SOUTH AFRICA

A NEW ZEALAND MAORI VIEW

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Introduction

New Zealand is not beset by multiple ethnic divisions. The main distinction is between indigenous Maori and the subsequent settlers the vast majority of whom were from Britain. Maori were a minority from 1865, are 12% of all today, and accordingly neither an unrepresentative legislature nor apartheid laws were needed for white domination. Maori could safely enter white society at all levels.

From colonisation Maori 'lost' most of their lands, by fair means and foul, but especially by the latter in some opinion. Out of 27 million hectares they now hold 1.2 million or less than 5%, much on poorer country and some 7% unworkable. The manner of losing their land became the gravamen of Maori complaints and a claims courts was recently established with the prospect of their retrieving part. This led to some public conflagration, to which I was able to lend fuel as chief judge of the Maori Land Court and chairperson of the claims body, the Waitangi Tribunal.

Along with people everywhere, Maori have been inspired and instructed by the position and progress of the African National Congress, in its search for a just society and a place where all belong. Maori seek the same, though they long especially for a fair share.

Maori have an interest in constitutional rights, land claims and land reform. In this we may unite in broad common purpose, but differences of history and circumstance constrain comparisons and the import of outside opinions. I cannot therefore advocate a stance, but proffer a 'take it or leave it' opinion. From different pasts we have inherited the legacy of contrasting attitudes, to ethnicity, for example.

Ethnicity and Tribalism

The New Zealand experience suggests that despite the unwholesome distortions of tribal identity under apartheid, with prescriptive ethnic divisions and puppet authoritics, there will be some who will continue to prefer tribal association at a local level. These too may need to be accommodated in a free and democratic society that is sensitive to minority needs. In this content, it appears to me that apartheid tribalism is not tribalism, but a regulated perversion. The experience of apartheid does not then necessarily invalidate an honest development of the customary tribal base. Tribal ethnicity cannot be imposed, but nor can it be denied if it is genuinely preferred by a section of the community. Though the New Zealand history is, in this respect, quite different to that of South Africa, yet it demonstrates the resilience of cultural preference when attempts are made to suppress it.

Currently, many Maori propose to continue their advance on tribal lines, seeking an economic base for tribal self-management in land, commercial and educational endowments. They seek to combine economic and social reform through extended family networks. This may be seen as compromising unity in a situation where national unity is the more compelling requirement; but Maori seek to accommodate tribalism within the state. That has been the historic and traditional Maori preference.

Historically the New Zealand tribes fought to constrain the advance of white settlement. They lost the wars and suffered land confiscation, but tribal identity remained important. An early attempt to rule through chiefs, failed (this by Governor Grey of Cape Town fame). Though some co-operated with the Government and others were opposed, the intent for each was in fact the same, to maintain their people's status within the new system.

But New Zealand governments did not depose chiefs and prop up others. Maori chiefs had no absolute power and where one flouted tribal opinion or collaborated against the people's wishes, another was found to lead. The chiefs' existed to execute the people's wishes.

Nor did Government divide Maori on tribal lines. When Grey's attempts to rule through chiefs failed, the Government passed laws to suppress the tribal system (particularly through the imposition of new land tenure laws). This was apartheid in reverse, but Maori persisted in their tribal allegiances.

Tribalism has not been a barrier to Maori unity. The New Zealand tribes are inter-related, compounded through the ambilineal tracing of descent and intermarriage. They have a common origin, a single language, a history of military and economic alliances, and a sense of common identity. Even today, tribes combine for joint ventures in fishing, farming, banking and other activities. At a political level, Maori may combine as Maori on national issues (though sometimes tenuously), and divide to tribes on domestic affairs.

Traditionally Maori favoured village or hapu autonomy but post-settlement circumstances, politics and commercial imperatives encouraged greater centralism. Maori governance springs from the earth however, and although the need is seen for larger tribal bureaucracies and a central state government, local control of local resources and affairs remains important. The issue is the proper apportionment of responsibilities at national, district and local levels.

In the national New Zealand context, tribalism does not equate with regional independence or a federal system of government. Maori resources and people are pepper-potted throughout the general community.

