Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169

Case Study: 5

Good Practices of Indigenous Political Participation: 
Maori Participation in New Zealand Elective Bodies

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EXECUTIVE SUMMARY

Historical circumstances, political will and Maori struggles have resulted in substantial Maori political representation in New Zealand Parliament. The combination of the guaranteed Maori seats and the Mixed Member Proportional Representation system represents a positive example of implementation of article 6.1 (b) of the ILO Convention No. 169, which requires participation of indigenous peoples in elective bodies to the same at least extent as the other sections of the population. The guaranteed Maori seats in Parliament have existed for the last 140 years and their number, currently 7 out of 121, varies depending on the number of Maori registering for the Maori roll. The Mixed Member Proportional Representation system (MMP) allows candidates to enter into Parliament either via the 69 electorates (which include 7 Maori electorates) or through pre-determined Party lists. Maori voters have the opportunity to register either for the Maori roll that decides on the 7 Maori MPs or the General roll. The Maori guaranteed seats confirm the Maori unique position in the New Zealand society, give them control over who will represent them in Parliament and contribute to their fair numerical representation. At the same time, the option of Maori enrolment in the general roll prevents marginalisation and pushes political parties to take Maori viewpoints into account when designing their policies.

New Zealand introduced the MMP system in 1993. Since then, the Maori percentage in Parliament has increased (17.3%, which translates to 21 Maori MPs out of 121) to the point that it is now slightly above the percentage of Maori in New Zealand society (15.1%). MMP has allowed the election of some Maori MPs who would not otherwise have been elected, but has also allowed the Maori Party, formed in 2004, to enter Parliament. Parties rank Maori candidates highly on partly lists in an effort to secure the support of Maori voters; 25% of Party lists MPs are Maori. Also, since the introduction of MMP, Maori participation in elections has increased and so has Maori engagement with national politics. Although the current polarised atmosphere, intensified by the adoption of the Foreshore and Seabed Act 2004 and the Brash Nationhood speech hinders Maori rights, recent measures in favour of Maori and the most recent additional funds in the 2007 Budget could be attributed to an extent to the Maori increased representation and visibility in the political scene. In addition,
the Maori Party has initiated positive steps for Maori, including the review of the State Owned Enterprise Landcrop operations on Maori lands, and has repeatedly opposed –albeit unsuccessfully- the adoption of restrictive bills for Maori.

Maori representation in Parliament has not been replicated at local government level: less than 5% of members elected to local councils are Maori. The Plenty Regional Council (Maori Constituency Empowering) Act 2001 and the Local Government Act provided local authorities with the choice to establish Maori constituencies, but very few councils opted for this option. The Electoral Act 2001 offered local councils the choice of staying with plurality or changing to a Single Transferable Vote (STV), a system that would be more beneficial to Maori, but very few authorities adopted STV and those who did, were plagued by poor explanations of the process. In general, Maori disengagement with local politics and lack of political will still act as important obstacles to the fair representation of Maori in local government. Fortunately, consultation with Maori in decisions that affect them at the local level has increased.
OBJECTIVES OF THE CASE STUDY

Increased indigenous political representation constitutes one of the main claims of the indigenous trans-national system. The example of Maori representation in the elective bodies of New Zealand offers some interesting lessons regarding practical ways to achieve fair indigenous representation. In the past few years, Maori Parliamentary representation has increased to the extent that currently, the percentage of Maori Members of Parliament is proportionate to the percentage of the Maori population in New Zealand. Maori constitute about 15% of the national population and hold 17.3% of the seats in Parliament. The Mixed Member Proportional (MMP) electoral system implemented in 1996 has significantly increased the level of Maori parliamentary representation. Further, the formation of the Maori Party in 2004 has added to the Maori voice in Parliament.

The main aim of this study is to critically present the case of Maori political representation in New Zealand as a positive example of indigenous participation in elective institutions, as required by article 6.1(b) of the ILO Convention No. 169. The study’s principal objectives are:

- To identify all elements of Maori political representation in New Zealand, including the Maori reserved seat system in Parliament, the Mixed Member Proportional Representation system;
- To give an account of the several Acts of Parliament providing specifically for Maori participation in public affairs;
- To analyse these initiatives within the wider historical and social context of New Zealand, including the Treaty of Waitangi, the Waitangi Tribunal, the Foreshore and Seabed Act 2004 and other developments;
- To record the various steps that led to positive initiatives and the Maori struggles to this end;
- To note the role of Maori women in the political life of New Zealand;
- To elicit Maori perspectives on their current and future participation in the elective, administrative and other political bodies of the State;
- To compare such measures for Maori participation in Parliament with the situation in local government;
To conclude on best practices of indigenous participation in elective institutions and administrative and other bodies, as included in article 6.1(b) of the ILO Convention No. 169;

To recommend, based on the New Zealand example, best practices for the implementation of Article 6.1(b) the ILO Convention No. 169 to the benefit of indigenous peoples.

METHODOLOGY

The methodology used for this study is qualitative and multi-level. A wealth of secondary literature has been used to understand the wider context of the study. Secondary literature has been useful to get an overview of the specific background and challenges of Maori participation in Parliament. Particularly interesting has been the 2007 annotated bibliography on Maori decision making processes compiled for the New Zealand Electoral Commission, a government body.¹ The Electoral Commission has also published other useful material that was studied. Primary sources and statistics regarding Maori representation were gathered and used to strengthen the arguments and/or highlight them. The work of the Waitangi Tribunal and speeches by members of the Maori Party as well as by Maori Members of Parliament also provided an insight into the major challenges faced by Maori. The opinions of Maori on their representation in the elective bodies have been recorded in the national context; so have the opinions of non-Maori that were easily accessible especially in the press. Other sources studied include relevant national Acts that provide for indigenous participation in the elective and administrative bodies; and their critiques by commentators and academics.

One of the challenges we were very aware of related to the accurate reflection of Maori feelings in Maori politicians’ speeches. Maori elites have been vocal, but it is not certain that they represent all Maori. We could not confirm that these opinions were shared by the majority of Maori, including the non-vocal ones, the ones who have not chosen to take an active part in politics. A further challenge was the emotional feelings developed after the

Foreshore and Seabed Act 2004. The press has published many emotional articles about the United Nations criticism of the state and the Maori claims in this respect. In the midst of many emotional exaggerations, it was difficult to get an accurate feel of the atmosphere between Maori and the state.

The collaboration with a Maori expert on indigenous political representation in New Zealand, Dr. Dominic O’Sullivan, has been invaluable. The use of his expertise on local realities, as well as his deep understanding of the various opinions within the Maori community, has ensured that Maori opinions and ideas are accurately recorded. Dr. O’Sullivan was able to gather most of the primary material needed for the study and to evaluate its usefulness and accuracy. Maori ideas and opinions have been paramount in this analysis and have been taken seriously into account when evaluating the measures taken for Maori representation in the political life of New Zealand. Such opinions have already been recorded in the public domain and the study used them directly and indirectly. Maori speeches in Parliament, political commentary by Maori in the newspapers, opinion polls in Maori electorates on the eve of the elections and other sources recording the Maori feelings were also taken into consideration. Although this material is rather easily accessible, its dissemination outside New Zealand is not widespread.

Essentially, the study presents existing resources on Maori participation as a means of identifying components of best practice for the implementation -both in theory and in practice- of article 6.1(b) of the ILO Convention No. 169. The elements of the measures taken by New Zealand need to be juxtaposed with the requirements of article 6.1(b) of the ILO Convention No. 169. Particular emphasis was given on the element of ‘effective participation’ required by article 6.1(b); hence, the emphasis was on practice rather than solely on the law. Other sections of article 6 are not the focus of this study. After the comprehensive presentation of the measures ensuring the Maori representation in the elective life of New Zealand, recommendations were made applicable outside the national context of New Zealand.
CONTEXTUAL OVERVIEW

New Zealand is a constitutional democracy governed by a unicameral legislature. It is a member of the Commonwealth, with the British Queen represented by a Governor General, being head of state. The Prime Minister is head of government and like all ministers, is a member of the elected House of Representatives. The state was governed from November 1999 to July 2002 by a Labour-Alliance Coalition Government. The Labour Party continued into a second term after the July 2002 general election, that time forming a coalition government with the Progressive Party. A general election again took place on 17 September 2005 and has resulted in New Zealand being governed by a Labour-Progressive Coalition Government with confidence and supply agreements with New Zealand First and United Future.

New Zealand has been inhabited by Maori for between 800 and 1000 years. The first known European contact was with the Dutch explorer Abel Tasman who mapped part of the New Zealand coastline in 1642-1643. The English explorer James Cook made three visits between 1769 and 1778. Sealing, whaling and trade from 1792 was the precursor to formal British settlement in 1840. The first Parliament assembled in 1852, but New Zealand remained a British colony until 1907 when it became a Dominion with increased self-government. It remained a Dominion until accepting full independence under the Statute of Westminster in 1947.

Today, New Zealand’s population of just over 4 million inhabits an area of 270,500 square kilometres over two main islands. The 2006 national census shows that the population is primarily of British descent (79.2%), with Maori constituting 15.1% of the total. The Maori population has increased by 30% in the last 15 years and 52.8% of Maori people claim that Maori is the only ethnic group to which they belong. It is estimated that by 2021 the Maori group will grow to 17%. Additional ethnic identities are most commonly (42.2%) with

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European groups. 84.4% of Maori live in urban areas compared with 50 years ago when nearly two-thirds were rural residents. In 2006, 87% of Maori lived in the North Island and just under one quarter (24.3%) lived in the Auckland region. Maori are geographically and economically integrated into the wider society, but for the most part are also determined to retain their unique cultural identity, determined to seek recompense for land alienation and to have their values and beliefs upheld in public life. Just one measure of this is the growing number of Maori who can converse in the Maori language. Although in the 1970s this language was on the verge of extinction, ‘in 2006, 131,613 (23.7 percent) of Maori could hold a conversation about everyday things in Te Reo Maori, an increase of 1,128 people from the 2001 census’.  

Maori still face discrimination and harsher conditions of living. They have lower income and education levels than the rest of the population; higher rates of unemployment, teenage pregnancy and single-parent families; and are incarcerated at a rate disproportionate to their size of the population. Many view these as typical consequences of colonialism; some place emphasis on the globalising of the New Zealand economy and the reforms in the state sector from 1984 through to the mid-90s which changed policies involving the Maori and affected their unemployment, health and education outcomes and their general socio-economic status. Yet, globalisation also had positive consequences for Maori as it ‘released a myriad of political possibilities that Maori grasped with both hands’. For example, they have been very active members of the transnational indigenous movement and have been using other indigenous peoples’ situation to find effective tactics and ways of improving their situations.

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5 For example, see 15-17th Periodic Report of New Zealand Report to CERD, UN Doc. CERD/C/NZL/17 of 18 July 2006.
8 Ibid.
Maori benefit from the international system of human rights protection. New Zealand has signed and ratified most major human rights treaties with the exception of the *International Convention on the Protection of the Rights of All Migrant Workers and their Families*, the *Convention for the Protection of All Persons from Enforced Disappearances* and the *Convention on the Rights of Persons with Disabilities*. It has also ratified many ILO conventions, including *Convention No. 111 on Discrimination (Employment and Education)*, which is of great relevance to Maori, but has not signed *Convention No. 107* or *Convention No. 169*. At the domestic level, the Human Rights Commission, established as a result of the *Human Rights Amendment Act 2001*, incorporates several Commissioners, including a Chief Human Rights Commissioner, a Race Relations Commissioner, an Equal Opportunities Commissioner and several part-time Commissioners; they all provide leadership, advocacy and education on human rights. In addition, Te Puni Kōkiri, the Ministry of Maori Development, specifically supports the government in policy advice on Maori issues, effective monitoring and building and maintaining relationships between the government and Maori. The Maori Land Court may hear applications for ‘customary rights orders’ under the *Foreshore and Seabed Act 2004*. The Office of Ethnic Affairs launched in 2001 as a unit within the department of Ethnic Affairs, has supported the first Ministerial portfolio for Ethnic Affairs and advises on Maori issues, although its main concern is migrant groups and their descendants.

Recompense for land alienation is now possible under the *Treaty of Waitangi Act 1975* and subsequent amendments and is given effect in specific tribal context by special legislation such as the *Waikato Raupatu Claims Settlement Act 1995*. Indeed, during the 1980s Maori/Crown relationships were heavily influenced by the understanding that principles of the Treaty of Waitangi ought to be reflected in public policy. In the Court of Appeal case *New Zealand Maori Council v. Attorney-General* President Cooke explained what perhaps became the most influential, the ‘partnership’ principle. According to it, the Treaty signified a partnership between Pakeha and Maori requiring each to act towards the other reasonably and with the utmost good faith. The relationship between each
of the treaty partners creates responsibilities analogous to fiduciary duties. The duty of the Crown is not merely passive, but extends to active protection of Maori people and their use of their lands and waters to the fullest extent practicable. The partnership principle is, however, problematic. Expectations between partners and among the disparate components of each partner differ, and principles ‘have often found refuge in vagueness and ambiguous generalisations’.


