APPENDIX A

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

5 July 2004

TE RUNANGA O TE RARAWA SUBMISSIONS – GOVERNMENT PROPOSALS ON FORESHORE AND SEABED

Introduction

1. Te Runanga o Te Rarawa (Te Rarawa) makes these submissions on behalf of the whanau, hapu and iwi of Te Rarawa: past, present, and those future generations to come. As representatives of our respective hapu and collectively as Te Rarawa Iwi, we reiterate that we are the principal spokespeople, protectors and custodians over all our *taonga,* which are our inherited and given rights.

Acknowledgments / Affirmations

2. Te Rarawa acknowledges and affirms the following points as a means to contextualise the current foreshore and seabed debate.

The Declaration of Independence

3. The 1835 Declaration of Independence established Māori sovereignty that enabled Māori to Treat with the Government in 1840. Article 2 of the Declaration stated that the Confederation of the United Tribes:

> "*will not permit any legislative authority separate from themselves...to exist, nor any function of government to be exercised...unless...acting under the authority of laws regularly enacted by them*".

4. It is presumed that "laws regularly enacted" would reflect and be consistent with the practices, customs, values and beliefs of hapu and iwi such as mana and kaitiakitanga. In other words, the Declaration was expressing that no legislative authority or government would be permitted unless it acted consistent with those practices, customs, values and beliefs. This qualifier is as powerful and relevant today as it was in 1835.

Law-making and the Application of Laws in New Zealand

5. The Government has the right, by virtue of Article I of Te Tiriti o Waitangi (Te Tiriti), to govern in New Zealand (including the right to make laws). However, such governance is not unfettered: the Government's right is qualified by Article II, which states that:

> *"Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira – ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa."*
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> A fair translation of which reads as follows[1]:

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

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"The Queen of England agrees to protect the Chiefs, the Subtribes and all the people of New Zealand in the unqualified exercise of their paramount authority over their lands, villages and all their treasures."

6. Therefore, to the extent that the Bill does not protect te tino rangatiratanga a Te Rarawa (including our customary rights and obligations), the Bill is in breach of the Government's fiduciary obligation of good governance.

7. Furthermore:

> *"English law came into force in New Zealand only "insofar as applicable to the circumstances of the colony". That was the original common law rule on the reception of English law in a colony such as New Zealand, but in 1858 it was put into a statue and in this form it remains the current law."*[2]

8. The Bill contradicts many the fundamental agreements embodied in Articles II and III of Te Tiriti. Therefore, to the extent that the Bill in that sense does not apply to the circumstances of New Zealand, we believe the Bill to be unlawful.

Retention of the Substance of the Land

9. It was Panakareao who said at Waitangi at the signing of Te Tiriti"in 1840 that "*The Shadow of the land goes to the Queen, the substance remains with us*". This reflected that our ancestral rights to our foreshore and seabed are part of our 'whenua papatupu, whenua tuku iho' (customary land, land handed down to us by the ancestors). This continues to be the understanding of Te Rarawa with respect to the intention of Te Tiriti (regardless of the fact that after the Northland land sales Panakareao bitterly reversed his famous saying when he felt only a shadow remained after all).

10. In 1884, elders from neighbouring iwi in Te Kao wrote:

> *"Greetings my friend...this is a message to let the Pakeha know to stop taking our sands on their steamers...the land is ours...it is not as if we were living in Hawaiki (dead), that they can simply come and steal the treasures from our lands."*

11. This statement further illustrates Māori understandings at the time of our rights over our taonga – an understanding which has endured to the present day.

Court of Appeal Decisions

12. The Court of Appeal decision *In Re Ninety Mile Beach*[3] held that the English common law of tenure displaced customary property in land upon the assumption of sovereignty. However,

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Ngāti Apa Decision

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[2] "Untangling the Foreshore", Jim Evans (25 May 2004), http://publicaddress.net/default, 1248.sm.

3 *In Re Ninety Mile Beach* [1963] NZLR 461 (CA) 3 (1877).