The New Zealand tribes do not impose a commitment of loyalty on their members. Through tribal inter-marriages, sometimes formally arranged, and through the maintenance of long lineage lines in oral lore, most Maori relate to several tribes. They may connect to many but associate with the one where they live. If they shift they may join with another. Alternatively they may not identify with any tribe at all. It is a matter of personal choice on the one hand and community acceptance of the individual on the other. Status, as Maori or tribal member is not then determined by blood degree. A blood criteria elevates race above actual relationships and that should never be allowed to be imposed.

Nor has New Zealand tribalism been a barrier to national unity. Tribal identity and loyalty to the extended family, do not derogate from Maori commitment to the nation. Maori identify as New Zealanders, as Maori, and as tribal members as the occasion requires; and they resist rigid classifications. They do not stand apart from other New Zealanders but alongside.

It may be considered that we react to our histories and current circumstances. Tribalism is opposed by many Africans where in South Africa it was imposed to control and divide, and is seen to threaten unity still. Tribalism is favoured by many Maori where the policy was to replace the tribal way, and where, Maori risk the loss of their valued culture through the numerical dominance of another people. The Maori circumstance is probably more akin to that of the Nama (except Maori have no reserves) than the Zulu as seen by Inkatha. The Maori record suggests however, that tribal identity will not be given away lightly, and will survive, even if there are policies to suppress it.

There must be constraints however. People should be free to choose which tribe, if any, they prefer to identify and the lifestyle they wish to lead. On the other hand, where tribal ethnicity is posed as inimical to national identity, people may feel bound to elect between the country and the tribe. This they do not have to do when the state can accommodate both.

It may also be considered that some antagonism to tribal ethnicity may be misdirected. Criticism of a tribal bureaucracy for example may best be directed not to tribal ethnicity as such, but to the validity and authenticity of the tribal regime. There are examples of this in New Zealand, and modern tribal centralism, does carry the risk of a new Maori elite. The maintenance of democratic process and accountability in tribal structures, and the apportionment of powers and responsibilities between local groups and tribal bureaucracies, is therefore important.

It is accepted however that South Africa is clearly more difficult. If language is evidence of ethnicity, clause 7 of the ANC draft Bill of Rights (on language rights) recognises 11 South African ethnicities. By comparison Maori constitute a single ethnic unit, though politically divided to iwi (tribes), hapu (sub-tribes) and whanau (extended families).

Maori are also a minority, and therefore it has been with greater ease that earlier state goals to amalgamate Maori into the national British structure have now given way to official policies for biculturalism - not separate "culturalism" but for more cross-fertilisation (thus, Maori language is taught in most schools now, and to white students). Conjunctively there are programmes to strengthen an autonomous Maori economy and society, not to divide but as a positive way of improving our national social and economic performance. Maori need no longer fear the loss of their identity, traditionally sustained not through song and dance alone, but through the tribal polity, economy and society. From once being threatened by diversity, New Zealand would now seek to capitalise on it as a positive way of improving our performance.

I should add however, for the sake of balance, that not all Maori want to identify tribally. Some would stand alone. That is their right and nothing should prevent it. In addition, there are large and significant Maori communities that have formed new associations in the cities, not necessarily tribally oriented. There too must be recognised and provided for.

South Africa is clearly more complex, requiring other strategies but not necessarily competing truths. Unity is not sameness if sameness is compelled just as diversity cannot be used to divide.

Land Claims and Land Reform

My perspective on land claims and land reform is coloured by the experience of the Maori Land Court and Waitangi Tribunal. These are now explained.

The Maori Land Court (for the judicial administration of Maori lands)

> New Zealand became a colony in 1840. It was generally assumed the land belonged to one or other tribe and that none of it could be settled unless it was first acquired. Colonisation followed a Treaty with the Maori tribes (Treaty of Waitangi 1840) guaranteeing Maori the ownership of those lands they did not wish to sell. There were in fact large sales however but the circumstances and propriety of many are in question. Sales, and the refusal to sell led to war and the wars gave rise to confiscations. By then the tribes had lost most of the land base that sustained their economies, the traditional authority that upheld their own laws, and the status they once enjoyed in the country.
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> The Maori Land Court, established in 1865 after the main wars, settled the ownership of the then remaining Maori lands, dividing them to farmable allotments awarded to small groups of former custom holders in defined shares. Later, the court arranged successions to deceased owners and supervised sales and leases to both Maori and to settlers.
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> A preferred Maori alternative, that the land be held in tribal ownership with allotment, sales and leases effected under tribal supervision, was not permitted. Maori had either to accept the court system or miss out on land awards.