The principles have allowed some Maori to continue to portray themselves as victims constantly in grievance mode, a mentality which leads down a dead-end path from which no true progress can come. It also anchors Maori (and tries to do the same to non-Maori) to the past, limiting their prospects for the future.

Finally, these principles are a divisive mechanism which has set one group of New Zealanders against another (…)\(^{12}\)

The Bill passed its first reading and its second reading is due in 2008.

Nevertheless, the most important issue for the recent deterioration of the relations between Maori and Pakeha has been the (2004) *Foreshore and Seabed Act*, an act that attracted severe criticism from the United Nations. The Special Rapporteur on Indigenous Issues referred extensively to the human rights implications of the act in the report of his visit,\(^{13}\) while the UN Committee for the Elimination of All Forms of Racial Discrimination (CERD) issued an early warning procedure on the matter (Decision 1(66)). CERD has also commented on the restrictive interpretation of ‘positive measures’ by New Zealand.\(^{14}\) The state has repeatedly denied the criticisms and some governmental sources have even expressed suspicion and negativity towards the United Nations fora. Other controversial issues in addition to the removal of references to the Treaty of Waitangi from acts and public documents that has been mentioned above\(^{15}\) include suggestions to end special measures for Maori\(^{16}\) and New Zealand’s position regarding the draft *Declaration on the Rights of Indigenous Peoples*.\(^{17}\)


\(^{17}\) Peace Movement Aotearoa, as above.
The Declaration of Independence

The origins of modern New Zealand politics can be traced to the Declaration of Independence of the newly created United Tribes of New Zealand promulgated in 1835. The Declaration was a statement of independent statehood, which Britain recognised as a necessary precursor to the Treaty of Waitangi, signed in 1840 between the Chiefs of the United Tribes and Britain. The Declaration introduced the concept of a pan-tribal national polity to Maori political, social, and cultural life and there has since developed a two-tiered tribal and national basis, alongside the individual basis for political participation. The term Maori, arose from the phrase ‘tangata maori’ or ‘ordinary people’ of New Zealand, and entered popular discourse as a British construction of convenience, but it also helped cement a new sense of ‘nationhood’ to indigenous political conceptions.

Maori signed the Treaty of Waitangi to give Britain the authority to control antisocial behaviour among its settlers, to strengthen economic interaction and to foster a protective relationship with Queen Victoria to secure authority over their own affairs and counter the possibility of French or American invasion. The Treaty established the authority of central government (article 1); preserved Maori land, forests, fisheries, other resources and tribal governance over them and established that any selling of Maori land can only be made to the government (article 2); and stated that Maori should have the same rights as British subjects (article 3). Tensions among interpretations of the nature and location of authority have since been the principal characteristics of Maori/Crown political relationships. In any case, the Treaty of Waitangi ‘has become increasingly important as a constitutional founding document for New Zealand’.

The Treaty of Waitangi Act 1975 established the Waitangi Tribunal as a body empowered to investigate and recommend redress for contemporary breaches of the Treaty by the Crown.

The Treaty marked a turning point in New Zealand’s political and legal history. Although enacted without controversy and with bipartisan parliamentary support, the nature and extent of the Tribunal’s future importance was, perhaps, not fully anticipated. The Tribunal, in time, came to ‘the forefront of a nation coming painfully to terms with its past for the first time’; contemporary objections to its work ought to be evaluated in this context. The Tribunal is a quasi-judicial body standing outside the political process and its jurisdiction is recommendatory only. Retrospective powers were granted by amendment to the Act in 1985. The Act recognised Maori grievances against the Crown and strengthened the Treaty as an on-going moral, political, and legal point around which Maori political participation has become focused.

The Crown settles grievances with Maori under legislation specific to each claim. Settlements are intended to be ‘full and final’. The Waikato Raupatu Claims Settlement Act 1995 was the first of many and its approach and principles are illustrative of later settlements. The Act began with an unreserved apology to the Waikato people, provided monetary compensation and the return of some confiscated land. The Crown apologised for its ‘invasion’ of Waikato during a war between the two in 1863 and for the confiscation of land with a ‘crippling impact on the welfare, economy and development of Waikato’ (Waikato Raupatu Claims Settlement Act 1995. Part I, section 6 (3)) The Crown accepted Waikato’s argument that ‘as land was taken, land should be returned’ and that ‘the money is the acknowledgement by the Crown of their crime’. The Crown recognised that the lands confiscated in the Waikato have made a significant contribution to the wealth and development of New Zealand, whilst the Waikato tribe has been alienated from its lands and deprived of the benefit of its lands. Tribunal findings in historical cases have helped considerably in the restoration of tribal economic bases. Other settlements have concerned development rights with wider economic significance in fisheries, geothermal energy, water, airwaves and other natural resources.

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21 Ibid., part I, section 6 (5).
Although *iwi* and *hapu* (tribes and sub-tribes) are acknowledged as traditional units of Maori social organization with whom the Government is settling Treaty claims, they have very limited formally recognized governance powers, mainly with respect to assets returned in Treaty settlements and in the fulfillment of social/health contracts with the government. They must also be consulted in several cases under the *Resource Management Act*. New forms of Maori governance bodies have emerged from the settlement of claims process. *Iwi* authorities currently participate in *Treaty of Waitangi* settlement negotiations, political decision-making and consultation with local and central government; these bodies are usually *iwi* authorities, among others *Runanga* (which have often replaced Trust Boards). For instance, *Te Runanga o Ngai Tahu*, a governance body was established by the Ngai Tahu *iwi*. These bodies also participate in the successful management of any monies or assets that arise from the settlement of claims.22

**Maori Autonomy and Development**

Maori enjoy participation and autonomy in some areas. For example, *iwi* authorities are independent institutions that facilitate political participation. Their political status was enhanced in the 1990s when they were empowered to negotiate health and social service delivery contracts with the government, to engage in commercial activities, and to receive, on behalf of their members, compensatory settlements for breaches of the Treaty. The greater political recognition of *iwi* authorities has played a major role in enhancing Maori autonomy and is the most significant example of government willingness to acknowledge limited self-determination. Maori autonomy can also be seen in the education system, where the state has supported the establishment of schools and pre-schools that teach in the Maori language, and according to a Maori pedagogy. The establishment of state supported Maori tertiary educational institutions, one of which has authority to teach to Ph.D. level, has markedly increased the rates of Maori participation in tertiary education.

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Contemporary Maori conceptions of participation were well articulated at the Hui Taumata 2005, a Maori development summit meeting sponsored by the government, along with several private Maori and non-Maori entities. The meeting’s political, economic, cultural, and social objectives stemmed from the overriding objective that Maori ‘might live as Maori and as citizens of the world’. From this, the meeting was explicit in its view that Maori required an economic base to engage with the national and international economies in its own right, as the basis for development, and as a guard against assimilation. Economic development was also sought to ensure that Maori can participate in the affairs of state from a position of strength rather than dependence.

The Ngai Tahu iwi, which covers most of the South Island, provides an example of the large-scale Maori economic re-engagement. Ngai Tahu has increased its financial worth from its $170 million Treaty settlement package in 1998, and is once again the largest landowner in the South Island. Also, Tainui Group Holdings established in 1998 to manage Waikato-Tainui commercial assets after the tribal confederation’s Treaty settlement in 1995, has a property portfolio worth $140 million, substantial investments in tourism and agriculture, and its subsidiary company Raukura Moana Seafood owns 416 tonnes of in-shore fishing quota.

The above points emphasise the need for Maori participation in all aspects of life. Cultural, economic and social participation is very important if the situation of Maori and their relations with Pakeha are to be improved. Notwithstanding the need to explore all types of participation, this study will focus on political participation of Maori in elective bodies.

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23 Hui Taumata, 2005, p. 4
IMPORTANCE OF THE CASE AS A POSITIVE EXAMPLE

Historical circumstances, political will and Maori struggles have resulted in substantial Maori political participation in elective and administrative bodies. The Parliament of New Zealand has today 21 (17.3%) Maori MPs out a total of 121. This proportion goes slightly beyond the percentage of Maori out of the whole population in New Zealand. The several features that contribute to the effective realisation of Maori participation are particularly important. They are: a/ guaranteed seats in Parliament; b/ Mixed Proportional Representation system and c/ the formation of the Maori Party.

The guaranteed Maori seats in Parliament are supported by the wide public influence of the Treaty of Waitangi, a foundation for a unique democratic order that supports at least limited Maori self-determination. Even though still rare, dedicated seats in Parliament for representatives of indigenous groups are no novelty: Since 1952, Greenland has been represented by two permanent members in the Danish Parliament. In India, the constitution reserves districts for scheduled castes and tribes in proportion to their numbers in the population, thus reserving 79 seats for the 15 per cent scheduled castes population and 41 seats for the 8 per cent scheduled tribes population. In these districts, although all electors have voting rights, only a member of the scheduled caste or tribe may stand for election. In Taiwan indigenous peoples also have guaranteed seats; in the aftermath of the down-size of the Parliament, guaranteed indigenous seats will be reduced from 8 to 6 in the future. In Colombia, indigenous people have the right to their own seat in the Chamber of Representatives and two in the Senate of the Republic, elected by means of a special constituency for indigenous communities; Venezuela also has reserved seats for indigenous representatives. In Burundi, the 2005 Constitution includes three guaranteed seats for indigenous Batwa people in Parliament and three in the Senate. Still, even these examples do


not fully match the New Zealand example: the high number of guaranteed Maori seats (currently 7); the tradition of these seats which have existed for the last 140 years; and the combination of guaranteed seats with a system that allows for diversity in Parliament makes this case stand out as an overall positive example of indigenous representation in elective bodies.

The Mixed Member Proportional Representation system (MMP) is the second positive feature that has contributed to the fair representation of Maori in Parliament. Voters cast a vote for the candidate of their choice and a vote for the political party of their choice. The percentage of party votes decides who will be an MP from pre-determined party lists. In addition to list MPs, MPs are elected to represent 69 electorates on the basis of the number of votes. These 69 electorates consist of 62 general seats and 7 Maori seats. The Maori seats are not decided by the General roll, but by the Maori roll. Maori have the chance to either register for the General roll or the Maori roll. The number of Maori who have registered for the Maori roll decides the number of seats that are guaranteed for Maori MPs.

The Maori seats continue to be a feature even after New Zealand has adopted MMP, a move that might been thought to obviate the need for continued dedicated representation for a social group as large as Maori and as well-represented in party lists as Maori. In this respect, the role of the dedicated seats has changed from being a safety net serving the wider goal of self-government for Maori as a distinct people. Essentially, the co-existence of Maori guaranteed seats and the MMP system demonstrates how positive measures for the protection of indigenous peoples do not have to lead to their separation from the rest of the population. The system allows for Maori to decide whether they wish to vote in the general roll or the Maori roll.

Also, New Zealand’s MMP electoral system encourages further Maori parliamentary participation. The MMP system has been seen by many as the most inclusive system, as it makes a greater presence in Parliament more likely of sub-national groups and women. The UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of
Indigenous People has noted that ‘the MMP system, whatever its limitations, has broadened democracy in New Zealand and should continue governing the electoral process in the country to ensure a solid Maori voice in Parliament and guarantee democratic pluralism’.\textsuperscript{27} The MMP system as practiced in New Zealand has served as a model-suggestion for other countries with indigenous peoples and especially Canada.\textsuperscript{28}

Within the spirit of diversity that this system encourages, it has created an opportunity for an independent Maori parliamentary voice. The Maori Party was formed in 2004 and could even hold the balance of power in future Parliaments. It is interesting that one of the co-leaders of the Party has become a well-known female figure in New Zealand politics. Her presence is a role model for other Maori women and contributes to a more visible presence of indigenous women in Parliament.

The growing Maori population; a strengthening Maori economic base through the settlement of claims against the Crown for breaches of the Treaty; increasing income and qualifications; pressure to extend guaranteed Maori representation to local authorities; national economic interdependence; and legislative requirements that public bodies consult Maori on a raft of political issues; all mean that there is a reasonably positive climate for active and meaningful Maori political participation. Maori do not, however, accept that the nature and form of their contemporary political participation is entirely just and unproblematic. The \textit{Foreshore and Seabed Act 2004}, which precipitated the foundation of the Maori Party is the most significant recent example. Also voices for the elimination of the Maori guaranteed seats and aggressive talk against positive measures for the protection of Maori canvass a doubtful future for Maori representation in elective institutions. Notwithstanding the challenges laying ahead, the current combination of dedicated seats, the favourable political system for Maori access and the establishment of the Maori Party constitute a positive example of indigenous political

\textsuperscript{27} \textit{Stavenhagen Report}, as above, para. 17.

