

# The Demographic and Political Imperatives for Improving Crown-Maori Relations in Aotearoa-New Zealand

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# Asia Pacific

## I S S U E S

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**S U M M A R Y** Nearly a decade has passed since the United Nations declared International Year of the World's Indigenous People. Yet issues of social and economic marginalization, inequality, cultural survival, and change related to indigenous peoples continue to challenge the global community. In Aotearoa-New Zealand the Pakeha (Caucasian) settler population for many decades dominated the political landscape, leaving little voice for the nation's indigenous Maori people struggling for greater rights. Today, however, the growing Maori population makes New Zealand the only First World country in which the indigenous people's movement for self-determination is sufficiently large to promise the possibility of major societal transformations.<sup>i</sup> Over the past quarter century, regardless of which political party or coalition held power, escalating Maori demographic trends and increased political activism have encouraged the Crown to address Maori concerns and grievances.<sup>ii</sup> Today, with one out of four children under the age of five a Maori, the government has little option but to negotiate with a growing indigenous community.

*A carefully fostered appearance of racial harmony masks the reality of political tension*

The contemporary context of Crown-Maori relations can be understood only against the historical backdrop of the Treaty of Waitangi, the founding document of the contemporary nation of Aotearoa-New Zealand. The treaty was translated from English into the Maori language—its most distinctive feature—and a number of copies were circulated and signed by more than 500 chiefs.<sup>iii</sup> Although signatories represented less than a majority of Maori *iwi* (tribes), in May of 1840 the British lieutenant-governor of New South Wales, Captain William Hobson, declared British sovereignty over all of New Zealand.<sup>iv</sup> Throughout the intervening 162 years, Maori have protested the crown's interpretation of the treaty and their loss of *rangatiratanga* (sovereignty). Today, a carefully fostered appearance of racial harmony masks the reality of political tension between the predominantly white-dominated Crown government and Maori political activists. Crown-Maori relations stand as New Zealand's single most pressing sociopolitical issue as it confronts and seeks to address its colonial past while forging a just and equitable multicultural society. This process and its outcomes are being carefully observed by governments and indigenous peoples worldwide.

At the beginning of the twenty-first century, current and projected population dynamics clearly demonstrate the challenge to the Pakeha majority and the momentum behind New Zealand's changing social and political reality. The New Zealand census of 2001 revealed that 1 in 7 people (526,281) are of Maori ethnicity or 14.5 percent of the population, an increase of 21 percent since 1991.<sup>v</sup> It is also a young population. The Maori median age is 22.0 years, significantly below the New Zealand median for all groups of 32.0 years. By comparison, the number of Europeans grew by 3.5 percent and their median age is 34.6 years. More important, however, a 1996 analysis of census data found that "Maori now account for one in every four, or 25.6 percent of all New Zealand children under five and 23.6 percent of children under fifteen years." Furthermore, "with higher rates of fertility, greater proportions of people of child-bearing age, births from inter-ethnic unions and (in the case of non-Maori) immigration, non-European groups are growing at a much faster rate

than the European ethnic group and making up an increasing share of the total population."<sup>vi</sup> Maori are expected to reach nearly one million by 2051 and constitute 22 percent of the population; along with Pacific Islanders and Asians they will make up approximately 43 percent of New Zealanders by mid-century. Equally significant is the projection that 68 percent of New Zealand's children in 2051 will be of Maori, Pacific Island, or Asian extraction.<sup>vii</sup> In the future Maori may well have to compete with a growing non-white immigrant population for scarce resources, but they have learned the value of the ballot to achieve their goals. Due to increased enrollment on the Maori Roll under New Zealand's Mixed Member Proportional electoral system, the number of Maori parliamentary seats has risen from 4 in 1993 to 7 in 2002. In the 1996 election 63 percent of the Maori electorate cast votes; a large number of Maori remained on the General Roll but it is unclear how they voted.