The lands left to Maori were insufficient for their needs. The court system, and some aggressive state acquisition policies, saw the rapid alienation of further Maori land, and as a result of successions, a fragmenting ownership of the remainder. Land shortage resulted in most Maori seeking urban work, from about 1940, and 80% of Maori are now urban dwellers. Distances in New Zealand are not great however, urban transition was often a small shift to the local town, and urban dwellers may retain close links with the ancestral community.

To overcome fragmented ownership, owners formed their own collectives, called 'trusts' and 'incorporations', to farm and manage land for the owners as a whole, several allotments being amalgamated to produce large-scale, highly mechanised pastoral and horticultural farms and forests. These bodies manage some 672,000 hectares. (The word 'trust' bears no bad connotations for Maori. It does not imply state control of native land or second-class ownership, but the control of the land by owners, freed of state supervision.)

On the better land areas, the trusts and incorporations have generally been profitable. In the Rotorua district for example some 25 trusts and incorporations, ranging from small farms with 30 owners to large undertakings of 7,000 owners, have assets of $58 million. The Ngati Whakaue Incorporation which borders Rotorua city has sold some lands to invest in commercial property. In addition it farms 3,000 hectares (sheep, cattle, deer, berry- fruits), has 4,250 owners and assets of $14 million.

Trusts and incorporations in the Gisborne district have assets of $98 million. The largest, Mangatu, with over 3,000 owners, works some 50,000 hectares in 15 farms and forests.

In addition, an estimated 1,200 Maori households farm privately about 160,000 hectares in different parts of the country.

Comparatively few work the land however. Most are absentee owners, living in towns but receiving dividends on their shares - which continue to fragment over successive generations. The land may be better cared for than the people, and with rising unemployment, affecting Maori more than others, the question is whether incorporations and trusts should allot lands for small householder farms, while maintaining a managerial overview, in equipment supply and marketing for example, and with restrictions on the alienation of farms outside of the extended family.

Virtually no land is held tribally and tribal authorities lack an economic base for their programmes. Some trusts and incorporations are able to contribute but although they would to marry custom and modern management, they are legally bound to return the greater part of their profits as dividends to their owner shareholders in accordance with their shares. There is some opinion that lands in excessive multiple ownership should be held for the general benefit of a tribal or sub-tribal group.

The Maori Land Court continues to handle successions and to hear claims concerning the democratic and commercial operation of trusts and incorporations. There are annual general meetings, elections and audit requirements, and the Maori Land Court provides an accessible forum to review process operations if there are complaints.

There are now extensive restrictions on the alienation of Maori land outside of the extended family. Land provides the basis for enduring family relationships and alienations are seen to threaten the integrity of the group.

There is some opinion that much of the court work could pass to tribal authorities.

The Waitangi Tribunal (for Maori claims against the state)

The Treaty of Waitangi guaranteed Maori full citizenship within the state, the maintenance of their own authority for the management of their own affairs and the retention of their own lands, fisheries and things important to them for so long as they wished to keep them. Maori protested that several state laws and policies were contrary to the Treaty and in 1975 the Government established the Waitangi Tribunal to hear claims against contemporary and future state laws and policies, and to make recommendations.

But the main grievances concerned past expropriations and acquisitions and in 1985 the Tribunal was empowered to hear claims on these too, and to recommend compensation in land, cash or other assets. Then in 1987, following court action, the Tribunal was empowered to pass-over large state farms, forests and other assets where a claim was proven. The Tribunal cannot do so in respect of private lands however.

The main claims concern

- the propriety of so-called 'sales' in the period to 1865, when the Maori Land Court was established;

- the impact of that court and the alienations made thereunder;

- Crown purchase policies under the imposed Maori Land Court tenure system; and

- land confiscations and expropriations under various statutes.

In addition the Government is negotiating claim settlements.

