

***Ki te kore koe e mau puu ana ki o tikanga me toou Mana Motuhake,
Kua ngaro koe ki te poouri otira e whai kee ana koe i ngaa tikanga a tetahi
noatu***

***When you fail to sustain your beliefs, sovereignty, freedom
You become lost to yourself as you are subsumed by those whose customs
and practices you must now serve***

In 1980 following the furore which was engendered by the publication of the Maori Sovereignty articles, Bruce Jesson commented:

“Essentially, Maori sovereignty is about the complete incompatibility of the Maori and Pakeha ways of life, and about how economic and political power has resolved this conflict in favour of the Pakeha.”¹

At the time there was a strident group of Maori radicals who readily identified with the concept of Maori Sovereignty and with Maori resistance to Pakeha intrusion into their territories, their values, their mindscapes and their landscapes.² The core was drawn from an urban underclass from the communities of South Auckland, Hastings and Wellington. Their message was simple: Pakeha have colonised our hearts and our minds and have substituted our traditional systems and institutions with ones that Awatere described as exploitative, oppressive, dehumanised and spiritually deficient.³ It was time for the nation to turn the page on an era of greed, irresponsibility and injustice and an era of change was demanded.

¹ Jesson B, “*Waitangi a Pakeha Issue too*” p. 108 in Andrew Sharp (ed) *To Build a Nation Collected Writings 1975–1999*, Penguin, Auckland, 2005.

² It is interesting to note that the Oxford Dictionary characterises the term ‘radical’ as the “*departure from tradition*”. In these regards, the term ‘Maori Radical’ would seem to define people of the ilk of Don Brash, i.e. those who would seek to sever Maori from their traditions. Of course, in our domestic context, the term ‘Maori Radical’ relates to those who have struggled through the ‘Brash Attacks’ in their many guises to maintain Maori connections and their freedoms in this country. The proof of this statement is evidenced most starkly in the fact that the Brash’s have faded, yet the Harawira’s still remain.

³ Jesson B, “*Waitangi a Pakeha Issue too*” p.108.

The Maori World responded over the ensuing decades with a number of initiatives that were initially resisted by the Crown and, in general, by the Pakeha public. These initiatives included widespread development activity in the revitalisation of Te Reo Maori, autonomous Kura Kaupapa education initiatives, control over Maori health and social services delivery mechanisms, independent Maori media, and demands for redress within the Treaty Settlement arena.

The struggle transformed from one of simple *confrontation with the state* to one that sought the reclamation of Kaupapa Maori theory, practices and methodologies *with the assistance of the State*. Whether Labour or National, the apparatus of the state responded with a variety of quangos like the Maori Language Commission, the Maori Broadcasting Agency, the Ministry of Maori Development, the Maori Economic Task Force, the Crown Forest Rental Trust and the Treaty of Waitangi Fisheries Commission. The process of corporatisation had begun, with Maori radicals like me complicit in the transformation. Hone Harawira and I were appointed as founding members of Te Mangai Paho, the Maori Broadcasting Agency. I was also appointed as the Deputy Chairperson of Aotearoa Fisheries Ltd, a subsidiary company created by the Maori Fisheries Act 1989.

The same period saw the rise of a Maori elite within the process of litigating, negotiating and then implementing Treaty settlements, many of whom have become active sycophants of the broader neo liberal agenda which transfers a limited subset of publicly owned assets and resources into the private ownership of corporations to settle the injustices that have been inflicted upon hapu and iwi Maori.

An aura has built up around these Iwi leaders who, in tandem with the Maori Party, are now treated as the authorised voices of all Maori. But I am actively involved in all these issues and even I don't know who they are and where their mandate comes from on particular issues, let alone who they are accountable to and how.

In the process, the reality of our people has been lost sight of. As many well know, the economic miracle that has allegedly transformed Maori society and propelled this forum into what has been described as the most powerful lobby group in Aotearoa is a myth, a carefully constructed illusion. Maori land holdings, even after Treaty settlements are taken into account, are small, less than three hectares per person, and returns from Maori land are confined to a small section of the Maori population, about one third.⁴ Similarly the asset base of some of these large corporations - Te Ohu Kaimoana, which is estimated at \$590 million, only equates to approximately \$1,000 per person (if we use 523,000 as indicative of the total Maori population).⁵ The position is even worse for the most populous iwi like Ngapuhi, whose shareholding per person diminished to about \$500 per person upon the terms of the actual allocation model.⁶

Statistics continue to reflect the poor socio-economic state of most Maori. The Maori unemployment rate is twice as high as non-Maori, and one out of four Maori receive a benefit compared to one out of ten non-Maori.⁷ Maori are three times more likely to live in an overcrowded household compared to non-Maori.⁸ Only two out of five Maori are completing secondary education with a Level Two Certificate, compared to two out of three non-Maori.⁹ While Maori currently represent around 13% of the general New Zealand population, we make up 51% of the prison population. In 2006, Maori accounted for 43% of all police apprehensions.¹⁰ Maori life expectancy is 10% lower than non-Maori, and Maori are twice as likely to be obese.¹¹ Our suicide rate is 1.6 times higher than non-Maori, and our youth suicide rate is twice that of non-Maori. In 2006 the Maori youth suicide rate was 31.8 per 100,000, compared with the non-Maori

⁴ Durie, Mason, *Nga Kahui Pou: Launching Maori Futures*, Huia Publishers, 2003, p.95.

⁵ Ibid.

⁶ It should be noted that the ten largest iwi in the 2006 Census are as follows: Nga Puhi 122,211; Ngati Porou 71,910; Ngati Kahungunu 59,946; Ngai Tahu/Kai Tahu 49,185; Te Arawa 42,159; Ngati Tuwharetoa 34,674; Ngati Maniapoto 33,627; Waikato 33,429; Tuhoe 32,670 and Ngati Awa 15,258.

⁷ Socioeconomic Indicators at <http://www.socialreport.msd.govt.nz/>

⁸ Ibid.

⁹ Ibid.

¹⁰ Dannette, Marie, "Maori and Criminal Offending: A Critical Appraisal", 43(2) *The Australian And New Zealand Journal Of Criminology*, 2010, at p.284.

¹¹ The Social Report 2009 "Health" <http://www.socialreport.msd.govt.nz/> at pp.21 and 29

rate of 16.8 per 100,000.¹² Almost half of all Maori women smoke cigarettes, which is twice as high as non-Maori women,¹³ and we are significantly more likely to have a potentially hazardous drinking pattern.¹⁴

The process I am describing is not new. Sadly, it mirrors the all-too-familiar colonial pattern where governments have aimed to maintain control of indigenous populations through indirect means; that is, in lieu of direct military-political control, neo-colonialist powers co-opt indigenous elites through privileged relationships with their government and opportunities to profit from their economic, financial and trade policies, at the expense of their people. “Rangatiratanga”, as Moana Jackson reminds, “has in effect been redefined yet again as a neo-liberal right of self management bound by the good faith of the Crown and what the Court of Appeal called in the 1987 Case the ‘right to govern’”. Moving on from the past and recognising the special place of tangata whenua has become a journey not of constitutional change but of devolution and the authority of the State to devolve or permit Iwi to manage certain resources and programmes subject to government funding and rules of contract”.

The National Iwi Chairs Forum, in particular the executive who is also in charge of the secretariat of this group, has set themselves up to be first in the queue to sit at the Masters table with the clear desire of exerting economic influence in corporate terms.¹⁵

It is these observations that have inspired my contribution this evening, coupled with the fact that as someone born and raised in the DPB capital of the world Kawerau, I have been personal witness to the impact of the economic reforms on heartland New Zealand. I have watched a thriving mill-town reduced to a community that is dependent on the generosity of the diminishing welfare state to ensure the well being of its families. Reading the insightful commentary on

¹² Ibid, p.25.

¹³ Ibid, p.27.

¹⁴ Ibid, p.31.

¹⁵ *Te Tepu*, Series 6, Episode 15. Transcript from Interview with NICF leader Tukuroirangi Morgan by Waihoroi Shortland.

my hometown by Simon Collins in a series in the *New Zealand Herald* recently reminded me that the poor and dispossessed who are my family and my closest friends are not being treated with respect or as relevant to these processes and that Maori elites are complicit in perpetuating this poverty without remorse. The articles raised a serious moment of introspection on my part.

I hope this contribution will enable the Maori who aspire to the ranks of the Iwi Leaders Forum to reflect on whether they are in fact leaders of our people or followers of a New Right process that is designed to disenfranchise tangata whenua and nullify the guarantee of independence of Aotearoa in Te Tiriti o Waitangi. By embracing a modern version of integration that has all the zest, scale, speed and power of the old industrial-era capitalist imperialism, they are 'leading' a systematic onslaught on the Maori way of life.