\textsuperscript{28} For example, see A. Fleras, ‘From Social Control towards Political Representation? Maori seats and the Politics of Separate Maori Representation in New Zealand’ (1985) 18 \textit{Canadian Journal of Political Science} 551-576; also see L. Smith, ‘Mending Fences: Increasing Aboriginal Representation in Canada’, Paper presented in the 78\textsuperscript{th} Annual Meeting of the Canadian Political Science Association, York University, June 2006.
representation. In this way, with all its problems, the Maori political representation in the electoral system combines ‘stability with experimentalism’.  

RELATED ARTICLES OF CONVENTION No. 169

Article 6.1(b) of the ILO Convention No. 169 reads:

1. In applying the provisions of this Convention, governments shall:

   (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

The ILO Committee of Experts has noted that ‘the spirit of consultation and participation [as included in article 6] constitutes the cornerstone of Convention No. 169 on which all of its provisions are based.’ 30 One of the main incentives for the establishment of this convention was indigenous control over the matters that affect them and equality of treatment combined with recognition of the right to be different. 31 Article 6 requires consultation ‘whenever consideration is being given to legislative and administrative measures which affect [indigenous and tribal peoples] directly’. 32 This article has been used mainly for effective participation in administrative and other bodies, rather than elective bodies. Paragraph 6.1(b) is particularly important for our case study: it requires governments to establish means by which indigenous peoples participate ‘to at least the same extent as other sectors of the population’. This language leaves an opening for special treatment 33 but at the same time, it encourages the empowerment of indigenous peoples to fend for themselves. This is exactly the basis on which the electoral system works in New Zealand: it gives Maori the possibility to participate in Parliament through the general roll, but it also gives them the possibility to participate through their own parliamentary seats.


32 Article 6(a).

33 Swepston, as above, p. 42.
In essence, effective Maori participation in Parliament has been achieved in New Zealand through the combination of the Mixed Member Proportional elective system and the Maori dedicated seats. Further, the establishment of the Maori Party broadened the possibilities of indigenous participation in Parliament.

Let us now see these features in detail.
GUARANTEED MAORI PARLIAMENTARY REPRESENTATION

The most significant and enduring mark of Maori political authority and participation is the designated geographically-based seats in the House of Representatives of New Zealand’s unicameral Parliament. The Maori dedicated seats have existed since the 19th century. When the first New Zealand Constitution was adopted in 1852, Maori were excluded from voting if they did not have individual property qualification to vote, even though Maori tribes (*iwi*) continued to control a substantial part of New Zealand. Rising tensions between Maori and non-Maori about the Maori alienation from their lands and the increasing Crown’s authority; the subsequent New Zealand Wars; the embarrassment about Maori complete lack of representation in the government despite their paying taxes to the Crown and living under laws passed by Government; and repeated attempts by Maori chiefs to enter Parliament initiated changes.\(^{34}\) The official reasons for the establishment of Maori guaranteed seats in 1867 were explained at the time in the *New Zealand Gazette*:

> Whereas owing to the peculiar nature of the tenure of Maori Land and to other Causes the Native Aboriginal inhabitants of this Colony of New Zealand have heretofore with few exceptions been unable to become registered as electors or to vote at the election of members of the House of Representatives or of the Provincial Councils of the said Colony and it is expedient for the better protection of the interests of Her Majesty’s subjects of the native race that temporary provision should be made for the special representation of such Her Majesty’s Native subjects in the House of Representatives and the Provincial Councils of the said Colony.\(^{35}\)

The *Maori Representation Act 1867* fixed the number of Maori seats at four regardless of any increase in the number of European (now called general) seats. Giving four seats for 40,000 to 50,000 Maori, as opposed to 72 seats for 220,000 non-Maori population, was hardly a fair compromise; still, by doing so, the Act recognised that although by this time colonisation had left Maori relatively weak, numerically and politically, they were still an important minority, a significant financial participant in the colonial economy and major land holders. The Act was also a conciliatory initiative in the end of the New Zealand Wars, which was intended to

\(^{34}\) Geddis, ‘A dual track democracy?’, as above, 351-352.

\(^{35}\) (1867) 47 *New Zealand Gazette* 491.
alleviate tensions between the government and Maori, and to acknowledge the assistance of government aligned tribes during the wars.

The seats were intended as a temporary measure until the imposition of individual title over Maori land would allow Maori to meet the property qualification to vote in European seats. According to the settlers, the cultural change imposed by individual property title, inter-marriage and the Maori accepting the ‘superior culture’ would ensure that Maori and non-Maori would harmoniously become one. However, Maori refused to assimilate and in any case, MPs feared the consequences of Maori swamping the general seats; hence, in 1872, Parliament voted to retain the Maori seats for five additional years and indefinitely in 1876. By the end of the 1870s separate representation for Maori and non-Maori had become a legally established characteristic of New Zealand’s electoral system; when universal suffrage was introduced in 1893 the guaranteed seats remained.

In the 1870s, Maori also had the chance to be represented in the Cabinet. The first Maori ministerial representation was in the 1870s. This was in spite of the several times premier, Edward Stafford, arguing that it was absurd ‘that they should enter into a Cabinet and take part in the ordinary affairs of the Colony’. Pragmatism, however, compelled an attitudinal shift in 1872 when Stafford appointed two Maori members to the ministry because he required their votes to form a government. After just one month in office the government’s attitude to confiscated Maori land alienated the support of one of the Maori ministers and the government lost its parliamentary majority.

In the following years, Maori repeatedly asked for more seats and for more formalised rules in Maori electorates; however, Maori parliamentary representation continued to be viewed more or less as second-class until the 1993 Electorate Act. This act changed the total number of Maori seats from four to a varying number determined in a similar way to the general

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36 D. Keenan, ‘A Permanent Expedient: MMP and Maori Politics’ (1006) 1 He Pukenga Korero at 60.
electorates (on the basis of the voting population of Maori) and reviewed periodically by an independent Representation Commission. Hence, the number of Maori seats depends on how many Maori have been registered to the Maori electorate, rather than the general electorate. In 1993, when the system changed and greater participation of minorities and women was correctly predicted, Parliament made a significant departure from the original plans of the Royal Commission on the Electoral system and did not eliminate the dedicated Maori seats. During consultations, the importance that Maori placed on the dedicated seats in Parliament became clear. In view of this, the Select Committee’s report on the proposed legislation and Parliament agreed that it would be illegitimate to establish a new system without the Maori seats. The Electoral Act 1993 provided that if voters chose the MMP system, the Maori would retain their dedicated seats. In our view, this outcome, the result of a deliberative process based on consultation and good will, manages to get the balance right. By using the enrolment option and pressuring parties for list positions, Maori have now increased their seats up and beyond their percentage to represent their special status in the society they live in: from 7.1% of Parliament before the introduction of the MMP system, Maori now represent the 17.3% of Parliament.

According to the system, any citizen could be enrolled to a Maori electorate if s/he can prove some identifiable Maori ancestor. The system follows the principle of self-identification, as any Maori can choose to be included in the general electorate. This choice can be exercised the first time the person enrolls to vote and can only be changed every 5 years during a 4 month Maori Electoral Option (MEO) period. During the MEO, those who indicate on their enrolment forms that are of Maori descent are sent letters asking them to choose between registering for the Maori roll or the general roll. This is a major difference between the New Zealand and the majority-minority districts in the US, in that the US minorities cannot choose where they whether the want separate representation.  


39 Ibid. at 536.
Choosing to register in the Maori roll rather than the General roll has theoretical and practical advantages for Maori. For Maori, these seats represent an important symbol of their distinctive constitutional position as a distinct nation. Maori, as other indigenous groups around the world, want to distance themselves from minority groups; the dedicated seats give the right message about their status within the New Zealand society. In more practical terms, registering in the Maori roll ensures democracy’s effectiveness for Maori. The number of voters in the Maori roll is linked to the number of Maori guaranteed seats in Parliament: the more Maori roll for the Maori roll, the more guaranteed seats in Parliament Maori get. This means that by registering in the Maori roll, Maori get more Maori MPs in Parliament, which in turn gives Maori more possibilities to put forward their opinions, more space for political manoeuvring and more chances to be heard. Also, studies show that Maori registered in the Maori roll seem to believe that they have a better say on issues:

Although the likelihood of feeling efficacious is small for Maori regardless of enrollment status (...), the likelihood of having the lowest level of efficacy is higher for Maori on the general roll (...) than those on the Maori roll (...). This suggests that the Maori electorates succeed in fostering a greater sense of efficacy among those Maori who choose to take advantage of the Maori option.40

However, having Maori registered in the General roll has an important advantage: that of non-marginalisation. The inclusion of Maori in the general roll ensures that they are included in the mainstream political processes. In this way, they are able to participate in the wider political life of the state. They are also more interested to the general politics of the state, rather than the Maori politics only, and, as long as the processes do not exclude them, may have more incentives to become informed and active citizens. Also, their votes act as incentives to political parties and MPs to respond positively to their claims. Their claims become part of the general vision of the state and its mechanisms, while Maori view is taken into account on every single matter, rather than just the matters that concern them.

Therefore, the choice that the current system gives to Maori to register either with the Maori or the general roll is a positive example of the implementation of a specific principle

As mentioned above, article 6 specifies that indigenous peoples should have ‘at least’ the same rights of participation to elective institutions as the rest of the population. Same rights are not perceived as same measures, but measures that guarantee equal opportunities and outcomes. In this instance, Maori have the right to participate in the election of Parliament in the same way as non-Maori (though the general roll). At the same time though, ILO Convention No. 169 encourages the recognition of separate measures for indigenous peoples; such measures are recognised by other instruments too (f. ex. CERD article 1.4). By giving the choice of the general or the Maori roll, New Zealand gives control to Maori individuals to decide whether they want to take part in a separate process that would ensure Maori places in Parliament or they wish to be part of the same process as the rest of the population. With control over matters that affect them and self-management being keywords in ILO Convention No. 169, this formula seems to follow the spirit of the convention.

The division of Maori voters between the Maori and the General electorates seems to maintain a difficult balance. Indeed, there is a fear that if all Maori registered to the Maori rolls, it could lead to their political marginalisation, as non-indigenous MPs would have no electoral incentive to respond to the Maori concerns. However, the system seems to prevent this, as the two-vote system creates continuing incentives for parties to address Maori concerns. On the other hand, if all Maori shifted to the general roll, they might gain electorate influence at the sacrifice of group solidarity and the risk of losing descriptive representation in Parliament. Essentially, this dilemma is included in the wider debate on assimilation v. separation.\textsuperscript{41} Nagel notes the paradox of the two-vote system, where separate voting rolls could lead to the integration of Maori in the society on the basis of equal and effective participation.\textsuperscript{42}

Since 1993, the percentage of Maori choosing to take part in the Maori roll option has increased steadily. It is worth noting that registration in New Zealand is compulsory and it is

\begin{footnotes}
\item[41] J. Nigel, ‘What Political Scientists can Learn from the 1993 Electoral Reform in New Zealand’ (1994) 27 3 Political Science and Politics 525-529 at 527-528.
\item[42] Ibid., at 528.
\end{footnotes}
estimated that around 90% of Maori are registered on either roll.\textsuperscript{43} The Electoral Commission has noted that if all Maori were enrolled for the Maori roll, there would be about 13 Maori electorates.\textsuperscript{44} In the first Maori Electoral Option held in 1991, there was less than 1% increase among those choosing to register on the Maori roll. In the second Maori Electoral Option round held in 1994, enrolment increased from 41% to 51%, resulting in a fifth Maori seat. In 1997, Maori enrolment increased to 54% resulting to a sixth seat, effective in the 1999 election. In 2001, a seven seat was created following an increase of 4%. In 2002, 170,000 Maori were represented in the seven electorates (about 25,000 Maori per electorate).\textsuperscript{45}

In the 2006 Maori Electoral Option, 21,500 Maori changed the type of electoral roll they were on and 10,280 enrolled in either roll for the first time. Overall, an additional 14,914 Maori enrolled on the Maori roll (7,914 of that were first time voters) bringing the total number of voters in the Maori roll to 385,977.\textsuperscript{46} A significant increase of close to 50,000 Maori in the overall population growth was noted, an increase from 671,293 in 2001 to 721,431 in 2006. This latest MEO narrowly failed to bring an additional eighth seat for Maori, even after a concerted effort by the Maori Party.

