There has to be a middle ground. I do not think our recent constitutional reform finally ended the plight of our Indians, nor do I consider the new provisions perfect. Not all indigenous traditions and uses are acceptable; we cannot look the other way when they include slavery, denial of basic rights for women, penalties by mutilation or other such practices.

Economic development requires by force the incorporation of some "white people" uses. There is no way around it. As good as their traditional medicine can be, inoculation campaigns can not stop at their doorstep, this is not and can not be construed as an invasion or violation of their autonomy.

We are a mixed breed, our ancestors were indigenous peoples, but it is not proper to romanticize and idealize their uses and culture.

VI. Conclusion

Let me finish by reminding you of the real reason the Spanish conquistadores were able to defeat far superior forces with a few men: the Aztec Empire subjugated so many nations and was such a cruel master, that one day they all decided to join forces with the white invaders and together they were able to overcome the mighty "Meshicas."

Perhaps there lies the solution, in an alliance between Indians and *Ladinos* (white people).

The Maoris in New Zealand*

*Ambassador Terence Charles Baker***

I. Introduction

In New Zealand, we definitely have not solved the many issues that have to be faced and Maori still fare badly in socio-economic statistics. But, as a nation, we have recognised and formally acknowledged a national responsibility to the original inhabitants of New Zealand and are attempting to meet our obligations.[1] How far we have come as a nation in this task would be a lengthy debate in itself, and it is to be noted that the further one advances, the more complex the issues become and more expectations rise.

II. Background

New Zealand was one of the last significant land masses settled by man, something over a thousand years ago, and it required extremely competent seafarers to cross the oceans around the country. Polynesians had migrated over many centuries down from the Asian mainland through Micronesia and Polynesia to Aotearoa where they are identified as Maori or *tangata whenua.* Ethnically and linguistically, they are one with the Polynesians of Hawaii, Tahiti and Samoa . This means that they shared a common culture and language but were separated by kinship and linked into a fluid tribal system. Prior to European contact they were predominantly hunter-gatherers but also engaged in cultivation and trade.

* This was presented by His Excellency during the second day of the colloquium.

** Ambassador Extraordinary and Plenipotentiary of New Zealand to the Republic of the Philippines. Mr. Aris Gulapa helped in the progress and evolution of the article to its present form.

Cite as 47 Ateneo L.J. 829 (2002).

1. For a more extensive discussion of New Zealand's stand on indigenous issues, *see* Statement by New Zealand Representative Jillian Dempster on Indigenous Issues, U.N. Commission on Human Rights, 58th Session (18 March –16 April 2002) (discussing the protection of Indigenous Peoples).

Land ownership was based on occupation and usage. There were very strong spiritual and oral traditions with a social emphasis on *mana,* or status. Social requirements of *utu,* or payback, for either gifts or affronts, together with land disputes, produced endemic low-level warfare.

The appearance of Europeans in the late eighteenth century raised the capacity for warfare. The arrival of settlers early in the nineteenth century increased pressure for land and further acerbated the conflict situation. Maori had a highly evolved social and cultural structure prior to European arrival and adapted extremely well during the initial period of European contact, when they still outnumbered the newcomers.

Maori had a high literacy rate and they traded extensively within New Zealand and as far as Australia, and proved to be adept at modern war tactics and methods. But the sheer pressure of numbers eventually overcame them. The absence of any concept of individual land titles also proved to be a very serious impediment.

By the middle of the nineteenth century, Great Britain was a very reluctant colonizing power and, recognising the potential threat to indigenous inhabitants, endorsed the signing of a treaty (*Te Tiriri o Waitangi)* in 1840[2] between the Queen's representative and a significant number of

2. Treaty of Waitangi, Feb. 6, 1840, Gr. Brit.-N.Z. (original in Maori text) (trans. Prof. Sir Gugh Kawharu) (citations omitted), *available at* http://www.govt.nz/aboutnz/treat.php3 (last accessed October 11, 2002). The English text of the treaty provides:

> Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness. So the Queen has appointed me, William Hobson, a Captain in the Royal Navy, to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.
>
> THE FIRST
>
> The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.
>
> THE SECOND

Maori chiefs. While disputes over both what the treaty actually meant to the chiefs who signed the treaty and the translation persists, the treaty essentially ceded governorship (interpreted variously as trusteeships or sovereignty) in exchange for guarantees of treasured possessions *(taonga)* – the land, the lakes, the rivers, the seas, the forests and the mountains.[3] A further provision was that Maori land could only be alienated to the Crown. The Treaty had now been regarded as New Zealand's foundation document since we do not have a written constitution.