These figures have major political and social policy implications for New Zealand's future. The national election of July 2002 provided the latest referendum on the Crown's efforts to address Maori concerns and grievances. The Maori struggle has had at least two fronts: calls for justice based on human rights and Treaty of Waitangi principles, and increasing involvement in the political process as voters or supporters of political parties. Maori voters usually have a clear perception of which party will best serve their interests.

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### **Political Background**

Maori have been a strong constituency of the social democratic Labour Party since the 1930s when the Ratana Church movement, a Maori variant of Old Testament beliefs, entered an alliance with the Labour Party. Yet Maori had little to show for nearly four decades of political loyalty. When Labour took power in 1972, it moved to defuse social unrest and address Maori demands by passing the Treaty of Waitangi Act in 1975. The legislation established a quasi-judicial Waitangi Tribunal to hear individual and tribal claims arising from breaches of the treaty. The act placed severe limitations on the tribunal; for example, it had

no retrospective powers and could consider only contemporary and future claims. The tribunal had power only to recommend settlements; final disposition was by act of Parliament or executive fiat. Furthermore, tribunal cases considered only claims against Crown lands, forests, fisheries, and the like; no private property could be involved. Thus, for the first decade of its existence the Waitangi Tribunal was relatively ineffectual, although some important cases set precedents for enforcement of Maori rights under its provisions.<sup>viii</sup>

Labour regained control of the government in the 1984 election and renewed its effort to set things right with Maori. The energetic minister of justice, Sir Geoffrey Palmer, pushed through the 1985 Treaty of Waitangi Amendment Act, which gave the tribunal retrospective review power to 1840, thus effectively covering the period when most transgressions occurred.<sup>ix</sup> In the 1987 State Owned Enterprises case, the New Zealand Maori Council challenged the Crown's right to sell properties while tribal claims that might encumber them were still pending before the tribunal. The High Court of New Zealand sustained the Maori position but gave neither side a clear victory; instead, the court invoked a theory of "partnership" and "spirit of the treaty" as means for the Crown and Maori to reconcile their differences. This decision led to three important pieces of legislation that significantly advanced Maori fortunes in the late 1980s.

First, the 1988 Treaty of Waitangi (State Enterprises) Act gave the tribunal power to award Crown holdings to Maori claimants under limited conditions. Second, in 1989 the Crown Forestry Act placed thousands of acres in trust for Maori pending the settlement of future claims, and the income from said lands was placed in escrow for their benefit. A Crown Forestry Rental Trust was established to function as the fiduciary agency for these lands and is a major funding source for claims research. Third, the Maori Fisheries Act of 1989 was the initial step in assuring the Maori people a significant stake in the fisheries industry of New Zealand. These were dramatic breakthroughs in recognizing legitimate treaty interests, but they exerted little immediate impact on the life

of most Maori, especially the urban group that occupied the lowest rung on the socioeconomic ladder. Maori suffered most from Labour's unexpected turn to "New Right" economic policies in the 1980s. One critic noted, "On the surface, the Labour government did take unprecedented steps to redress the injustices of the past, and the 'principles of the Treaty of Waitangi' . . . . But in reality little changed. Labour's economic policy and its policy on the treaty were on a collision course. The dilemma would require it to redefine Maori treaty rights and induce Maori to accept a settlement which left intact individual property rights, unrestrained exploitation of resources, maximisation of private profit and the supreme authority of the Pakeha state."<sup>x</sup>

**National Party policies, 1990–1999.** The New Zealand electorate, including Maori, leery of Labour's radical departure from democratic socialism, replaced it with the conservative National Party at the 1990 election. In a stunning reversal of fortune, Labour lost all of the Maori seats in Parliament.<sup>xi</sup> The new government continued dismantling New Zealand's welfare state for another decade and looked to settle with Maori as well. National expanded the process, begun under Labour, of devolving control over social service programs for Maori. Labour had begun to shift control of services by contracting them directly to local tribal agencies. In urban areas this policy gave prominence to the role of pan-tribal Maori authorities. Before vast sums of money were awarded to *iwi*, however, governmental structures had to be in place to handle the funds. The 1990 Runanga Iwi Act—passed by Labour just before it left office—had potential equivalence to the 1934 Indian Reorganization Act in the United States, which provided the political and legal framework for Indian self-determination. It established government-recognized Maori political organizations—*runanga* or councils—based on tribal structures.

