THE INDIGENOUS WORLD 2012

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Compilation and editing: Cæcilie Mikkelsen
Regional editors:
The Circumpolar North & North America: Kathrin Wessendorf
Central and South America: Alejandro Parellada
Australia and the Pacific: Kathrin Wessendorf
Asia: Christian Erni and Christina Nilsson
The Middle East: Diana Vinding
Africa: Marianne Wiben Jensen and Geneviève Rose
International Processes: Lola García-Alix and Kathrin Wessendorf
Cover and typesetting: Jorge Monrás
Maps: Julie Helquist and Jorge Monrás
English translation and proof reading: Elaine Bolton
Russian translation: IP Galchenko Ludmila Nikolayevna
Prepress and Print: Eks-Skolens Trykkeri, Copenhagen, Denmark

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INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS
Classensgade 11 E, DK 2100 - Copenhagen, Denmark
Tel: (45) 35 27 05 00 - Fax: (45) 35 27 05 07
E-mail: iwgia@iwgia.org - Web: www.iwgia.org

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PART III – GENERAL INFORMATION

AOTEAROA (NEW ZEALAND)

Māori, the indigenous people of Aotearoa, represent 17% of the 4.3 million population. The gap between Māori and non-Māori is pervasive: Māori life expectancy is almost 10 years less than non-Māori; household income is 72% of the national average; half of Māori males leave secondary school with no qualifications and 50% of the prison population is Māori.[1]

The Treaty of Waitangi was signed between the British and Māori in 1840. There are two versions of the Treaty, an English-language version and a Māori-language version. The Māori version granted a right of governance to the British, promised that Māori would retain sovereignty over their lands, resources and other treasures and conferred the rights of British citizens on Māori. The Treaty has, however, limited legal status; accordingly, protection of Māori rights is largely dependent upon political will and ad hoc recognition of the Treaty.

New Zealand endorsed the UN Declaration on the Rights of Indigenous Peoples in 2010 (see *The Indigenous World 2011*). New Zealand has not ratified ILO Convention 169.

The national election, and the devastating Christchurch earthquake, dominated the agenda in Aotearoa in 2011. For Māori, there were few positive developments. The election produced a mixed result: state asset sales that may push up utility prices are planned, discriminatory marine legislation was passed, petroleum surveying was carried out without adequate consultation, four of the 17 "terror" accused are still awaiting trial and the Special Rapporteur on the rights of indigenous peoples' 2011 recommendations went largely ignored. More positively, Treaty settlements continued and the Wai262 report was released, although both attracted controversy.

National election mixed for Māori

New Zealand's general election was held on 26 November 2011. The centre-right National Party obtained 59 of the 121 seats and secured a second three-year term by entering into coalition agreements with the rightist ACT New Zealand and United Future parties, each of which obtained one seat. The Labour Party received 34 seats, the Green Party 14 and New Zealand First 8. The two parties with an explicit Māori *kaupapa* (vision) – the Māori Party and Mana – did not fare well. The Māori Party saw a reduction in its number of seats to three (Pita Sharples, Tariana Turia and Te Ururoa Flavell retained their seats), and the newly-formed leftist Mana party obtained only one seat (for its leader Hone Harawira).[2] In December, the Māori Party entered into a relationship accord and confidence and supply agreement with the National Party (Confidence Agreement). It was seen as a gesture of goodwill to consolidate the relationship forged with the Māori Party in the previous electoral term and as a means of strengthening the Government's majority. The Confidence Agreement includes a number of social welfare and development commitments by the National Party as well as commitments concerning the environment, the constitutional review, the focus of the Ministry of Māori Development and negotiations over the allocation of high frequency radio channels to Māori. Māori Party co-leaders will again hold ministerial posts outside of cabinet, including the positions of Minister of Māori Affairs and Minister respon-

sible for *Whānau Ora* (the Government's integrated social services delivery programme).