The second half of the nineteenth century was marked by successive waves of European migration, increasing pressure for land and sporadic warfare as Maori resisted encroachment and settler domination. But by the end of the century, Maori autonomy was crushed and they were effectively regarded as a dying race that would ultimately be "assimilated."

That did not however prove to be the case although urban drift did threaten the central core of Maori tribal life and land alienation continued through the twentieth century. By 1990, Maori comprised 15% of the population and had lost most of their land. But by that time, legal recognition had been given to their status and rights and the process of honouring the treaty was under way.

III. The Settlement Process

Maori had always been consistent in their demands for their rights under the Treaty of Waitangi to be honored by the Crown. The Treaty of Waitangi

> The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.
>
> THE THIRD
>
> For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.
>
> [signed] William Hobson Consul & Lieut. Governor
>
> So we, the Chiefs of the Confederation of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.
>
> Was done at Waitangi on the sixth of February in the year of our Lord 1840.

3. *Sustainable Development in New Zealand, in* THE NEW ZEALANDERS 10 (2002) [hereinafter *Sustainable Development*].

Act of 1975[4] established a Tribunal to establish just what this meant but it was not until 1987 that a Court of Appeals ruling legally confirmed the special partnership between Maori and the Crown.

The Waitangi Tribunal, headed by a judge and with both Maori and *pakeha* membership, inquires into Maori claims related to the Treaty and makes non-binding recommendations to the government.[5] An Office of Treaty Settlements attached to the Ministry of Justice but under a specific Minister in Charge of Treaty of Waitangi Negotiations, negotiates with tribes on specific claims. The Office also has power to acquire, manage and dispose of Crown land for purposes related to treaty claims. The office is currently negotiating with about twenty (20) claimant groups. There is also a separate Ministry of Maori Development (Te Puni Kokori) with an annual appropriated budget, which focuses on Maori development in the areas of education, health, employment and economic resources, *inter alia*.

Land and resources are the main issues from which all the other social and economic ills arise. Maori customary land now comprises only about six percent (6%) of the total landmass of New Zealand and most Waitangi Tribunal hearings are about wrongful acquisition of land in the past. Over 800 claims have been registered since 1975[6] (the relatively small number reflects the tribal nature of Maori society).

A Maori Land Court maintains records and titles of Maori land. However, through legislation in 1993, the special significance of land to Maori was recognised and the retention of land in Maori hands was specifically promoted. Collective ownership is a particular problem but this is part of the Ministry of Maori Development's responsibilities together with loans, trusts and succession issues. The Waitangi Tribunal and Treaty Settlements set-up is not designed to return private land to Maori even if a grievance is recognised. The aim of the settlement process is to ease the sense of grievance in a fair and durable manner. Past wrongs are acknowledged and redress is provided to contribute to building the economic base of the claimants.

There have been a number of very significant settlements with tribal groups, which have transferred substantial amounts of Crown resources, not just money, to Maori. The success of the recipient tribes has been mixed-as one would expect-but there are some remarkable success stories and it is not

4. Treaty of Waitangi Act (10 Oct. 1975), *available at* http://rangi.knowledgebasket.co.nz/gpacts/reprint/text/ 1975 /an/114. html (last accessed 18 Dec. 2002).

5. *Id* art. 4.

6. *Sustainable Development, supra* note 3. It was in 1975 when the Treaty of Waitangi Act was passed establishing the Waitangi Tribunal which was empowered to inquire into claims and to make recommendations on redress.

just about financial redress. Each settlement is based on an open and explicit recognition and acknowledgement by the Crown of past wrongs. Reconciliation is also a vital element.