14. On 19 June 2003 the Court of Appeal released its decision on the jurisdiction of the Māori Land Court to investigate title to the foreshore and seabed of the Marlborough Sounds.[4] The Court held that:

    14.1. The Māori Land Court has jurisdiction to determine the status of the foreshore and seabed under the Te Ture Whenua Māori Act 1993 (the Act); but just as significantly

    14.2. *In Re Ninety Mile Beach* is based on the discredited authority of *Wi Parata v Bishop of Wellington*[5].

15. Common law therefore upholds that Māori customary rights to the foreshore and seabed have not been extinguished, and that a claim to native title is still possible.

Substantive Issues – The Four Principles

16. The Four Principles contained in the Proposals are already enshrined in Te Rarawa understanding of our customary rights. Te Rarawa refrains from commenting comprehensively on those Principles and the nature and extent of our customary rights at this time, but makes the following brief observations.

The Principle of Access

17. Te Rarawa has always maintained that in principle it has no desire to prevent reasonable public access for recreational purposes to coastal areas within the Te Rarawa rohe. Te Rarawa has no intention, in principle, to significantly change reasonable public recreational access and use.

18. As with any principle, however, there are always exceptions. Te Rarawa reserves the right to limit access to:

    18.1. Certain discrete sites of significance that are of special importance to Te Rarawa whanau, hapu or iwi. Such sites may include those presently being negotiated in the Te Rarawa Historical Treaty claims settlement process. The return of such sites to Te Rarawa would be justified not only by their special significance but also because of the nature and extent of the Crown Treaty breach associated with those sites. Arguably, public access is already limited to many of these sites due to their remote location.

    18.2. Certain areas from time to time in accordance with our practices and customs (e.g. for sustainable natural resource management purposes, such as rahui).

The Principle of Regulation

19. Te Rarawa refutes that regulating the use of the foreshore and seabed is solely the Crown's responsibility. Regulation and management is also an inherent component of the customary rights of Te Rarawa.

The Principle of Protection

20. Te Rarawa considers that the Proposals make Māori customary rights subordinate to a mere interest (i.e: public use and access). This subordination is:

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

5 *Wi Parata v Bishop of Wellington* NZ JUR (NS) SC 72.

20.1. Evidenced by the Bill's structure which addresses , and the order in which the Government's Four Principles (Access, Regulation, Protection and Certainty) are presented and discussed in the Proposals; and

20.2. In itself a response to the speculation and unfounded fears of the New Zealand public majority regarding restricted access to the foreshore and seabed by Māori.

21. This subordination does not give Te Rarawa confidence that the Government will properly protect our customary rights. On the contrary, Te Rarawa foresees that the general public will gain disproportionately at the expense of protection of Māori customary rights.

The Principle of Certainty

22. Te Rarawa agrees with this principle. However, to a large extent 'certainty' will depend on the legitimacy and fairness of any foreshore and seabed solution. If it is not procedurally and substantially fair, Te Rarawa will deem the solution to be a contemporary Crown breach of Te Tiriti. This will result in ongoing uncertainty as Te Rarawa continues the struggle for recognition and protection of our customary rights.

Substantive Unfairness – General Submissions

Onus of Proof

23. The Government has effectively placed the onus on Māori to prove our specific customary rights. Te Rarawa contends there is sufficient legal foundation and evidence to establish our customary rights, therefore the onus should be on the Government to disprove their existence. Te Rarawa refuses to accept that the burden of proof should be ours to discharge. Unless and until they are disproved, Te Rarawa customary rights remain intact.

Nature and Extent of Customary Rights

24. The Proposals demonstrate only a rudimentary Government understanding and recognition of Māori customary rights. The Government has assumed "*that there are few if any customary rights that have not by now already been acknowledged and protected.*"[6] This assumption is erroneous. The responsibility is therefore placed on Māori to correct that assumption. However that assumption suggests a lack of Government willingness and open-mindedness to acknowledge and discuss all components of Māori customary rights relating to the foreshore and seabed which include but are not limited to:

24.1. Protection of the resource consistent with our tikanga – Te Rarawa does not seek a title over our seabed and foreshore, rather we consider a title-less status is more appropriate;

24.2. Regulation/ management;

24.3. Use and access (in some cases exclusive);

24.4. Development and evolution (cultural and economic); and

24.5. Intergenerational transference (of the resource and knowledge associated with it).

Māori Land Court

[6] Government Proposals, p7.

