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STATEMENT ON THE STATUS OF MAORI PEOPLE AS TANGATA WHENUA OF AOTEAROA NEW ZEALAND

The Human Rights Commission acknowledges the status of Maori people as tangata whenua o Aotearoa. The Commission affirms the Treaty of Waitangi as the basis of a partnership between Maori and representatives of the British Government in the name of the Crown. All later settlers have come under the umbrella of the Treaty.

The Commission acknowledges that the precise basis and terms of the partnership were not fully worked out in 1840 and still need to be resolved.

Some specific rights and obligations were, however, agreed in the Treaty for both Maori and the Crown. The Commission affirms in particular, the specific rights of the Maori contained in the

treaty to the "full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession" or as expressed in the main Maori version of the Treaty, "te tino Rangatiratanga o ratou whenua o ratou kainga me o ratou taonga katoa".

The precise scope of even these specific Treaty rights and the extent to which they have been dishonoured in the past and can be rectified also need to be resolved. This is the initial responsibility of the Waitangi Tribunal, with the support of the Government and people of Aotearoa New Zealand.

The Commission recognises the importance of Maori culture as being special not only to Maori people but also to all people of Aotearoa New Zealand. The Commission acknowledges the Maori people's particular association with the land, the seas, the forests and the inland waters. The Commission believes that it is significantly through the elements of Maori culture — language, customs and traditions — that Maori identity is and will continue to be expressed.

The Commission in its work will endeavour to respect and affirm the provisions and intentions of the Treaty, the culture of the tangata whenua and the various distinctive cultures of other New Zealanders.

This statement has been prepared in accordance with the views of Commissioners and staff. To provide further perspectives on the statement, the following comments were invited:

The Rev. Hone T. Kaa

The Rev. Hone T. Kaa commented that he had no difficulties with the overall statement and that, in fact, he quite liked it. He made the following specific comments:

"Tangata Whenua as a concept requires some explanation. It is often translated as people of the land, but such a translation doesn't correctly convey the deeper meaning. I prefer to translate the phrase as 'people who are the land'. The reason for

this is that according to Maori tradition we are the descendants of Rangi and Papa who are the parents of all living things. This belief is basic to an understanding of the cultural differences between being born of the earth and thereby claiming primacy of existence in Aotearoa, as against settling here from another part of the earth and endeavouring by political or military conquest to claim belonging.

"Sir Paul Reeves refers to Aotearoa as a

'Treaty driven' society. It is quite an appropriate phrase, because the Treaty must become the very vehicle against which the economic, social and political values of the community are set. It is not a peripheral document but is central to its existence and development. To use the phrase 'treaty driven' is to raise questions about who drives, who rides, who has power/primacy, in what direction will the vehicle/society move and what is its ultimate destination?"

Wally Hirsh, Race Relations Conciliator

History will show that the 1980s and especially the last half of the decade will be described as the years when so much happened to take account of the spirit of the Treaty of Waitangi and the promises of the partnership in this country between the Maori people and other New Zealanders.

The decision of the courts over Maori land and the epoch making decision of the Court of Appeal in 1987 when the proposed transfer of land to State Owned Enterprises were placed on hold on account of the provisions of the Treaty.

- The passing of the Maori Language Act in 1987,
- the setting up of the working party on Maori Fisheries in 1988,
- the establishment of bilingual schools in the 1980s,
- the setting up of Maori Studies departments in Community Colleges, Polytechnics and Universities,

- the recognition by an increasing number of Government Departments, Local Authorities and Hospital Boards of the need to take into account a Maori and cross cultural perspective,

are just a few of the very many things that are happening at this time in recognition of the Treaty of Waitangi and the honouring of the spirit of the Treaty as it applies to New Zealand today.

The recent emphasis given to the Treaty by the Royal Commission on Social Policy, its excellent little publication on the Treaty, the much more comprehensive work by Claudia Orange and a diverse array of media programmes, are further testimony to the activities which abound in trying to have all New Zealanders understand our need to respect and affirm the Treaty.

The process is not without its problems and there will continue to be major hurdles to negotiate. But it is a process, and our

progress with it will be evaluated again in 1990, the 150th anniversary of the signing of the Treaty when we will commemorate and make further commitment in respect of the Treaty.

I believe we are approaching a potential exciting threshold in race relations in this country when we put behind us the assimilationist policies of the past and send a message to all New Zealanders that they are all part of and well in a country where the differences between us are affirmed and respected as well as seen as a source of richness and strength. Turning that into a reality will not be achieved through a we/they attitude, nor by blaming people for the past nor by feelings of guilt, but will be achieved by the positive embracing of the unique opportunities which lie in front of us in New Zealand. Not destroying those opportunities will be the challenge for all New Zealanders.

Graeme MacCormick, Proceedings Commissioner, Human Rights Commission

The Commission statement on the status of Maori people as Tangata Whenua of Aotearoa New Zealand is an attempt to hold together two competing concepts.

It is an attempt to acknowledge the worth and dignity and rights of all people regardless of race, colour or ethnic origin, and it is an attempt to consider the special position of the indigenous people of a country.

The United Nations and indeed all countries with a reasonably developed social conscience are also concerned for the position of minorities. Frequently an indigenous people is also a minority. Minorities can be disadvantaged under dictatorships and democracies alike.

Culture and language are special to all minority ethnic groups. They enable the members of that minority ethnic group to provide mutual support to each other in the midst of a society with a different majority culture.

Differences of race and ethnic origin cannot be entirely ignored for they quite simply exist. Such differences can be used to stereotype and denigrate members of a group; they can also be used by that group itself in a positive way. There is richness in diversity and each language and culture has value in its own right.