As an example, during the 1860s land wars in Taranaki, on the west coast of the North Island, the government confiscated over half a million hectares of Maori land with no distinction between those tribes involved in fighting and those who were not. This alienation continued through the twentieth century and by the 1990's Maori retained only five percent (5%) of their original land. Compensation amounting to about $10,000 was offered in 1927 but, not surprisingly, it was rejected. Once the Waitangi Tribunal process was in place, the Taranaki tribes could submit claims for settlement of their century old grievances and the process is ongoing with a number of specific settlements made. The Ngai Tahu tribe of the South Island settled its claims in 1998. The settlement included a mixture of land and assets, including $250 million and the tribal trust has now built a portfolio worth over $373 million bringing in annual revenues of $120 million.

In 1992,[7] the Crown also legally recognized the rights of Maori to a share of New Zealand's very significant commercial fisheries resource (one of the *taonga* or treasures guaranteed under the Treaty of Waitangi). The Treaty of Waitangi Fisheries Commission now controls almost fifty percent (50%) of our total fishing quota and Maori are guaranteed a share of any new species. The problem has been how to divide the revenues and benefits among tribes (customary fishers and inland tribes) together with the issue of non-tribal affiliated Maori (urban dwellers) also getting a share.

IV. CONCLUSION

The settlement process is still at a very early stage and progress is exceedingly slow. Despite considerable efforts and a few significant settlements, the benefits are yet to be seen among the bulk of the Maori population. The Maori are still totally over represented in the worst sort of social statistics

7. *See How Government Works, The Right to Fish, available at* http://www.decisionmaker.co.nz/Guide/Government/Government.asp?Int_PageID=223 (last accessed 21 December 2002).

A Deed of Settlement was signed on 23 September 1992. Under this settlement the Crown provided the Maori Fisheries Commission with $150 million payable in three tranches of $50million, the first of which was to assist the Commission to buy a half share in Sealord Products Ltd in a joint venture with Brierley Investments Ltd. Also, 20% of all new species brought into the Quota Management System were to be handed to the Commission for the benefit of all Maori. Provisions relating to customary fisheries and Maori involvement in fisheries statutory bodies were also contained in the Deed of Settlement. Maori agreed that all current and future claims in respect of commercial fishing rights had been fully satisfied and discharged.

(health, education, crime) and grievances continue to mount; especially among urban Maori who often lack the formal outlet that direct linkages to a tribe provide. But New Zealand society has changed and is now much more at home with Maori values and practice. The country is forging a distinctly New Zealand cultural identity which incorporates many elements of Maori society (language and attitudes towards the environment and land).

The settlement process has been politically driven but it ultimately requires acceptance by the majority of the population and this includes changes in the attitudes and values of society. This all starts at the level of basic education and all children are now exposed to Maori language and culture at a very early age. Maori is now an official language, and there are radio and television programmes and stations in the language. Maori are also consulted on all significant domestic and foreign policy issues that touch on their interests as defined by the Treaty of Waitangi. The partnership that the government set out to develop a quarter of a century ago now exists although it is not yet the full and equal one to which we aspire.

Confronting the Challenge of Tomorrow

*Ambassador Howard Q. Dee**

As we conclude these proceedings of the Colloquium on Indigenous Peoples, it is right and proper for us to express our gratitude to the organizers — ILO INDISCO, UNDP, NCIP, ECIP, PANLIPI, Ateneo Human Rights Center and the *Ateneo Law Journal,* to the organizing committees under the baton of professor Sedfrey Candelaria, and to all the illustrious presenters from the government, academe, the NGO sector and the international community, with the notable presence of the resident representative of UNDP and his excellencies, the ambassadors of Finland, Mexico and New Zealand.

On my part, I find your commitment to the advancement of our Indigenous Filipinos most heartwarming, and your expert perspectives enlightening. The ten presentations yesterday represent a broad spectrum of your rich experiences on indigenous governance and culture, and the multifarious concerns attendant to the recognition and protection of ancestral domains. Each case study is in itself a learning experience that must be shared. We thank the *Ateneo Law Journal* in making this documentation, and its sharing possible.

This morning, we had the benefit of hearing the global perspective on the issues of international instruments, globalization, regional concerns and comparative country perspectives from an all-star cast of six distinguished gentlemen: a priest-educator, three distinguished ambassadors, the Resident Representative of UNDP and an ILO Specialist.