25. The Government prefers its proposal to re-design the Māori Land Court (the MLC) to investigate and record customary rights and interests in the foreshore and seabed.[7] However, the Proposals list a number of issues[8] that need to be explored and resolved regarding MLC role and function and foreshore and seabed matters, and more issues are likely to be identified. Te Rarawa at this time has considerable doubts as the suitability of the MLC to resolve foreshore and seabed matters for various reasons including the following.

Onus of Proof and Tests to be Applied

26. The Appeal Court commented that it may be difficult to prove customary rights before the MLC. We can only assume that the Appeal Court was alluding to the tests which are likely to be applied in New Zealand courts, i.e. that the claimant must show[9]:

    26.1. "The interest or activity is an element of a practice, custom, or tradition integral to the distinctive culture of the group claiming the right."

    26.2. "The interest or activity was being undertaken at the time of the signing of the Treaty of Waitangi (1840) and continues to be undertaken."

    26.3. "The customary right has not been extinguished by or under law, for example by the imposition of a conflicting statutory regime to regulate the activity or the space, or the legal grant of the space to another person."

27. Again, Te Rarawa refuses to accept that the burden of proof should be ours to discharge. Unless and until they are disproved, Te Rarawa customary rights remain intact. With respect to 26.2 above, Te Rarawa takes issue with having to prove continuous use of our customary rights when:

    27.1. "Nothing in the doctrine of native title requires that the holders of such a title must have maintained a continuous presence since [1840]",[10] and

    27.2. Government actions or omissions may have impeded or prevented Māori from exercising the same – in short such actions or omissions are tantamount to a Crown Treaty breach. Te Rarawa is obviously averse to engaging in a process where there is real risk of creating an opportunity for the Government to unjustly benefit from a Crown breach of Te Tiriti.

Unsuitability of Outcome

28. Currently a MLC decision does not provide a mechanism that protects Te Rarawa customary rights. As stated above, Te Rarawa does not wish to have the foreshore and seabed returned to us in freehold title. The MLC may be able to determine land 'ownership' matters, but we do not see that the Court has the jurisdiction to determine other customary rights matters (such as those listed in paragraph 21 above).

Erosion of Te Rarawa Rights

29. A MLC judgment will for all intents and purposes set in stone Applicant areas of interest, or boundaries. Te Rarawa believes cultural evolution is our customary right. In this regard Te

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[7] Government Proposals, p29.
[8] Government Proposals, p29.
[9] Government Proposals, p7.
[10] "Untangling the Foreshore", Jim Evans (25 May 2004), http://publicaddress.net/default, 1248.sm.

Rarawa sees potential MLC judgments as a serious threat insofar as it effectively locks our people into a point in time. Te Rarawa notes this threat is echoed in other aspects of the MLC Proposals and the Proposals generally, eg. that customary rights are *"Not able to be ... used for commercial purposes, or in any way used for pecuniary gain or trade."*[11]

Procedural Unfairness

30. The Government's response to the foreshore and seabed issue is procedurally unfair. The Government has shown bad judgment and a lack of good faith in its reaction to the Marlborough Sounds Court of Appeal decision. For the following reasons, Te Rarawa considers that the Government's Proposals (the Proposals) herald an imposed solution based on political expediency rather than legitimacy and the protection of Māori customary rights.

    30.1. In many respects it has been ill-timed, ill-considered and mismanaged. This has materially contributed to public and political confusion, uncertainty, and a lack of perspective. The result is the creation of a policy environment that is at best unreceptive and at worst oppressive to Māori, and manifestly hostile to the promotion of Māori customary rights.

