

# TE TIRITI O WAITANGI AND COMMUNITY DEVELOPMENT

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## Introduction

The Treaty of Waitangi is the founding document for relationships between Maori and the Crown in Aotearoa/New Zealand. In more recent years, discussion and debate about the Treaty and its relevance to modern society has been both vigorous and contentious.

So what, then, is the relevance of the Treaty to us as community development workers and communities? How do we sort through the myriad of issues and give real meaning and effect to the Treaty in our everyday work and lives?

This paper will explore some of the issues surrounding the Treaty, taking an Article-based approach to working with the Treaty in an effective and meaningful way for those of us working in community development.

## What is the Treaty of Waitangi?

The Treaty is seen by Maori as a covenantal agreement between the Crown and Maori; a covenant that is spiritually binding as much as it is contractually binding, and one which cannot be broken. The covenant recognised that there were people who lived in Aotearoa/New Zealand prior to colonisation; people who settled here and developed hugely diverse and complex cultural, spiritual, social and economic value systems and ways of living in this country well before European contact.

The Treaty allowed for the establishment of government, i.e. it allowed the government to formulate and establish laws for this country. In return for that privilege, there was a guarantee by the Crown to actively ensure the protection of anything that Maori considered to be "taonga" (treasures). It also extended to Maori full rights of British citizens.

Therefore, it is the Treaty of Waitangi that is the founding document for relationships between Maori and the Crown in Aotearoa/New Zealand. Maori see the Treaty as the founding document for the relationships that occur between the Crown (and its representatives) and Maori in this country.

In more recent years, discussion and debate about the Treaty and its relevance to modern society has been both vigorous and contentious. What, then, is the relevance of the Treaty to us as community development workers and communities?

What, then, did the parties get out of the Treaty? The following diagram gives an indication of the provisions made under the terms of the Treaty:

PROVISIONS OF THE TREATY FOR THE PARTIES			
ARTICLE	GAVE TO	MAORI TERM	ENGLISH TERM
Article I	Crown	Kawananatanga	Governance
Article II	Maori	Tino Rangatiratanga	Sovereignty
Article III	All	Oritetanga	Equality

Sometimes people get confused about what is actually contained in the Articles of the Treaty, and what each Article provides for. An easy way to remember this is to think: What did the Treaty provide for:

- a. The Crown (Article 1)
- b. Maori (Article 2)
- c. Both parties (Article 3)

This is a nice easy way to remember the three Articles and what each of them refers to.

The Maori version of the Treaty was the one that most Maori signed, and it is the version used by the Waitangi Tribunal in its claim deliberations.

Under Article 1, The Crown was provided with the right to govern. The word that is used in the Treaty is “Kawananatanga”, or “Governance” (in the Maori version of the Treaty). Through this, the Crown were given the right to govern, to set up a government, and to establish laws, rules and procedures for how we operate as a society.

Under Article 2 Maori retained the right to tino rangatiratanga, which refers to their absolute sovereignty, absolute chieftainship of everything that they considered to be treasures – which was far more than just their land, forest and fisheries that are referred to in the English version.

It is important to remember here that Maori already had tino rangatiratanga in this country, and at the time of the signing of the Treaty it certainly wasn't in any danger – Maori outnumbered non-Maori 35 to 1 (70,000 Maori to 2,000 non-Maori). Maori were still very dominant in society in terms of their culture, customs and language, which were still completely intact.

Under Article 3, we see what both parties got out of the agreement, and that was equal rights as citizens of this country.

## **The Two Original Texts of the Treaty**

You will notice that I refer specifically to the Maori text of the Treaty; however, most New Zealanders don't actually know that there are two versions. However, it is a fact that there were two versions originally: the English version, which was drafted first, and then the Maori version, which was supposed to be a translation of the English. The English version was translated into Maori by Williams, who didn't do an awfully good job; the Maori version is certainly not an accurate reflection of the English version. The majority of Maori who signed the Treaty (approximately 450) signed the Maori version, and never saw the English version. There were some who signed the English version (approximately 50) but the discussion that was held by Maori about the English version during the debate on the Treaty (held on 5<sup>th</sup> February 1840) was in Maori. So most thought they were signing what they had been talking about, rather than what was written on the piece of paper in English. Therefore, the Maori version is the one that most Maori refer to when they talk about the Treaty.