This grand show of support from the NGO community and the academe and especially from the international community is in itself a cause for us to celebrate. Why? Because your institutional support represents the social capital that is a vital resource to ensure the effective operationalization of the IPRA law — to emancipate our indigenous peoples from centuries of oppression and deprivation and return them to their former state when they were self-governing, self-nourishing and self-sustaining.

The storehouse of this social capital is with you, the non-government sector — your work experiences and human resources — in theorem as in praxis; your commitment and dedication, and your wisdom and your

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Cite as 47 ATENEO L.J. 835 (2002).

perseverance. This social capital is a treasure house and it should be used wisely to renew, regenerate, revitalize, reform and to support NCIP.

The IPRA law, expertly constituted, is a revolutionary law as it mandates a process of a revolutionary reform. This process involves (1) the awarding of ancestral domain titles to authentic indigenous communities; (2) developing their capabilities and empowering them to manage their ecosystems and resources for their self-sustenance and self-governance; (3) preserving their indigenous knowledge systems and traditions, and protecting their rights and their culture of peace.

It is easier to launch a revolution than to implement a revolutionary law. In a revolution, you need only to die once. In operationalizing the IPRA law and making the revolution happen as the law intended, you need to die everyday, a thousand deaths.

In a revolution, you can take your sweet time. But a slow implementation of IPRA can spell disaster because political forces are at work and the people are impatient.

For in no other government agency can you find this solidarity of NGOs, academe and the international community, except for Indigenous Peoples. This social capital must not be squandered or misused; it must be utilized to make IPRA work.

But I can see here the need for coordinated effort among the NGOs, the academe and the international community that holds this social capital in trust. I recommend therefore that this social capital be harnessed in an organized manner as you have done in this Colloquium to continue to support the efforts of NCIP and its objectives.

Let us take one issue which was brought up no less than the UNDP Resident Representative. This is the militarization of the IPs going on in the countryside. The IPs are being recruited in large numbers as CAFGUs to fight the NPA rebels. This is a revival of the infamous Alsa Masa movement of the eighties which caused many human rights violations including the murder of priests and innocent civilians. I went to see the Chief of Staff but got nowhere except a promise that he would issue guidelines for the recruitment of IPs as CAFGUs.

Yesterday morning, when I was there, it was reported to me that about a hundred civilian Dumagats in Tanay, Rizal were rounded up by the military, taken from their homes and brought to Camp Capinpin for presentation to president GMA as NPA surrenderees and returnees. And last week, nine IPs in Palawan protecting their fishing waters were slaughtered. These are acts of terrorism against IPs in these situations, the NCIP appears helpless to extend protection.

Sometimes, I suffer from schizophrenia. When I read the IPRA law and its goals, and the stated mission of NCIP, it is as if I am dreaming, on cloud nine. But when I wake up to the reality of what is happening on the ground, it is as if I am in a nightmare. Now when I am here in Ateneo listening to all these beautiful reports and interventions, I am back on cloud nine.

Before I get too confused, let me end with one recommendation and this is to continue this Colloquium on Indigenous Peoples for one year by holding three colloquia in 2003, organized around one of the three objectives of the NCIP, so that we can together assist and support their operationalization of IPRA and participate actively in this revolution.

These three objectives, as I understand them, are:

One, the survey, delineation and titling of ancestral lands including cultural mapping, adjudication and settlement of land disputes.

Second is the human resource development and the development of the natural resources, particularly livelihood, indigenous education, indigenous health practices and shelter, sustainable agriculture and water systems and preservation and promotion of indigenous knowledge systems and practices, including indigenous systems of self-governance of the indigenous peoples.

And third is the protection of human rights, protection and preservation of the domain, protection against violence and recruitment into armed conflict, social protection by way of self-sustenance and self-reliance of the indigenous peoples.

And fourth, if you want to hold another colloquium next year, let us talk about the renewal, reorganization, and the reformation of the NCIP to help it operationalize IPRA and meet all its three objectives.

Lastly, I propose that this colloquium pass a resolution addressed to our government military establishment as well as to all rebel groups for them to respect the rights of the indigenous peoples to live in their traditional culture of peace and not to recruit them as CAFGUs or rebel soldiers. This right is protected by the IPRA law and will be defended by our courts of law. It should be safeguarded by all men of goodwill.