    30.2. The Proposals were developed unilaterally by the Government.

    30.3. Te Rarawa sees the proposal to legislate as a 'back door' solution to circumvent due legal process. The Government's decision to legislate in this way undermines the value of the legal system and renders farcical its statement that "*The ability to take a claim to the courts is an important check on government for all citizens, and in this context it provides a particular protection for Māori.*"[12]

    30.4. The Government's consultation process:

        a. Wrongly treats Māori customary right holders as merely another stakeholder along with the interested public. Rather, the Government ought to engage separately and directly with Māori as the holders of customary rights whose permission must be sought and expressly obtained regarding any changes to those rights. Māori are not merely to be consulted with.

        b. Has a timeframe that is unreasonably short.

31. In summary, Te Rarawa:

    31.1. Notes an inherent contradiction in the Proposals: the Government's approach is based on four 'Principles', yet the Government has failed to observe the fundamental principle of procedural fairness which should underpin its entire approach;

    31.2. On the basis of procedural unfairness alone:

        a. Strenuously rejects the Proposals outright;

        b. Is extremely distrustful of the Government's response to the foreshore and seabed issue;

        c. Considers that the Government's request of Māori to respond in itself constitutes an act of bad faith and a breach of the Treaty of Waitangi; and

        d. Does not consider that there is any sense in responding.

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[11] Government Proposals, p30.

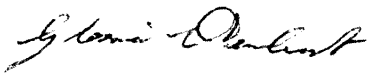
[12] Government Proposals, p28. Te Rarawa has a particular view about the merits of the Māori Land Court (see paras 22-26 below). However, this view does not detract from our criticism of the Crown undermining Māori access to due legal process.

32. Te Rarawa does not wish to further acknowledge or legitimize the Government's procedurally unfair consultation by taking part in it. We only comment below on the substantive aspects of the Proposals as a starting point in anticipation of the Government's implementation of a fair process of engagement with Māori.

Concluding Remarks

33. Te Rarawa looks forward to the Government withdrawing its proposal and starting again, using Te Tiriti and the extensive current knowledge and expertise of individual whanau, hapu and iwi in respect of their foreshore and seabed to reach solutions which benefit all.

34. If the Government fails in its Proposals to protect Māori customary rights to the foreshore and seabed Te Rarawa will consider them to be a contemporary breach, and Te Rarawa will be left with no option but to take all and any means to protect our customary rights.



Gloria Herbert, ONZM
Chairperson

APPENDIX B

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

8 Mahuru / September 2004

To: The Fisheries and Other Sea-Related Legislation Select Committee

SPEAKING NOTES: TE RUNANGA O TE RARAWA ORAL SUBMISSIONS ON THE FORESHORE AND SEABED BILL

Introduction

1. On February 7th several thousand people joined hands along the 90 Mile Beach to celebrate and support the Te Rarawa kaupapa of protecting the rights of access for everyone. It was also the day of blessing the pouwhenua placed on the foreshore at Paripari, the entrance to Te Ara Wairua, the pathway of the spirits that runs the length of Te Oneroa–a-Tohe to Te Rerenga Wairua, a site of significance to all iwi throughout Aotearoa. Pouwhenua are a symbol of our sense of heritage, of our responsibility to protect our customary ownership for the benefit of all future generations. In the Far North Te Rarawa are known for our restraint, integrity and commitment to developing good working relationships with the wider community, and with both central and local government.

2. However as the year has progressed our people have become increasingly disturbed, frustrated and angered by the course of events and the proposed legislation. They believe no Pakeha would put up with such an expropriation of their property rights (indeed, under the Bill, they don't have to!); or such a violation of their human rights to equal access to justice, or their right to protection against racial discrimination; or their constitutional right to participate in democratic decision-making processes that are fair. Yet commentators are calling for Maori and Te Rarawa to show "moderation". To us that is just another word for 'don't rock the boat', or 'majority rules'.