The act was rescinded for two reasons. First, many of the *iwi* resented political interference in their affairs and viewed it as an attack on *rangatiratanga*. Second, National had its own scheme for Maori development and led the fight to repeal the Runanga Iwi

*Three important pieces of legislation significantly advanced Maori fortunes in the late 1980s*

Act and related legislation. It promoted “mainstreaming” in which services previously delivered by Maori agencies would come through existing government agencies—Maori were to be treated like everyone else. The Ministry of Maori Affairs was eliminated and funds shifted to existing government social agencies.

The National Party soon moved to accelerate the treaty claims process toward full and final settlement. In 1994 the Crown announced its “fiscal envelope” policy, which placed a NZ\$1 billion cap on future treaty claims settlements.<sup>xiii</sup> Although later renounced as “official” policy after strong Maori remonstrance, there was a clear implication that the figure remained an unofficial benchmark for future negotiations. Two tribes with major claims moved preemptively to secure a sizable portion of the billion-dollar fund. In 1995 the Tainui people of the Waikato area settled for a package of lands and money valued at NZ\$170 million. That was followed in 1998 by the Ngai Tahu settlement, also worth NZ\$170 million, which covered most of the tribes of the South Island. Both documents carried a provision stating that should all Maori claims settlements exceed NZ\$1 billion, Tainui and Ngai Tahu would each receive 17 percent of the excess amount, since each of their settlements represented approximately 17 percent of the total figure. In this way these tribes were protected for having taken the risk of being first to settle with the Crown. On the other hand, the provisions had the effect of locking in the NZ\$1 billion figure for a settlement package, as future governments would not want to incur the substantial costs entailed in exceeding it.

The National Party also inherited the fisheries issue. The Treaty of Waitangi (Fisheries Claims) Settlement Act of 1992 represented the ultimate in hardball political negotiations between the Crown and a team of distinguished Maori leaders representing the *iwi*. The Crown spent NZ\$150 million to purchase half-ownership in 26 percent of the fisheries quota for Maori, and established a Treaty of Waitangi Fisheries Commission to oversee the assets and formulate a plan for their eventual distribution. The most difficult issue became allocating the fishing quotas among the various Maori claimants. There is a fundamental disagreement among *iwi* whose territory

borders the sea and inland *iwi* over a distribution formula, and both groups were opposed to sharing with urban Maori—although the 1992 act stated the assets were for “the benefit of all Maori.” Traditional tribes claimed all fishing resources under the treaty’s guarantee of *rangatiratanga*. A coalition of urban Maori authorities made a claim for distributive justice based on their citizenship rights guaranteed by the treaty. They argued that limiting distribution only to traditional *iwi* could not give effect to the overriding purpose of the settlement, which was to benefit all Maori, and sued to be recognized as *iwi* for purposes of the fisheries distribution.

In 1997 the Fisheries Commission published a *Proposed Optimum Method for Allocation Consultation Document* in which only those *iwi* recognized by the Commission received quotas and other assets. The model was heavily weighted in favor of coastal *iwi* that would receive a majority of the quotas. No quota was allocated to urban Maori, whom New Zealand courts held were not *iwi* in the meaning of the Treaty of Waitangi. An appeal taken to the Privy Council in London was remanded for further consideration of whether the 1992 act limited distribution solely to *iwi*, and did *iwi* mean only traditional Maori tribes. When the New Zealand courts answered yes on both counts, the Manukau Urban Maori Authority and others again appealed to the Privy Council. Their final appeal was dismissed on 2 July 2001.