Last year saw a national settlement of all Maori fishing claims, the passage of $150 million for a national Maori body to purchase New Zealand's largest fishing company in a joint venture with a private concern, and the transfer to Maori of some 15% of all fishing quota. From income and capital the national body will promote Maori into fishing businesses and/or will allocate quota and other assets to competing tribal bodies. In addition there are legislative provisions to protect customary fishing.

Almost all claims are by or on behalf of tribes or sub-trial groups where asset recovery is sought to re-establish the tribal economic base.

There are delicate questions of who properly represents the tribal or sub-tribal groups. Under new legislation this year, these questions may be referred to the Maori Land Court. The legislation gives no guidelines on how this should be handled but past practice with incorporations and trusts suggests the court will seek evidence of free elections following widely notified meetings, and the subsequent formation of some corporate structure with clearly defined and democratic rules. The court may also hear complaints concerning the operation of such bodies, after assets have passed to them.

The sale of state land and assets is an important part of the state's policy for economic recovery, but the same is inimical to Maori who have claims against those lands. The contribution of the general courts has come mainly through the granting of injunctions to restrain state asset transfers pending claim determination or settlements. The court actions have goaded direct Maori-state negotiations.

While most Maori are wedded to the claims process, there is some opinion that the same could be replaced by positive state policies for the restoration of the economic base of the main tribal groupings.

Land reform and a claims court for South Africa

Given the historical legacy of irreconcilable equities in the rival claims of settler and indigenous peoples, it is hard to imagine there could be any ideal resolution of land reform problems. It seems to me neither side can expect too much of the course finally adopted, for in this situation, any course must represent a compromise, and a disappointment, to some degree, for all. The most that can be aimed for is the best solution, one that is better than others in a situation where none can be perfect. It requires broad and expansive thinking, humanity and compassion, and the highest order of political statesmanship and judicial profundity. Land reform draws deeply on all our wells of vision and courage. Paying off for the past is just one thing. In effecting reform we are mainly buying into the future.

Nor can we rely too much of course, on the experiences of other places. They provide, at best, some insights, but any process must reflect the unique circumstances of the country to which it is to apply. With that caveat, some views are proffered, but not advocated, on the report of the Land Claims Court Working Group (July 1992 - but my copy has only the first 18 pages).

In New Zealand the Tribunal has raised public awareness of the Maori grievance and the need for a fair resolution. It now seems generally accepted that some land redistribution is required. The restoration of the former position or the provision of an equivalence is not feasible however. In that circumstance the claims process is not proving the most efficient way of restoring the balance or achieving an equitable re-distribution of resources, and political policies on asset recovery and allocation seem most required.

On the other hand, where there are specific rival claims to particular private lands, justice would appear to require judicial intervention. The limitation of the proposed claims court for South Africa to that area, seems sensible.

To achieve the objectives of Maori land legislation, Maori land laws tended to be prescriptive, with a precise formula for the action to be taken in particular cases. This led to a bureaucratic approach to land management in the Maori Land Court and a lack of flexibility to deal with unforeseen situations. Undue prescription should be avoided, in the Maori Land Court experience. By the same token, the court itself should not make policy and policy guidelines are desirable. It is preferable that the background and the broad purposes should be expressed in a preamble to the legislation, with more precise objectives stated in an early clause, and with a direction that the court should interpret and apply the specific provisions in the light of the preamble and declared objectives. The current Maori Land Act 1993 is modelled on that line.

The provision for commissioners with an inquisitorial role, in the ANC Working Group proposals, would be supported from a Maori point of view, especially for those whose knowledge of western legal process and whose access to archival records may be limited. Maori prefer bicultural officers, and officers who are peripatetic, accessible, and open to listening to the people in an informal atmosphere. In the experience of the court and Waitangi Tribunal, interviews should be held openly, in the presence of the assembled group. Some people are less mindful of the group position when approached individually.

Commissioners should be appointed for their knowledge and experience in the matters likely to come before them,

and not necessarily for their judicial expertise. Their task is to inquire. The Waitangi Tribunal has the powers of a Commission of Inquiry, and both the Tribunal and the Maori Land Court have an inquisitorial jurisdiction.