Hikina Te Arai

Lifting the Veil

Who is the Brown Table?

In a recent submission to the UN Special Rapporteur, James Anaya, the National Chairs Iwi Forum (NICF) claims that it represents more than 400,000 Maori, over two-thirds of the Maori population, and is portrayed as the new frontier of Iwi Maori, the global entrepreneurs.¹⁶

Both Mark Solomon and Tukuroirangi Morgan¹⁷ have suggested that the National Iwi Chairs Forum actually numbers approximately 70 people who convene quarterly to discuss a broad agenda. It is not clear who these people are and upon what right of representation they claim to speak on issues.

Ironically, most of those Maori they represent have to go to the website to find out who their 'leaders' are! A search of the website suggests that the National Iwi

¹⁶ Background Paper, Iwi Chairs Forum to United Nations Special Rapporteur on the situation of human rights and fundamental freedoms to Professor James Anaya located at <http://www.iwichairs.maori.nz/Special-Rapporteur/Iwi-Chairs-Forum-Background-Paper.pdf>
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¹⁷ Questions posed at the Hui – a – Motu Iwi Leaders Working Group on Climate Change 10 November 2009 Rydges Hotel Rotorua.

Chairs Forum is a self-defined group of individuals who meet regularly, and who are chairs of their own iwi runanga, tribal trust boards or other tribal corporate entities, what is commonly referred to as Iwi Authorities.

Attendance at the NICF is 'restricted' to elected chairs of hapu/iwi entities of this kind who are purportedly mandated to represent their constituents in the Forum. Their website names Mark Solomon (Chairperson of Te Runanga o Ngai Tahu), Tuku Morgan (Chairperson of Te Arataura), Raniera (Sonny) Tau (Chairperson of Te Runanga o Ngapuhi), Professor Margaret Mutu (Chairperson of Te Runanga o Ngati Kahu), Toko Renata (Chairperson of Hauraki Maori Trust Board), Ngahiwi Tomoana (Chairperson of Ngati Kahungungu Iwi Incorporation) and Api Mahuika (Ngati Porou) as Iwi Chairs who make up the Forum. Apparently, the further 63 or so individuals have not notified the website manager of their details, which makes it difficult to ascertain the Forum's actual membership. However, the two forums that I have attended certainly suggest a broader group attends these meetings, but that the business of the forum is led by the iwi Chairs profiled on their website.

The seven named individuals seem to perform an executive function for the broader NICF, supported by a secretariat. Various Iwi Leaders Working Groups (ILGs) are formed around specific issues, such as water, climate change, public private partnerships, foreshore and seabed, whanau ora and geothermal, where they 'consult' at the kind of invitation-only hui that I describe below. These groups operate in similar ways, in that the ILG on a particular issue engages directly with government, endeavours to hui with Iwi and hapū representatives at hui they organise across the country, and report back to each National Iwi Chairs Forum. What is interesting is that the ILGs seem to rely on mandates effected at the Forum's own quarterly meetings to suggest that have been confirmed in a representative capacity for iwi katoa.¹⁸

¹⁸ See discussion for example of the establishment of the Iwi Leaders Working Group (ILG) on Foreshore and Seabed which was formed at the Hopuhopu Iwi Chairs Forum on 20 August 2009 in Background Paper, Iwi Chairs Forum to United Nations Special Rapporteur on the situation of human rights and fundamental freedoms to Professor James Anaya located at <http://www.iwichairs.maori.nz/Special-Rapporteur/Iwi-Chairs-Forum-Background-Paper.pdf> p 9. This group by 26 August 2009 was seeking a number of commitments from the Government.

A closer examination of the genesis of the NICF shows that it mainly comprises men who are chairpersons or members of the 57 Mandated Iwi Organisations (MIO) that were established to satisfy the criteria to receive fisheries settlement assets following the Sealords Deal. In an interview with Koha reporter Tina Wickliffe, Tukuorangi Morgan noted that approximately 51 of the MIO are or have been represented at the Forum.¹⁹ Most of these organisations have by no means secured mandates from the constituent members beyond the single issue of fisheries settlement management or management of settlement funds. Debate between iwi on how to share that settlement took years, as did setting up the necessary iwi corporate structures to manage the proceeds.²⁰ The Maori Fisheries Act 2004 led to the first distribution to iwi of fish quota, cash, and shares in Aotearoa Fisheries Ltd in September 2005.

According to its website, in the five years since its inception the National Iwi Chairs Forum has operated in two main areas: hui convened of national Iwi Chairs to consider strategic issues; and working groups established at the behest of the NICF to prepare discussion papers around strategic matters. Tuku Morgan, Ngahiwi Tomoana, Mark Solomon, the late Sir Archie Taiaroa, Professor Margaret Mutu and Api Mahuika are all said to have been convenors at various times on various matters under consideration by the Forum. The NICF identifies issues of concern to all Maori - or a very broad range of whanau, hapu and iwi - and sets up working groups to address them. Each working group is convened by an Iwi Chair. These working groups may co-opt expertise from amongst their bodies. These are the bodies that have become known as "Iwi Leader Groups" because their membership aims to become that of leaders in the respective issues as identified.

¹⁹ Wickliffe, T.; 'Lifting the Veil of Secrecy', *Koha*, Issue 7, p.5, Published by FOMANA Capital Ltd September 2010.

²⁰ As Lord Goff noted *Treaty Tribes Coalition v Urban Maori Authorities* [1997] 1 NZLR 513, 517 (PC) Maori have found the task of dividing the fisheries resource to be "an extremely challenging process"; See also *Te Runanga o Wharekaui Rekohu Inc v Attorney-General* [1993] 2 NZLR 301; Waitangi Tribunal, *The Fisheries Settlement Report* Wai 307 (Department of Justice, Wellington, 1992).; *Te Runanga o Muriwhenua v Te Runanganui o Te Upoko o Te Ika Association Inc* [1996] 3 NZLR 10, 16; *Te Waka Hi o Te Arawa and others v Treaty of Waitangi Fisheries Commission* (4 August 1998) unreported, High Court, Auckland Registry, CP 395/93 (Wgtn) Anderson J.

In addition to its website, the NICF claim to have a communications network, largely through email, to exchange information with “iwi katoa”, and there are email streams that develop amongst iwi leadership groups on specific issues. However, when I asked who was part of the email stream, I was advised it is mainly the 50 or so representatives that had been invited to the Coronation meeting in 2007 that had formalised the group, but that it was a very fluid matter.²¹ I am still waiting for a copy of the list of individuals who were purported to have mandated the creation of the forum, which Tukuroirangi Morgan promised would be made available to me following a meeting with the Iwi Leaders Working Group on Climate Change in Rotorua in November 2009.

One of the strident criticisms is that a self-selected group of iwi authority chairpersons and their advisors have sidelined traditional communities and their tikanga Maori processes of engagement, such as regularly convened advertised hui that hapu and iwi leaders have maintained prior to fundamental decisions being made that impact on the lives of the community that they purport to represent. There is no vetting process on those attending this National Iwi Chairs Forum: the chairs who register as attending claim to do so under the mana of their electing body; but there is no clear indication whether in fact the electing bodies or those hapu and whanau they represent, have mandated the participation of these individuals on the broad range of issues under consideration. Their status as ‘leaders’ purports to eliminate, or at least relegate from relevance, other figures of authority that their people might look to for direction, even though there is the often-token attendance of some elders in these meetings.

A New Maori Hegemony

It is no coincidence that the National Iwi Chairs Forum, (NICF) where the Chairs and Convenors and Advisor of Iwi Leaders Groups conduct their consultation with each other and a small extended circle, emerged at a time when the first

²¹ Hui-a-Motu 10 November 2009 at Rydges Hotel ILG (Iwi Leaders Working Group) on Climate Change

distribution of capital into Maori communities was anticipated following finalisation of the principles of allocation to be applied to the Sealords deal. Apart from Tainui and Ngai Tahu, and perhaps one or two other iwi groups, this was to be the first allocation of cash to Iwi corporates since the inception of the Treaty Settlement framework and it was eagerly awaited by the brown bureaucracy that had grown in anticipation of this.

This group of Iwi Authority representatives are joined in the NICF by chairpersons from other organisations, like Tribal Trust Boards, and Runanga. There is also emerging representation from the corporate arms of Post Settlement Governance Entities required to be established by the Office of Treaty Settlements to receive settlement assets, so that Tukuorangi Morgan, for example, claims to represent Te Arataua, rather than the Tainui Parliament, the Kauhanganui.

The culture that the new Maori elites have adopted increasingly demands that Maori entities be run on business lines, mirroring the model of the Treasury and the Business Roundtable.