Of course, for the system to work well, the modalities of the Maori option are important. These modalities have been the subject of proceedings before the Waitangi Tribunal and the national courts. In 2004, a claim to the Waitangi Tribunal concerned the 2004 election and the polling arrangements made for the by-election in Te Tai Hauauru.\textsuperscript{47} The claimant complained about the fact that 406 polling places were provided by the Electoral Office in the Tai Hauauru electorate in the 2002 election, but only 100 for the 2004 by-election. The claimant argued 52% of the total number of votes cast in the Tai Hauauru electorate in 2002 had been cast at one of the 311 places that would not be available in the 2004 election. Thus

\begin{footnotesize}
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\item \textsuperscript{43} Banducci, Donovan and Karp, as above, 536.
\item \textsuperscript{44} 2002 Electoral Commission.
\item \textsuperscript{45} Banducci, Donovan and Karp, 537.
\item \textsuperscript{46} ‘Maori Electoral Option 2006’ (2006) 15 \textit{Maori Electoral Option e-panui}.
\item \textsuperscript{47} Waitangi Tribunal, \textit{Interim report of the Waitangi Tribunal on the Te Tai Hauauru By-Elections} (WAI 1174)
\end{itemize}
\end{footnotesize}
the claimant argued that Maori voters in the Tai Hauauru electorate in the 2004 by-election would not receive fair and equal treatment when compared either with the position which prevailed in the 2002 election or with the allocation of resources to a by-election in 1998 where that electorate was only a third the size of Te Tai Hauauru. He believed that the Crown should provide the same number of polling places in 2004 that it provided in 2002 – that is 406. The state replied that the two elections were not really compatible and that the main criterion was to provide good service to the electorate and to expend public money prudently. The Tribunal accepted that the approach was correct, but could not decide on whether the result was fair or not. The Tribunal did note though that the distance necessary for voters to travel was a real concern, especially given that the number of Maori not having a vehicle was on average twice that for non-Maori.

A claim concerning the funding provided to publicise the Maori option was submitted to the Waitangi Tribunal in 1994. The *Maori Electoral Option Report* 48 analysed the exercise by Maori of the Maori electoral option to register on the Maori or the general roll (s.76 of the Electoral Act 1993). The Tribunal found that the present level of funding to assist them in promoting the enrolment of their people and to gain an understanding of the nature and implications of the choice they are required to make was substantially less than would be reasonably required to meet the Crown’s Treaty obligations to protect Maori citizenship rights. The Tribunal noted that ‘if adequate funding is not provided for both a vigorous kanohi ki te kanohi and a targeted mass media programme to ensure that as many Maori as possible are enrolled and exercise an informed choice then Maori will be seriously prejudiced’. 49 The Tribunal recommended that further funding should be provided for a publicity campaign concerning the option. However, Cabinet rejected this suggestion on the grounds that first, a considerable amount had been spent for the 1994 Maori option and second, that the Electoral Act 1993 required that an option card be sent to every registered elector recorded as being of Maori ancestry; hence, no need for further publicity. Overall, Cabinet noted that it was for the Government to decide how much should be spent on the publicity campaign.

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48 Waitangi Tribunal, *Maori Electoral Option Report* (WAI 413), Waitangi Tribunal Report 7 WTR.

49 Ibid.
After the tribunal’s opinion, the National Maori Congress and others sought the judicial review of the decisions regarding the modalities of the Maori option. The Courts provided some support to the claimants even though they did not provide a legal remedy. The High Court was critical of the Government, even though it could not ask for a re-run of the MEO, while the Court of Appeal recognised that the government was under the implied duty to ensure that adequate information was made available to all those entitled to exercise their right of choice between General and Maori electorate. Still, the Court of Appeal thought that such a duty did not derive from the Treaty and concluded that the government’s actions had passed the test of reasonableness. At the end, the High Court and the Court of Appeal held that even though ‘what was done was far from perfect’, the Crown had taken reasonable steps to publicize the Maori option. Even though the Maori Congress sought leave to appeal the Court of Appeal decision to the Privy Council, this was denied in June 1995.

The judicial recognition of a duty to publicise the existence of MEO period led to some changes in the system. The Government recognized that it was especially important to promote awareness of the option to Maori, especially since the number of Maori seats in Parliament is determined by the number of electors registered on the Maori roll. Following an Electoral Law Select Committee inquiry, legislation was enacted to extend the option period from two to four months. The notification of Maori voters of each MEO period by mail; the better funding of such campaigns; the extensive face to face education; and the work on encouraging enrolment paid by the Electoral Enrolment Centre and carried out by Maori organisations; have all had very positive results, as more Maori have enrolled in the Maori roll. Consequently, the number of dedicated Maori seats in Parliament has risen from five in the first MMP election held in 1996, to six in 1999, and seven in 2002 and 2005.

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50 Taiaroa v. Minister of Justice (no.1) unreported, High Court, Wellington, CP No. 99/94, October 4, 1994.

51 Taiaroa v. Minister of Justice (no.2) 1 NZLR 411, 415 [1995].

52 Unreported, HC Wellington, CP 99/94, 4 October 1994, McGechan, J.

53 Ibid, attached as Annex Z.
The Maori seats consistently returned Labour party candidates. However, in 1996 all Maori seats went to candidates from the New Zealand First Party; they returned to Labour in both 1999 and 2002. Then, at the 2005 election, anger over the Labour led Government’s *Seabed and Foreshore Act* 2004 and its violations of Maori property rights as well as a desire for more independent position from Maori MPs resulted in four out of seven Maori seats being won by a newly formed Maori Party. Because many Maori voted for the Maori Party candidates but for Labour party vote, the Maori Party won one more electorate seat than its share of the party vote would have justified, raising the size of Parliament to 121. Maori participation has enabled the possibility of Mori participation Currently, Executive includes 6 Ministers of Maori descent, but 4 of them are ministers outside Cabinet (including Winston Peters, the NZ First leader). Of the two Cabinet Ministers, one, the Customs and Youth Affairs Minister Nanaia Mahuta is female.

Even though the dedicated seats have been used as a positive example of indigenous political participation, their future is not guaranteed. Although they survived the 1993 change of electoral system, they have become an issue of contention. Each political party has formed its position about the future of the seats taking in to account the support that it is likely to get from Maori and non-Maori voters. Positions vary from unconditional support (Green Party, Maori Party); to qualified support until Maori decide otherwise (Labour Party, New Zealand First Party); to support of a holding of a national referendum on the future of the seats (United-Future Party); to outright rejection of their place in New Zealand’s electoral framework (Act Party, National Party). However, these positions become negotiable when need be: for example, the position of the National Party became negotiable when it became apparent that it would need Maori MP support to form a coalition government. Gradually, the role of the Maori seats has shifted from providing some measure of political representation to ensuring the on-going representation of Maori to guaranteeing a kind of self-government. As Geddis notes, ‘the existence of Maori representation provides a symbolically important recognition of the position of the Maori people as “a Treaty partner”’

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54 Stavenhagen report, as above, para. 17.

55 Geddis, ‘A dual track democracy?’ as above, at 351.
in the enterprise of national government’. Even though this recognition has been endorsed by the Royal Commission on the Electoral system, the Waitangi Tribunal and the national courts, it does not in itself secure the existence of these seats in any formal, legal manner.

There are positive democratic arguments for the Maori roll and for continuing guaranteed Maori parliamentary representation and similar arguments have been put forward for extending such guaranteed representation in local government. Democracy, even when perceived as absolute majority power, is not compromised by guaranteed Maori representation. Guaranteed parliamentary representation enhances democracy’s effectiveness for Maori. Political institutions ought to be responsive to all the people, not just some of the people. Democracy’s guiding principle should be fairness to all, which means that no one group of people should always lose. If the same people consistently lose then democracy is exclusionary. The right to be governed by representative government is the basis of a full share in the national sovereignty, which is for Maori, the objective of political participation. The system of a Maori roll and guaranteed representation in Parliament constitutes is a very strong, although not absolute, protection against exclusion from participation in the wider political process. It guards against democracy becoming, for Maori, a ‘tyranny of the majority’.

In May 2007, the Leader of the Opposition and successor to Don Brash, John Key, announced his party policy to abolish the Maori seats in Parliament without any consultation with the Maori. The abolition of Maori seats would create practical problems of representation for Maori as only 8 Maori have been ever elected from general seats and at present Parliament contains no Maori MP elected by general seats. It is argued that this would be against general international law. The John Key plans are particularly dangerous for

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56 Ibid., 359.
58 Waitangi Tribunal, Maori Electoral Option Report (WAI 413), Waitangi Tribunal Report 7 WTR.
59 Taiaroa v. Minister of Justice (no.2).
the future of the seats, as in the same month, only a year before the 2008 elections, three polls showed him to be as the preferred Prime Minister.\textsuperscript{61}

\textsuperscript{61} See http://en.wikipedia.org/wiki/John_Key#Poll_Ratings.
THE MIXED MEMBER PROPORTIONAL ELECTORAL SYSTEM

In addition to the dedicated seats, Maori benefit from the MMP system introduced in 1993. Continuously from 1914 until 1993 and predominantly before then, New Zealand used the plurality rule in single member electorates to choose members of the House of Representatives that had 99 MPs in 1993, the last First Past the Post (FPTP) elections. The MMP system increased the size of the House to 120 members and established two types of MPs, those elected from single-member electorates and those chosen from nationwide party lists. New Zealand has a system of only one parliamentary chamber (unicameral parliamentary system), an appointed Head of State with limited powers and no ‘fundamental law’. In view of these, the powers of the government were seen before the adoption of the MMP system as ‘unbridled’. A Single Member Plurality (SMP) system combined with few checks on government power meant that single-party majority governments could hold office on the basis of much less than half the votes. Also, since 1935 two parties dominated Parliament; as smaller parties emerged the major parties votes steadily decreased. By the 1990s, the ratio between votes and seats in Parliament has become quite disproportionate. The catalyst for electoral system change was a succession of two elections in 1978 and 1981 that saw the governing party returning to power with fewer votes than the opposition. In 1984 the Royal Commission was appointed to look into the electoral system. In 1986 the Commission recommended adoption of the MMP system, if approved by referendum.

In 1992, an ‘indicative referendum’ was held where nearly 85% of New Zealanders voted against the existing electoral system in favor of the MMP system. Still, the latter faced important enemies in the face of the major political parties but also the New Zealand


63 Vowles, Banducci and Karp, ‘Forecasting…’ as above, at 268.

Roundtable (BRT), an organization of selected chief executives of major New Zealand business firms and advocates for a free market economy.\textsuperscript{65} After a second referendum in 1993 where again MMP was preferred to FPP by a much weaker margin of 54%-46% votes,\textsuperscript{66} New Zealand replaced their Canadian influenced system of FPTP parliamentary elections with a new German style MMP electorate system, making New Zealand the first English-speaking country to adopt a form of proportional representation based on party lists. MMP has since been employed in 4 elections, held in 1996, 1999, 2002 and 2005.

As mentioned above, under this electoral system, every voter casts two votes, an electorate one and a party one. Parties gain representation by either winning a constituency seat or by winning 5% of the nationwide party list vote. Members of the Parliament are elected to represent 69 general constituencies, known as electoral districts, or electorates, on the basis of the number of votes cast in each individual electoral districts. These 69 electorates consist of 62 geographical seats and 7 Maori seats. Although the two types of electoral districts overlap in their geographical coverage, they have separate voting rolls. Thus, Maori and non-Maori citizens can be enrolled to vote in different electorates. As mentioned earlier, Maori can decide whether they wish to be included in the general or the Maori electorate.

Apart from the 69 MPs, additional MPs are drawn to pre-determined party lists according to the percentage of votes towards the party. It is the party vote that determines the final constitution of the House of Representatives on the basis that each party’s total representation should roughly correspond to its share of the party vote. So once it has been determined how many constituency seats a party has won, it is allocated additional seats from its published party list to bring its number to the total required to ensure proportionality. For example, at the 2005 General Election the New Zealand Labour Party won 41% of the party vote, entitling it to 50 seats. As it won just 31 constituency seats its remaining 19 members were elected from the party list. The Maori Party won 2.12% of the party vote, but won four constituencies, meaning that it had one seat additional to its proportionate share, and


therefore no candidate from its list was elected. In this event, where a party wins more electorate seats than its party vote entitlement, it is permitted to keep the additional representation and the size of the House of Representatives is temporarily increased, creating an ‘over-hang’.

Following a supportive review of the Parliamentary Select Committee in 2001, the new system now seems secure. The MMP system is the PR variant with greatest appeal to governments with traditional single-member electorates (ridings), because it retains constituency representation by individual MPs while at the same time producing a high degree of proportionality among parties.