For Māori, the results of the election were mixed. Numbers-wise, Māori retained a relatively good presence in Parliament. Overall, the number of Members of Parliament that self-identify as Māori remains approximately proportionate to the number of Māori living in New Zealand. Māori will also once again hold ministerial posts. In addition to the posts outside of cabinet assumed by members of the Māori Party, National's cabinet also includes, for example, Hekia Parata as Minister of Education and State Owned Enterprises. Further, the Māori Party and Mana are both represented, albeit in low numbers. During the general elections, New Zealanders also voted on whether to retain the current Mixed Member Proportional (MMP) voting system. Fifty-seven per cent voted in favour of retaining MMP.[3] This was a positive outcome for Māori, as MMP is credited with improving the representation of Māori and other minority groups within Parliament. However, Māori remain a numerical minority in Parliament and those with seats are constrained by their respective party's policy positions.

State asset sales planned

In January 2011, Prime Minister John Key announced that if the National Party won the general election it would seek to raise up to NZ$10 billion (around USD 7.8 billion) to help return the Government's budget to surplus through the sale of minority stakes in state-owned power companies and the state-owned coal producer and through the reduction of its shareholding in the national airline.[4] Despite widespread public opposition, with National's electoral victory, the partial asset sales are set to start in 2012.

Māori reactions to the proposed asset sales have varied. Representatives of some *iwi* (tribes), including the chair of Waikato-Tainui and other members of the Iwi Chairs Forum, have expressed support for the sales and indicated their interest in investing in the assets. The Mana Party opposes the policy. The Māori Party has also expressed opposition but at the same time has indicated that if the sales go ahead it will support those *iwi* that wish to buy shares.[5] While a few well-financed *iwi* may stand to benefit from investing in the assets, Māori may bear higher prices for essential utilities that many can ill afford and there is real concern that the assets may end up wholly privately owned.

Discriminatory marine legislation passed

The Marine and Coastal Area (Takutai Moana) Act 2011, which removes Māori interests over the foreshore and seabed and vests them in a new construct called a "common space" (see *The Indigenous World 2011*), was passed early in 2011. It was passed with the support of the Māori Party (who acknowledged that the Act did not go as far as it would like), despite opposition to the Act by *iwi* and *hapū* (sub-tribes). The Māori Party's support for the legislation prompted Hone Harawira to leave the party and form a new political party, Mana, opposed to the Act.[6]

Wai262 report released

The Waitangi Tribunal released its full report on the Wai262 claim, *Ko Aotearoa Tenei*, in July 2011. Wai262 is popularly referred to as "the indigenous flora and fauna claim" but the report's coverage is in fact far broader. It concerns the place of *mātauranga Māori* (Māori knowledge) in contemporary New Zealand law and government policy and practice. Ultimately, it is concerned with the evolution of the Crown-Māori relationship "from one based on historical grievance to an ongoing partnership based on mutual advantage."[7] The report, which took 20 years to complete, is significant in scope. It is over 800 pages long and contains eight substantive chapters concerning cultural heritage, indigenous flora and fauna, the environment, conservation, language, Crown guardianship of *mātauranga* Māori, *rongoā* (traditional Māori healing) and international instruments.

The report contains a suite of recommendations that attempt to balance the interests of the Treaty parties. The recommendations are sweeping. For example, the Tribunal recommends new standards of legal protection for cultural heritage, the establishment of a Māori Committee to advise the Commissioner of Patents, reform of the Resource Management Act regime to provide for enhanced *iwi* development plans and that Department of Conservation policy should accord Māori a "reasonable degree of preference" when decisions are made about commercial activities in the conservation estate.[8] Some have criticised the breadth and audacity of the report's recommendations but these are also open to the criticism that, rather than heralding a new Crown-Māori relationship, with their emphasis

on policy changes, the establishment of advisory committees and enhanced consultation, they deviate little from the status quo.[9]

It remains to be seen what, if any, of the Tribunal's non-binding recommendations will be taken up by the Government. The Government has indicated that it will take its time responding to the report. Prominent Māori commentators, such as Moana Jackson, hold out little hope that the Government will fully implement the Tribunal's recommendations.[10]

Iwi protest against Petrobras petroleum survey

Conflict concerning the Government's granting of a five-year petroleum exploration permit over the Raukumara Basin to Brazilian company Petrobras International without adequately consulting with *iwi* heated up in 2011. Petrobras carried out a seismic survey of the basin early in 2011. Its ship was met by a flotilla of protest boats, including from local *iwi* Te Whānau ā Apanui and Greenpeace. The captain of a Te Whānau ā Apanui fishing boat was subsequently arrested after allegedly interfering with the ship's survey work. Despite the protests, the Government has refused to revoke or suspend the permit, arguing that it was granted lawfully and that it had no obligation to consult with the *iwi* about the permit. Te Whānau ā Apanui and Greenpeace have secured a judicial review of the Government's granting of the exploration permit on environmental and Treaty of Waitangi grounds. The hearing is scheduled for the High Court in June 2012.[11]