In the case of an indigenous language and an indigenous culture they can also have special value to the country as a whole - to the extent that they can be appropriately shared. Indigenous language and indigenous culture are unique to a country. They should be accorded a special place in that country - something in the nature of courtesy rights.

Overlaying the general situation can be treaty rights made either between members of different countries or between members of different races, separately represented. It is wrong for a solemnly made treaty to be ignored. A treaty is in essence a contract and there is dishonour in the breach of any agreement that has not been mutually rescinded.

At the very least the Treaty of Waitangi covered land rights, fishing rights and acknowledged the status of the representative Maori signing it. It did not cover all matters that might arise in detail, but it did endeavour to establish principles. It contains the basis of a partnership for the future, between Maori and later settlers.

I would add:

- There is little doubt that as pressure came on from later settlers to acquire and utilise land, the provisions of the Treaty of Waitangi were substantially dishonoured by the newcomers - notwithstanding the statement of Chief Justice Martin in 1860 that "The

compact is binding irrevocably. We cannot repudiate it so long as we "retain the benefit which we obtained by it". (Quoted by Claudia Orange "The Treaty of Waitangi").

- The extent to which the Treaty has been dishonoured and the means by which it can be rectified can only be determined issue by issue. The issues are most unlikely to be resolved in any one way at any one time.
- Partnership, as envisaged by the Treaty does not necessarily mean a 50/50 partnership in all things; but it must mean significant and in some cases majority or total Maori input to those matters of special concern to Maori.
- The traditions and values of different cultures are important to society as a whole. In a variety of cultures the will be much of worth; and nothing of worth must be lost. Each culture affirms its own people and enables them to contribute more to society as a whole.
- I support affirmative action for members of minority groups "in order that their cultural and spiritual contributions might be made in an atmosphere of equality and justice." (Baha'i submission to Royal Commission on Social Policy).

I see the statement prepared for the Human Rights Commission as a working statement which endeavours to hold all these things together.

The Treaty of Waitangi

The Text In English

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article The First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Article The Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the

same in their possession; but the chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate - at such prices as may be agreed between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article The Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British subjects.

W. Hobson Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

The Text In Maori

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me Nga Hapu o Nu Tirani, i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te ata noho hoki, kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga tangata maori o Nu Tirani. Kia wakaetia e nga Rangatira maori te Kawanatanga o te Kuini, ki nga wahi katoa o te wenua nei me nga motu. Na te mea hoki he to komaha ke nga tangata o tona iwi kua noho ki tenei wenua, a e haere mai nei.

Na, ko te Kuini e hiahia ana kia wakaritea te Kawanatanga, kia kua ai nga kino e

puta mai ki te tangata maori ki te pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau, a Wiremu Hopihona, he Kapitana i te Roiara Nawa, hei Kawana mo nga wahi-katoa o Nu Tirani, e tukua aiane amua atu ki te Kuini; e mea atu ana ia ki nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani, me era Rangatira atu, enei ture ka korerotia nei.

Ko Te Tuatahi

Ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa hoki, kihai i uru ki taua Wakaminenga, ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko Te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirani, te tino Rangitiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otia ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei i te Kuini hei kai hoko mona.

Ko Te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani. Ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) William Hobson,

Consul and Lieutenant-Governor.

Na, ko matou, ko nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani, ka huihui nei ki Waitangi. Ko matou hoki ko nga Rangatira o Nu Tirani, ka kite nei i te ritenga o enei kupu, ka tangohia, ka wakaetia katoatia e matou. Koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi, i te ono o nga ra o Pepuere, i te tau kotahi mano, e waru rau, e wa tekau, o to tatou Ariki.

A literal English Translation of the Maori Text

Signed at Waitangi February 1840, and afterwards by about 500 chiefs.

Victoria, the Queen of England, in her kind (gracious) thoughtfulness to the Chiefs and Hapus of New Zealand, and her desire to preserve to them their chieftainship and their land, and that peace and quietness may be kept with them, because a great number of the people of her tribe have settled in this country, and (more) will come, has thought it right to send a chief (an officer) as one who will make a statement to (negotiate with) the Maori people of New Zealand. Let the Maori chiefs accept the governorship (Kawana-tanga) of the Queen over all parts of this country and the Islands. Now, the Queen desires to arrange the governorship lest evils should come to the Maori people and the Europeans who are living here without law. Now, the Queen has been pleased to send me, William Hobson, a Captain in the Royal Navy to be Governor for all places of New Zealand which are now given up or which shall be given up to the Queen.

And she says to the Chiefs of the Confederation of the Hapus of New Zealand and the other chiefs, these are the laws spoken of.

This is the first

The Chiefs of the Confederation, and all these chiefs who have not joined in that Confederation give up to the Queen of England for ever all the Governorship (Kawanatanga) of their lands.

This is the Second

The Queen of England agrees and consents (to give) to the Chiefs, the hapus, and all the people of New Zealand the full chieftainship (Rangatiratanga) of their lands, their villages, and all their possessions but the Chiefs of the Confederation and all the other Chiefs give to the Queen the purchasing of those pieces of land which the owner is willing to sell, subject to the arranging of payment which will be agreed

to by them and the purchaser who will be appointed by the Queen for the purpose of buying for her.

This is the third

This is the arrangement for the consent to the governorship of the Queen. The Queen will protect all the Maori people of New Zealand, and give them all the same rights as those of the people of England.

William Hobson

Consul and Lieutenant-Governor.

Now, we the Chiefs of the Confederation of the Hapus of New Zealand, here assembled at Waitangi, and we, the chiefs of New Zealand, see the meaning of these words and accept them, and we agree to all of them. Here we put our names and our marks.