Among the other advantages the Royal Commission found in the MMP system was that proportional representation would improve the quality of political representation in various ways. The new system would retain electorate representation via single member districts for about half the members of Parliament and thus, would assure effective representation of constituents. Reducing the number of directly elected MPs would increase the size of electorates, but not beyond tolerable limits. Some list MPs would attach themselves to an electorate and provide choices for voters who might want to approach a person from a different party as their local MP. At the same time, the system would guarantee more diverse representation in Parliament, as the MMP system would allow for an enhanced representation of small parties and groups including Maori.

Indeed, in New Zealand the MMP system delivered what it had promised: a more representative and more diverse Parliament. Small parties that had no little or no parliamentary representation won more seats after the introduction of the MMP system, while

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votes for the two major parties gradually fell.\textsuperscript{69} Following the first MMP election in 1996, the numbers of Maori in Parliament have grown considerably from 6 in 1993 (out of 99 MPs); to 16 in 1996 (out of 120) and 1999; 19 in 2002; and 21 in 2005 (out of 121).\textsuperscript{70} As minorities are not often geographically concentrated, when only single member districts exist, the ethnic minority group cannot be independent, as it needs to work with a major party to win some power. In proportional representation this is not necessary as it also gets a piece of the political cake. At the same time, through maintaining single member districts, citizens continued to choose their individual representatives, so MPs continued to have an incentive to serve as local advocates.\textsuperscript{71}

The introduction of MMP had concrete positive outcomes for Maori. Under the old system, the Maori percentage in Parliament varied between 5-7.1%. However, immediately after the introduction of the MMP system, the Maori percentage almost doubled to 13.3%, as Maori MPs would come in from the Party lists, the general electorates and the Maori dedicated seats. Still, even without the lists, the Maori percentage would have increased considerably, as 10.8 of the election MPs were Maori. Within a decade, Maori percentage from the electorates has remained the same, but the percentage of Maori MPs chosen by the Party lists has increased from 16.5% to 25%. MMP has also resulted in the election to Parliament of several Maori who would most likely not have been elected under the previous First Past the Post (British) system. Metiria Murei from the Green Party who takes fairly assertive stands on a number of Maori issues is one example, as is the more conservative Tau Henare, a former New Zealand First constituency member who returned to Parliament as a National Party list member in 2005.

\textsuperscript{69} Vowles, Banducci and Karp, ‘Forecasting…’, at 272.

\textsuperscript{70} \textit{15-17\textsuperscript{th} Periodic New Zealand Report to CERD}, UN Doc. CERD/C/NZL/17 of 18 July 2006.

\textsuperscript{71} Karp, ‘Members of Parliament and Representation’, as above, p. 130.
Table 1: The New Zealand Parliament and descriptive representation: Maori percentage in recent elections

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| 2005 | 10.1    | 25.0  | **16.5**


The introduction of MMP also had another positive outcome for Maori: the number of female Maori MPs has increased. Maori women have been in Parliament since Iriaka Ratana’s election (Labour, Western Maori) in 1949. There is currently a Maori woman (Nanaia Mahuta, Labour, Tainui) in Cabinet, although she is the first since Whetu Tirikatene-Sullivan (Labour, Southern Maori) who was a minister between 1972 and 1975. There are several

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72 Most commentators believe this percentage to be 17.35%; this depends on how many MPs are identified as Maori. One MP identifies himself sometimes but not always as of Maori origin.
Maori women in the current Parliament in addition to Turia and Mahuta (Mackey and Pettis, Labour; Te Heuheu, National and a former minister; Bennett; and Turia, Green Party). ILO and United Nations conventions clearly establish gender equality in all aspects of life; indigenous women though around the world still face double discrimination. New Zealand is an excellent example of how indigenous representation can increase the visibility and role of indigenous women, who rarely play a pivotal role in the life of a state.

In general, Maori female MPs have focussed more on their Maori rather than their gender identity. Tremblay has looked into the role of female representation in New Zealand and interviewed female members of Parliament. When she asked them whether they felt a responsibility to represent Maori women, all female Maori deputies ‘were unanimous: they represented Maori women, of course, but first and foremost they represented all Maori – women and men. It seems that cultural identity is more important than sexual identity to these Maori MPs’ role as representatives, perhaps because of a history of oppression and their socio-political status’.73 It is interesting to note that Garneau arrives at the same conclusion about female members of First Nations in Quebec.74 Nevertheless, it is encouraging to see that the Maori female viewpoint is also represented in Parliament.

It was hoped that the MMP system would contribute to the rise of substantial policy responsiveness to Maori issues. Since the party list determines the overall allocation of seats in parliament, parties have an incentive to appeal to Maori voters despite the segregation of their constituency votes. Such a system enables the minority to have a guaranteed level of descriptive representation without risking loss of substantive influence. Recent laws that restrict Maori rights could be used as evidence to suggest that the MMP system did not result in substantive policy responsiveness to minority interests, even though the Maori voice is more prominent than ever in Parliament. Still, the fact that Maori have managed to enter big parties and the Parliament does ultimately have a positive impact on Maori issues, as these


MPs try to protect Maori rights as much as possible. On occasions, this has even resulted to Maori MPs criticizing their own Party: for example, in 2003 John Tamihere, a Maori Labour MP criticized the government’s (Labour coalition) own welfare policies. As Tamihere was a minister in a minority government (a form of government which is more likely under MMP) he perhaps had more freedom than a minister in a large majority government may have had, where a minister would have been more easily got rid of without threatening a government's majority. Such a minister may have been dismissed whereas Tamihere was not.

The MMP system was also expected to promote greater general policy responsiveness among politicians and parties. Under FPP, parties had a strong incentive to appeal to the broadest possible audience to win the most votes. The result was a system often characterised by two large parties sharing often very similar platforms. In a PR system, parties can maintain their ideological stigmas and focus more specifically on their core supporters. This increases the number of parties competing for votes and offers clearer choices to voters. Advocates of the new system also argued that PR would not only be fairer than FPP in the proportional allocation of parliamentary seats, and would encourage politics of consensus, requiring cooperation between several parties to achieve effective government, in contrast to the dominance in government of one party, and the resulting adversarial nature of politics under FPP.75

Indeed, consensus politics has been important since MMP was adopted. New Zealand First, a small right wing party, played a pivotal role in coalition formation following the 2002 and 2005 elections. Between 2002 and 2005, the Alliance was the smaller party in a coalition with Labour and had some influence over re-establishing state owned retail banking and extension of parental leave rights. From outside the government, the Green Party had some influence over the Labour-Alliance coalition, mainly on the issue of genetic modification.76

75 Karp, pp. 129-130.

After the 2005 election, Labour and its centre-left allies lost their parliamentary majority. In the absence of an alternative centre-right majority, Labour was able to form a new government based on ‘enhanced confidence and supply’ agreements with the two major parties, United Future and New Zealand First, giving each party a ministerial position outside Cabinet and considerable policy concessions. The agreement also allowed Labour to legislate for its main election promises. These unusual agreements drew much criticism on the grounds of dilution of Cabinet collective responsibilities especially since one of the positions outside Cabinet was Minister of Foreign Affairs.\(^77\) The Maori Party could have been involved in the negotiations, but decided to insist that it would only support a government that would revisit the foreshore and seabed issue. This let Labour designate them ‘the last cab off the rank’ when it came to negotiations. The party remains on the cross-benches, and will oppose or support the government on an issue-by-issue basis, but is not considered part of the opposition.\(^78\) MMP has given the opportunity to the Maori Party to play a pivotal role in the national politics, something that would not easily happen with the previous system.

It was also hoped that the MMP system would raise the turnout in the elections, both in general and among minority groups. The proportion of valid voters did increase, even though by a small percentage of 4.4% on an age-eligible population; turnout was 80.9% of registered voters, at the low end of New Zealand’s participation history.\(^79\)

Voting has also increased among Maori voters. In 2005, Maori participation was significantly up on the 2002 election, even though at 67.2% was still considerably lower than the national figure.\(^80\) Non-voting amongst Maori on the general roll fell from 16% not voting in 2002 to 10% not voting in 2005.\(^81\) Non-voting amongst Maori on the Maori roll remained largely the same between the 2002 and the 2005 elections (moving from 12% to 11%). That was another

\(^{77}\) Ibid., at 274.

\(^{78}\) Geddis, ‘General Election in New Zealand’ as above, at 813.

\(^{79}\) Geddis, ‘General Election in New Zealand’, as above, at 811.

\(^{80}\) Geddis, ‘General Election in New Zealand’ as above, at 812.

concrete benefit of the introduction of MMP. The ‘political engagement’ argument prescribes that minorities are more engaged when they have their members in parliament.\textsuperscript{82} Empowerment via descriptive representation influences participation because the presence of minority representatives creates ‘micro-level cues that affect how people perceive the costs and benefits of voting’.\textsuperscript{83} The presence of minority elected officials sends a message to minorities that the benefits of voting outweigh the costs of not voting.\textsuperscript{84} Studies have shown that Maori who are represented by Maori electorate MPs are more likely to believe they have a say in government, but are also more critical of their MPs. Maori are also more likely to vote when their representative is also of Maori descent. It seems that minority citizens will vote in those places where minorities hold office. Also, increases in Maori representation through an increase in the number of Maori seats and through PR may enhance the awareness of descriptive representation. Yet, the effects of increased representation are more likely to be felt by those represented by Maori electorate MPs.\textsuperscript{85} Right after the introduction of the MMP system, the Maori basis remained largely alienated from the political process; however, increased Maori participation could only be a gradual process. The lack of immediate rise in Maori numbers may also be attributed to their disillusionment with Labour’s ineffectiveness in promoting Maori issues together with the Labour monopoly over the Maori electorates until the 1993 election. In the following elections, improved representation for Maori through the increased number of Maori seats and the inclusiveness of the MMP system helped increase the perception that government is responsive to Maori concerns,\textsuperscript{86} while important issues to be solved contributed to their renewed interest to the elections.

The MMP electoral system has yet another positive outcome for Maori: it saw most political parties rank Maori candidates highly on their lists in an effort to secure the support of the increasing number of Maori voters. The effect was that in 2005, 14 Maori were elected from


\textsuperscript{83} Banducci, Donovan and Karp, at 539.

\textsuperscript{84} \textit{Ibid}.

\textsuperscript{85} See the results of the study in \textit{ibid} at 550-552.

\textsuperscript{86} Karp, ‘Members of Parliament and Representation’, p. 144.
party lists, in addition to the 7 constituency members (with some commentators putting the Maori elected MPs to 15, as an MP endorses in some occasions his Maori descent; however, the Electoral Commission and most commentators refer to 14 MPs). There were, however, no Maori elected from general constituencies, and indeed, no more than 10 Maori have ever been so-elected, suggesting that there remain overwhelming political and social barriers to Maori being fairly represented in the absence of designated seats. This fact highlights the weakness of the argument that guaranteed Maori representation is an unnecessary and even racist privilege. The former National Party Leader, Bill English, had argued that while the Maori seats were once necessary, this was no longer the case because: ‘In recent decades, there has been a progressive restoration of Maori rights as citizens’. It is true that in recent decades there has been a progressive restoration of Maori citizenship rights, but the inferior Maori status in all aspects of life indicates that New Zealand is yet to offer Maori the full freedom and integrity of which English spoke.

Labour, the leading Party in the last two coalition Governments, has referred to some positive measures which have been taken by the last two governments on Maori: over 40,000 more Maori are now in work than at the same time in 1999; the number of Maori on the unemployment benefit has halved; economic measures including the transfer of control on assets and quota to Maori following the Maori Fisheries Act; the Maori Business Facilitation Service; the establishment of commercial marine farming space; the removal of double taxation and the lowering of compliance costs for Maori authorities; have improved Maori economic situation. Also, the Maori enrolments in tertiary training doubled from 1999 to 2003, while enrolments by Maori in post-graduate courses have increased by 19% since 1999 and the proportion of Maori aged 15 or over enrolled in tertiary education has increased to 22.8%. Improvements have also been recorded in health and Maori broadcasting has significantly improved. It is difficult to establish whether such measures have been the direct outcome of increased Maori representation, but a more visible Maori presence in the elective bodies of the State must certainly have played an important role.


