

Teaching about the Treaty — Teaching the Treaty and human rights

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Edwina Hughes is the Coordinator of Peace Movement Aotearoa, the national networking peace organisation, which works on peace, social justice and human rights issues. One of Peace Movement Aotearoa main focuses is providing information, education and resources on the Treaty and human rights from a Pākehā perspective.

This workshop presented a graphic and cumulative table which has been developed as a way of teaching the complexities of the Treaty of Waitangi (the Treaty) and human rights - in domestic legislation and the international human rights instruments - and the interconnections between and among them. Using the Foreshore and Seabed Act as an example to demonstrate these connections (although any legislation or policy affecting the individual and collective rights of Māori could be used), the table has the secondary effect of illustrating the lack of protection both for the Treaty and for human rights more generally when breaches occur because of Acts of parliament or government actions, and the tertiary effect of illustrating the necessity for constitutional change.

The discussion following the presentation covered points including:

- honouring the Treaty would ensure the collective and individual rights of Māori are protected, with less need for recourse to the international human rights instruments and the international human rights treaty monitoring bodies
- the prohibition on racial discrimination is specified in the UN Charter and the Universal Declaration of Human Rights (UDHR), the International Convention on the Elimination of Racial Discrimination (ICERD) was the first of the core human rights instruments arising from the UDHR
- the UN Committee on the Elimination of Racial Discrimination's General Recommendation 23 on indigenous peoples' rights is used by the Committee to monitor state compliance with ICERD, and some of its provisions are arguably stronger than those in the UN Declaration on the Rights of Indigenous Peoples (the UN Declaration)
- the UN Declaration represents a commitment on the part of the UN and all of its member states (regardless of whether or not they voted in favour it), within the framework of the obligations

established by the UN Charter, to promote and protect human rights and fundamental freedoms for all without distinction, on a non-discriminatory basis. Regardless of whether or not the NZ government chooses to support the UN Declaration, it is being used by other states, UN and regional human rights bodies, and throughout the UN system (in some cases, even before it was adopted by the UN General Assembly in 2007) and it thus constitutes an internationally recognised minimum standard for the rights of indigenous peoples

- the positive developments around the Inter-American Court of Human Rights
- issues around the approach of NZ governments to international law, in particular the perception that the provisions of the legally binding human rights treaties do not have effect here unless they are specified in enabling (domestic) legislation, and the unfortunate response of NZ governments to recommendations and jurisprudence of the human rights treaty monitoring bodies
- the lack of full protection for human rights here is unusual when compared with other states generally considered to have a democratic system of government; and
- the legally binding obligation on states to provide an effective remedy for human rights violations has within it an obligation to ensure that any such violations do not happen again - neither obligation can be met under NZ's current constitutional arrangements.

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Notes by Joan Macdonald