In the English version, Article 1 doesn't refer to "kawanatanga"; it says that Maori ceded "sovereignty" to the Queen. This is quite different to the Maori version, where the retention of sovereignty is referred to in Article 2, and it is held by Maori. Therefore we can see that, in the Maori version we have Maori retaining sovereignty (Article 2), and in the English version, we have Maori ceding sovereignty (Article 1). No wonder everyone is confused!

In the English version of the Treaty, Maori cede their rangatiratanga under Article 1. For Maori, to completely relinquish your tino rangatiratanga is to give up your absolute chieftainship, which is linked to your mana. Mana is the spiritual power and authority that has been conferred by the gods, in order that their revealed will may be carried out. Some people call it status or authority; however, the best analogy I have heard about mana came from Rev. Maurice Gray. Imagine yourself sitting at the traffic lights in your new Jag. The light is red, so you don't have the authority to go through the light. You have the power, but not the authority. Mana is when you are sitting at the lights and the light goes green. You have the power and the authority (not just the power, which on its own does not constitute power). Many people go around saying they are the "big chief"; they have a lot of power, but they don't have the authority to go with it. This is a problem in Maori and non-Maori communities alike.

Therefore, sovereignty refers to mana, and a person's (or a people's) mana is attached to the gods. It follows, then, that there is no way that Maori would ever cede their tino rangatiratanga to anyone else; it just wasn't possible. There was nothing in the Maori psyche that would ever have allowed them to do such a thing.

The English version of Article 2, the English text refers to the full, exclusive and undisturbed possession of land, estates, forests and fisheries by Maori. Inherent in this is the concept of "ownership". It was very much the concept of land title that was behind this wording; however, Maori had no concept of the "ownership" in the British common law understanding. For Maori, it is about belonging to the land, being a part of the land. The connection is genealogical; it links Maori back to the very beginnings of time through Papatunuku (the Earth Mother). Maori can trace their whakapapa back to Mother Earth (and through her, back to the Creator of all life); therefore we are part of her and she is a part of them. So Maori refer to "belonging" rather than "owning". The concept of "ownership" wasn't a part of Maori thought.

Article 3 gave Maori the same rights and privileges as British subjects. Therefore, they not only had the same status as British subjects, but were also guaranteed (under Article 2) the full protection of their customary rights, spiritual history and knowledge, and their tribal customs and lore.

### **Which Version of the Treaty Should be Used?**

In considering claims, the Waitangi Tribunal uses the Maori version of the Treaty, utilising the international law of “contra preferentum”. This means that, where there are two versions of an agreement or a Treaty (one written in the indigenous language and one written in the language of the colonisers), the version that should be considered is that of the indigenous people, because it was that version that the indigenous people understood to be the truth when the agreement or Treaty was made.

Other Treaties overseas are also dealt with under the law of contra preferentum.

### **Legislative Changes since 1840**

What has happened in New Zealand since 1840 has been a process of colonisation by successive Pakeha controlled governments through the use of laws to:

- alienate Maori land ( which had a direct effect on their security and economic base, their values and self esteem);
- impose systems based on English law;
- undermine the practices of Maori law, religion, education, health, language, and culture.

As a result, Maori are over-represented in every negative statistic in this country.

The government systematically used the law to alienate Maori from their land, and to set up systems that were based on British law. At the same time, they outlawed and decimated Maori practices in relation to their spiritual, economic, educational, health and language customs, lore and practices. There were many laws passed specifically to alienate Maori from their land. There were laws passed that prevented Maori from speaking Maori, and it is only recently there has been a cultural renaissance that has enabled Maori to have much more control over their language. Probably one of the most damaging laws that was passed was Tohunga Suppression Act, which outlawed Maori practising their own spiritual beliefs and practices through the use of Tohunga. The passing of this Act had a huge decimating effect on Maori spirituality, and on Maori society as a whole.