Similar speculations can be made for the latest Government budget increases on Maori. Budget 2007 includes funds for health initiatives of particular benefits to Maori (for example the “Get Checked” programme for the prevention of Diabetes);\textsuperscript{89} $27.1 million additional funding for Maori television and an additional $4 million on Maori radio;\textsuperscript{90} an additional $13.9 million over four years for improvements in Maori schools and around $102 million over four years to provide school property for Maori schools;\textsuperscript{91} $2 million to support and train of people working to prevent violence in Maori communities.\textsuperscript{92} Also, an extra $7.7 million will be injected to the Waitangi Tribunal in the next four years, an increase of 25% in funding.\textsuperscript{93}

In conclusion, one can cite several positive outcomes of the introduction of MMP. First, it has improved the participation of Maori in Parliament. From having 7.1\% of Maori in Parliament, Maori now represent 17.3\% of Parliament, a percentage in proportion to their percentage in population. Second, Maori representation is more effective than before. The need for agreement obliges the leading part of the opposition to try to find consensus with Maori. Third, the increased Maori participation in Parliament also meant a number of female Maori MPs and broader Maori viewpoints added to all discussions. It has also brought a gradual increase in Maori participation in the electoral process and gradually more trust to and more involvement with the political life of the state. Overall, these changes have contributed to more funds for the improvement of the Maori situation in New Zealand and some checks on government policies on Maori and their implementation.

\textsuperscript{89} For the announcement of such initiatives, look at \url{http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=29371}.


\textsuperscript{92} For this initiative see \url{http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=29380}.

THE MAORI PARTY

One of the major outcomes of MMP has been the broader representation and viability of small political parties, of which the Maori Party is one. This was not, however, the first party created by Maori. During the 1920s the prophet Tahupotiki Wiremu Ratana attracted strong Maori following as he linked the evangelical objective of converting Maori to Christianity with the political objective of securing government recognition of the Treaty of Waitangi. By 1928 the Ratana Party had become an important political force. Ratana’s secretary Eruera Tirikatene failed by one vote to win the seat of Southern Maori and Ratana candidates polled second in the three remaining Maori electorates.\(^{94}\) After a second failure in 1931 Ratana tried to broaden its support base and through electoral accommodations, then an alliance with the New Zealand Labour Party, it managed by 1943 to win under the Labour name all four Maori seats.

Between 1946 and 1949, and between 1957 and 1960, the Ratana/Labour members held the parliamentary balance of power, which allowed Labour to govern. However, as Love argues, it was a pragmatic rather than genuine political commitment that ensured continuing Ratana support.\(^{95}\) Using their position, Maori did gain some victories, but their exercise of power was constrained by the two-party Parliamentary environment; Maori had to side with one major party or the other and Labour was seen as the least negative of the two. The Maori political voice was in fact so ineffective that by the 1960s ‘racial harmony’ had entered popular mythology as the defining characteristic of Maori/European relationships.\(^{96}\) In truth, assimilation remained the active policy of successive governments until the 1970s when, probably unintentionally, the Third Labour Government (1972-1975) set the Treaty on a path to public policy centrality. The *Treaty of Waitangi Act 1975* was passed on the motion of the Maori Minister of Maori Affairs, Matiu Rata, and gave the Treaty a new political and legal status which broadened the parameters of debate about Maori/Crown relationships. It was the foundation of a new, greater, and more influential Maori participation in national political

\(^{94}\) AJHR, 1929


\(^{96}\) *Ibid.*
affairs. In spite of his legislative success, Rata became disillusioned with the general Labour policy direction, and after being removed from the parliamentary frontbench while in opposition in 1980, he resigned from Parliament, to contest a by-election for his newly formed Mana Motuhake Party. Rata narrowly lost to Labour and at the following year’s general election Mana Motuhake came second to Labour in each of the four Maori seats. Maori clearly wanted to be represented by a mainstream political party as even a candidate of Rata’s stature failed to challenge Labour’s dominance in Maori electoral politics. He did not, as is explained below, have a single galvanising issue around which to draw support, as the Maori Party did with the foreshore and seabed legislation in 2004.

**The Foreshore and Seabed Act 2004 and the Nationhood Speech**

Since 1999 the Labour Party has governed with coalition and confidence and supply agreements with various minor parties. These governments have always included Maori ministers and have made incremental developments towards greater recognition of Maori interests and aspirations. However, the enactment of the 2004 *Foreshore and Seabed Act* demonstrated that such measures were inadequate to prevent restriction of Maori rights and acted as a catalyst for the formation of the Maori Party.

In 2004, a Court of Appeal decision *Ngati Apa v. Attorney General*\(^7\) considered whether or not the Maori Land Court had jurisdiction to grant fee simple title to Maori groups over the foreshore and seabed. The Court answered affirmatively, but cautiously, holding that the legal test was high and likely to be granted only rarely. The implications of the decision were exaggerated by both government and opposition political parties to create a fear among non-Maori that the decision obstructed their access to the foreshore for recreational purposes. Yet, at no stage in the sometimes acrimonious public debate which followed, did the Ngati Apa tribe, or any other Maori group, claim that restriction of access was their intention or the purpose of the litigation. The populist position prevailed and the government ownership of the foreshore and seabed was vested in the Crown. A public opinion poll after the Act was passed showed public support for the legislation at 56% of New Zealanders, with only 9%

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\(^7\) CA 173/01 CA75/02, 19 June 2003.
agreeing that it deprived Maori of rights that they should enjoy.\textsuperscript{98} In 2005, the government released data claiming that the same poll indicated 45% Maori support for \textit{Foreshore and Seabed Act}. The Maori sample in the poll of over 600 people was, however, just 65.\textsuperscript{99} The poll does not, therefore, discredit the wide acceptance that most Maori are against the legislation and that many of them see it as confiscation, some even drawing analogies with nineteenth century land confiscations. In protest at the legislation, a Labour minister in the minority coalition government, and Maori constituency Member of Parliament, Tariana Turia, resigned from her party and Parliament. She contested the ensuing by-election as an independent to seek a mandate for a new Maori political party. Turia was re-elected, unopposed by any of the major political parties, and by the time of the 2005 general election the party contested all seven Maori seats, and won four of them. It is, however, important that the Labour Party still won the majority of the party votes in those constituencies.\textsuperscript{100} Maori were, seemingly, voting for a Labour led government, but at the same time wanting to ensure an independent Maori voice in parliament.

The \textit{Foreshore and Seabed Act 2004} was an unfortunate response to an already polarised political debate. It undermined the national reconciliation implicit in the settlements of Treaty of Waitangi grievances against the Crown and when coupled with an agenda setting \textit{Nationhood} speech by the Leader of the Opposition National Party, Don Brash, it dramatically reshaped public debate around issues of self-determination and indigenousness. The Act and the speech together eroded a longstanding, although cautious, bipartisan acceptance of self-determination as a legitimate Maori political aspiration. There emerged an environment of unease, even hostility towards Maori political claims, which strengthened Maori resolve, and perhaps, helps to explain why the Maori Party succeeded, when Mana Motuhake had failed.\textsuperscript{101}

\begin{flushright}
\textsuperscript{98} UMR Research.
\textsuperscript{100} Elections New Zealand, 2005
\end{flushright}
The *Nationhood* speech was delivered in January 2004.\(^{102}\) It positioned a ‘one rule’ or ‘one law’ for all philosophy in ideological contrast to an alleged government determination to recognise a Maori ‘birthright to the upper hand’. The speech appealed to perceptions of an over emphasis on the Treaty as a guide to public policy-making, and to a public convinced by fundamentally dishonest interpretations of the *Ngati Apa* decision. There was popular appeal, too, in Brash’s assertion that social policy ought to be delivered on the basis of need not race. He argued that ‘Maori New Zealanders who are in need are as entitled to assistance as any other New Zealanders who are in need’.\(^{103}\) This was, however, an oversimplification of complicated policy initiatives intended to reduce social and economic disparities between Maori and non-Maori. The speech overshadowed the role of the collective in Maori identity and questioned the basis of Maori claims to self-determination. Rather than being interested in a ‘birthright to the upper hand’, Maori claims, based on the wish to retain a unique collective identity, can be summarised as consisting of the right of access to the judicial system in the same way that all citizens enjoy, the right to receive education and social services in preferred cultural context, and the right to land and resource ownership without fear of expropriation. Maori seek these rights out of claimed ‘birthright’ to live as Maori. The Treaty gives specific New Zealand context to the universal norms of justice which legitimise this claimed ‘birthright’.\(^{104}\) It is interesting to note that while Don Brash criticised the positive measures for Maori as discriminatory, CERD criticised them as not going far enough!

The speech’s political impact was remarkable. It raised the National Party’s public opinion poll rating from 28% to 49% giving it a substantial lead over Labour which it only narrowly failed to hold at the general election almost two years later.\(^{105}\) Shortly after the delivery of the *Nationhood* speech, Brash dismissed his Māori Affairs spokesperson Georgina Te Heuheu because she would not publicly support the speech. In the following year, Brash went on to


\(^{103}\) Ibid.

\(^{104}\) O’Sullivan, *Beyond Biculturalism*, as above.

\(^{105}\) Television New Zealand, 2004; New Zealand Electoral Commission, 2005.
deliver even more emotional statements. During his 2005 election campaign, for example, he criticised the use of *powhiri* in welcoming international visitors in this way:

> I mean, I think there is a place for Maori culture, but why is it that we always use a semi-naked male, sometimes quite paled-skinned Maori, leaping around in, you know, mock battle?106

These statements raised the negative feelings between Maori and non-Maori. In response to the *Nationhood* speech the government created a ministerial position of Coordinating Minister Race Relations. The minister’s mandate was to review government policies and programmes to ensure that public policy was based on need not race. Maori saw the appointment as a challenge to Treaty rights. It made the assumption that Maori claims could be attended to through needs based welfare policy, rather than by way of a rights-based Treaty discourse, which was the predominant Maori view of the shape that public policy ought to take. Maori rights became entangled in a political contest for the populist high ground, which overshadowed and to some extent arrested the earlier positive developments towards Maori political participation.107

Meaningful Maori political participation requires recognition of a collective Maori identity. It is an identity of ‘peoples’ whose values and aspirations are closely linked through genealogical connection and geopolitical relationship to clearly identifiable space. The Maori academic, Mason Durie, explains how Maori understand self-determination as the foundation of political participation. Firstly, he argues, self-determination requires ‘economic standing, social well-being, and cultural identity’ for both individuals and communities. Secondly, it requires individual and collective ‘power and control’ for a better self-management and decision-making over natural resources, especially Maori land, the promotion of good health, good education, and the use of the Maori language. Thirdly, cultural change because: ‘Maori self-determination is not about living in the past’.108 There are also many examples of positive opportunities for Maori participation in the affairs and institutions of state. Maori is an official language, with the same status as English. It can be used in any public context and

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107 O’Sullivan, *Beyond Biculturalism*.

108 Durie, as above, p. 4.
is often used in Parliament. Maori educational facilities and health providers ensure that Maori have the opportunity to participate in these services in preferred cultural context and in their own language.¹⁰⁹

The formation of the Maori Party

As mentioned earlier, the Maori Party was formed in 2004 by Tariana Turia and Pita Sharples after Maori electorate holder Turia left the Labour Party in response to the foreshore and seabed debate. Both leaders are well-known figures in New Zealand politics. Tariana Turia has Maori roots in Whanganui, Ngati Apa, Nga Rauru, and Tuwharetoa iwi. Before entering politics, she was very active with a number of Maori organisations, has actively supported Maori language and education and has worked with Te Puni Kokiri (the Ministry of Maori Development) and a number of Maori health providers. She first entered Parliament in 1996 as a list member ranked 20th on the Labour list. At the next election she was ranked 16th. In 2002 she contested and won the Te Tai Hauauru seat. Turia has served as Associate Minister of Health, Associate Minister of Housing, Associate Minister of Corrections and in 2002, Minister for the Community and Voluntary Sector.

Despite Maori protests the Prime Minister made clear that she expected Labour’s 10 Maori MPs to vote in favour of the foreshore and seabed legislation. Three initially refused to do so, Tariana Turia (Te Tai Hauauru), Nanaia Mahuta (Tainui) and Georgina Beyer (Wairarapa). Mahuta received permission not to vote on the issue, but Beyer, who represented a general constituency, was not given the same permission and voted for the legislation in Parliament. Her case highlights the problems and limitations Maori MPs representing general seats face in advancing Maori concerns and it adds to the arguments for the retention of the Maori seats. Turia maintained her opposition and in June announced her resignation from the Labour Party and the formation of the Maori Party. Her supporters admired her standing by her by her principles, while her opponents criticised ‘an astonishing lack of perspective’ in not seeing the wider Maori developments attributable to the Labour-led government. In the by-election of 10 July 2004, Turia re-contested her seat as a Maori Party candidate and won over

¹⁰⁹ O’Sullivan, Beyond Biculturalism.
other independent candidates with 92.7% of the votes; no other party had contested the seat.\textsuperscript{110}

Pita Sharples joined Turia as co-leader of the Maori Party. Born in 1941, Sharples who had received a royal honour for services to Maori (the CBE), and a Professor of Education at the University of Auckland, had long advocated a separate Maori political party. In 2005, he won the seat of Tamaki Makaurau, a Maori electorate covering urban Auckland. In 2007 he was named ‘Communicator of the Year’ by the Public Relations Institute of New Zealand.