3. Te Rarawa's opposition to the proposed legislation is consistent with concerns held by other parties such as the Waitangi Tribunal, Human Rights Commission, the Business Round Table, constitutional lawyers, Churches. - Even the United Nations has shown concern over the Bill.[1]

[1] See the Committee on the Elimination of Racial Discrimination (CERD)'s 'Issues Recommendations' from its 65th Session (20 August 2004) which states: *"A letter was also sent to the Government of New Zealand regarding which the Committee received information from non-governmental sources alleging that it discriminates against Māori on ethnic and racial grounds. In both cases the Committee requested further information before 20 September 2004"*. Refer also to **Appendix One:** Te Rarawa's support letter for Te Rūnanga o Ngai Tahu's and the Treaty Tribes' Coalition petition to the CERD to invoke its Early Warning Procedure.

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Continuation of Crown Treaty Breach

4. Te Rarawa's claim negotiators recently embarked on a series of hui to report the findings of our historical research. Our story reads as a succession of strategic legislations instituted by the Crown that led to significant loss of land within Te Rarawa. This Bill as just another step in the continuum of a Crown land acquisition strategy which began prior to 1840. It is still happening - just a different means to the same end.

5. Inevitably many of our people believe that the Crown simply assumes that, as Sovereign, it need answer to no-one. Te Rarawa considers this as an abuse of power, and in the face of such, it is unreasonable to think that the whanau and hapu of Te Rarawa will simply stand by and let another land confiscation take place. Previous submitters from Te Hiku o Te Ika have already indicated the risk of direct action and civil unrest should this Bill go ahead as is. Our words are not threats; they are not attempts to incite disorder or conflict. They are simply conveying the feelings of the whanau and hapu on the ground, and urging politicians to take heed. The strong and serious tone of our statements should be an indication of just how grave the situation is.

Procedural Unfairness

6. We are hugely dismayed; -

   6.1. That only 350 out of 4,000 submitters were invited to make oral submissions.

   6.2. That hearings have only been held in Auckland, Wellington and Christchurch. So many people who submitted in good faith have been denied the chance to have their say. .[2]

Sovereignty of Parliament

7. The Crown has stated that Parliamentary Sovereignty cannot be fettered. However, Article II of Te Tiriti clearly does exactly that, and the Government's right to govern and Parliament's right to make laws is not unfettered. To the extent that the Bill does not protect te tino rangatiratanga of Te Rarawa, the Bill breaches the Government's fiduciary obligation of good governance.

8. Is Te Tiriti as binding now as it was in 1840 when Te Rarawa signed it in good faith, or is it not?

Court of Appeal Decision of 2003

9. If the Crown can negotiate foreshore and seabed settlements with some iwi, and negotiate with Māori a percentage of Aquaculture Management Areas, is that not acknowledgment that Māori already have ownership rights in the foreshore and seabed? So why are Māori having to prove our ownership before the Courts under the Foreshore and Seabed Bill?

10. Māori are on the higher legal and moral ground to argue 'ownership'. All the Crown has is an assumption of the same. If anyone should be proving their right to own the foreshore and seabed, it should be the Crown.

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[2] Te Ope Mana a Tai, "Committee defends selection" (20 August 2004, RNZ).

The Four Principles

The Principle of Access

11. Te Rarawa has always maintained that we have no desire to prevent reasonable public access for recreational purposes to coastal areas within our rohe. 'Hands Across the Beach' was a demonstration of our genuine commitment to maintaining that public access.

12. However more and more access is being denied through the purchase of privately owned coastal properties. We can cite many examples in our own rohe. If the Bill does not transfer ownership of those privately held lands to the Crown, then not only does it fail to ensure access throughout the coastal area, but it treats our customary land differently for no reason other than that it is Māori-owned. Any reasonable person could be drawn to the conclusion that the Bill and its architects are racist.