Paepae rangatira are categorised as symbolic, lacking in the requisite expertise to risk allowing them to have even a minimal amount of control of economic concerns. The strident demands for a separation of governance from management have accompanied efforts to diminish the role of governance and inflate that of management in an effort to reverse their hierarchical status. In so doing they have actually advocated a disconnection of tangata from their whenua.

This empowerment of corporatised iwi structures has been driven by two discourses.²² The first centred around the rationale that the commercial, social and regulatory functions of government departments should be separated, which

²² In two consultation documents called “Te Tirohanga Rangapu” and “Te Urupare Rangapu” approved Iwi authorities were to be created to deliver certain programmes, usually in health or social welfare. Iwi were to be agents and service providers for the Crown operating with appropriately indigenized Pakeha structures.

had commenced during the Rogernomics era. The second was the State's need for a mechanism to manage settlement of Maori interests that were guaranteed by Te Tiriti o Waitangi and which had threatened to act as a judder bar to the Crown agenda to privatise, and for certainty about who to deal with in the commercial environment. These discourses informed a market view of devolution through a decision-making model that only recognised the authority of those iwi groups who had been approved by the state. As Graham Smith observed: "Who names what constitutes leadership of iwi therefore is determinative of who the experts are",²³ and therefore from whom one should seek Maori opinion.

The economic agenda of the NICF was legitimised by the outcomes of a Hui Taumata that was convened in Wellington from 1-3 March 2005, which brought together a wide range of perspectives to look at ways to accelerate Maori economic growth. It was the second hui of its kind, the first held in October 1984 before the onslaught of Rogernomics. The 2005 hui was borne from the recognition that Maori had been disproportionately affected by the radical economic reforms of the intervening period and the failed closing the gaps policy. A Maori Economic Taskforce was established following the Maori Economic Summit. Prominent amongst its membership was Rob McLeod of the Business Roundtable, Ngati Kahungunu Runanga Chairperson Ngahiwi Tomoana who was later to assume the Chairperson role of the Treaty of Waitangi Fisheries Commission and Ngai Tahu leader Mark Solomon, who has been a clear driver behind the National Iwi Chairs Forum and is a convenor of one of the Iwi Leaders Groups (ILG) relating to Public/Private Partnerships.²⁴ The other members were Bentham Ohia, June McCabe, John Tamihere and Daphne Luke, as

²³ Smith G, "Kimihiā te Maramatanga", Doctoral Thesis, Chapter 5, p.103.

²⁴ The work in this area has been progressed under Minister Sharples' Taskforce on Māori Economic Development. The Taskforce has a number of portfolios spanning; the primary sector; access to capital, labour force development and training, small and medium enterprise development and support; Māori branding opportunities, infrastructure investment, kaupapa Māori models of commercialism and co-investment amongst Iwi and with the Crown. Mark Solomon is leading the work stream on co-investment amongst Iwi and with the Crown. See Background Paper, Iwi Chairs Forum to United Nations Special Rapporteur on the situation of human rights and fundamental freedoms to Professor James Anaya located at <http://www.iwichairs.maori.nz/Special-Rapporteur/Iwi-Chairs-Forum-Background-Paper.pdf>
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well as Leith Comer, Chief Executive of Te Puni Kokiri and Hon Georgina Te Heuheu, Associate Minister of Maori Affairs.²⁵

The potential impacts of such separation seem all the more significant when we remember that the processes of individualisation allow lands and other taonga to be seen as tradeable commodities. These measures are said to be necessary to achieve the oft-quoted mantra of taking Iwi Maori from grievance to development mode. The fact that history shows the method to be dangerously flawed hardly seems to register. Instead, a new type of internecine conflict erupts,²⁶ as the appetite for power of those who would seek to control the asset base intensifies the covetous desire to obtain more. In the Treaty settlement litigation that has resulted from the process, a central concern has been the repeated bureaucratic inadequacies that resulted in a failure to protect the interests of individuals and groups not (or inadequately) represented at the negotiating table. When the courts have been faced with these challenges they have almost always opted for the view that these are political, as opposed to legal, matters and are therefore not justiciable and have been reluctant to intervene. The difficulty is that the iwi authority structures themselves are without the apparatus to ensure proper democratic and accountability mechanisms by those who proclaim a mandate at this national level. The claims for Mana Motuhake and Political Independence by hapu are effectively

²⁵ Te Puni Kokiri; *The Maori Economic Taskforce* – Kokiri – Kokiri 15 2009.

²⁶ The Crown policy to negotiate the settlement of Treaty claims with large natural groupings with tribal interests at an Iwi level rather than at a hapu, whanau or claimant level has been the subject of much attention by the judiciary in a number of contexts from challenges to the robustness of mandates, concerns around the failure to address the needs of overlapping claims and allegations that customary relationships to land are being transformed contrary to Te Tiriti o Waitangi and settled principles of Maori Law as negotiated following the Lands case. See: *The Ngati Awa Cross Claims Settlement report Wai 958 2002 The Te Arawa Mandate Report: Te Wahanga Tuarua; Wai 1150 2005; and the Tamaki Makaurau Settlement Process Report Wai 13622007; Hayes v Waitangi Tribunal HAC WN CP 111/01 10 May 2001; Waitaha Taiwhenua o Waitaki Trust v Te Runanga o Ngai Tahu HC WN CP 41/98 17 June 1998; Milroy v Attorney General [2005] NZAR 562 (CA) and New Zealand Maori Council v Attorney General [2008] 1 NZLR 318 (CA); Pouwhare v Kruger CIV-2009-485-976 High Court; Attorney General v Kenehi Mair & Ors [2009] NZCA 625; Haronga v Attorney General [2010] NZCA 201; For a full discussion of the genesis of the policy See also Annie Mikaere, "Settlement of Treaty Claims: Full and Final, or Fatally Flawed?", (1997) 17 NZULR 425; Malcolm Birdling, "Healing the Past or Harming the Future? 'Large Natural Groupings' and the Treaty Settlement Process", (LLB(Hons) Research Paper, Victoria University of Wellington, 2003),12.*

surrendered to the Iwi Leaders quest for greater participation and influence in the New Zealand Economy.

The result is a new Maori hegemony that sits within a national one. This Maori hegemony emerges out of the new iwi leadership's assumption of a high caste status, because members of the NICF or their delegations are increasingly the only individuals that the Crown sees as relevant on Maori issues. Yet the status of the NICF exists within a framework of authority that has been created or redefined within the settlement process to accommodate the requirements of the Office of Treaty Settlements as part of the Crown's Settlement Policy. The process of Crown approval and recognition by the Office of Treaty Settlements, prior to the determination of what and how much the Crown will grant in settlement, reflects the old patterns of the Native Land Court and highlights the broader and more obvious subordination of traditional Maori processes of decision-making. The compliant acceptance of this state of affairs, by the few for the many,²⁷ illustrates the continuing subjugation of Maori to a neo liberal economic hegemony to protect the stability of the construct of Crown unitary sovereignty.

It is unsurprising that the coalescence of the Iwi Chairs leadership into a national body called the National Iwi Chairs Forum has brought with it a desire by the Crown to entertain national settlements on key resources like climate change, freshwater, geothermal, foreshore and seabed and public private partnerships. Rather than dealing with these issues in accordance with Te Tiriti o Waitangi

²⁷ Many chairs of the National Iwi Chairs Forum (NICF) like the late Archie Tairaroa, who was also a former Chairperson of the now defunct National Maori Congress, have a long history of fighting for the rights of iwi and hapu to maintain their mana motuhake and political sovereignty. Sir Archie Tairaroa was the Co-Chairperson with the late Sir Hepi Te Heuheu at of the Hirangi Hui convened to consider a Pan-Maori response to the questions of the controversial Fiscal Envelope Policy. The difficulty in the present regime is that the models of settlement being agreed to by many of the Iwi Chairpersons and their constituents (like the statutory boards created over Waikato River and the Rotorua Lakes in the past) are still models of participation and management of policy within the Crown's rubric of authority which denies the legitimacy of tino rangatiratanga in the modern context and highlights the fact that the Crown Treaty Policy Framework is still in the main unilaterally developed by the Crown. Furthermore the question must be posed do Iwi Chairs have the mandate to interface on these issues with the Crown by the peoples at the grass roots whom they purport to represent on matters when their organisations focus is quite often limited to particular land management or fisheries management issues.

guarantees, the Forum seems to be promoted and accepted as a Maori issue one-stop shop.

This upper layer of Maori society, created to engage with the Crown, provides a convenient interface that makes it unnecessary for the Crown or the anointed leaders to communicate directly with those intransigents who refuse to relinquish their identities. When it is seen in this context, the newly constructed layer of Maori leadership seems to be a quango which the Crown then resources as part of its specific consultation requirements in the expectation it will generate an acceptable Maori view.