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### Labour’s New Opportunity

After nine years in the political wilderness Labour returned to power in 1999 with a resounding victory. A major factor was the return of Maori voters to Labour. Although National had concluded two large treaty settlements and passed the fisheries act, little progress had been made in alleviating Maori social problems or promoting economic development. Labour’s platform emphasized the party’s historical commitment to addressing Maori issues, and it recaptured the designated Maori seats in Parliament that had been lost in 1996. Although Labour is committed to a renewed partnership between Crown and Maori, this has proven most difficult for the new government to

*A fisheries claims settlement act in 1992 represented the ultimate in hardball political negotiations between the Crown and Maori leaders*

implement. Moreover, a number of political miscues by the Labour government made the future loyalty of Maori voters problematic. Three issues illustrate the strained relationship between the Crown and Maori that had to be reconciled if Labour was to retain Maori support in the 2002 national election: the “Closing the Gaps” policy, the Maori fisheries issue, and Treaty of Waitangi issues.

**The “Closing the Gaps” policy.** National first coined this inelegant slogan, but Labour appropriated it as the centerpiece of Maori policy in the 1999 campaign. The policy emphasized the equal rights aspect of Article 3 of the Treaty of Waitangi and promised to incorporate distributive social justice into government programs for Maori. To address the policy implications, Prime Minister Helen Clark headed a special cabinet-level “Closing the Gaps” committee. In an effort to meet this commitment “treaty clauses” were added to major social legislation, effectively linking social policy to treaty rights. A new Employment Relations Act, a health bill, and even a trade pact with Singapore contained “treaty clauses” protecting Maori rights. This clearly broke with the previous government’s substantive position that treaty rights were confined to issues such as land, forests, and fisheries, but Clark defended the policy vigorously. Nevertheless, by February 2001 political pressure had become so intense that Clark announced that “Closing the Gaps” was no longer an acceptable term due to the political backlash it caused, especially among conservative Pakeha. Government offices ceased using the term, while the special cabinet committee was abandoned and its functions shifted to a subcommittee on inequality.

Maori response to the abandonment of “Closing the Gaps” was immediate and harsh. Several Maori members of her own party denounced Clark for making no progress on Maori issues. The Ratana Church leadership, traditionally supportive of Labour, bluntly criticized the prime minister for abandoning her “flagship” policy. There were also threats to revitalize the movement for an all-Maori party. Such defections and splintering of the Maori vote could have had grave consequences for Labour in the upcoming election.

**The Maori fisheries issue.** The Treaty of Waitangi Fisheries Commission was dominated by strong Maori personalities such as Sir Tipene O’Regan, Sir Robert Mahuta, and Sir Graham Latimer, who helped negotiate the settlement with the Crown. The members represented competing interests in the clash between coastal and inland *iwi* over control of the fishing quotas. They also appeared to take the side of recognized *iwi* against urban Maori interests. The commission now controls over one-third of the New Zealand fishing industry and has amassed assets of more than NZ\$700 million. How will they be distributed? The 1997 allocation model presented by the commission was a political bombshell, and Labour courted urban Maori with a promise of equitable distribution if they returned to power.

True to its promise, Labour appointed a new commission in late 2000 and several staunch defenders of the pending allocation model were ousted while urban Maori representation increased. The new commission was charged with developing an acceptable allocation scheme by August 2002—just in time for the national elections. This was immediately challenged by the Treaty Tribes coalition representing the coastal *iwi*, which threatened a suit to have the 1997 allocation model immediately implemented. In April 2001 the new commission chairman advanced his position that the Fisheries Commission should not allocate the quotas to individual *iwi*—rather the commission would hold the accumulated proceeds and distribute dividends. This would require changing the Fisheries Commission act and would provoke furious resistance from tribes with long coastlines. Although the Privy Council upheld the New Zealand court ruling that urban Maori are not *iwi*, it would be naive to assume that urban Maori will accept that as the final word in the matter—especially as New Zealand, following the lead of most Commonwealth nations, prepares to discontinue using the Privy Council as its court of last resort.