13. Government doesn't have to resort to the foreshore and seabed being vested in the Crown to protect access. There are other ways that could be achieved while protecting Māori customary rights. Several ideas have already been put forward which gives us confidence that an acceptable solution can be found:

    13.1. Shared ownership with tangata whenua without a title

    13.2. Vesting in the Treaty –?[3]

    13.3. The Crown to hold title to foreshore and seabed on trust for Maori customary owners where these can be judicially identified.[4]

14. These and other solutions could be explored in the longer conversation as recommended by the Waitangi Tribunal.

The Principle of Regulation

15. Te Rarawa refutes that regulating the use of the foreshore and seabed is solely the Crown's responsibility. The framework for shared management already exists. It is possible for the Crown to establish similar arrangements in regard to foreshore and seabed management.

The Principle of Protection

16. Access would be better protected if the foreshore and seabed were to be recognised as Māori customary land. It would be more difficult to alienate it, particularly if the Crown availed itself of its preemptive right under Te Tiriti to purchase customary land before anyone else.

17. If Crown ownership of the foreshore and seabed goes ahead, there is no guarantee that ownership will be in perpetuity as, under the Bill, a simple majority vote of MPs can alienate any foreshore and seabed in Crown ownership.

18. The Bill does not even provide the minimal comfort to Treaty claimants of a protection mechanism for any foreshore and seabed sold by the Crown to third parties, like the 27B memorials on SOE lands

[3] Submission by constitutional lawyer and author Alex Frame, "Constitutional problems with Foreshore and Seabed Bill (12 August 2004, NZPA).

[4] "Jock Brookfield: Trusteeship may solve the problem" (31 August 2004, New Zealand Herald).

The Principle of Certainty

19. While the Bill may give the Crown legislative certainty, it is unlikely to lead to political, regulatory or economic certainty for either the Crown or the country.

Processes Available for Resolution

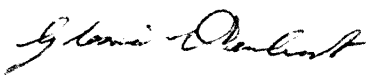
20. Te Rarawa applied to the Court on 5 April this year for an investigation of customary land within our rohe (including foreshore and seabed). We did this because the Crown agenda to remove land from customary Te Rarawa ownership is clearly demonstrated throughout history in the Bill and, and doing nothing was not an option. We were also uncertain about the extent to which we could negotiate foreshore and seabed redress in our current claims negotiations. Waiting for the post-Foreshore and Seabed legislative environment offered even less protection. So, while we have some doubts about the suitability of the Maori Land Court (given its history) to protect our mana whenua and customary rights in the foreshore and seabed, our application was the best of a bad lot of options available to us at the time.

21. Therefore we are disappointed that the Bill, having removed the Maori Land Court as an avenue to obtain resolution of ownership, does not offer any alternative avenues other than confiscation of the foreshore and seabed. Under the Bill, we are once again giving more to the public good than we will receive and there are no advantages whatsoever in it for us. "Joe Public" and the Crown will benefit enormously at the expense of our rights. In addition to its other shortcomings, the Bill's limitation of Maori Land Court jurisdiction on foreshore and seabed applications is another example of the web of Crown land alienation strategies.[5]

Summary

22. Te Rarawa looks forward to the Government withdrawing its proposal and starting "the longer conversation".

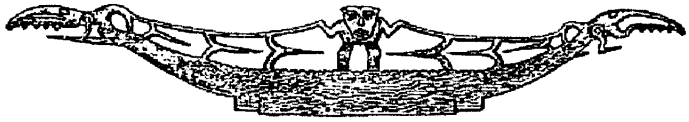
23. If the Government fails in its Proposals to protect Māori customary rights to the foreshore and seabed Te Rarawa will consider them to be a contemporary breach, and Te Rarawa will be left with no option but to take all and any means to protect our customary rights.



Gloria Herbert, ONZM
Chairperson

[5] Refer to Te Rarawa Historical Overview, Te Uira Associates, August 2004.

Appendix One:



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Tumoana, Puhi, Nukutawhiti me Ruanui nga tangata
Panguru, Whakakoro me Whangatauatia nga maunga,
Hokianga, Whangape me Karirikura nga moana
Te Rarawa te iwi

13 August 2004

Petitions Team
Office of the High Commissioner for Human Rights
United Nations office at Geneva
1211 Geneva 10
SWITZERLAND

To whom it may concern

REQUEST TO CERD TO INVOKE ITS EARLY WARNING PROCEDURE RELATING TO NEW ZEALAND RE: DISCRIMINATION AGAINST MAORI

Te Runanga O Te Rarawa is the iwi authority for the region from North Hokianga through to Kaitaia, up to Hukatere and bound by Te Oneroa a Tohe (Ninety Mile Beach) to the West in the North of island of Aotearoa, New Zealand. We represent eighteen communities that in turn service more than 12,000 descendants.