Not only is this obstructive of the direct relationship foreshadowed and guaranteed by Te Tiriti o Waitangi, which is one between Nga Rangatira o Nga Hapu and the Crown; it is indicative of a more fundamental fact that the group's accountability is not to our own kaupapa. It is not unreasonable to assert that the Crown is seeking to engineer a Treaty partner in its own image that is subordinate to it.

The Complicity of the Maori Party

These developments require consideration within the context of the Maori Party's willingness to relinquish its responsibilities to an elite group of Iwi Chairs whose 'Maori view' enables its coalition partner to achieve what it needs, while claiming it has clean hands.

When the Maori Party stormed into Parliament on 15 September 2004, securing four seats and upsetting Labour's safe and complacent hold on the Maori electorates, it set in train a rethink of the way Maori political participation with the mainstream parties would be managed. In the honeymoon period following the Maori Party's entry into Parliament they were courted by a range of Maori interests, not the least of which were many who later became prime movers in the National Iwi Chairs Forum. Hui were called at venues like Pukawa, Waitangi and Ngaruawahia, the Kingitanga stronghold, with Tuku Morgan taking a

prominent role that built on relationships with the Maori Party leadership he had nurtured during its years in opposition.

The relationship has been cemented over time with meetings being convened at these gatherings by Iwi leaders, ostensibly to brief the Prime Minister and his cabinet colleagues about business that the National Iwi Chairs Forum has discussed, with Maori Party leaders Sharples and Turia invited to attend. According to Tuku Morgan, it was one such gathering, which happened to coincide with the coronation commemorations in 2007, at which the National Iwi Chairs Forum was formalised to promote Maori-Crown relationships.²⁸ The relationship has no doubt assumed greater prominence in this latest Parliamentary term since the Maori Party cut a deal with National, who had already achieved a coalition agreement with ACT.

In a Parliamentary debate on the Foreshore and Seabed Hone Harawira put it this way:

“Te Ururoa’s line was basically that the Maori Party is happy to allow this matter to be settled by the Iwi Leaders Forum as the best group to represent Maori in negotiations, given that every member is an elected member of their own iwi.

And there is undoubtedly considerable support for that point of view, but if I can be so bold, I suggest that that is not necessarily the view held by the tens of thousands of people who have voted for the Maori Party over the past 5 years.

*In fact, going back to when the Maori Party was still just a twinkle in somebody’s eye, I bet that if I’d asked the 40,000 people who marched on parliament back in 2004 whether they thought the Foreshore and Seabed debate should be settled by the Iwi Leaders, I reckon 39,500 of them would have probably said no”.*²⁹

This summarises the difficulty which these undemocratic processes present and how the Maori Party has positioned itself in the process.

²⁸ Wickliffe; T; Lifting the Veil of Secrecy Koha Issue 7 p.5 Published by FOMANA Capital Ltd September 2010;

²⁹ <http://www.scoop.co.nz/stories/PA1002/S00209.htm>

Lessons from History

To demonstrate the inappropriateness of such a remedy, let me juxtapose it against the practices of the colonial institution that is perhaps most consistently seen as one of the major causes of grievance, the Native Land Court. The Waitangi Tribunal has found that the Native Land Court was designed to ‘nail home’ British ascendancy following conflict by picking apart the communities that Maori had historically looked to for protection. It was “*designed openly to destroy tribal titles ... [and] flatten out the network of rights*”.³⁰ In this way, the interests of hapu were transformed into an individualised form of private ownership to be held by a select group on behalf of the collective. The collective size of the asset conveniently masked the miniscule and paltry fragments of individual interest, and “*whether by reason of debt, greed, or unfamiliarity with the new system, ... [the select elite] started to act as individuals and not as kaitiaki on behalf of their people*”.³¹ As the people were cut out, so too was their ability to enforce the accountability of the leadership in accordance with tikanga.³² It was within this imposed reality that a Maori vulnerability was created and exploited.

History is repeating itself. The process that is now being adopted to remedy prejudices that flow from injustices inflicted upon Maori is a process of transferring assets from collective Maori ownership to control by an elite - a process that has been repeatedly criticised for the intergenerational impoverishment that it imposed upon Maori in the past.

The destruction of Maori communities and the subordination of their interests to achieve economic imperatives appears to be so fundamentally ingrained into the political psyche that it is as much a part of New Zealand Culture as Buzzy Bees and Picture Tea Towels.

³⁰ Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, WAI-814, 2004, p.436.

³¹ *Ibid*, p.438.

³² *Ibid*.

Riding the Tide of Discontent

To put these developments in a broader context, the Fisheries Act was passed when Don Brash and the National Party had whipped-up anti-Maori, anti-Treaty sentiment into a frenzy - the Iwi versus Kiwi dichotomy. One commentator suggests it was these events, coupled with the widespread protests by Maori following the Ngati Apa decision and the Labour Party's entrenchment of the Foreshore and Seabed Act, that became a call to arms for Ngai Tahu Chief Executive Mark Solomon to organise corporate opposition.³³ It is claimed because of this he went to see the late Queen Dame Te Atairangi Kaahu to get the royal seal of approval for a pan-tribal coalition to drive Maori interests and concerns.

But there is a major element missing in this explanation of the genesis of the National Iwi Chairs Forum. What is clear to me was that like the protest movements of the 1980s, the Foreshore and Seabed debacle of 2004, which saw the creation of the Maori Party, had mobilised Maori back onto the streets in numbers that had not been seen for a decade or more. It is estimated that over 60,000 Maori participated in the Hikoī that followed the clamour for direct action after the Labour Party's leadership, the Prime Minister and Attorney-General, rejected the Ngati Apa decision.

In the thirteen day journey from the Far North to Wellington, Maori organised protests in Whangarei, Auckland, Hamilton, Rotorua, Taupo, Whanganui, Wairoa, Napier, Waipukurau, Palmerston North and New Plymouth in outrage at the largest confiscation of lands to have occurred since the early colonial period. Networks that had long lain dormant since the 1980s were reactivated. The initial call came from Ngati Kahungunu elders to Hikoī in the spirit of Mana Motuhake and Kotahitanga. Then the leadership and former organisers of WAC, (Waitangi Action Committee), Te Kawariki, Te Kotahitanga o Waiariki and the Peace Movement Aotearoa called for a national co-ordination of direct action.

³³ Wickliffe, T.; 'Lifting the Veil of Secrecy', *Koha*, Issue 7, p.5, Published by FOMANA Capital Ltd September 2010.

Old heads were joined by a new vanguard of energetic young women leaders of the Tino Rangatiratanga Movement. Kura Kaupapa networks were tapped into and hapu and marae committees were approached in the style of the Great Land March to take responsibility for various legs of the journey to Parliament when it became clear that the Labour Party was to entrench the ownership of these remnants of the coastline which sit outside general title (some 30 per cent of the total land mass involved) into Crown hands. The huge inequity which still subsists in the recently introduced Mark II version of this law, is that Maori were to be conferred the opportunity to negotiate limited rights to these lands as proscribed by statute, while vast stretches of the coastline which are already in private ownership, remained untouched and outside the confiscation and regulatory regime.

The NICF have capitalised on that momentum for change. Surfing on the tide of discontent they have assumed the space that grass roots activists created and promoted neo liberal goals, such as the right to exploit the vast natural resources under the sea, that are more in keeping with capitalism than with the tino rangatiratanga that was being called for. Significantly, they have moved also to assume the role that had previously been occupied by the earlier Crown construct, the New Zealand Maori Council, in this regard.

***Te raukawa a Rerenoa
Piri ki te Punui
He kaioraora***

Like the parasite of Rerenoa
That clings to the Punui
Devouring its essence alive

Separating Tangata from Whenua

Ironically, many groups who had argued that it is for iwi to determine what constitutes an iwi and who also represents iwi, became legally incorporated to take advantage of the opportunity offered by Labour's Iwi Runanga Act. It is apposite to remind ourselves that this Iwi Runanga legislation did not survive because the proposal was considered to be a "monocultral document which undermined the tribal base of Te Ao Maori, misinterpreted cultural values,

cultures and beliefs of the Iwi and sought to regulate tribal affairs in a manner that was inconsistent with customary beliefs".³⁴

One cannot under-estimate the influence of the Fisheries Commission ideologues, Shane Jones and Whaimutu Dewes, in this reorganisation of Maori communities into iwi corporates either.³⁵ Both had been prominent advocates in the Iwi Corporatism debates generated by the Iwi Runanga Bill, with Shane Jones being part of a later attempt in the 1990s to develop what he termed an elite paepae, a taumata to be created as the authoritative voice comprised of representatives of four organisations - the Maori Women's Welfare League, Maori Congress, the Maori Council and the Federation of Maori Authorities. But this idea foundered, as has the visibility of many of these organisations, with only FoMA maintaining any prominence in the national Maori political scene today and the New Zealand Maori Council under review.

