NEW ZEALAND – NGO REPONSE TO STATE PARTY STATEMENTS

Treaty Tribes Coalition, Aotearoa Indigenous Rights Trust, Maori Party, Te Whanau a Apanui & Peace Movement Aotearoa.

Foreshore and Seabed

1. The Foreshore and Seabed Act remains the most egregious and keenly felt breach of Convention rights in the contemporary era, for which there is no accessible remedy.
2. The State party has relied on the current negotiations with iwi to impliedly mitigate the severity of the Acts discriminatory consequences. However, we reiterate that the negotiations precede the Act, are being conducted outside the confines of the Act and were entered into in circumstances where iwi were confronted with no real choice but to negotiate with the Crown. In any event, the existence of negotiations does not negate the basic injustice of the legislation, denial of due process, and continued absence of guaranteed compensation.

Treaty Settlements

3. As the primary reparative justice mechanism to remedy historical breaches of the Treaty of Waitangi and Convention, it is critical that Treaty settlements are conducted in a fair and principled manner so as to avoid further contravention of the Convention. We reiterate that the current settlement framework is flawed, and fails to satisfy the protections provided in the Convention, specifically as interpreted in General Comment XXIII.
4. The reparative and reconciliatory purposes of Treaty settlements are fundamentally undermined by the Crown's unilateral definition of the terms of engagement and full immunity from impartial review. Significantly, the Crown determines, at its sole discretion, the Maori collective with whom settlements will be negotiated and the quantum and content of redress. We emphasise that Maori self-determination and the return of nationalised minerals have been resolutely excluded from the terms of engagement. We are convinced that the absence of legal and due process safeguards within the settlement framework renders Maori particularly susceptible to experiencing contemporary breaches of the Convention, particularly in respect of the disproportionate quantum of redress.

Waitangi Tribunal

5. Terminating the historical jurisdiction of the Waitangi Tribunal is an arbitrary and unilateral imposition that will have a significant prejudicial impact on iwi unable to research their histories within the requisite timeframe, the probability of which is high due to the erosion of capacity effected through colonisation.
6. Confining the Waitangi Tribunal to recommendatory powers is indicative of the 'soft law' approach to Treaty issues which permeates Government policy and practice. We consider the Government has disingenuously emphasised the binding powers of the Tribunal in respect of Crown owned land. We reiterate that these powers are strictly circumscribed in legislation, and infer from the Tribunal exercising them on only one occasion, that they are considered by the Tribunal and Maori as ineffective.
7. We are convinced that the current constitutional framework, political climate, and inherent flaws within the Treaty settlement process, including the 2% proportion of Tribunal recommendations adopted by the Government, necessitate the Tribunal being granted broad based binding authority. Whilst we accept the desirability of negotiated reparation, we consider that binding powers are a necessary antecedent so as to create the safeguards to which Maori are entitled under international law, including the right to access the courts, due process, and the right to a remedy.

Constitutional Issues

8. Constitutional reform, incorporating fundamental rights safeguards, is a national imperative which Maori have unwaveringly pursued since the signing of the Treaty of Waitangi. The current constitutional dialogue is not being conducted in good faith with a genuine commitment to meaningful reform. In contrast to facilitating full participatory constitutional discussions, we note that the responsible Select Committee is a comparatively low level, Crown controlled, entity with restrictive terms of reference, and that it received limited submissions from a non-representative section of the community.
9. We are disappointed that the Government has relied upon continued confusion as to the meaning of the Treaty as necessitating further dialogue. We interpret this statement to represent an excuse, rather than a justification, for the enduring aversion to constructively engaging with the Treaty as the constitutional basis for the New Zealand nation.
10. We consider that good faith constitutional reform should be initiated by a process that properly reflects the rights, interests and world views of both signatories to the Treaty, with a genuine commitment by both parties to design an innovative and truly autochthonous constitutional framework duly premised on the Treaty of Waitangi.