At the time of the creation of the Maori Party, another Maori party, the Mana Maori Movement, was active in Maori politics, but attracted little electoral support. Its founder Eva Rickard, a prominent activist, had formed the party after leaving Mana Motuhake in protest at its joining the Alliance (a broad left-wing coalition of minor parties founded by Jim Anderton, the leader of Labour’s current coalition partner the Progressive Party). Convinced that an independent party was essential, Rickard founded Mana Maori in 1993. At the 2002 general election Mana Maori incorporated the smaller Te Tawharau and Piri Wiri Tua parties which polled very poorly.\textsuperscript{111} The emergence of the new Maori Party prompted the transfer of support from Mana Maori and the party was officially deregistered in 2005.

In 2005, Turia was re-elected in Te Tai Hauauru and Pita Sharples was elected in Tamaki Makaurau. Also, Hone Harawira, a controversial political activist and demonstrator, was elected in Te Tai Tokerau and Te Ururoa Flavell, an educationalist who has acted as a consultant to several government agencies, in Waiariki. The winning of the four seats resulted in celebration for the Maori Party supporters who anticipated seeing an independent voice in Parliament. However, at 2.3%, the Party share of the party vote across the country placed it sixth out of the eight parties in parliament by party vote. Table 1 highlights the results of the 2005 elections and the prevailing parties in constituencies.


\textsuperscript{111} New Zealand Electoral Commission, 2002
These results show that Maori seem to want to support the Maori Party but also Labour. This split meant that the Maori Party’s share of the party vote amounted to 2.1%, entitling it to only three seats in the House. Consequently, a parliamentary ‘overhang’ has occurred, with the Maori Party retaining its four MPs and increasing the House to 121 members. One effect was that 61 votes were required to secure a majority in the House, further complicating coalition arrangements.\(^{112}\) Below are the results of the 2005 general election and the corresponding seats won by each party. The table also shows the changes that occurred from the previous general election.

The creation of the Maori Party had important political consequences for Labour as it used the ‘political wedge’ created by the Brash speech to its advantage and broke the Labour monopoly in all seven Maori seats. This was a major victory for the newly formed party. Repeating the phrase *Tenei te wa*, meaning ‘this is the time’, Maori Party supporters argued that the time had come for Maori to have an independent voice and vote in the Parliament. Apart from the foreshore issue, the Maori Party advocates among other issues for a retirement age of Maori to be reduced to 60 and tax reductions.

As the Maori Party is not in Government, nor is it a Government support party, it has not had the opportunity to trade any concessions from the Labour-led government in return for support. The Maori Party can, however, be more effective than individual Maori MPs. A Maori Party presence ensures that matters are not brushed aside by Maori MPs who are constrained by membership of a bigger party. During the Foreshore and Seabed Bill

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**Table 3**

Results of the general election, New Zealand 17 September 2005

<table>
<thead>
<tr>
<th>Parties</th>
<th>Party vote (%)</th>
<th>% Change since 2002</th>
<th>Seats</th>
<th>Seat change since 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT Party</td>
<td>1.5</td>
<td>−5.6</td>
<td>2</td>
<td>−7</td>
</tr>
<tr>
<td>Green Party</td>
<td>5.3</td>
<td>−1.7</td>
<td>6</td>
<td>−1</td>
</tr>
<tr>
<td>Progressive Coalition</td>
<td>1.2</td>
<td>−0.5</td>
<td>1</td>
<td>−1</td>
</tr>
<tr>
<td>Labour Party</td>
<td>41.1</td>
<td>−0.2</td>
<td>50</td>
<td>−1</td>
</tr>
<tr>
<td>Maori Party</td>
<td>2.1</td>
<td>+2.1</td>
<td>4</td>
<td>+4</td>
</tr>
<tr>
<td>National Party</td>
<td>39.1</td>
<td>+18.2</td>
<td>48</td>
<td>+21</td>
</tr>
<tr>
<td>New Zealand First</td>
<td>5.7</td>
<td>−5.7</td>
<td>7</td>
<td>−6</td>
</tr>
<tr>
<td>United-Future</td>
<td>2.7</td>
<td>−4</td>
<td>3</td>
<td>−5</td>
</tr>
<tr>
<td>Other</td>
<td>1.3</td>
<td>−2.3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total seats</td>
<td>100</td>
<td></td>
<td>121</td>
<td></td>
</tr>
<tr>
<td>Total broad-left</td>
<td>49.7</td>
<td>−2.4</td>
<td>61</td>
<td>−2</td>
</tr>
<tr>
<td>Total broad-right</td>
<td>49</td>
<td>+2.4</td>
<td>60</td>
<td>+3</td>
</tr>
<tr>
<td>Total government</td>
<td>42.3</td>
<td></td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Turnout</td>
<td>80.9%</td>
<td>+3.9%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes: Broad left includes Labour, the Greens, the JAPC, and the Maori Party. Broad right includes National, New Zealand First, Act, and United-Future. Total government includes Labour and Progressive coalition (Jim Anderton alone).


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1113 Maddison, as above.
discussion, most individual Maori MPs were silenced by their parties. However, recently the Maori Party introduced a Bill into Parliament to repeal the *Foreshore and Seabed Act*. The Bill did not get past a First Reading, but it was still an important stand. A party specifically looking after Maori rights is able to bring Maori views in to all discussions, not just on that others believe will affect Maori. Finally, since New Zealand has a minority government the Maori Party is well-positioned to exert influence disproportionate to its level of Parliamentary representation. It is also likely that it will in future be in a position to influence the formation of governments.

Indeed, despite its small percentage, the Party has already managed to be visible in Parliament and to have several ‘successes’. Soon after the 2005 election, the Party signed a voluntary Code of Conduct with the other small parties in Parliament (ACT, United Future and the Green Party), where they agreed to uphold integrity, respect, accountability and transparency in their Parliamentary work. Also, the Party successfully initiated a joint call with the Green Party, United Future and ACT to enact the Law Commission’s recommendation to remove the crime of sedition. On another occasion, the Party played a significant role in securing Government agreement to review the management policies of the State Owned Enterprise Landcrop on Maori lands, and the Office of Treaty Settlement (OTS) after serious complaints of mismanagement raised by several *Iwi* and *Hapu*. Also, the Party has repeatedly raised concerns about the impact of the *Fisheries Amendment Bill* on Maori.

The Party has also attracted criticism. John Tamihere, the former Labour Associate Minister of Maori Affairs, who lost his seat to Sharples in 2005, portrays the party as ultimately unviable. One of the main problems for the new party involves the broad range of opinion that the party must represent. Tamihere, one of the Maori Labour politicians who voted in favour of the *Foreshore and Seabed Act*, has also said that the party's leaders ‘belong to a relatively wealthy, educated élite’ whose ‘reality is considerably removed from the overwhelming majority of Maori’.\(^{114}\) Tamihere claimed that Maori have more interest in issues such as health, education, and employment than in the comparatively academic issue

\(^{114}\) ‘Māori Party’ in *Wikipedia*, http://en.wikipedia.org/wiki/M%C4%81ori_Party
of the ‘foreshore and seabed’. The Party has failed to gain the formal support of any iwi. While broadly supporting the party's policy platform Ngai Tahu, for example, said it would not provide financial support or political endorsement. Its policy has always been that it not formally endorsed any party or candidate.

One of the main problems the Party faces is the challenge of uniting diverse views. Maori do not hold homogeneous opinions and finding a balance between radicals, conservatives, and moderates seems likely to prove problematic. Donna Hall (a controversial lawyer) and Titewhai Harawira (a radical activist) both indicated an interest in the party, but the party's leadership showed reluctance to accept them as candidates, apparently judging them too controversial. Tariana Turia, however, believes that in the new Party, ‘all parties [have] come together in the spirit of unity’.115

115 http://en.wikipedia.org/wiki/M%C4%81ori_Party.
MAORI REPRESENTATION IN LOCAL GOVERNMENT

The level of Maori participation in Parliament has not been replicated in local government. In 1986, the absence of Maori representation on the Auckland Regional Authority was the subject of a claim to the Waitangi Tribunal.\textsuperscript{116} The claim was withdrawn when the Authority decided that members would be elected from constituencies whose boundaries coincided with those of the regional parliamentary electorates and introduced two Maori seats in 1989. Further reforms saw the seats removed in 1992.\textsuperscript{117} The continuing positive impact of the guaranteed seats in Parliament, however, meant that the issue of Maori representation in local government remained. In 1995 several Maori candidates sought election to the Bay of Plenty Regional Council. None, including the one Maori sitting councillor, were elected, despite the fact that Maori constituted 28\% of the regional population and were substantial regional landholders. Following the election results, the Council received 912 public submissions on a proposal to establish designated Maori wards. 760 submissions were in favour and the Council asked Parliament to enact enabling legislation.\textsuperscript{118}

Supporters of the guaranteed seats argued that Maori were unable to gain election to council under the system, which was unfair and not democratic: at least the numerical significance of Maori should be reflected in councils. Guaranteed seats would ensure Maori representation, a principle implied in the principles of the Treaty of Waitangi, and would provide Maori with a voice on council. Also, as Maori are major landowners; guaranteed seats would encourage better participation of \textit{iwi} in all areas of local governance.\textsuperscript{119} Opponents to the idea continued to bring in arguments about racial disharmony and separatism. They claimed that New

\textsuperscript{116} Report of the Waitangi Tribunal on a Claim Relating to Maori Representation on the Auckland Regional Authority, WAI 25.

\textsuperscript{117} O’Sullivan, Beyond Biculturalism.

\textsuperscript{118} O’Sullivan, Beyond Biculturalism.

\textsuperscript{119} Ibid.
Zealanders are all one people and everyone should be elected by merit rather than by preferential treatment.\textsuperscript{120}

In 2001, at the request of the Bay of Plenty Regional Council, Parliament passed the \textit{Bay of Plenty Regional Council (Maori Constituency Empowering) Act 2001}, which allowed the council to establish 3 Maori wards in 2004. In 2002, the \textit{Local Government Act} provided local authorities with the choice to establish Maori constituencies. The intention to invest greater power in communities led to the 2002 re-writing of the \textit{Local Government Act}. The government’s intention was expressed to the Minister for Local Government’s first reading speech as:

\begin{quote}
Mr. Speaker, this bill, above all, is about ‘empowerment’. Not as some might imagine, the empowerment of councils to exert greater influence and authority over their electors, but rather, empowering New Zealanders within their local communities to exercise ever greater control over their lives and over the environments in which they live.\textsuperscript{121}
\end{quote}

The Minister was Sandra Lee, a Mana Motuhake member, who won the general seat of Auckland Central as an Alliance candidate. She was the only Mana Motuhake member ever elected from a constituency, although at different times two others were elected from the Alliance list.

The \textit{Local Government Act 2002} defines the purpose of local government as enabling democratic local decision-making and action by and on behalf of communities; and promoting the social, economic, environmental, and cultural well-being of communities. Implementation of the act has been left primarily to the local government itself to manage, while central government focuses on activities that derive from the individual departments’


\textsuperscript{121} S. Lee ‘First Reading Speech by Hon Sandra Lee of the Local Government Bill 2001’, Wellington. Accessed at: \url{http://www.lgnz.co.nz/news/pr1080525254.html}
activities and require effectively the development of collaborative relationships at a regional and local level. The Act recognises and respects the Crown’s obligations under the Treaty of Waitangi by placing some specific obligations on councils. Local elections will take place in September-October 2007. A number of councils have Maori constituencies. For example: Kohi, Mauao, and Okurei. Several councils have already resolved not to establish these seats in their next local authority election and others are still considering them. Guaranteed Maori representation in local government (and in Parliament) responds to, but does not change a society that is unwilling to elect Maori in proportionate number to public office. Nor does it confront the Maori contribution to their own disenfranchisement by not participating in elections in great number, either as candidates or as electors. Fuller understanding of these issues is preliminary to a complete understanding of the nature of a participatory democracy that is responsive and inclusive of all.  

In addition to the guaranteed seats, the Electoral Act 2001 provided that a Single Transferrable Vote (STV) system was mandatory for District Health Board elections and offered local councils the choice of either staying with plurality at large or changing to STV. It also provided for a binding poll of voters in an area to be held to determine which system would be used, either at the initiative of the council or by a citizens’ initiative instigated by voters in an area. In STV, voters rank the candidates, putting a ‘1’ for their favourite, a ‘2’ for the next, and so on. If the voter’s first choice candidate does not need their vote, either because he or she is elected without it, or because he or she has too few votes to be elected, then the vote is transferred to the voter’s second choice candidate, and so on. In this way, most of the votes help to elect a candidate and far fewer votes are wasted. An important feature of STV is that voters can choose between candidates both of their own and of other parties, and can even select candidates for reasons other than party affiliation. Thus, a voter, wishing for more Maori representatives could vote for a Maori from their own party and then all other Maori candidates, whatever party they stand for. Hence, STV would be beneficial for Maori participation.