Given this history, it is not surprising that one of the strongest criticisms of the National Iwi Chairs Forum is that it is not democratic and is made up of a very small sector of the Maori community who has little, if any, direct accountability to the whanau and hapu it serves.

The people at the grass roots, and until recently Maori women, were practically invisible in the delegations that have met with various government Ministers of the Crown on the issues of the Foreshore and Seabed replacement legislation, Emissions Trading Scheme and Public Private Partnerships. More disconcerting is that those most directly affected by these policies, Maori communities themselves, seem to be irrelevant in the whole process of reporting and accountability and are forced to rely on media releases and the nightly state-funded television programmes Te Kaea and Te Karere for information on what the ILGs or the NCIF is up to. It has not gone uncommented either that during the Waitangi commemorations the Iwi Chairs Forum prefers to meet in

³⁴ NZPD, 6 December 1989, 14429.

³⁵ In *Crown Proposals for the Settlement of Treaty Claims* the Crown also claims that it wishes to be sure that the assets and resources transferred to Maori were managed and administered within a proper legal structure.

hotel venues at Haruru Falls and the Waitangi Copthorne, away from where the public debates are occurring around Te Tiriti at Te Tii Marae, again denying hapu and iwi the right to have an understanding and input into the matters under consideration. Their style of operation is quite distinct from that which operated during the era of the National Maori Congress, which actively encouraged representation of up to 5 delegates from each of the iwi participants with specific representation for Rangatahi Maori, Women and other sectors of the community.

What is also clear is that over a relatively short period the NCIF Executive has emerged as the key stakeholder group which appears to determine the Maori Party's position on fundamental issues, and the Maori Party has acted as a doorman to allow them access to the key cabinet strategy committee on Treaty Issues comprising National Party Members of Parliament Bill English, Gerry Brownlee, Chris Finlayson, the Prime Minister, John Key and Maori Party co-leader Pita Sharples. I use this metaphor deliberately, because in the words of Tuku Morgan in an interview conducted in Te Reo Maori with Waihoroi Shortland on the Maori Television commissioned programme Te Tepu:³⁶

Ko te tokoono nei - ka hoki mai au ki te tokoono nei, a, kia ahua nei, he torutoru ana, he, nga mea o te Ao Maori ka taea te totoro atu te patoto i runga i te kuaha o te Pirimeia, ka tuwhera mai, ahakoa he aha te kaupapa.

This six, back to the six. I think there are very few Maori who can knock at the PM's door and it will open, whatever the issue.

He torutoru ana i nga mea pera ana.

Very few people can do that.

Ka mutu, ahakoa ka whakaturia ko tena ko tena ko te mahi uaua rawa atu ko te patoto i runga i nga kuaha o nga Minita nei, ka tuwhera mai, ka tomo atu tatou ki roto ki te atawherawhera i o tatou kaupapa.

Whilst different people are chosen, what's really difficult is knocking at these Ministers' doors, to open up, to let us in, to discuss our issues adroitly.

³⁶ *Te Tepu*, Series 6, Episode 15. Transcript from Interview with NICF leader Tukuroirangi Morgan by Waihoroi Shortland.

Na, koira te mahi nui ki ahua nei.

I think that's the main task.

Na reira, he mama ake, kia tuku ma te tokoono nei, nga kuaha nei e pa - e patuki atu, e patoto atu, kia tere te puta atu to matou ki roto, ki te ata hamahama i te tepu ki mua i te aroaro o te kawanatanga, ki te mea atu, e, anei e te whakaaro o te iwi Maori puta noa i te motu nei.

You see, its easier, to let this six beat against these doors, knock on these doors, to enter quickly to hammer the table in front of Governmentt to say, hey, here is what Maori around the country think.

As even prominent right wing commentator Matthew Hooten has observed: "The Groups inter relationships with iwi, the Maori Party and the Government are murky. The Group does not claim to speak for all Maori, but behaves as if it does."³⁷ I will use the case studies of the ETS, Tree Lords and Whanau Ora to illustrate the point.

The Hijack of the Maori Development Agenda by ILG The Emissions Trading Scheme

In 2002 the Labour-led government passed the Climate Change Response Act to enable New Zealand to meet its obligations under the Kyoto Protocol. Just prior to Xmas 2006 on 18 December, the Government released further information on New Zealand's options in responding to the issue of climate change. The Ministry of Environment planned 11 regional consultation hui with Maori to occur between 12 February 2007 and 14 March 2007, with final submissions due on 30 March. The process of consultation was prescriptive. At each hui, attendees were required to discuss the information and to select a single representative to a Climate Change Maori Reference Group³⁸ for a twelfth

³⁷ Hooten Matthew: *Foreshore & Seabed Issue Risks Going off the Rails* Exceltium Corporate & Public Affairs Quarterly; Summer Edition 2010; p.10.

³⁸ L Tukua, S Wilson, A Houkamau, J Ruru, T Paenga, M Black, S Clair, T Wilson, H Ruru and M Skerrett see Figure: *Relationships with the Iwi Leadership Group* Ministry of Environment.

consultative hui on 29 March 2007, which had been added as an afterthought. Final submissions on ETS were due the next day, on 30 March 2007.³⁹

At all of the 12 consultation hui, the principal concerns of the participants fell into four broad categories: the focus of the emissions trading scheme was too strongly on economics at the expense of the environment (with environmental benefits unclear); the need to ensure the obligations of Te Tiriti were provided for; the need to give paramouncy to a Maori world view and a broad Tikanga Maori approach; and that there appeared no obvious way for Maori to have meaningful and ongoing input in the scheme. Moreover, the largest and richest industries were being protected from the cost of their polluting with the burden being shared across all other sectors. Major criticisms of the consultation process included the lack of any analysis of the effects on Maori.

On 24 July 2007, the Maori Reference Group (MRG) had met with Ministers of the Crown David Parker, Michael Cullen and Parekura Horomia to hear the Government response to their submission.⁴⁰ What is clear is that right up to this point the Crown representatives had also maintained strategic relationships with the Federation of Maori Authorities (FoMA), who claimed to be acting in a representative capacity not only for their members but also for and on behalf of all Maori who own land or were Crown Forest License (CFL) claimants to pre-1990 forest lands and substantial post-1989 forests.⁴¹ There was no sign of formal recognition of the New Zealand Maori Council in this process of engagement, which is highly unusual given their joint role in cementing obligations via the courts with respect to the proposed sell down of the New Zealand State Forests and the consequent passing of the Crown Forest Assets Act some 20 years earlier and the statutory function that is the preserve

³⁹ New Zealand Ministry for the Environment (2007), *Consultation with Maori on Climate Change: Hui Report*, Ministry for the Environment, Wellington.

⁴⁰ Submission on Climate Change (Emissions Trading and Renewable Preference) Bill to the Finance and Expenditure Committee, Iwi Leadership Group and Maori Reference Group Executive, 29 February 2008.

⁴¹ Federation of Maori Authorities: Submission to the Emissions Trading Scheme Review Committee.

of the New Zealand Maori Council to act in a representative capacity for all Maori.⁴²

The very next day, Ministers Cullen, Horomia and Jim Anderton met with "a collective of iwi leaders"⁴³ to outline the Government's preferred response to the question of climate change. From this collective, an Iwi leadership group was then established, which included Apirana Mahuika, Timi Te Heuheu and Mark Solomon for the ILG and Paul Morgan for FOMA. Interestingly the NCIF background paper confirms that the ILG working party was established in October 2007 but does not note at which meeting of the NCIF that this was confirmed. None of these individuals had been selected from the 12 regional hui to represent the Maori opinion on ETS. Their leadership of the process was assumed following the meeting with the Crown Ministers. They were initially called the Climate Change Maori Leadership Group, but has since been changed to the Climate Change Iwi Leadership Group, and is usually now referred to as simply the Iwi Leadership Group (ILG) speaking on issues less directly related to climate change.

In October 2007, the government conducted a further 12 consultation hui specifically on the ETS and engaged new technocrats, the Maori Reference Group Executive (MRGE) of Roger Pikia, Jamie Tuuta and Lisa Kanawa to facilitate a process of engagement with Maori assisted by consultancy group Iwi Corporate Solutions lead by Willie Te Aho.⁴⁴ In addition, a report was commissioned on the

⁴² Maori Community Development Act 1962 ss 17 and 18.

