. These findings are of special concern to the Special Rapporteur and highlight a systematic negative description of Maori in media coverage, an issue that should be addressed through the anti-racism provisions of New Zealand’s Human Rights Act.

67. Another important issue relates to respect for and protection of traditional indigenous knowledge, an issue that the Ministry of Economic Development is considering in the intellectual property context. Changes were made to New Zealand’s trademarks legislation to guard against the registration of trademarks based on Maori text and imagery likely to be offensive to Maori. However, the protection of Maori intellectual property rights is still in its early stages.

#### **F. The challenge: reducing inequalities**

68. Maori are highly integrated into the wider national economy at all levels and make a significant and vital contribution to it, as workers, owners, investors and consumers. Maori household income was 72 per cent of the national average in 1998. The average incomes of employed Maori increased by 8 per cent in real terms over the period 1998-2003. The Maori unemployment rate fell from 18.6 per cent to 8.75, and Maori employment growth outstripped that of Europeans over the six years up to 2005. Though more Maori women are currently in paid employment or self-employed, their rates of employment and participation in paid work are still lower than those for Maori men and non-Maori. Still, their earnings are growing more rapidly than those of other categories.

69. The Ministry of Maori Development aims to improve outcomes for Maori and ensure the quality of government services delivered to Maori. It is engaged in realizing Maori potential by seeking opportunities for Maori to change their life circumstances, improve their life choices and achieve a better quality of life, recognizing that Maori are supported by a distinctive culture and value system.



70. New Zealand as a whole ranks high on international human and social development indicators. The average living standards and levels of well-being of Maori reflect that situation to a great extent. Nevertheless, despite the Government's intention to reduce the inequalities in the country, persistent disparities between Maori and Pakeha continue to exist in a number of areas. Across a range of indicators, Maori women still experience poorer economic, health and social outcomes than other New Zealand women, but there has been progress.

71. The Ministry of Health reports that Maori at all educational, occupational and income levels have poorer health status than non-Maori. A recent study finds that Maori life expectancy is significantly lower (almost 10 years) than that of non-Maori, although they have made a significant gain in the most recent five-year period. Maori are 18 per cent more likely to be diagnosed with cancer than non-Maori but nearly twice as likely to die from cancer. Maori are twice as likely as non-Maori to be diagnosed as having diabetes and yet are nine times more likely to die from it. Maori women are still twice as likely to be diagnosed with cervical cancer as non-Maori women, although the incidence of cervical cancer among them has decreased. Maori continue to have a higher infant mortality rate compared to the total population, but the gap is closing. Maori have on average the poorest health status of any ethnic group in New Zealand, according to official statistics.

72. Maori women experience higher rates of partner and sexual violence than European women. The Government's Action Plan for New Zealand Women intends to improve outcomes for women, including Maori women. Approximately 45 to 50 per cent of battered women using Women's Refuge services are Maori. Where women are at risk, their children may also be at risk. Maori youth have higher rates of suicide than similar non-Maori age groups, a situation that may reflect higher family dysfunctions and social disorganization associated with a history of discrimination.

73. The Government has adopted a specific Maori health strategy designed to improve outcomes for Maori and reduce the inequalities. There are 240 Maori health providers that service Maori communities, and are also used by non-Maori. In order to monitor Maori health effectively, high-quality ethnicity data has to be available. The Government has reviewed programmes and policies targeted by ethnicity and produced guidelines to ensure future targeting is clearly identified with need, not race. As a result, some programmes have been retargeted based on socio-economic need rather than ethnicity. The Special Rapporteur considers that such a "quantitative" approach might lead to neglecting the specific contextual factors that have impacted the persistent inequalities suffered by Maori and make the aim of "reducing inequalities" more difficult to attain, and he suggests that special measures to rapidly improve outcomes "by Maori for Maori" may still be called for. Of course this should by no means imply that other at-risk populations deserve anything less. There is evidence that indicates that access to high-quality health services is not evenly distributed between Maori and non-Maori.

74. The Human Rights Commission reports that Maori and Pacific peoples are disadvantaged in terms of affordability and habitability of housing - they are four times more likely to live in overcrowded houses than the national average. It finds that despite some indications of improvement, significant racial inequalities continue to exist in health, housing, employment, education, social services and justice. Home ownership rates are much lower for Maori than for the general population and have declined from 52 to 44 per cent over a 10-year period, and this is likely to continue in the future. The proportion of Maori renting is correspondingly much higher.

75. The Social Report 2005 indicates that outcomes for Maori have improved since the mid-1990s, and have been greater than for Europeans. This includes indicators of life expectancy, suicide, participation in early childhood and tertiary education, school leavers with higher

qualifications, employment, unemployment, low incomes and housing affordability. While the effect of this has been to reduce the disparity in outcomes between the Maori and non-Maori populations, indicators of well-being for Maori are still relatively poor in a number of areas, and in particular health, paid work and economic standard of living.