We are writing in support of the petition submitted by Te Rünanga o Ngäi Tahu and the Treaty Tribes Coalition on 29 July 2004, requesting that CERD invoke its early warning procedure to call on New Zealand to withdraw its proposed legislation on New Zealand's foreshore and seabed (the Bill).

We agree that the Bill is the most serious example of racial discrimination to arise in New Zealand since the mass expropriation of Maori property rights over 160 years ago. We consider that the Bill is discriminatory because:

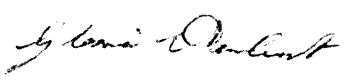
- Mäori Property Rights are extinguished, whereas other property rights in the foreshore and seabed are protected;
- Mäori are being deprived of the right to equal treatment before the tribunals and all other organs administering justice;
- Mäori are being denied the right to equal participation in cultural activities; and
- Mäori will not be able to benefit from the right to development.

We consider that there is no reasonable justification for these discriminatory acts.

We have objected to the Bill with written submissions to Government in 2003 (when the Bill was just 'policy' in the making), numerous public media statements, by hosting the Hands Across the Beach day in February this year (see our website for more information), participating in the Hikoi (march) 2004 protesting against the same, and in written submissions to Select Committee considering the Bill at this time.

Our opposition to the Bill has been repeatedly ignored, and there are no domestic legal avenues in which we can compel the New Zealand State to comply with the prohibition against discrimination. We consider that the early warning system is the only remaining procedure available to Mäori to compel New Zealand not to discriminate against us. Therefore, we take this opportunity to formally endorse the petition submitted by Te Rünanga o Ngäi Tahu and the Treaty Tribes Coalition, and urge the Committee to invoke its early warning procedures.

Naku noa na,



Gloria Herbert ONZM
Chairperson

APPENDIX C

TE RUNANGA O TE RARAWA

28 South Rd, P.O. Box 361, KAITAIA

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

13 August 2004

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SWITZERLAND

To whom it may concern

REQUEST TO CERD TO INVOKE ITS EARLY WARNING PROCEDURE RELATING TO NEW ZEALAND RE: DISCRIMINATION AGAINST MAORI

Te Runanga O Te Rarawa is the iwi authority for the region from North Hokianga through to Kaitaia, up to Hukatere and bound by Te Oneroa a Tohe (Ninety Mile Beach) to the West in the North of island of Aotearoa, New Zealand. We represent eighteen communities that in turn service more than 12,000 descendants.

We are writing in support of the petition submitted by Te Rünanga o Ngäi Tahu and the Treaty Tribes Coalition on 29 July 2004, requesting that CERD invoke its early warning procedure to call on New Zealand to withdraw its proposed legislation on New Zealand's foreshore and seabed (the Bill).

We agree that the Bill is the most serious example of racial discrimination to arise in New Zealand since the mass expropriation of Maori property rights over 160 years ago. We consider that the Bill is discriminatory because:

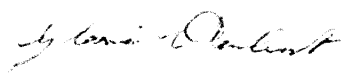
- Mäori Property Rights are extinguished, whereas other property rights in the foreshore and seabed are protected;
- Mäori are being deprived of the right to equal treatment before the tribunals and all other organs administering justice;
- Mäori are being denied the right to equal participation in cultural activities; and
- Mäori will not be able to benefit from the right to development.

We consider that there is no reasonable justification for these discriminatory acts.

We have objected to the Bill with written submissions to Government in 2003 (when the Bill was just 'policy' in the making), numerous public media statements, by hosting the Hands Across the Beach day in February this year (see our website for more information), participating in the Hikoi (march) 2004 protesting against the same, and in written submissions to Select Committee considering the Bill at this time.