⁴³ Submission on Climate Change (Emissions Trading and Renewable Preference) Bill to the Finance and Expenditure Committee, Iwi Leadership Group and Maori Reference Group Executive, 29 February 2008.

⁴⁴ The Ministry of the Environment also supported participation of Maori Reference Group members at each of the regional hui and supported additional hui for the Maori Reference Group on 25 September and 25 October 2007; a Maori leadership-lead National Maori Climate Change Hui on 3 September and 26 October 2007; a National Maori Forestry Hui on 8 November 2007; and weekly meetings of an executive of Maori Reference Group during October and November. Finally, government support was also provided for the transportation, accommodation and meals for members of the Climate Change Iwi Leadership Group, Maori Reference Group Executive and secretariat to meet with Ministers and attend all national hui including the most recent one held on 18 December 2007.

Maori impacts from the ETS – Interim High Level Findings by Chris Karamea Insley and Richard Meade.⁴⁵

The Maori Reference Group organised a National Maori Climate Change Hui in Rotorua in October 2007, with three subsequent hui in November, December and February 2008 held in Hamilton and Wellington. A statement in a letter dated 13 December 2007 from the Iwi Leadership Group to Ministers Cullen, Anderton, Horomia, Nanaia Mahuta, Trevor Mallard and Parker in response to an Officials' Report is telling: "... we have advocated on two platforms. The first platform is the Treaty of Waitangi and the second is the Maori Economy. Due to the tight timeframes and the economic nature of the ETS, we have focused on the economic impacts."⁴⁶

The Iwi Leadership Group (ILG) and Maori Reference Group Executive (MRGE) gave a joint submission on the Climate Change (Emissions Trading and Renewable Preference) Bill to the Finance and Expenditure Committee on 29 February 2008 claiming that their position had been unanimously supported by Iwi leaders that met at Waitangi on 4 February 2008 (and again on 20 February 2008 at Pukawa).⁴⁷

Parallel to this process, the Maori Party had been developing its own policy approach to the question. The Maori Party Minority report on the Bill, which was eventually released early in 2009, very much reflected the matters that had been promoted by Maori during the consultation hui. The report stated that: "the nation needs to grapple with the notion of sustainability and the increasing challenge posed by a changing climate system and pending peak oil to think and live differently, to live sustainably",⁴⁸ and opted to oppose the ETS in favour of the imposition of a carbon tax. The gravamen for this position was expressed

⁴⁵ Dated 23 October 2007.

⁴⁶ Mahuika, Apirana (for and on behalf of the Climate Change Iwi Leadership Group), Letter of 13 October 2007, Climate Change Iwi Leadership Group Response to Officials Report.

⁴⁷ Submission on Climate Change (Emissions Trading and Renewable Preference) Bill to the Finance and Expenditure Committee, Iwi Leadership Group and Maori Reference Group Executive, 29 February 2008.

⁴⁸ Emissions Trading Scheme Review Committee: 114.

this way: “an ETS allows sectors to pollute and trade up to the Kyoto target, but ... does not include incremental emissions reduction targets in its design. With the emphasis on trading - establishing and maintaining the conditions for it - the overarching problem of unsustainable economic growth remains unaddressed.”⁴⁹

Labour’s law was passed. Prior to the finalisation of the scheme in late 2009 the Iwi Leaders Group (ILG) and Maori Reference Group (MRG) convened a further 6 hui over a period of 12 days called between 28 October 2009 and 10 November 2009.⁵⁰ Despite the short time period, the ILG claim over 170 attended the hui with the highest turnout being 92 people at the National Hui in Rotorua and the smallest turnout 2 people at the Nelson hui. That is, 170 people out of the 500,000 estimated Maori population. The ILG claimed in their report of these meetings that the “caliber” of the attendees at each of the hui meant the group had a significant level of support from Maoridom for their proposal.

As one who attended the hui in Rotorua in this round of consultation on this matter, it needs to be emphasised that these meetings are by no means well advertised, open and transparent in their purpose and objectives. There is little material distributed prior to hui and the hui themselves are conducted not by the Iwi Leaders Group, (ILG), but by the technocrat advisers that are in their travelling road shows. In the instance of the ETS, the ILG secretariat comprised a group aptly named Iwi Corporate Solutions, Willie Te Aho, his wife, Linda Te Aho and employees Gina Rangi and Mahinarangi Maika with Mr Te Aho being the

⁴⁹ Emissions Trading Scheme Review Committee: 113. Specific reasons for opposing the ETS also included a) an ETS will not make a significant contribution to lowering our domestic emissions; b) the Maori Party was unconvinced that the market is the best mechanism to set prices on carbon; c) the current mode of living in developed countries is not sustainable into the future d) the urgency of the climate-change crisis demands the development and implementation of an effective scheme that is not reliant on whether or when the price of carbon increases to a sufficient level to incentivise change; e) intensity based allocations and subsidies distort the market model by allowing businesses to increase their emissions without penalty and be rewarded for it.

⁵⁰ Climate Change Leadership Group Position Paper, 13 November 2009 prepared for the Maori Party located at http://cst.org.nz/groups/job_vacancies/files/f/909433-2009-12-14T165354Z/13%20Nov%20ILG%20position%20paper%20for%20Maori%20Party.pdf

main interface between hui participants and the group.⁵¹ Much of the advice that was proffered in support of the ILG's position on the ETS was not available for distribution on the basis of the commercial sensitivity of the matters. Even more worrying was that the ILG's position had by October 2009 departed from the Maori Party minority view that had opposed the government's scheme because of its relative ineffectiveness and inequalities, including the subsidisation of the nation's largest polluters at the cost of households and small-medium businesses.⁵²

Although the Maori Party were not willing to talk about its relationship with, or the effect of lobbying by, the Iwi Leadership Group or the wider NICF for that matter their positions on an emissions trading scheme by this time were closely aligned. Newspaper reports at the time suggested that individuals amongst the ranks of the Maori Party National Council tried a last ditch effort to seek commitment to the earlier minority report position on the basis of the burden the scheme would place on low income households.⁵³ The party's co-vice president, Te Orohi Paul, issued a statement to make it clear the party was not about to "welch" on the deal with the government, although this specific matter had not been part of the Maori Party-National Party relationship agreement.

Tree Lords

These developments cannot be understood in isolation from the commercial forestry interests in the Treelords settlement. On 25 September 2008 the largest ever Treaty of Waitangi deal, since the 1992 Sealords fisheries arrangement, passed into law. The Central North Island Forests Land Collective Settlement Act legislated the so-called Treelords deal which involved \$195.7 million of Crown forest land covering 176,000 hectares, plus about \$223 million in land rentals

⁵¹ See diagram <http://www.mfe.govt.nz/publications/climate/summary-key-themes-consultation-hui-Feb08/html/figure/page8/html>

⁵² Emissions Trading Scheme Review Committee, see also Sustainability Council of New Zealand Media Release 12 November 2009. Households would bear half the total costs resulting from the proposed changes to the ETS during its first five years (52%), while accounting for just a fifth of all emissions (19%). Pastoral farmers would gain a \$1.1 billion subsidy and pay the equivalent of 2% of their fair share of the Kyoto Bill during the first five years of the scheme, while large industrial producers would gain a \$488 million subsidy.

⁵³ <http://www.stuff.co.nz/national/politics/3095679/Maori-Party-revolt-threatens-Emissions-Trading-Scheme>

that had accumulated in the Crown Forest Rental Trust since 1989 and an annual income stream of \$13 million. It was also a significant new step in that it was a treaty settlement across several tribes, rather than a pan-tribal or individual tribe-Crown disposition.