#### **IV. CONCLUSIONS**

**76. On the basis of his conversations and observations the Special Rapporteur has reached the conclusions outlined below.**

**77. During the last three decades or so, ethnic relations in New Zealand changed from an assimilationist model (that undermined Maori cultural identity and governance structures) to a new bicultural approach based on the Treaty of Waitangi principles and the partnership between Maori and the Crown. The increasing assertiveness of Maori in demanding their long-denied rights and their claims for redress of past injustices led to inquiries and recommendations by the Waitangi Tribunal, negotiations leading to Treaty Settlements and the enactment of laws by Parliament when such settlements were finalized to the mutual satisfaction of the Government and Maori, with the sympathy and support of the majority of New Zealand society. Yet the legacy of the first 150 years of New Zealand was difficult to overcome, and many inequities continued to plague the relationships between Maori and Pakeha.**

**78. The inherent rights of Maori were not constitutionally recognized, nor were their own traditional governance bodies, which allowed Parliament to enact legislation by simple majority that modified this relationship according to the circumstances, a condition that the minority representation of Maori in the political process was unable to reform. Maori have the perception that all along they have been junior partners in this relationship.**

**79. Nothing illustrates this situation better than the complex land rights issue. Having been dispossessed of most of their lands and resources by the Crown for the benefit of Pakeha, Maori had to accept sporadic and insufficient redress, only to be faced with accusations that they were receiving undue privileges, which left in their wake resentments on both sides about perceived social and racial tensions. The latent crisis broke over the controversy concerning the Foreshore and Seabed Act 2004, whereby the Crown extinguished all Maori extant rights to the foreshore and seabed in the name of the public interest and at the same time opened the possibility for the recognition by the Government of customary use and practices through complicated and restrictive judicial and administrative procedures.**

**80. Despite social programmes, disparities continue to exist between Maori and non-Maori with regard to employment, income, health, housing, education, as well as in the criminal justice system. Although Maori collectives (*iwi, hapu, whanau*) are increasingly involved in the strategies designed to reduce these inequalities, as well as in those designed to promote economic development and Maori success in business, actual self-governance mechanisms based on the recognition of the right of indigenous peoples to self-determination have not yet been devised. 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 International Convention on the Elimination of All Forms of Racial Discrimination.**

**81. A return to the assimilationist model appears increasingly in public discourse, redirecting concern about collective rights and the place of Maori as a people within the wider society, to emphasis on the protection of the individual rights of all New Zealanders,**

including the rights to equal opportunity, due process of law and freedom from illegal discrimination on any grounds, including ethnicity or race.

82. These wider constitutional and societal issues need to be debated responsibly and democratically by all social and political actors concerned because their solution will determine the kind of society New Zealand will be in the future.

## V. RECOMMENDATIONS

83. On the basis of the foregoing considerations, the Special Rapporteur makes the recommendations that follow to both Government and civil society.

### A. Recommendations to the Government

#### *Constitutional issues*

84. Building upon continuing debates concerning constitutional issues, a convention should be convened to design a constitutional reform in order to clearly regulate the relationship between the Government and the Maori people on the basis of the Treaty of Waitangi and the internationally recognized right of all peoples to self-determination.

85. The Treaty of Waitangi should be entrenched constitutionally in a form that respects the pluralism of New Zealand society, creating positive recognition and meaningful provision for Maori as a distinct people, possessing an alternative system of knowledge, philosophy and law.

86. The MMP electoral system should be constitutionally entrenched to guarantee adequate representation of Maori in the legislature and at the regional and local governance levels.

87. *Iwi* and *hapu* should be considered as likely units for strengthening the customary self-governance of Maori, in conjunction with local and regional councils and the functional bodies created to manage treaty settlements and other arrangements involving relations between Maori and the Crown.

88. The Legal Services Act should be amended to ensure that legal aid is available to Maori *iwi* and *hapu* as bodies of persons so as to afford them access to the protection mechanisms of human rights, and in order to eliminate discrimination against Maori collectives.

#### *Human rights and the Waitangi Tribunal.*

89. The Waitangi Tribunal should be granted legally binding and enforceable powers to adjudicate Treaty matters with the force of law.

90. The Waitangi Tribunal should be allocated more resources to enable it to carry out its work more efficiently and complete its inquiries within a foreseeable time frame.

91. The New Zealand Bill of Rights should be entrenched to better protect the human rights of all citizens regardless of ethnicity or race.

92. The Foreshore and Seabed Act should be repealed or amended by Parliament and the Crown should engage in treaty settlement negotiation with Maori that would recognize the inherent rights of Maori 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.

#### *Treaty settlements*

93. In all Treaty settlements, the right of Maori to participate in the management of their cultural sites according to customary precepts should be specifically acknowledged, thereby enabling greater expression of Maori cultural and spiritual relationships.

94. Existing settlement acts should be amended, and other such acts in the future should be framed, so as to enable iwi and hapu to self-determine an appropriate corporate structure for receipt and management of assets.

95. The Crown should engage in negotiations with Maori to reach agreement on a more fair and equitable settlement policy and process.

#### *Environment*

96. The Crown should take an active interest in supervising the compliance of the paper company in cleaning up the waste site at Kawerau and the waste disposal build-up at Maketu.

#### *Education and culture*

97. More resources should be put at the disposal of Maori education at all levels, including teacher training programmes and the development of culturally appropriate teaching materials.

98. Student fees should be lowered and allowances increased so as to stimulate the passage of more Maori students from certificate and diploma to degree level programmes in tertiary education.

99. Maori sacred sites and other places of particular cultural significance to Maori should be incorporated permanently into the national cultural heritage of New Zealand.

100. The Maori cultural revival involving language, customs, knowledge systems, philosophy, values and arts should continue to be recognized and respected as part of the bicultural heritage of all New Zealanders through the appropriate cultural and educational channels.

#### *Social policy*

101. Social delivery services, particularly health and housing, should continue to be specifically targeted and tailored to the needs of Maori, requiring more targeted research, evaluation and statistical data bases.

*International indigenous rights*

102. The Government of New Zealand should continue to support efforts to achieve a United Nations declaration on the rights of indigenous peoples by consensus, including the right to self-determination.

103. The Government of New Zealand should ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

**B. Recommendations to the civil society**

104. Public media should be encouraged to provide a balanced, unbiased and non-racist picture of Maori in New Zealand society, and an independent commission should be established to monitor their performance and suggest remedial action.

Representatives and leaders of political parties and public organizations should refrain from using language that may incite racial or ethnic intolerance.

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