



Peace Movement Aotearoa

PO Box 9314, Wellington 6141 Aotearoa New Zealand. Tel 04 382 8129

Email pma@xtra.co.nz Web www.converge.org.nz/pma

Secretariat, Constitutional Advisory Panel
Email: constitutionalreview@justice.govt.nz

31 July 2013

Submission to the Constitutional Advisory Panel

Thank you for this opportunity to contribute to the Constitutional Conversation. Our submission provides an overview of 42 community discussions using the process in *Time for change: A framework for community discussion on values-based and Treaty-based constitutional arrangements*, published by Peace Movement Aotearoa in 2012.

There are four main sections in our submission:

- 1) About Peace Movement Aotearoa;
- 2) Overview of the Time for Change process;
- 3) Overview of the community discussions:
 - a) Concerns about the review of New Zealand's constitutional arrangements,
 - b) Concerns about the current constitutional arrangements,
 - c) Values identified during the community discussions,
 - d) Desired outcomes for the constitutional arrangements;
 - e) What constitutional arrangements might achieve the desired outcomes:
 - i) The Treaty,
 - ii) Protection of human rights,
 - iii) Protection of the environment,
 - iv) Decision making,
 - v) Statement of common values; and
- 4) Conclusion and recommendations.

We are interested in being involved in the Constitutional Advisory Panel's deliberative fora on New Zealanders' views, and providing feedback on the Panel's draft report.

1) About Peace Movement Aotearoa

Peace Movement Aotearoa is the national networking peace organisation, registered as an incorporated society in 1982. Our membership and networks mainly comprise Pakeha organisations and individuals.

As the realisation of human rights is integral to the creation and maintenance of peaceful societies, promoting respect for them is a key aspect of our work. In the context of Aotearoa New Zealand, our work in this area is focussed on Te Tiriti o Waitangi (the Treaty¹), domestic human rights legislation, and the international human rights instruments, in particular those New Zealand is a state party to; and includes publishing resources, providing information and updates on the Treaty and a range of human rights; highlighting opportunities for submissions and other input to national and local government; writing submissions and assisting other organisations, and individuals, with theirs; and public meetings, workshops and lectures.

In addition, we regularly provide information to United Nations human rights monitoring bodies and procedures on government performance in relation to its international human rights obligations².

2) Overview of the Time for Change process

Over the past two years, Peace Movement Aotearoa developed a framework for community discussion on Treaty-based and values-based constitutional arrangements, in conjunction with the Quaker Treaty Relationships Group, the Rowan Partnership, the Pakeha Treaty workers' network, and colleagues in a range of other organisations.

Our work on the framework has arisen out of the long-standing focus of our organisations, which are primarily Pakeha, on the need for constitutional change. Rather than looking at some aspects of the constitutional arrangements and how they might be altered, the Time for Change process involves three main stages:

- identifying core values;
- identifying the desired outcomes that the constitutional arrangements should achieve; then
- identifying what constitutional arrangements might best reflect those core values and desired outcomes.

The Time for Change resource was published in December 2012, and more than 400 copies have been purchased by a range of non-governmental organisations (NGOs), community groups and individuals to date, as follows:

◦ Faith-based groups and NGOs ³	37%
◦ Treaty education NGOs and networks	21%
◦ Community and adult education NGOs	12%
◦ Human rights NGOs ⁴	9%
◦ Libraries	8%
◦ Academics and university institutions	3%
◦ Individuals	3%

- Professional associations⁵ 3%
- Environment NGOs and networks 2%
- Other NGOs and community groups 2%

The Time for Change process has been used by a range of these organisations in three ways: discussion within an organisation; discussion with representatives of two or more organisations, and for public discussion on Treaty-based and values-based constitutional arrangements.

Time for Change is an ongoing project, and further community discussions are scheduled to take place in the months ahead.

3) Overview of the community discussions

We have facilitated or jointly-facilitated 17 Time for Change community discussions, and received written reports or feedback from a further 25. This submission provides an overview of some of the common points raised during these 42 community discussions.

It should be noted that not all of the organisations and individuals taking part in the community discussions would necessarily support every point included below, this overview indicates points that were commonly raised across a range of organisations and participants.⁶

One of the useful aspects of the Time for Change process is that facilitators are encouraged to approach each discussion without a pre-determined agenda or outcome - the discussions are designed to elicit the knowledge, experience and opinions of the participants present to reach commonly held values and desired outcomes.