Our opposition to the Bill has been repeatedly ignored, and there are no domestic legal avenues in which we can compel the New Zealand State to comply with the prohibition against discrimination. We consider that the early warning system is the only remaining procedure available to Mäori to compel New Zealand not to discriminate against us. Therefore, we take this opportunity to formally endorse the petition submitted by Te Rünanga o Ngäi Tahu and the Treaty Tribes Coalition, and urge the Committee to invoke its early warning procedures.

Naku noa na,



Gloria Herbert ONZM
Chairperson

APPENDIX D

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

18th November 2005

Mr. Rodolfo Stavenhagen
Special Rapporteur
United Nations Commission on Human Rights
Office of the United Nations
1211 Geneva 10
Switzerland

Re: Mission to Aotearoa/New Zealand

Dear Mr. Stavenhagen

1) We are the Te Rarawa tribe of the far north region between Hokianga Harbour and the 90 mile beach ("Te Oneroa a Tohe"). The last Aotearoa/New Zealand census (2001) showed that over 11,000 people identified as Te Rarawa, but our own estimates range between 30,000 and 40,000 people living mainly in the major cities of Aotearoa/New Zealand and Australia. Our representative body comprises twenty four affiliated marae and two associations which are urban based. Te Runanga o Te Rarawa is established as a charitable trust which administers the affairs of the tribe and is wholly responsible for pursuing the return of tribal resources, including both dry land and foreshore and seabed.

2) Please accept this communication as a written submission to your current mission to Aotearoa/New Zealand to examine how obstacles to the full protection of human rights of indigenous people can be overcome.

3) **In this submission, we respectfully recommend that:**

   a) in your report to the New Zealand government, in relation to the implementation of the Foreshore and Seabed Act 2004 ("the F & S Act"), you recommend that it:

      i) establish a fund similar to the Environmental Legal Assistance Fund to ensure that the right of access to justice is available to Maori groups who wish to pursue their customary rights under the F & S Act (including for both Customary Rights Orders and Territorial Customary Rights);
      ii) adopt a policy of providing financial assistance (for costs such as legal representation and research) for Maori groups who participate in direct negotiations with the Crown in pursuance of their customary rights under the Foreshore and Seabed Act 2005 (including for both Customary Rights Orders and Territorial Customary Rights); and
      iii) adopt such other policies as will assist and encourage Maori groups to pursue their customary rights under the F & S Act.

   b) in your report to the New Zealand government, in relation to meeting its international obligations (with respect to Maori) under various United Nations bodies, you recommend that it:

      i) devise (in consultation with Maori groups) a generic policy outlining a proper process of consultation with Maori groups before it makes any representations to United Nations bodies on any matters for which Maori are an interested party; and
      ii) consult at an early stage with Maori groups in devising its fifteenth periodic report under the International Convention on the Elimination of all Forms of Racial Discrimination;

c) in your report to the New Zealand government that, in recognising the vulnerable position of the Maori people under New Zealand's constitutional framework, you recommend that it devise (in consultation with Maori groups), facilitate and implement a process to investigate ways of better protecting the rights of Maori under New Zealand's constitutional framework;

d) you be so kind as to give us an opportunity to comment on a draft version of your report before it is finalised for submission to the United Nations Commission on Human Rights.

4) A separate commentary on each of the above recommendations is set out in Annex A.

5) We would like to take this opportunity to thank you for embarking on this mission to Aotearoa/New Zealand. Should you require clarification on any matters arising from this submission or wish to request further information from us please do not hesitate to contact me on 64-027-4419426.

6) Finally, we wish you well for the remainder of your visit here and look forward to hearing from you.

Yours sincerely,

Mr. Haami Piripi
Negotiator
Te Runanga o Te Rarawa

Note: *This submission is made in my capacity as a negotiator for my tribe – Te Runanga o Te Rarawa and* ***not*** *in my capacity as Chief Executive Officer of Te Taura Whiri i te Reo Maori/ the Maori Language Commission.*