Treaty settlements progress

Treaty settlements continued apace in 2011. Eight groups signed Deeds of Settlement with the Crown,[12] 17 signed Agreements in Principle[13] and four *iwi* agreed that their deeds of settlement were ready for presentation to their members for ratification.[14] In another positive development, in July, the Ngāi Tūhoe *iwi* and the Government signed a "relationship agreement" signalling a first step towards rebuilding their relationship after the Prime Minister rejected the possibility of returning lands within Urewera National Park to them as part of their Treaty settlement package in 2010.[15]

Issues with the Treaty settlement process are still being worked through. For example, in May the Supreme Court ruled that the Waitangi Tribunal, the commission of inquiry charged with investigating claims of breaches of the Treaty of Waitangi, had to hear a claim for redress by Mr Haronga (representing a small Maori incorporation) whose Treaty claim was about to be extinguished by a large region-wide Treaty settlement.[16] Mr Haronga claimed that the body preparing to conclude the region-wide settlement no longer had a mandate to agree a settlement regarding his claim over the Mangatu State Forest. He sought an urgent hearing before the Waitangi Tribunal to consider remedies regarding his claim, which was declined by the Tribunal. The Supreme Court's decision to overturn that ruling signals a victory for smaller groups who feel sidelined in the Treaty settlement process but may slow the pace of future Treaty settlements.[17]

"Terror" accused still await trial

Over four years since police raided a community of the Ngãi Tũhoe *iwi* and the homes of social activists under the Terrorism Suppression Act of 2002 and the Arms Act of 1983, four of the accused are still awaiting trial. After a series of pretrial legal challenges, in September 2011 the Crown dropped charges against 13 of the 17 accused on the basis that there was not sufficient evidence to justify proceeding. The remaining four, including Tũhoe activist Tame Iti, face charges of allegedly participating in an organised criminal group and firearms offences. The judge-only trial is set to start in February 2012.[18]

Little progress on Rapporteur's recommendations

In 2011, the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, released his report on his 2010 country mission to Aotearoa.[19] Anaya's report recognised some positive developments but also identified ongoing concerns, which formed the basis for 17 recommendations to the Government on issues related to the Treaty of Waitangi (concerning partnership and participation, the Waitangi Tribunal and negotiated Treaty settlements), domestic legal security for Mãori rights and Mãori development. The National-led Government's response to the visit and report was more positive than the Labour-led Govern-

ment's response to previous Special Rapporteur Rodolfo Stavenhagen's 2005 mission to Aotearoa.[20] However, the Government has made little progress in implementing Anaya's recommendations. ❍

Notes and references

1 Most of the population statistics cited here are based on the *New Zealand Census 2006* (the next Census will be held in 2013).

2 **New Zealand Electoral Commission** "2011 General Election – Official Result" 22 December 2011 available at http://www.electionresults.govt.nz/electionresults_2011/ (last accessed 4 January 2012).

3 **New Zealand Electoral Commission** "Overall Results – 2011 Referendum on the Voting System" 10 December 2011 available at http://www.electionresults.govt.nz/electionresults_2011/referendum.html (last accessed 4 January 2012).

4 See, e.g., **Tom Peters** "New Zealand government outlines spending cuts, asset sales" available at http://www.wsws.org/articles/2011/feb2011/nzea-f14.shtml (last accessed 5 January 2012).

5 See, e.g., **Karla Akuhata** "Iwi chase Key for SOE talks" 30 November 2011 available at http://www.stuff.co.nz/waikato-times/news/6059868/Iwi-chase-Key-for-SOE-talks (last accessed 5 January 2012) and **Derek Cheng** "Mana, Māori divided on asset sales" 30 October 2011 available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10762695 (last accessed 5 January 2012).