122 O’Sullivan, Beyond Biculturalism.
Unfortunately, in practice very few local authorities adopted STV under the Act's provisions, and in those that did, the use of STV was plagued by poor explanations of the STV process. From 2002 until July 2003, only 12 local authorities chose this polling option. The vast majority of local authorities still use plurality at large (bloc voting).\textsuperscript{123} In the 2004 elections, 81 STV elections occurred, but two were not contested. Confusion was caused by the fact that some local elections included ballots for multiple local government bodies, some of which were conducted by single-winner plurality ('first past the post'), some by plurality at large, and some by STV. Due to low voter turnout, the high number of spoilt votes and the long time taken for results to be declared, the Justice and Electoral Committee of the New Zealand Parliament has undertaken an inquiry into the use of STV in New Zealand. Triennial elections for all 73 cities, districts, twelve Regional Councils and all District Health Boards will be held on October 13, 2007. Most councils will be elected using the First Past the Post method, but eight, of which Wellington City is the largest, will be elected using STV. In any case, both guaranteed seats and the use of STV have not so far had the positive results Maori had hoped for. Little more than 5% of members elected to local councils (regional, city and district councils) are Maori.\textsuperscript{124}

In addition to opportunities for Maori participation via separate wards and constituencies, the \textit{Local Government Act 2002} also established principles for Maori participation in the decision-making processes in local government. It requires all councils to a/ establish and maintain opportunities for Maori to contribute to decision-making processes; b/ ensure processes are in place for consulting with Maori; c/ consider ways to foster Maori contribution to decision-making processes; and d/ provide relevant information to Maori. When a council is making an important decision involving land or a body of water, it must take into account the relationship of Maori with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga. This is no different from existing requirements on councils when taking decisions under the \textit{Resource Management Act 1991}. These provisions apply to all Maori in the city, district, or region; in this way all Maori are acknowledged, even those not resident in the area. These requirements under the \textit{Local Government Act 2002}

\textsuperscript{123} \url{http://en.wikipedia.org/wiki/History_and_use_of_the_Single_Transferable_Vote}.

\textsuperscript{124} \textit{Stavenhagen Report}, as above, para. 18.
apply to general activities and decisions of councils, but do not over-ride the requirements on councils specified under other statutes. Other acts such as the *Resource Management Act 1991*, the *Historic Places Act 1993* and the *Biosecurity Act 1993* also establish requirements for councils to consult with Maori. Councils must also state in each annual report what they have done to involve Maori in council processes. For some, the new act heralds a major change in the ongoing local governance relationships between local authorities and the Maori members of local communities. For the first time in New Zealand’s legislative history, local authorities are required to specifically factor Maori input into strategic decision-making in a capacity other than ordinary members of society.\(^{125}\)

So far, the legislation has had more positive results in the consultation requirement than in the representation requirement. In July 2004, *Local Authority Engagement with Maori*, a survey released by Local Government New Zealand, the Department of Internal Affairs and Te Puni Kōkiri, showed that between 1997 and 2004, councils with formal Maori consultation processes increased from 16 (from 64 councils responding) in 1997; to 69 from all councils (80%) in 2004. Councils with informal consultation and information sharing arrangements with Maori increased from 11 (from 64 councils responding) in 1997; to 79 from all councils (92%) in 2004.\(^{126}\) At the moment there are 17 district Maori councils elected by local committees; unfortunately, the council system budget is too low to make a difference.

Still for some the act has not gone as far as they had hoped. Maori had hoped for major reforms to guarantee them an active and meaningful role in the decision-making of the local authorities, especially since local authorities regulate Maori resources, including waterways, ancestral lands, and sacred sites. Participation in Committees established by councils, such as the Auckland City Council Tangata Whenua Consultative Committee, the Waitakere City Council Te Traumata Runanga or other standing committees, can be considered by Maori


groups as political forums to assert their status vis-à-vis other groups. The Resource Management Act 1991 recognises and provides for these matters; however the lack of knowledge and lack of political will to implement the relevant sections of the act have deterred the expected protection of Maori ancestral lands, waterways and sacred sites. The reforms sought by the Local Government Act 2002 were so watered down that it is left to the local authorities to decide whether they will include Maori in the decision-making or not.

The measures established in legislation certainly constitute positive examples for indigenous participation. However, while consultation has been used broadly, Maori participation in local authorities has so far been very limited. Partly this reflects the Maori disengagement from local government; partly it is because due to the lack of implementation of the existing legislation. In Manukau for example, where Maori are believed to be under-represented both as voters and candidates. The city council is trying to encourage greater participation for the 2007 local elections and is running an advertising campaign to encourage Maori to stand as candidates for council or community boards as well as Auckland Regional Council, Counties Manukau District Health Board and local licensing trusts. It also aims at encouraging Maori to vote. Council treaty unit manager Moana Herewini has noted that the awareness-raising campaign will be run through public hui and an advertising campaign will focus on the importance of local authority works in people's everyday lives. It will look at the various ways the council impacts on Maori such as water quality, recreation facilities for children and ensuring development of the city takes into account the cultural and social values of Tangata Whenua. However, the most fundamental challenge for local authorities is to develop the trust and confidence of Maori to engage in local governance issues, something that traditionally has not happened.

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130 For more criticism of the Act, see NZLG, Submission to the Local Government Commission in the Matter of The Review of the Local Government Act 2002 and the Local Electoral Act 2001 from Local Government New Zealand (April 2007); also see Farell, ‘Maori Tribal Governance arrangements’, as above.
One option that seems to gather some support is that of a Maori Parliament or Council of Elders. Such a proposal was included in the 2007 annual report of the Race Relations Commissioner Joris de Bres. The Commissioner noted that the current system where government agencies hold numerous *hui* throughout the country to consult on every issue fails to give Maori a collective voice for long-term policy issues and brought as positive examples the Sami Parliaments. Also, the Head of Maori and indigenous Studies at Canterbury University, Rawiri Taonui suggested a non-partisan council of elders and chiefs that would work with all political parties on issues such as the Treaty of Waitangi claims, the new school curriculum and social problems.\(^{131}\) It is suggested that a Maori Parliament could alienate Maori from the rest of the population and the general state agenda. A Council of Elders with a consultative status would increase Maori consultation and would help minimize the current flaws of the system. However, its mandate would not improve direct participation of Maori in all decision-making processes of councils. Therefore, it is suggested that the idea of guaranteed seats in councils appears the one that would contribute most to the representation of Maori in local government. Of course the co-existence of a Maori Council of Elders with guaranteed seats in government would ensure both consultation of Maori in matters that concern them and on-going Maori representation in all local government fora.

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\(^{131}\) ‘Collective voice urged for Maori to be heard’ *New Zealand Herald*, 10 March 2007.
CONCLUSIONS

The combination of the Mixed Member Proportionate Representation and the Maori seats has been beneficial for Maori representation in Parliament. Maori guaranteed seats reflect the position of Maori in New Zealand society. They recognise that Maori are more than any other minority and reflect their position as the original owners. Mixed Proportional Representation ensures electoral representation as half of the members of Parliament are elected, but has also guaranteed more diverse representation in Parliament, which has been translated to more Maori MPs in Parliament. From 7.5% before the introduction of the MMP system, the percentage of Maori in Parliament has gone to 17.3% within 12 years. This percentage marginally exceeds the percentage of Maori population in New Zealand and reflects the position of Maori in the New Zealand society. The MMP system has also ensured that smaller parties enter Parliament. This has been important for the Maori Party. After having managed to win 4 seats, the Maori Party is still showing growth potential. As major parties need all the support they can get from small parties so that they form and maintain government, so has the Maori Party shown its willingness to forge relationships with them. This makes the major parties more receptive to Maori claims.

Concrete positive outcomes of the Maori wider representation are difficult to be seen in the current polarised environment. In recent years, New Zealand has been characterised by regression. New Zealand is the only country in the Commonwealth that has absolute parliamentary sovereignty: Parliament can override through legislation and the courts cannot overturn any such legislation. This makes indigenous rights vulnerable by political objectives and electoral votes. Indeed, although indigenous view points have been raised, several laws that restrict Maori rights have recently been passed by Parliament: the Treaty of Waitangi Amendment Act 2006 and the draft Principles of the Treaty Deletion Bill 2006 are glaring examples. The number of Maori MPs in Parliament are not such that would prevent such laws from being passed. However, in such a climate small victories are important: convincing the government to look into the accusations of mismanagement policies by Landcorp was an important positive step for Maori rights. Also, after continuous protests from Maori MPs, in May 2007 the Parliament’s Primary Production Committee requested a three month extension
of the date by which the *Fisheries Act 1996 Amendment Bill* was considered. For many, this was a positive outcome of MMP that was welcomed by the Maori fishing sector. In general, the better political decisions are taken by Maori MPs, the better role models will be for the general public. For example, sound initiatives such as the expulsion of the law on sedition, may contribute to changing the negative picture Pakeha may have of Maori due to prejudicial rhetoric. Also, because of the politics of consensus, the Maori party may become an important player in the political scene of New Zealand in the future. In addition, wider Maori representation in Parliament promotes inclusion of Maori in the New Zealand society and its future. It is an important step towards a genuine partnership between Maori and Pakeha.

However, the MMP system has is not a panacea. Contrary to initial hopes, the new system has not managed to considerably increase the policy responsiveness to Maori issues, even though the Maori voice is being stronger in Parliament. Also, the co-existence of General and Maori rolls has not managed to attract large numbers of Maori voters to participate in the elections, even though some increase in the numbers of voters has been observed. Unfortunately, Maori are still quite disentangled from the politics.

While attempts have been made to transfer this model to local government elective bodies, its success has been compromised by lack of political will and distortion of the meaning of equality in practice. Indeed, the *Local Government Act 2002* and the *Electoral Act 2001* give local government the possibility for Maori seats. There have been some councils which have use this opportunity. The Maori presence in councils ensures participation in council decisions. The law also gives the opportunity to use the Single Transferable Vote system, a system that would help more increase Maori representation in local government bodies. Unfortunately, very few authorities have taken advantage of this new system. Nevertheless,

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positive developments have taken place, especially with respect to the participation of Maori in the decision-making bodies of local government.

Overall, the modalities of Maori representation in New Zealand parliament constitute a positive example of how the principles included in ILO Convention No. 169 can be applied. The system goes beyond formal equality and promotes measures to ensure substantial equality in law and practice. The existing system of both Maori and general rolls ensures that Maori participate in the political life of the state, while at the same time increases control over their affairs. This satisfies the spirit of ILO Convention No. 169 to the measure that positive discrimination is promoted without this leading to separation and exclusion of indigenous peoples from the political life of the society they live in. In essence, the political system satisfies the multicultural model by recognising indigenous identity, working towards the elimination of direct and indirect discrimination and at the same time, promoting integration of Maori in the New Zealand society.
RECOMMENDATIONS

The Maori guaranteed seats must continue to exist in order to ensure Maori fair representation in Parliament and to reflect Maori history and position in New Zealand.

The MMP electoral system should be constitutionally entrenched to guarantee adequate representation of Maori in the legislature and at the regional and local governance levels.

New Zealand should ensure that special measures continue to be taken that would ensure the equal and effective Maori representation in elective bodies.

References to the Treaty of Waitangi must remain in legal and other documents in order to provide important guidance in implementing the law.

Adequate funding must be ensured for the dissemination of the Maori Electoral Period and other measures related to Maori participation in elections.

Participation of Maori in local government must use *iwi* and *hapu*, in conjunction with local and regional councils.

More work should be done on the role of Maori women on Maori representation.

The government must multiply their efforts to disseminate the correct understanding of direct- indirect discrimination and equality. Public media can be very helpful in this respect.

Government is encouraged to undertake periodical reviews of the electoral system and its modalities and to initiate more discussion with Maori to find ways to promote the fair participation of Maori in elective bodies.

Local councils are encouraged to consider the adoption of measures provided by the *Local Government Act* and the *Electoral Act* that would improve Maori representation in elective bodies.

Local authorities are encouraged to adopt policies that would encourage the implementation of domestic provisions on Maori representation in local government.

International organizations and agencies should intensify their work on disseminating in the New Zealand the understanding of indirect discrimination and positive action included in the current standards of international law.

International organizations and agencies should consider devising training sessions for officers of New Zealand government, local government and the media on Maori indirect discrimination and positive measures.
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