Crown Forestry Rental Trust (CFRT) annual reports show \$57 million was paid out in costs to effect the deal since 1990, with \$30 million of that allocation directly attributed to the five year period in which the Treelords Agreement in Principle was negotiated and then signed. Almost \$20 million went on expenses for iwi representatives to meet and negotiate among themselves regularly. Part of the \$57 million was spent also on lawyers (in the processes of litigation and lobbying over the period), consultants and those paid to implement the deal. Significantly this expenditure did not include the further allocation from Treasury that was allocated as part of the expenses to conclude the deal in 2008. What is known is that individual iwi facilitators who were initially engaged to facilitate information flow between the Crown and those iwi engaged benefitted significantly from the arrangement. George Asher, was reported to have earned \$88,000 during May and June 2008 from Crown Forestry Rental Trust alone. Two other iwi facilitators, Matt Te Pou and Graham Pryor, earned \$67,500 each over the same period. The Treasury increased the spending on the deal's iwi facilitators by \$90,000, although it refused to confirm each person's cut. Mr Asher confirmed in an interview with the *New Zealand Herald* that the negotiations component of the settlement cost about \$5 million, including administrative support.⁵⁴

Provided the Government was able to pass its emissions trading legislation, the Central North Island (CNI) collective of iwi covered by the settlement reportedly stood to gain it about \$40 million in carbon credits as part of the Treelords deal. National opted to carry over these elements of Labour's ETS scheme. It is not insignificant that the Climate Change Leadership Group relied heavily on the CNI Iwi Holdings Limited meeting of 5 November 2009, held at the Te Puni Kokiri Offices, Rotorua, to provide evidence of support for its position. The Maori Party

⁵⁴ Tahana Y, *New Zealand Herald*, 4 July 2009
http://www.nzherald.co.nz/forestry/news/article.cfm?c_id=47&objectid=10582485

abandoned its earlier opposition to the scheme and supported the Bill. In response to a question about what it wanted in return, Turia replied: “in the end, it's not so much particularly what the Maori Party want, it is what the Iwi Leadership want, and they are the ones who have been leading the dialogue, they have been asking us to definitely sign up for it.”⁵⁵

What the ILG and the Maori Party did not point out was that the scheme would entitle Maori to less than half the compensation that is being paid to other classes of owners. Pre-1990 forestland owners will receive compensation of up to 60 emissions units per hectare, if the land was acquired before 31 October 2002. Owners of land sold after 31 October 2002 receive only 39 units per hectare. But successful claimants to CFL land transferred after 1 January 2008, most likely to be Maori beneficiaries of Treaty settlements, would receive only 18 units per hectare. In return, as highlighted in the Ngai Tahu and FOMA Submissions to the Select Committee examining the National government's revised ETS scheme, the ETS would encumber property rights, and impose real and heavy costs on using and developing assets, with a particularly prejudicial effect on those transferred under Treaty settlements. At the end of November 2009, a deal was reached with ETS which provided an extra \$24 million for the home insulation scheme, targeted specifically at low income homes, a specific requirement to consult on fisheries, forestry and agricultural allocations; on future targets and on any complementary measures. A side deal with Ngai Tahu and four other iwi in which they get a 70-year lease on 35,000 hectares of DoC lands and 100 per cent of any carbon credits earned for the period of the lease and an all expenses paid junket to Copenhagen for two members of the Iwi Leadership group, Roger Pikia of CNI Holdings Ltd and Chris Insley of Ngati Porou Forests Ltd.

The New Restructuring

⁵⁵ Turia T; 18 October 2009 in Transcript of interview with Guyon Espiner on 'Q&A' Sunday October 18 2009 p 5

This process has not been an isolated one. Parallel to this process of policy development, regional consultation and then intervention by an elite group of men in the name of the Iwi Leaders Group has occurred on a number of key issues since the Maori Party/National Party cooperation agreement. Private Prisons, Public Private Partnerships and most recently the Water Forum have followed the same process of engagement almost exactly. Perhaps most disconcerting is that the Whanau Ora policy initiative has now been hi-jacked by the same interventionist approach, so that the Iwi Chairs are active voices in the privatisation of social services and demanding the right of veto over providers who have expressed interest in delivering whanau ora programmes.

Whanau Ora

A report was prepared by the Taskforce on Whanau-Centred Initiatives for Tariana Turia, Minister for the Community and Voluntary Sector. Bill English joined Maori Party co-leader and proposed Whanau Ora minister Tariana Turia at Te Puni Kokiri for the public launch of the taskforce report in April 2010.

The Taskforce developed a framework based on a review of relevant literature, the experiences of health and social service agencies, an analysis of oral submissions received at 22 hui throughout the country during October and November 2009 where over 600 people attended, and over 100 written submissions from individuals and organisations. Common themes emerged, particularly the need for Whanau Ora to demonstrate a 'Maori heart', ensure local representation in decision-making, minimal bureaucracy, sustainability and adequate resourcing, a research and evaluation component and quality relationships between whanau, providers and iwi. Funds were to be diverted from existing state agencies into a new Whanau Ora Trust which would contract out work to service providers to deal with the problems on a whanau basis. In other words, where an individual family member had health, education or justice system problems, the individual would be viewed as part of their whanau and the whole whanau would be engaged in finding solutions. The Taskforce also promoted collaboration and shared infrastructure in the wake of the proliferation of semi-autonomous Maori provider organisations who had

emerged within the framework of commercial contestability of Health PHOs and Education PTEs since the 1980s restructuring of delivery of these services.

An Iwi Leaders Working Group was confirmed at Waitangi during the Treaty commemorations in early 2010 to engage with the Crown on the policy. Its mandate was to achieve the following visions for the contributions of Iwi to realising Whanau Ora: a Joint Treaty partner approach to defining Whanau Ora outcomes and supporting the rollout of Whanau Ora; Iwi-led implementation of Whanau Ora in their respective tribal areas; and Whanau Ora pilots.⁵⁶

By May 2010 the idea of the Trust to devolve the services had disappeared and the budget had been slashed to just 4% of the original proposal. As Nanaia Mahuta pointed out in a media release “Tariana Turia must have felt a little short changed after the government decided to allocate a mere \$33.5 million dollars a year for 4 years to fund Whanau ora, \$800 million dollars short of what she first expected. In the case of the Whanau Ora funding it looks as if Tariana is robbing Paula to pay Pita.”⁵⁷

More significantly, Maori grass roots community workers were starting to describe Whanau Ora as the new restructuring and openly asking Maori Party Members of Parliament to explain why Whanau Ora, which was once a overarching programme designed to overhaul the delivery of social services to Maori with funding of \$1 billion, had morphed into a small scale programme for all New Zealanders, being run out of Te Puni Kokiri on a budget less than that of John Key’s cycle way.⁵⁸ Questions were also posed around how to qualitatively assess the new project and how much of the allocated budget will be utilized by Te Puni Kokiri to just roll out the project.

⁵⁶ <http://www.iwichairs.maori.nz/Special-Rapporteur/Iwi-Chairs-Forum-Background-Paper.pdf>
p 11

⁵⁷ Mahuta Nanaia, Press Release: New Zealand Labour Party, 6 May 2010
<http://www.scoop.co.nz/stories/PA1005/S00089.htm>

⁵⁸ Maori Legal Forum, July 2010, Question by Tipene Marr of Ngati Rangitahi and Dr Marilyn Brewin, Director of Research, Ngā Pae o te Māramatanga to Member of Parliament for Tai Tonga Rahui Katene.

In a familiar pattern, Ministers of the Crown (this time Paula Bennett) met with the Iwi leadership Group in August 2010 imploring them “ as respected leaders to go back to hapu, iwi and your whanau ... and say it’s time to face up to the systemic violence in their communities.”⁵⁹ Tariana Turia was defending the corporate leaders as those that would best provide the solutions in the industry of misery that Whanau Ora is directed to alleviate, despite the obvious lack of expertise or even involvement by many of the more prominent members of the ILG in programmes for the elimination of violence. She complained at the same meeting: “...We receive a daily diet of messages which express sincere concerns about the role of iwi. They use the term ‘corporate iwi’. I tell you what - when you are part of a Government there is nothing more disheartening than to hear such criticism from our own; of people who are trying to move us forward.”⁶⁰

Reflections on where to from here?

In his reflections on Maori Sovereignty, Bruce Jesson reminded Pakeha that Te Tiriti o Waitangi foreshadowed a community that both Maori and Pakeha are part of.⁶¹ He understood the Maori Sovereignty movement as a force of resistance to a capitalist economy that commodified nature and humanity. In the debate on who we are as a nation, we need to re-examine our understanding of national identity and our heritage, and to confront the ongoing process of colonisation that dispossesses Maori of resources for the benefit of others, as if we have no prior right or relationship to this part of the planet. The challenge by its nature requires Pakeha to break apart from the hegemony of State practice to align with Maori, not just to confront injustice, but to also dispense with a constitutional framework from which injustice is a natural product.

⁵⁹ Bennett Paula, Press Release, 23 August 2010

<http://www.national.org.nz/Article.aspx?ArticleID=33728>

⁶⁰ Turia Tariana, Address to Iwi Leaders Forum 19 August 2010

<http://www.scoop.co.nz/stories/PA1008/S00477/address-to-iwi-leaders-forum.htm>

⁶¹ Jesson, Bruce, *Waitangi A Pakeha Issue Too*, first published in *Auckland Metro*, 1983, p.109, and subsequently in Andrew Sharp (ed) *To Build a Nation Collected Writings 1975–1999*, Penguin, Auckland, 2005.