The cumulative effects of such legislation, of course, is the current situation were Maori are over-represented in just about every negative statistic in the country. The effects of these statutes and government policies are long-standing, and still show their consequences today.

## **Modern Relevance of a Document over 150 Years Old**

The Treaty is over 150 years old; so why is it still relevant today? My answer to that is to ask the following question: how old is the Magna Carta - the basis of our current government system? It was signed in 1215 A.D., yet is still relevant to our society today – and people have the audacity to say that a Treaty that's only 150 years old is obsolete?

In terms of the agreements that were made under the Treaty, only one side has been honoured. The British got to set up the Government and its laws under Article 1; however, the other side (Article 2), which talks about the benefits for Maori, hasn't been honoured yet. This is not something that just suddenly come up in the last 10 or 20 years; since Nga Tamatoa began protesting; since Ken Mair sparked an occupation at Pakaitore; or since Titewhai Harawira and Helen Clark had their standoff. The first protest about breaches of the Treaty occurred in 1841; one year after it was signed. A contingent of Maori travelled to England, and asked for an audience with the Queen. They wanted to let her know that the conditions of the Treaty that had been signed just one year earlier were already being breached; and they feared for their future. After they travelled 6 months to request an audience, she refused to see them, saying they should return to New Zealand to put their concerns to the Governor, whose job it was to deal with such issues.

So Maori have had grievances about the Treaty virtually since the day it was signed. I do believe that the situation was exacerbated by other events; for example, the Treaty was signed by 50 (odd) chiefs in February 1840, after which copies of the Treaty were sent around the rest of the country for signature by other chiefs. By the time the Treaty was signed in the South Island in late 1840, Hobson had already declared sovereignty over the entire South Island in May of that year. So you can see that, within a couple of months of the signing, Hobson was already carrying out some things that weren't within the brief of the Treaty; in fact, they were in direct breach of its provisions.

## **Relevance of the Treaty for Pakeha and Taiwi New Zealanders**

The Treaty is for everyone in this country; everyone was supposed to get something out of it. It's not just there to give special rights to Maori; its there to give rights to everyone in this country. The main problem, however, is that Maori are still waiting to have their rights recognised; that's where the talk of redress begins. The fact that Maori culture (customs, practices, values and beliefs) have not been enhanced, nurtured and protected in this country (the only country where they exist) is relevant for us all today. Maori language and culture are for all of us to take part in and enjoy, as part of our identity as New Zealanders. It is not just for Maori, it is for all of us – we all live on a street with a Maori name, or we have Maori neighbours, or we have a Maori son-in-law or grandchildren, we live in a town with a Maori name, or we know Maori people in any number of settings. You can't live in New Zealand and not be involved in something Maori; even if it's only the haka at a rugby match. These things don't exist anywhere else; if Maori culture dies out in this country, it dies forever; it doesn't exist anywhere else - simple as that. Yet there are many New Zealanders who would quite happily let it just go out the door. I think people don't have a clue about what they are really saying. Maori culture is a part of us. We feel quite proud of aspects of it; the little bits that we do have contact with.

Conversely, Maori have to spend huge amounts of time defending their right to practice their own culture in this country. It is hard to look after your people when you have to

justify everything you do, and every programme you want to set up in order to restore the identity and dignity of a culture. It makes me feel very sad that this is the case.

### **“Why Can’t Maori Do Things for Themselves? Everyone Else Has To.**

The short answer to this is that Maori people should have their culture enhanced, nurtured and protected every day, without having to ask for it. That’s what the Treaty promised. It was Maori who suffered the colonial process in this country, not other cultures.