**Treaty of Waitangi issues.** The Labour Party entered office with a renewed commitment to full partnership with Maori in treaty settlements and encouraged direct negotiations with the Crown. The government

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has declared there is no longer a “fiscal envelope” for meeting claims settlements. Officials admit, however, that treaty settlement funds are not unlimited and refuse to divulge how much they are willing to spend in total. At the same time the government has tended to underfund the Waitangi Tribunal, which still has a backlog of hundreds of cases. The Crown is thus undercutting the tribunal’s work, which it views as slow and cumbersome, but it is a process to which most Maori are committed because of the perceived fair treatment. Only a minority of tribes have opted for direct negotiation without a Waitangi Tribunal hearing first, in part because of the presence of Tribunal Chairman Edward T. Durie, who gave a distinctly Maori cast to interpretations of law and the treaty. To critics who find that the claims settlement process has already gone on too long, Durie responded that there will be a role for the tribunal for many years to come.<sup>xiii</sup>

The current minister in charge of Treaty of Waitangi negotiations, Margaret Wilson, agrees that the partnership process will be long lasting. However, despite articulating a position that defends Maori treaty rights, Wilson took several unsettling steps that got the new Crown-Maori partnership off to a rocky start. First, she proposed a comprehensive review of the 1975 Treaty of Waitangi Act and an end to the tribunal’s power to award some former State Owned Enterprises lands to Maori claimants. Second, she suggested renegotiating the 17 percent relativity clauses in the Ngai Tahu and Tainui settlements. Buying out these clauses for a set fee would free the Crown to negotiate future settlements and exceed the NZ\$1 billion figure without incurring exorbitant costs. Last, Wilson affirmed the government’s position that tribes would not be able to make claims against oil and natural gas deposits in their settlements. Maori responses to such proposals and actions have been mixed. Tribal Maori view the Waitangi Tribunal as a key factor in a “counter-hegemonic process” in defense of their Treaty rights and the exercise of *rangatiratanga*. It would take all the persuasive powers the prime minister can muster to convince the tribal Maori that it is in their interests to retrocede powers of the Waitangi Tribunal and bypass the courts for exclusive negotiations with the Crown.

***The Labour government maintains there is no ‘fiscal envelope’ for meeting claims settlements, but refuses to divulge how much it is willing to spend***

## Conclusion

Encouraged by polls showing she could win a clear parliamentary majority, Clark called a “snap election” for 27 July 2002, four months earlier than constitutionally required. The balloting saw Maori turn out to support Labour in great numbers and help return it to power for three more years. All seven Maori seats in Parliament were captured by Labour candidates, plus there will be two Maori in the new cabinet. The obvious conclusion is that Maori prefer the direction of Labour’s policies under Prime Minister Clark to what they could expect from National or other opposition parties. How was this turnaround accomplished? First, through astute political maneuvering, Clark reconciled her differences with most Maori leaders who recognized that Labour was pouring money into health and economic development programs without incurring strong Pakeha backlash by openly promoting a “Closing the Gaps” policy. Second, by having an early election Clark avoided the highly charged fisheries issue. Even so, acceptance by the Crown of *Ahu Whakamua/Report for Agreement*, a final report placing half of the fisheries assets in a corporation, would have the potential to fracture Labour’s Maori constituency. And it remains possible that the coastal tribes will return to court. Finally, in this year’s run-up to the election, Wilson concluded a flurry of small treaty settlements; despite lingering Maori concerns about her performance she remains as minister of Treaty Negotiations in the new Labour-led government.

Nevertheless, Labour won only 52 of the 120 legislative seats and had to form a coalition government. At the same time there is an ominous note in the resurgence of the New Zealand First Party which is anti-immigration and pro-Maori, although strongly opposed to aspects of the treaty settlement process; it received the third highest vote following Labour and National. Furthermore, the right-of-center United Future Party, which Labour selected as an informal coalition partner, appears reserved on Maori treaty rights. Therefore the next three years are unlikely to see major policies promoting Maori social and economic advancement.