To achieve this, Jesson reminded us that we must set serious goals for our nation and ourselves.⁶² Facing this challenge will involve a reinterpretation of sustainability and economic development and, in light of the discussion this evening, what the Iwi Leaders would have us believe tino rangatiratanga, Maori Sovereignty to be. There is no magic bullet; yet the challenges that confront us are urgent and require immediate action. That means believing in and articulating the values of a pathway to real alternatives sourced in Kaupapa Maori.

While traditional approaches to development focus on achieving growth, believing that this would “trickle down” and benefit everyone, I believe that people must be at the centre of the development process. I look to our own conceptual framework around the term tangata whenua to confirm this. Because the present economic growth model is premised on the commodification of taonga for profit and the separation of tangata from whenua to achieve this, it is problematic in a number of ways. Economic growth of this kind is not enough to achieve human development or to maintain the ethic of community well being which lays at the heart of constructs like whanau (family), hapu (community) and iwi (nation), which are the esteemed institutions of society expressly stipulated to be protected in Te Tiriti. As Jesson reminds us, a community depends on continuity. A nation and its institutions depend on continuity too. We as tangata whenua require our tangata to be connected to our homelands in more than a notional way.

In their haste to break away from tight control of the state and poor socio-economic status, the ILG have turned towards forces of globalisation for emancipation, either not recognising that they were being manipulated towards new forms of colonialism and domination or unable to identify any real alternative to achieve their goals. Their behaviour, in part, mirrors the inability of Aotearoa New Zealand as a nation to confront the problems of constructing

⁶² Jesson, Bruce, *There have always been Alternatives: Only their Purpose is Mad*, Dunmore Press Ltd, 1999, p.216.

alternatives when there has been such a systemic failure from our experiment with neo liberalism over the past 25 years.

Notwithstanding this, the Government process has been one of concerted co-option of Maori elites to maintain this particular agenda. Consultation has been organised by successive Governments on their terms. From the beginning, the Government has imposed unrealistic timeframes for Maori to understand all the issues and implications, to discuss widely and form opinions on this, and to communicate these to the Government. At each stage, groups have become smaller and less representative by requiring the consultation hui to elect only one representative each to form a group that was to represent all Maori (without the time to make this possible), or by reducing that group to an executive (presumably because of commitments and time constraints), or by the Iwi Leadership Group becoming the interface with the Crown.

Despite the feedback from the consultation hui that the focus was too economic, for whatever reason at each stage of the consultative input, the technocrats and advisers have focused more on the economics of ETS and devolution of contractual relationships and benefits to Iwi Corporates, and less on the other concerns, such as impacts on the environment and retention of a Maori worldview safeguarding Treaty relationships. This behaviour has culminated in the Maori Party completely changing or adapting its policy and objectives in line with the Iwi Leadership Group's edicts. There is a huge sense of urgency, created in part by the media hype, to roll out initiatives with very little analysis or understanding of the philosophy of the policy or imperatives on their delivery.

In the current context, Maori are the losers as it is their assets and resources exclusively that are captured within a confiscatory regime. The ire of the general public is inflamed by mis-information campaigns which suggest that the slight possibility that Maori might achieve some small redress is a windfall that they are undeserving of. The Seabed and Foreshore is a classic example. Politicians and the media whipped up a furore about the right of Kiwi to sunbathe on the beach. Having nationalised these resources, and denied any traditional

relationships to the Takutai and Papamoana that Maori may possess, the government is licensing transnational companies like Petrobras to mine the petroleum and other mineral deposits which subsist in the continental shelf.

This highlights the old Marxist notion of a false consciousness: Maori are defined in opposition to what is good for the nation and are told to forgive, forget and move on. We are told we must accept an identity that we are not. Unfortunately the denial of rights and confiscation continues and there is nowhere to move to, so they take to the road. Ostracizing the indigenous in their own lands when they succeed is not a new policy, at least not to this country, obvious examples being the imprisonment of Te Kooti at Wharekauri, Te Whiti and Tohu in Dunedin and Rua Kenana and Mokomoko in Mount Eden. More recent examples include the late Eva Rickard, the late Syd Jackson and the late Niko Tangaroa. It is important to note that none of these people were imprisoned for acts of violence, even though state-sponsored violence was inflicted on them.

The employment of policies of Realpolitik to 'radicalise' Maori views serves to legitimise the ongoing intentions of the state to proceed with its agenda and to deny Maori participation in the debate. Issues of justice and policy are reflected instead as issues of racial difference. Once Maori are separated in such a way, the task then turns to creating an elite class that will sycophantically agree to the agreed policy objectives on behalf of those who didn't elect them to undertake such roles.

But Pakeha New Zealand are losers too. They have been victims of the same process of corporatism that distances decision-making and denies effective participatory democracy.

We need to halt this process. Achieving this requires a mass movement that is dedicated to a sustained struggle, including education, participation, engagement, debate, organisation, action and reflection. It needs to be all-pervasive, with tentacles reaching to the hearts and minds of all of the sectors of our communities and to the pulse of our nation. I have actively campaigned

for a Planning Council, democratically elected by Maori responsible for the design of a process of decolonisation where the process of formulating the goals for Aotearoa New Zealand are as important as the goals themselves. Jesson himself saw this kind of strategy as an important step to restore democratic processes to Aotearoa New Zealand, citing the 1984 Economic Summit and Royal Commission on Social Policy as potentially hopeful precedents that have been suppressed and by-passed by the Cabal that imposed their agenda of neo liberalism.⁶³

Challenging economic 'reform' and trade liberalisation also requires a critical perspective on development. There is almost no one today asking questions that used to be asked in the 1970's — the decade of independence for some Pacific Island states — such as 'Development for whom?' and 'Who decides?' Despite the proliferation of Maori Doctoral theses in the last decade there are very few forums of the kind where I was nurtured in the 1980 Sovereignty movement, which looked for solutions from within our communities and consciously set about providing the tools of analysis to dismantle the barriers to debate between and amongst wahine and tane, Urban Maori and Traditional Communities, Maori and Pakeha.

The future Constitutional arrangements of this nation are the key to social, economic and ecological wellbeing of us all. Ironically, a single outstanding issue in the relationship agreement between the National Party and the Maori Party holds the opportunity to develop this kind of debate and for the Maori Party to redeem its claimed commitment to the kaupapa of Te Tiriti. At the Hirangi Hui, which was the last significant attempt by Maori as a nation to grapple with this issue, there was agreement that what matters now is not so much the details of a Treaty-based constitution or the flow-on constitutional arrangements, but a commitment to a constitutional review jointly undertaken by Maori and the Crown for the purpose of developing a New Zealand constitution based on the Treaty of Waitangi and, among other things, fully recognising the position of

⁶³ Jesson Bruce, *There have always been Alternatives: Only their Purpose is Mad*, Dunmore Press Ltd, 1999, p.221.

Maori as Tangata Whenua. Hui participants discounted the possibility of durable Treaty settlements without fresh constitutional guarantees and a final break with colonial laws and processes.

Any such process must be seen as a truly independent discussion, distinct from and not accountable to Te Puni Kokiri or the Department of Justice or the new quango, the Iwi Leaders forum. It must be accountable to the communities from whom and for whom the programmes of change are being discussed and evolved, and must actively facilitate their participation. For this mechanism to be effective, the Iwi Leaders model must be rejected and an independently resourced secretariat established to convene a series of constitutional hui and forums to discuss the future of our nation that engages meaningfully with all Maori communities and report back to them. The mandate must be grounded in the ongoing entrenchment of the guarantees of the Declaration of Independence 1835 and Te Tiriti o Waitangi, and seek to identify a constitutional framework whose principles and processes can equip us to confront the ecological, social, economic and spiritual challenges of the 21st century, and the crises of food, climate, energy and finance that are the legacy of the failed global market model.

While I am not a Republican, this is another point where my thinking for change converges to a point shared by Jesson. In modern Aotearoa we must move to a model of government which is not focused on just settling the grievances of our colonial past, but on building one where there is trust and respect amongst the communities that co-exist. The Constitutional Taskforce I envisage therefore to assist this process must also include non Maori community leaders working with their communities distinct from state control as part of this process. I am sure just by posing this solution, a whole lot of other questions immediately are raised, like who are these people and how are they selected and to whom are they accountable? New Zealand as a small nation can easily answer this question for themselves. Nominations for community representatives are not unknown in the not for profit sector with processes of engagement and report back part of the range of accountabilities to any successful nominee.

We as a nation need to formally engage in this process of transformation, which must be designed, controlled and implemented with the equal participation of the tangata whenua and other citizens who have made Aotearoa New Zealand their homelands. This plea is not new. What is new is the growing groundswell of voices joining those of the late Bruce Jesson and myself for a process to commence to take on the entrenched power and influence of the finance elite and others who have hijacked our nation. We should not allow the momentum of those pleas to dissipate.