It is incorrect to assert that “we should all be one people; there should be one rule for all people, where everyone gets the same rights”. What this statement assumes is that everybody starts on the same level on the playing field, which is actually untrue. Due to the long colonial history of Treaty breaches, all aspects of Maori wellbeing have been affected negatively – for example, health, socio-economic status, spirituality, and education. As a result, Maori start right down at the bottom, and it is important to redress this. Affirmative action is required to even get Maori on to the field, let alone an even playing field.

To this day, Maori spend a huge amount of effort defending their right to practice their own culture. It is not getting much easier with the monocultural institutions, policies and attitudes that still exist. Sometimes it is really hard to be Maori in this country.

### **Principles vs Articles of The Treaty**

When we talk about the Treaty we often talk about the Principles. The Principles are a much broader way of working within the Treaty and their practical application is therefore harder to define.

There are a number of sets of Principles, but the “official” Principles are those that were formulated by the Government in 1989. The Principles are an attempt to deal with Treaty issues in a way that is easier on the palate; these include the principle of Government, the principle of Self-Management; of Equality, of Reasonable Co-operation and Redress. Another version of the Principles list them as being “Participation, Protection, and Partnership”.

Unfortunately, the use of the Principles leaves room for inaction by the Government and by Government Departments who adhere to the Principles overall, but actually do very little in the way of active commitment to the Treaty. The other thing I've noticed is that the Principles all fall within the scope of the Articles anyway, as the following diagram shows.

PRINCIPLES OF THE TREATY OF WAITANGI FORMULATED BY GOVERNMENT (1989)		
	Principle	Relates to
1	Government	Article I
2	Self-Management	Article II
3	Equality	Article III
4	Reasonable Co-operation	Articles I, II & III
5	Redress	Article II

The Articles, as the basis of the Treaty, give us a quite clear way of working within a Treaty framework, and there is actually no need to work within Principles. I don't know any organisation that has effectively worked with the Principles of the Treaty; therefore, my advice would be to try to work with the Articles, to get that right first and then start to look at other things.

### **Giving Real Meaning and Effect to the Treaty in our Work and Lives**

Lots of people and organisations do make a real effort to understand the history of this country, to understand the Treaty and work with it in their communities. However, often we still remain unsure how to do this effectively. Public focus is often on the politics of it all; the small and often irrelevant issues that are designed to make people feel emotive about Maori and the Treaty, and to personalise it. This does not help us to work through the myriad of real issues that actually affect us all in the long term. We need to start to think about the wider community, about community development, and how we make a start with that.

I believe that community development is about tino rangatiratanga; self-determination. It is about working to empower people; it's about communities identifying what they need to develop themselves and utilising your expertise to get there. It's about allowing communities to develop themselves in a way that's appropriate to them; to be alongside when appropriate, and to know when to absent yourself. Community development is about collaborative, collective action taken by local people, with the aim of enhancing the social, economic, cultural, environmental and spiritual conditions of the community. For me, the primary goal of community development is to create better overall quality of life for everyone.

## **Working Within a Treaty Framework for Community Development**

So if you are working within a Treaty framework in terms of community development, what can you do at a practical level to be effective? Some of the following points may be of assistance:

- Make a commitment to actually working within a Treaty framework, don't just pay lip service to it. Don't wait for someone else to work it out for you. Be mindful of the Treaty, of biculturalism and what that means to you at a professional and personal level.
- Make an individual commitment. Work out what that means for you.
- Use an Article-based approach to the Treaty, and know what that means.
- Ask the question: what do each of your actions, activities, organisational policies and procedures mean in terms of the Treaty? Which Article(s) do they come under? You have to have this understanding first, before you can work out what's relevant to you, what's not relevant, and why. Self-education is critical in this
- Challenge your organisation - what does the Treaty really mean to the organisation? How does the organisation really enact its commitment to the Treaty and its Articles? Find out what your policies are and whether organisation's commitment goes any further than writing up a paper that is then left to gather dust on the shelf. However, don't try to challenge this on your own if you don't have to; it's much easier to get support from colleagues and approach the organisation as a group.
- Get out and about in the Maori community! Get to know the people, the local issues, personalities and politics. If your face isn't known in the Maori community, you are unlikely to be able to develop effective contacts and networks. If you are unsure about how to do that, contact someone who you think will know. This is really the only way you can begin to understand Maori needs, aspirations, beliefs, values and practices at a truly meaningful level.
- Feel free to have an opinion about Maori issues, as long as it is an informed opinion. Make a commitment to becoming informed, and don't make up your mind about an issue until you have all the information available. Also, don't listen to unreliable sources (such as the media). Nothing annoys me more than people who love to share their opinions publicly, without knowing anything about all sides of an issue. To me this is the height of laziness and ignorance, for which there is no excuse.