It should also be noted that most of the community discussions focused on core values and desired outcomes, as the key starting points for thinking about the possibilities for constitutional arrangements. Identifying what constitutional arrangements might best reflect the core values and desired outcomes was therefore more likely to be about what the constitutional arrangements should achieve rather than specific mechanisms.

Many of the community discussions began with a discussion of what the constitutional arrangements are, followed by a preliminary session with participants sharing their concerns about these (see section 3.b below). During the preliminary session, concerns were often expressed about the current review of New Zealand's constitutional arrangements (the review) and the 'Constitution conversation', and we have separated these points for clarity into the next section.

a) Concerns about the review of New Zealand's constitutional arrangements

Concerns about the review of New Zealand's constitutional arrangements centred around two main areas:

i) Nature and scope of the review - including: the limited terms of reference, which focus on the existing constitutional arrangements, rather than raising fundamental issues and underlying questions about the exercise of public power; the politicised nature of the process; and concerns

that it will not lead anywhere (the lack of follow-up to the 2005 consideration of constitutional issues was frequently mentioned).

ii) Resources for the Constitutional Conversation - including: the negative framing of the Treaty in the video 'Getting the Constitution Conversation Started' which includes the question "But what about the Treaty of Waitangi?" and the answer "That's a tricky one"; the inadequacy of the written resources, in particular the lack of reference to He Wakaputanga o Te Rangatiratanga o Nu Tireni (the Declaration of Independence), the way the Treaty and the historical basis for the current constitutional arrangements are framed; and the lack of information about the political (economic and social) institutions of hapu and iwi which pre-date the imposition of a Westminster-based system of government and provides alternatives to it that it would be useful to consider.

b) Concerns about the current constitutional arrangements

Concerns about the current constitutional arrangements were recorded in an initial brainstorming during community discussions. These tended to include a mix of concerns around constitutional structures, how decisions are made, and concerns around specific issues, including:

- the failure of successive governments to honour the Treaty, the imbalance between kawanatanga and tino rangatiratanga, the denial of the right of self-determination to hapu and iwi⁷, and the tendency of governments to enact legislation and implement policies that breach the Treaty and the collective and individual human rights of Maori, historically and in the present day;
- the failure to obtain the free, prior and informed consent of hapu and iwi in relation to decisions that affect their rights and interests⁸;
- the apparent belief in some quarters that the settlement of historic Treaty breaches somehow means an end to the Treaty;
- parliamentary supremacy, the lack of checks and balances to protect human rights, and the tendency of successive governments to over-ride such protections as there are and to enact legislation and implement policies which breach those rights;
- there is no clear statement of common values to guide and measure government policy and practice;
- lack of adequate protection for the environment and biodiversity;
- centralised and top-down, rather than local and community based, decision making;
- increasing levels of social inequality and the levels of poverty;
- the reduction in social welfare provision;
- access to education, health services, housing and other public services (including physical access, location, and issues around cost);
- workers' rights;
- prioritising of profit over people, communities and the environment;
- privatisation of state-owned assets;
- negotiation of free trade agreements and lack of transparency around such agreements;

- the level of imprisonment and lack of alternatives to prisons;
- issues around privacy and government surveillance; and
- relationships with other countries, including the level of overseas development assistance and the deployment of armed forces.

Concern was also expressed about the misinformation being provided by the vocal public campaign opposing the Treaty, and the impact that may have on this review.

c) Values identified during the community discussions

Core values commonly identified during community discussions included (in no particular order):

Justice, fairness, tolerance, respect (self-respect, respect for others, for other viewpoints, and for the environment), respect for diversity (cultural diversity and biodiversity), celebrating diversity, inclusion / inclusiveness, kindness, honesty, integrity, humility, joy, love, hope, support for the common good, generosity of spirit, empathy, accepting responsibility, accountability, equality of opportunity, openness (to others, to other cultures, to other ways of seeing, to doing things differently), compassion, hospitality, caring (for ourselves, for others, for the environment, and for all living creatures), human dignity, community, peaceful relationships, creativity, and fun.

d) Desired outcomes for the constitutional arrangements

Most of the community discussions came up with a lengthy list of desired outcomes, which we have grouped together and summarised below in the interests of clarity. Commonly expressed desired outcomes were that the constitutional arrangements should ensure:

- the Treaty is central to all decision making, and all legislation and policy (national and local government) is consistent with the Treaty;
- all human rights (economic, social, cultural, civil and political - individual and collective) are respected and fully protected, and all legislation and policy (national and local government) is consistent with these rights;
- the environment and biodiversity is fully protected, and there is responsible stewardship of natural resources for future generations;
- there are adequate checks and balances on the power of parliament;
- human flourishing, with families, communities, individuals and the environment nurtured and protected;
- there is equality of opportunity, participation and access to public / community services;
- there is equitable access to health, education (at all levels, including community and adult education), housing, justice, transport, a decent level of income, to social security, and to employment;
- that poverty is eliminated, and there is a just economic system that values people before profit;
- just, fair, transparent and representative decision making;

- local, community-based decision making; decisions are made by the communities or individuals most affected by the decision/s, and that decisions are made for the common good and with future generations in mind;
- diversity and difference is valued, treasured and celebrated;
- peaceful processes for resolving conflict are developed / in place at the local, national and international levels;
- vulnerable or marginalised members of society are safe, respected, valued and their needs are met;
- everyone understands their human rights and their responsibilities to themselves, their families, community / communities, and the earth;
- everyone feels valued, and a sense of being part of community / society; and
- respectful / right relationships with each other, within and among communities, with the environment, and with communities in other parts of the world.

e) What constitutional arrangements might achieve the desired outcomes

In the third and final stage of the community discussions, generally a mix of changes to the constitutional arrangements (for example, structures, and who should make decisions about what), amendments or repeal of specific legislation, and changes to government policy and practice around various aspects of public life were proposed.

In this section, we have identified five key changes to the constitutional arrangements that were common across the discussions.

i) The Treaty

As outlined in the section above, one of the commonly expressed desired outcomes across the community discussions was that the Treaty must be central to all decision making, and all legislation and policy (national and local government) is consistent with the Treaty.

The Treaty is often described as the founding document of the nation, yet it is frequently ignored and breached, and is not integral to the current constitutional arrangements. Treaty-based constitutional arrangements are seen as crucial for the future of this country, and that they must be developed by a process of negotiation between the parties to the Treaty, the Crown and hapu and iwi. Power-sharing with hapu and iwi at the level of national and local government is essential, and is nothing to be feared - rather, as participants often pointed out, it is an exciting opportunity to develop new and more positive constitutional arrangements that more deeply reflect the history and aspirations of the peoples of Aotearoa New Zealand.

In the interim, participants were generally agreed that: the free, prior and informed consent of hapu and iwi must be obtained before decisions that affect their rights and interests are implemented; and there must be no further erosion of the basic, if inadequate, constitutional protections for the collective and individual rights of Maori that are currently in place, for example, the Maori seats in parliament must at least be retained, Maori representation on local authorities must be retained and expanded, and so on.

It was proposed in a number of community discussions that the recommendations of the Waitangi Tribunal should be binding with respect to both historic and contemporary Treaty breaches.

ii) Protection of human rights

One of the key concerns common to the community discussions was around parliamentary supremacy, the lack of checks and balances to protect human rights, and the tendency of successive governments to over-ride such protections as there are and to enact legislation and implement policies which breach those rights. A commonly expressed desired outcome was that the constitutional arrangements must ensure all human rights (economic, social, cultural, civil and political - individual and collective) are respected and fully protected, and all legislation and policy (national and local government) is consistent with these rights.

Various mechanisms to ensure the full protection of human rights were proposed, including: a written constitution elaborating the full range of human rights included in the international human rights instruments that New Zealand is a state party too (and sufficiently flexible to include further human rights developments); the expansion of the New Zealand Bill of Rights Act to include the full range of economic, social, cultural, civil and political (individual and collective) rights, and making the Bill of Rights Act supreme law; a balance between parliament and the Courts to ensure legislation and policy is consistent with human rights obligations; the establishment of a Human Rights Select Committee to vet all proposed legislation for consistency with domestic and international human rights obligations; increased independence and resourcing for the Human Rights Commission; and increased education for the judiciary, politicians, the media and public about New Zealand's human rights obligations.

iii) Protection of the environment

A frequently expressed concern was about the lack of protection for the environment and biodiversity; and a commonly desired outcome was that the constitutional arrangements must ensure that both are fully protected, and that there is responsible stewardship of natural resources for future generations.

Various mechanisms to ensure the full protection of the environment and biodiversity were proposed, most commonly, a written constitution that specifies the rights of nature / Mother Earth, as in some written constitutions overseas (or, in the absence of a written constitution, a clear statement of such rights in supreme law or some other mechanism to ensure they cannot be ignored).

iv) Decision making

Concern about centralised, top-down decision-making was frequently expressed in the community discussions, and commonly desired outcomes were that local, community-based decision making is desirable; that decisions should be made by the communities or individuals most affected by the decision/s, and that decisions are made for the common good and with future generations in mind. The principle of subsidiarity was frequently raised in this context.

v) Statement of common values

It was generally agreed across the community discussions that a clear statement of commonly agreed or core values to guide government policy and practice, and by which it would be measured, would be extremely useful. There was considerable discussion about whether that would be best achieved via a written constitution, or by another mechanism.