Similarly, there should be minimum fuss over the form of applications. Undue complexity or formality inhibits access to the law for poorer people, as Chief Justice Bugwatti observed in his recent address to the Legal Resources Centre at Johannesburg; and in India (as with the Waitangi Tribunal) a mere letter, or even an oral statement, may suffice. It is more important that following research and consultation with claimants, the claims should be more clearly defined, if need be by the Commissioners themselves, before public and private notices are given.

The Waitangi Tribunal has its own research staff with the funding to commission further researchers to work to the Tribunal or direct to claimants. The Tribunal has found it advantageous to have a small permanent staff and to rely mainly on research commissions from the private sector. University teams, though still not much used by the Tribunal, present the prospect of a multi-disciplinary coverage. The research reports are made available to all parties and the researcher is available for cross-examination.

Permanent research staff, as distinct administrative officers, should be appointed by the commission, not the executive of Government, and only the commission should commission research.

The Tribunal was also able to assist claimants' legal costs.

The following describes a Tribunal approach, although the practice varies according to circumstance.

The Tribunal aggregates the claims in a given area before opening inquiries. By public notice and notice to Maori organisations, others are invited to join in; and the Tribunal will join in others as the inquiry proceeds.

Staff consult with claimants for a better understanding of the contentions and issues. They may then compile a numbered document bank, arranged in logical sequence and gleaned from official records, libraries and known private sources. Researchers are then commissioned to give their opinion, and may consult with claimants and incorporate their views. As Maori claims are all against the state, the Crown then responds with its research and opinions. The reports are made available to parties.

A conference to settle the issues follows, without restricting parties to the written claims as filed. If it then seems propitious to do so, the Tribunal will refer all or any of the issues to mediation. Failing mediation, and after further notice, the parties or anyone interested may be heard to support, oppose or extend upon the research opinion. The researchers themselves may be cross-examined. The research reports are received as evidence, though proof or further evidence may be required of some statements.

Hearings are usually conducted on marae (tribal meeting places) and so as not to offend rival groups, may commence on one marae and continue on others. Non-Maori also appear at marae but may be heard in halls if preferred.

In the course of hearing special arrangements may be made for questions of standing and representation and interlocutory decisions may be given. It may be necessary to adjourn for meetings and elections.

Thereafter the Tribunal issues a report with findings of fact and interpretation. Unless a negotiated settlement with the Government is then achieved, the Tribunal will sit again, in more western legal style, to hear argument on the relief to be given and to issue its determinations. In the course of so doing the Tribunal may state a case to the courts on any legal matter (but has not yet done so).

This procedure is not prescribed by statute. The Tribunal settles its own code, as yet only partly written in occasional practice notes. It has sometimes been taken on review but no review application has yet proceeded to a hearing.

In the Tribunal's experience questions of standing and representation are best dealt with in the later stages. By then groups have had a chance to caucus and to settle. In New Zealand however distances are not great and it is possible to assemble everyone on the marae at one time. Some stormy reactions may be enough to deter bogus claimants and representatives without a mandate.

The Tribunal does not have or seek a power to award costs, which might deter genuine claimants.

In considering compensation the Tribunal considers not only the land 'lost', but in a broad way, the impact of loss - the grievance from the manner of dispossession, injury for removal from ancestral holdings, lost development opportunities and the loss of infrastructure and the formation of the human capital resource that usually accrues to those protected in their property enjoyment.

The preservation of property values arises occasionally in the Maori Land Court when long term leases are due to terminate. Inventories of assets are maintained, an action lies for waste or impoverishment and losses may be off-set against any compensation payable. I should imagine that other conduct, the eviction of tenants for example, would

traditionally occupied or otherwise used.

15. Indigenous peoples have the collective and individual right to own, control and use the lands and territories they have traditionally occupied or otherwise used. This includes the right to the full recognition of their own laws and customs, land-tenure systems and institutions for the management of resources, and the right to effective State measures to prevent any interference with or encroachment upon these rights.

16. Indigenous peoples have the right to the restitution or, to the extent this is not possible, to just and fair compensation for lands and territories which have been confiscated, occupied, used or damaged without their free and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall preferably take the form of lands and territories of quality, quantity and legal status at least equal to those which were lost.

The Draft seems mainly designed for indigenous peoples who have become a minority in their own country following colonisation, and thus for example, Australia, New Zealand and the Americas. The universitality of the draft may be questioned, but the principles are important for a significant section of humanity.