## **Working at a Local Level – Example from the Christchurch Community**

So how does this all this work at the local level? The following is one example of an organisation that is really trying hard to work effectively within a Treaty framework. The organisation is the Mental Health Foundation (Southern Region), and I use them as an example with the permission of their Manager, Sue Turner.

### Article I:

- Maori representation on the National Board, and the appointment of a Kaumatua for the National Board.
- Development of a Treaty Policy, with goals and objectives that are adhered to throughout the organisation (at national, regional and local levels). This Policy was developed in consultation with the Kaumatua, Maori Board Members and Maori staff, and then checked out at regional and local levels with Mana Whenua (local iwi) organisations and adjusted to local contexts (i.e. within different iwi areas).
- The Treaty Policy is reviewed annually.
- Establishment of a Monitoring Group which monitors Treaty developments at all times.
- An Annual Hui of the organisation (which all staff attend) to review and discuss Maori and Treaty issues and their role and response to the issues.
- Establishment of a Memorandum of Understanding with Te Runaka ki Otautahi o Kai Tahu regarding the relationship between the two, with ongoing monitoring of the relationship.
- Provision of regular group cultural supervision and training for staff, as well as individual cultural supervision for the Manager.

### Article II:

- In conjunction with the local Runaka, the MHF were involved in the establishment of a local Whakamana Tiriti group, designed to explore the Treaty and particularly tino rangatiratanga, and how Pakeha can work with the Treaty in a meaningful and consistent way.
- Consulting of Runaka and other Maori groups to ascertain local Maori health aspirations – getting out there in the community, knowing the community.
- Active support of Maori initiatives: e.g. attendance at Runaka meetings, and at other Maori community hui and initiatives.
- Holding of hui with the Maori community to gather information and feedback about Maori mental health promotion.
- Support of Runaka and Maori initiatives in any way asked of the organisation.
- Accepting that they don't always need to know everything about an issue to support Maori on it.

### Article III:

- Active recruitment of Maori decision-makers and staff throughout the organisation (as national and regional policy)
- Bicultural approaches to all activities within the organisation, e.g. physical environment, protocols and practices.
- Initiating of Maori-specific programmes and activities that will ensure the continued improvement of Maori health status.

So this is just one example of how a Treaty-based framework can really work. Although the Mental Health Foundation is far from being perfect in this area, they are one of the leaders in the Southern Region in terms of working within a Treaty-based framework, actually making it meaningful for their organisation. Therefore, other organisations can do the same kind of things in order to work more effectively with, and for, Maori.

### Conclusion

Therefore what it's about at the end of the day is Pakeha and Maori taking responsibility in their respective journeys with the Treaty. It's about the culture on the strong end of the power differential giving away some of that power, in order to empower Maori to develop within the community, in a way that is appropriate to them.

It's also about us seeing community development for what it is – tino rangatiratanga (self-determination) - working to empower Maori, enabling them to identify what they need to develop and offering your expertise to help them to get it. Within this as well, it's about learning what the appropriate levels of involvement are, when to be there and when to withdraw.

It's about appreciating the privilege it is to walk alongside the Maori community as they work towards improving their long-term social, economic, cultural and environmental conditions of their community. It's about the sense of fulfilment we get when we know we have empowered, enabled and assisted Maori in creating a better overall quality of life for their community, and for the wider community as a whole.

And long-term, it's about working with the Treaty in order that we can all move positively into a future which is built on mutual respect and understanding.