6 See *The Indigenous World 2011*. A copy of the Act is available from the New Zealand Legislation website http://www.legislation.govt.nz/act/public/2011/0003/latest/DLM3213131.html (last accessed 4 January 2012). For a summary of *iwi* and *hapū* criticism see Kaitiaki o te Takutai "Summary of Māori submissions on the Marine and Coastal (Takutai Moana) Bill 2010" (22 February 2011) available at Converge < http://www.converge.org.nz/pma/fs220211.pdf> (last accessed on 21 March 2011).

7 **Waitangi Tribunal** *Ko Aotearoa Tenei – Factsheet 1: Key Themes* available at http://www.waitangi-tribunal.govt.nz/reports/summary.asp?reportid={BF981901-5B55-441C-A93E-8E84B-67B76E9} (last accessed 5 January 2012) 1.

8 **Waitangi Tribunal** *Ko Aotearoa Tenei: Te Taumata Tuarua Volumes 1 and* 2 2011.

9 See, e.g., **Yvonne Tahana** "Bold Bid for Common Path for Crown, Māori" 6 July 2011 available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10736518 (last accessed 4 January 2012) and **Morgan Godfrey** "Release of the Wai262 report" 3 July 2011 http://mauistreet.blogspot.com/2011/07/release-of-wai262-report.html (last accessed 4 January 2012).

10 Tahana above n 16.

11 See, e.g., **Susan Pepperell, 2011:** "New charge for protest ship's captain" 29 April 2011 available at http://www.stuff.co.nz/national/4940663/New-charge-for-protest-ships-captain (last accessed 5 January 2012) and *Gisborne Herald* "Judicial review of East Cape oil, gas exploration" 15 December 2011 available at http://www.odt.co.nz/source/apnz/190965/judicial-review-east-cape-oil-gas-exploration (last accessed 5 January 2012).

12 Ngāti Whātua Orakei, Rongowhakaata, Waitaha, Ngāti Whātua o Kaipara, Ngāti Manuhiri, Ngāti Mākino, Ngāti Rereahu in respect of the Maraeroa A and B blocks and Ngāi Tāmanuhiri.

13 Ngāi Tai ki Tāmaki regarding their Tāmaki Makaurau interests; Maungaharuru Tangitu Hapū; the twelve *iwi* of Hauraki who comprise the Hauraki Collective (note that they signed "Agreement in Principle Equivalents"); Ngāti Rangiwewehi; Tapuika; and Ngāti Rehua-Ngāti Wai ki Aotea.

14 Ngāi Takoto, Te Aupōuri, Te Rarawa and Raukawa ki Waikato. For information on the settlement process and settlements reached in 2011, see the Office of Treaty Settlements website available at http://www.ots.govt.nz/ (last accessed 5 January 2012).

15 *Gisborne Herald***.** "Tuhoe, Crown move forward" 4 July 2011 available at http://www.gisborne-herald.co.nz/article/?id=23548 (last accessed 5 January 2012). See *The Indigenous World 2011*.

16 (SC54/2010) [2011] NZSC 53.

17 For discussion see **Carwyn Jones, 2011:** "Haronga v Waitangi Tribunal (Supreme Court)" 6 June 2011 available at http://ahi-ka-roa.blogspot.com/2011/06/haronga-v-waitangi-tribunal-supreme.html (last accessed 5 January 2012).

18 **Jared Savage and Edward Gay, 2011:** "Ureweras case 'destroyed relationships' 6 September 2011 available at http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10749743 (last accessed 5 January 2012). For background see *The Indigenous World 2010* and *The Indigenous World 2009*. Note that one of the original accused has passed away.

19 **James Anaya, 2011:** *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Addendum: The Situation of Maori People in New Zealand* 31 May 2011, UN Doc A/HRC/18/35/Add.4. For background see *The Indigenous World 2011*.

20 See *The Indigenous World 2007* and New Zealand Government, Ms Dell Higgie, Statement by Delegation of Concerned Country, 18th Session UN Human Rights Council, 21 September 2011.

Fleur Adcock *(of Ngāti Mutunga and English descent) is a PhD scholar in indigenous peoples' rights and international human rights law at the Australian National University. Before commencing her studies, Fleur practised for several years as a solicitor in Aotearoa, including assisting in the negotiation of historical Treaty of Waitangi settlement claims.*