Clearly, ethnicity has bad connotations in South Africa, having provided a frame-work for apartheid. One might consider however that once the legitimacy of the South African state is established, with free national elections and a single assembly, some respect should be paid to those who freely choose to identify along customary ethnic lines for the management of their lands and local affairs. Democracy in this context is more than majority rule, but a state of society that involves all sections of the community, being thus tolerant of minority opinions.

I have forwarded to the Legal Resource Centre at Johannesburg, copies of relevant legislation on the Waitangi Tribunal and Maori Land Court, and on the structure of selected Maori trusts and incorporations.

also be relevant in assessing compensation.

The way land is awarded is important. The Tribunal is concerned to ensure that where a successful claimant is a group, tribally defined or otherwise, some corporate structure is in place, accountable to beneficiaries, subject to audit and with protection for minorities.

In New Zealand a claim may still be sustained where lands have been expropriated and market value compensation has been paid. The question is whether the people were unjustly removed from ancestral lands and whether they were in practice able to acquire other lands of equal value to them.

In assessing compensation to settler farmers, market value would appear to give unjust enrichment where lands were acquired at concessionary rates, with incentive loans, free training, subsidy arrangements or occasional debt write-offs.

The Government has mooted in New Zealand, a financial ceiling on claims, the total compensation in land, cash or other assets for all claims, not to exceed a maximum figure. Because the settlement of claims is not as urgent in New Zealand as South Africa, the New Zealand government has also mooted that a maximum payout might be set over any term, the position to be reviewed thereafter. This has led the Tribunal to consider how an equitable apportionment might be achieved so that those at the end of the list are not left wanting and waiting. To that end the Tribunal's procedures are changing. It is now undertaking a broad review of the claims as a whole, for the purpose of assessing comparative losses in all areas, and the impact of loss having regard to the varying demographies and economic circumstances of those in each district. Individual settlements might thus be effected within the national context, in the hope that the maximum payout over any one term might be fairly apportioned. The broad national-overview study is expected to take three years, but this is not seen as preventing some settlements 'on account' in the interim.

Property clauses in constitutions

New Zealand does not have a property clause in its constitutional instruments. It has a Bill of Rights but the bill is neither comprehensive nor entrenched.

New Zealand has a long history against undue land aggregation however. From the first establishment of the colony, settler claims to have acquired large territories before formal annexure, were disallowed to the extent they exceeded a maximum area.

Some settlers still came to acquire extensive holdings after the establishment of the colony, but again there were government moves to acquire and apportion them. In 1893 for example an 83,000 acre estate was compulsorily acquired. This was under an income tax act, but thereafter a compulsory acquisition clause was inserted in the Lands for Settlement Act 1894, and was maintained in subsequent legislation. Compulsory land acquisition for settlement was again exercised during and after the Second World War, under the Servicemen's Settlement and Land Sales Act 1943, and later, the Servicemen's Settlement Act 1950. The compulsory clause in fact encouraged voluntary sales so that between 1945 and 1954, the state acquired 1.1 million acres voluntarily and only 0.3 million acres by compulsion.

Full compensation was paid to settler farmers in the acquisitions of the 1890s, at an estimated £3-1-0 per acre. It should be noted however that at the same time the government was intent on breaking up as well, certain large holdings of the Maori land that still remained. There the average price paid was much less than market value, a mere £0-6-4 per acre between 1891 and 1911.

The amounts paid in and after the second world war were probably near to market value but it is difficult to say, since Government established tribunals and committees to "stabilise" rural land values, effectively, to keep the price down.

Today, under the Maori claims process, it is quite clear that full compensation for past losses will not be paid. That appears to be a generally accepted proposition founded on no great principle of law, but the pragmatic expedient that the economy cannot afford otherwise.

Whatever may be the official Government stance today, the historic New Zealand position would appear to be that the right of persons to retain their properties is relative and not absolute. It has not been seen as a basic human right so as to frustrate the breaking up of disproportionate land holdings to achieve social goals. The position would also appear to be that full compensation for expropriation is payable provided, (at least in the Maori case) that the state can afford it.