Participants in the community discussions were of the view that discussing core values is the ideal starting place for any discussion of the constitutional arrangements, as it provides the basis for then moving on to thinking about what it is they (as groups or individuals) want such arrangements to achieve and, from there, to considering what constitutional arrangements might best reflect their core values and desired outcomes.

4) Conclusion and recommendations

From our experience with the Time for Change project, there is considerable interest in a non-confrontational process for discussion to identify commonly held values and desired outcomes, and then to consider what constitutional arrangements might achieve these goals.

There is clearly a high level of concern about the current constitutional arrangements, as outlined above - in particular, that they are not Treaty-based, and fail to provide adequate protection for human rights, the environment and biodiversity - and a desire for constitutional change.

Furthermore, as mentioned above, during the discussions, concern was frequently expressed about the lack of accurate knowledge about the history of Aotearoa New Zealand, especially around the Declaration of Independence and the Treaty, and the impact of government policy and practice on Maori since 1840; and around human rights and responsibilities, in particular the full range of rights articulated in the international human rights instruments.

We therefore recommend the current review is not an end to the process of discussion around the constitutional arrangements. We would like to see an expanded process that includes discussion of commonly held values and desired outcomes.

However, it is crucial that the discussion is informed by resources which accurately reflect the historical basis for the current constitutional arrangements, and provide accurate information about the constitutional institutions of hapu and iwi, rather than approaching the discussion from a monocultural perspective.

As an organisation, Peace Movement Aotearoa particularly supports the recommendations included in section 3.e above as follows:

- Treaty-based constitutional arrangements developed by a process of negotiation between the parties to the Treaty, the Crown and hapu and iwi; and constitutional arrangements that ensure:
- that the Treaty is central to all decision making, and all legislation and policy (national and local government) is consistent with the Treaty;
- at a minimum, the free, prior and informed consent of hapu and iwi is obtained before implementing decisions that affect their rights and interests, and that the current (albeit minimal) protection for Maori and their rights is not further eroded;
- all human rights (economic, social, cultural, civil and political - individual and collective) are respected and fully protected, and all legislation and policy (national and local government) is consistent with these rights; and

- full protection for the environment and biodiversity, and responsible stewardship of natural resources for future generations.

We are also of the view that that local, community-based decision making is preferable to national, centralised decision making, and that decisions should be made by the communities most affected by them; and that a clear statement of commonly agreed or core values to guide government policy and practice, and by which it could be measured, would be extremely useful.

Thank you for your attention to our submission.

Notes

¹ References to the Treaty in this submission are to the Maori text (Te Tiriti o Waitangi), which was signed by representatives of the British Crown and by approximately 500 of the 540 hapu and iwi representatives who signed it, not to one of the English versions

² For example, to the United Nations Special Rapporteur on Indigenous Peoples' Rights in 2005; the Committee on the Elimination of Racial Discrimination in 2007 and 2013; jointly with the Aotearoa Indigenous Rights Trust and others, to the Human Rights Council for New Zealand's Universal Periodic Review in 2008 and 2009, and again in 2013; the Human Rights Committee in 2009 and 2010; the Committee on the Rights of the Child in 2010 and 2011; and the Committee on Economic, Social and Cultural Rights in 2011 and 2012

³ Mainly Anglican, Catholic, Methodist, Presbyterian and Quakers

⁴ Involved in multi-faceted human rights work, rights of migrants, rights of refugees, women's rights, children's rights, and civil liberties

⁵ Education and health

⁶ Organisations that have used the Time for Change process have made their own submissions to the Panel which provide more details on their particular focus/es

⁷ As articulated in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which New Zealand is a state party to, and re-affirmed as a right for indigenous peoples in the United Nations Declaration on the Rights of Indigenous Peoples

⁸ As outlined, for example, in the Committee on the Elimination of Racial Discrimination's General Recommendation 23 and the Committee on Economic, Social and Cultural Rights' General Comment 21; as included in both Committees' Concluding Observations on New Zealand; as referred to in the two reports on New Zealand by the United Nations Special Rapporteur on the Rights of Indigenous Peoples; and as elaborated in the United Nations Declaration on the Rights of Indigenous Peoples