*Even as Maori seek to establish their sovereignty, the nation is rapidly becoming a multicultural society*

Even as Maori seek to reestablish their *rangatiratanga*, the nation is rapidly becoming a multicultural society. Pacific Islanders, Asians, and others will eventually be integrated into the socio-political-economic equation as well. For Aotearoa—New Zealand to enjoy social stability in the twenty-first century it is imperative that a Crown-Maori partnership continues to develop along the lines discussed here. If current

political discourse offers a guide, the new paradigm of Maori-Crown relations—an incremental but significant improvement in Maori social and economic status along with the recognition of their indigenous rights—will very likely eventuate in a republic with a constitution that validates the principles of the Treaty of Waitangi.<sup>xiv</sup> Most Pakeha expect no more; Maori will accept no less.

### Notes

<sup>i</sup> Werther, Guntham F.A. 1992. *Self-Determination in Western Democracies: Aboriginal Politics in a Comparative Perspective*. Westport, CT: Greenwood Press, pp. 58–59.

<sup>ii</sup> Ward, Alan. 1999. *An Unsettled History: Treaty Claims in New Zealand Today*. Wellington: Bridget Williams Books, pp. 18–24.

<sup>iii</sup> Orange, Claudia. 1987. *The Treaty of Waitangi*. Wellington: Bridget Williams Books, pp. 258–261.

<sup>iv</sup> Sorrenson, M.P.K. 1991. “Treaties in British Colonial Policy: Precedents for Waitangi.” In William Renwick, ed., *Sovereignty and Indigenous Rights: The Treaty of Waitangi in International Context*. Wellington: Victoria University Press, pp. 15–29.

<sup>v</sup> 2001 Census Snapshot 4—Maori. 2002. Wellington: Statistics New Zealand/ *Te Tari Tatu*, p. 1.

<sup>vi</sup> Cook, Len. 1997. “New Zealand’s Current and Future Population Dynamics.” Wellington: Statistics New Zealand/ *Te Tari Tatu*, pp. 32–33, 44.

<sup>vii</sup> Projections Overview. 1997. Wellington: Statistics New Zealand/ *Te Tari Tatu*, pp. 2–11.

<sup>viii</sup> Temm, Paul. 1990. *The Waitangi Tribunal: The Conscience of the Nation*. Auckland: Random Century.

<sup>ix</sup> Interview with Sir Geoffrey Palmer, 13 March 2000. Tape OHInt-0475/01, National Library of New Zealand, Wellington. See also Geoffrey Palmer. 1992. *New Zealand’s Constitution in Crisis—Reforming our Political System*. Dunedin: John McIndoe.

<sup>x</sup> Kelsey, Jane. 1990. *A Question of Honour? Labour and the Treaty, 1984–1989*. Wellington: Allen & Unwin/Port Nicholson Press, pp. 1–3.

<sup>xi</sup> Durie, Mason. 1998. *Te Mana, Te Kawanatanga: The Politics of Maori Self-Determination*. Auckland: Oxford University Press, pp. 98–110.

<sup>xii</sup> Graham, Douglas. 1997. *Trick or Treaty?* Wellington: Victoria University Press, pp. 58–67.

<sup>xiii</sup> Interview with Justice Edward T. Durie, 7 June 2000. Tape OHInt-0475/05, National Library of New Zealand, Wellington.

<sup>xiv</sup> Durie, Justice Edward. 2000. “The Treaty in the Constitution.” Paper presented at the Building the Constitution Conference, 7–8 April 2000. Wellington: Victoria University Institute of Policy Studies. See also Mason Durie. *Te Mana, Te Kawanatanga*, pp. 218–240. Interview with Moana Jackson, 26 May 2000. Tape OHInt-0475/04, National Library of New Zealand, Wellington.

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