The exception to land aggregation is the state itself which has continued to hold major areas of farmable and forestry land (it is the country's biggest land farmer). It has used these to assist farming and forestry generally, in developing breeding stock, specialist horticulture, marketing expertise and processing facilities, from which it assists the private sector in gaining entry to export markets. Maori claims are therefore limited to state-owned properties and assets, the Maori seeking a share of the state land or compensation to acquire land privately held as it comes onto the market. Maori do not seek land alone however. Tribes have settled as well for Crown interests in urban commercial properties, with income to fund Maori into small businesses and into larger commercial activities.

Maori are not presently large property holders. They would support a property clause directed more to the equitable distribution of wealth than the maintenance of the status quo. Historically however, egalitarianism is a general New Zealand trait, and there is some public sympathy for the restoration of a Maori 'fair share'.

In short, and leaving aside the Maori question, a property clause that does not permit of land reform, when land is not fairly distributed, would be against the grain of New Zealand history. The expectation would probably be that compensation at Government valuation should be payable on any expropriation, but, the Maori case aside, New Zealanders have not had to address a situation where that might not be affordable to achieve equity in land distribution. Still, the equitable distribution of land has always been an enduring New Zealand value.

ANC Draft Bill of Rights

There is a category of human rights of universal application, the main personal rights for example, but the accommodation of humanity, in all its diverse forms, requires a further set of rights attuned to local circumstances. Again, our ways may not be instructive for yours, and vice versa, but some comparisons may help.

Maori should be especially interested in the ANC clause on language rights, recognising 11 South African languages, for Maori have been involved in Tribunal and court proceedings to gain greater protection for the Maori language. By contrast, there is only one Maori language. By the Maori Language Act 1987, it was declared official, but the provision is not entrenched; and in contrast with the ANC proposal, no duty is constitutionally imposed on the state to act positively to further its development. As a matter of policy however, the Maori Language Act established a commission to promote the Maori language. Maori is now taught in most schools and there are Maori radio stations and some Maori programmes on television. There is currently a Privy Council appeal by Maori seeking a larger share of broadcasting assets and more television time. (This is based on the Treaty of Waitangi which has been incorporated into the general law on state asset disposals.)

The recognition of South Africa's distinctive language groupings, may be seen to contrast with the small reference to the rights of peoples, or to group rights other than those defined by gender, age or disability. Article 1(2) of the ANC Draft provides

> no individual **or group** shall receive privileges or be subjected to discrimination, domination or abuse on the grounds of race, colour, language, gender or creed, political or other opinion, birth or status (emphasis added).

By comparison the New Zealand Bill of Rights mentions ethnicity, thus

> **19 Freedom from discrimination** - (1) Everyone has the right to freedom from discrimination on the ground of colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief.
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> (2) Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief do not constitute discrimination.
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> **20 Rights of minorities** - A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.

This reflects the particular New Zealand circumstance however that the country is not ethnically divided, and a reference to ethnicity does not portend of regional political divisions that are racially dominated. While New Zealand has separate Parliamentary seats for Maori, this is beneficial, giving protection for a significant minority interest and not leading to divisiveness. Maori are not all in one 'homeland' for the whole country is their homeland. They are distributed throughout the country and may choose to register on either the Maori or the general roll. Accordingly again, constitutions are not transportable, nor always, comparable. They must arise from out of the ground of the country to which they are to apply, reflecting local history and circumstances, and what works in one place, may not work elsewhere.

New Zealand is a party to the International Covenant on Civil and Political Rights, article 1 of which provides

> all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

There is some opinion that 'peoples' in this context means more than the people of a state as a whole and includes internal ethnic divisions, but that opinion may be seen as problematical.

This alternative view of 'peoples' however, is contained in the Draft Universal Declaration on the Rights of Indigenous Peoples, where Article 1 provides

> Indigenous peoples have the right to self-determination, in accordance with international law. By virtue of this right, they freely determine their relationship with the states in which they live, in a spirit of co-existence with other citizens, and freely pursue their economic, social, cultural and spiritual development in conditions of freedom and dignity.

Maori have a special interest in Articles 14-16 of the Draft which provide

> 14. Indigenous peoples have the right to maintain their distinctive and profound relationship with their lands, territories and resources, which include the total environment of the land, waters, air and sea, which they have