

## **MISAPPROPRIATION OF INDIGENOUS KNOWLEDGE: THE NEXT WAVE OF COLONISATION**

**AROHA TE PAREAKE MEAD, Ngati Awa**

Whenever legal standards are used to implement what are essentially moral ethics, one can always expect an almost hysteric public reaction. This has been evident in the Abortion/Right To Life Debate, and similarly the issues of Capital Punishment and Sexual Orientation. Misappropriation of tangata whenua (indigenous knowledge) is also a matter of morality. It has been an accepted practice by colonists and their descendants for a long time. In spite of vigorous protests by the world's indigenous peoples, the problem is escalating.

This article will briefly explore examples of misappropriation of indigenous knowledge past and present. I will discuss current global trends in the environmental sciences and medical research, and indicate the direction which indigenous peoples have indicated should be taken in order to minimise the damage to indigenous peoples in what is best described as 'the next wave of colonisation'.

Aotearoa New Zealand as well as the rest of the global community will no doubt face a heated debate as citizens come to realise that misappropriation of indigenous knowledge and resources is as much an issue of national sovereignty as it is about race relations and human rights.

In any discussion on misappropriation and commodification of indigenous knowledge, the western legal invention of cultural and intellectual property rights (CIPR) inevitably comes up. The ability and desirability of CIPR to become the main mechanism to address and redress matters as comprehensive and interdependent as 'nga taonga tuku iho', the treasures of the ancestors, needs to be thoroughly debated.

As with all issues of morality, one cannot enact legislation to force one individual to respect another. Ultimately, the will of citizens (academics, scientists, artists, musicians, writers to name but a few) as well as politicians and corporations, to act ethically will determine whether the debate will be constructive or destructive.

### **ETHICAL RESEARCH**

It has been common accepted practice amongst many research professionals to access traditional indigenous information for thesis, published works and development of government (national and local) policy. Such works have been considered as 'public record.' Whenever the appropriateness of a non-indigenous person recording and interpreting indigenous knowledge has been raised (e.g. NZ author Michael King) we are usually left with the explanation that if a non-indigenous person didn't record it, it would be 'lost' forever.

That explanation might hold up for the collecting of information, but can not withstand scrutiny when the eventual work is published as an author's work and the financial proceeds (albeit few) are retained by the author.

It has been argued that even if a non-indigenous author wanted to return the financial profits to the indigenous informants, they wouldn't be able to identify the 'true owners' of the information. However, in the absence of identifying the indigenous 'owners', what right does a non-indigenous person have to assume ownership? In isolation this may not necessarily present a problem, but when one considers that this practice has continued worldwide for many generations, the collective result has brought devastating consequences to indigenous communities. The Brazilian Sociologist Paulo Friere stated in his often-quoted work *PEDAGOGY OF THE OPPRESSED* "as beneficiaries of a situation of oppression, the oppressors cannot perceive that if having is a condition of being, it is a necessary condition for all humanity."<sup>1</sup>

A great deal of misinformation about indigenous peoples and their history pre and post colonisation has been promoted worldwide by non-indigenous authors and researchers. As a result, the world has lived a lie. For many governments, this has suited their objectives to assimilate or annihilate indigenous peoples within their State. It is only through the global assertion of sovereignty and rangatiratanga rights by indigenous peoples that the rest of the world is able to better understand how naive and ignorant we have all been about the history of others, particularly other indigenous peoples.

Misappropriation of indigenous knowledge in the social sciences has over time certainly contributed to the situation described above but Social Scientists as a group of professionals have, generally speaking, improved their understanding of ethical research. Many have experienced prolonged and direct challenges by their indigenous 'subjects' and didn't have much choice but to improve!

There is a new team of science professionals however who are embarking on a course well-tramped. Without focusing their urgent attention to developing Research Codes of Ethics their path is bound to lead to conflict. Environmental scientists, medical researchers and government policy makers in these fields, have for the most part been spared of experiencing public accountability. They have been left to their own on the assumption that whatever it is they are doing, must be for the public good. It is critical for professionals to develop ethical research methodology particularly in light of the inseparability in today's climate of commercialisation of research outcomes. The user-pays, cost-effective, policy directive has numerous cultural and intellectual property rights issues threaded throughout. Ultimately, the morality of certain research projects need to be thoroughly considered by those involved. National and international policies should only be used as instruments when all else fails. The onus must be on researchers and government policy makers, in the first instance, to act ethically and morally.

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<sup>1</sup> *Pedagogy of the Oppressed*, Paulo Friere, Penguin Books 1972

## MISAPPROPRIATION OF BIODIVERSITY

The difficulty in negotiating with the above-mentioned professionals as to the level of ethical protocols now required of them is in explaining the inseparability for indigenous peoples of the physical and metaphysical, the tangible and intangible aspects of cultural and intellectual property. A very foreign concept for some. The English vocabulary has many terms to differentiate between the two, but this is not in the case in most indigenous languages. The Maori term TAONGA, for example, relates to both the physical and metaphysical.

Iwi (tribal) customary knowledge forms the major component of what Maori describe as the 'mauri' (life force) of our cultural and intellectual property. Misappropriation of physical indigenous taonga (assets) therefore, is wholly related to misappropriation of indigenous knowledge. The interdependency of both elements are inseparable.

It stands to reason therefore that misappropriation of natural resources results in misappropriation of Iwi knowledge. The alienation of the physical resource prevents the parallel metaphysical resource from being utilised. This is why in defending Iwi Claims to the Waitangi Tribunal concerning; sacred sites, confiscated lands, polluted waters to name but a few, Iwi consistently raise the 'mauri factor', which essentially is the metaphysical connection between customary knowledge of environmental and cultural well-being with a physical tangible resource.

## THE GLOBAL ENVIRONMENT

The environmental community has come to recognise that 7% of the earth's surface hosts between half and three-quarters of the world's biological diversity. Virtually none of this botanical treasure resides in either Europe or North America.<sup>2</sup> In the industrialised world's obsessive drive to develop super-breeds of fruit, vegetables and livestock, substantial habitats of rich biodiversity have been lost. The only source of replenishment are the lands of developing countries. Biodiversity mining as it has come to be known as, is big business these days. The prospectors are virtually all from industrialised countries. The new mining sites are primarily in developing countries and the peoples most affected, tend to be the world's indigenous peoples.

New Zealand is recognised as part of 'the North', an inherently white club with the majority of members demonstrating appalling feats of colonisation. We follow the policies set by 'colleagues'. We make the same mistakes. We see land with scrub (popular name for native bush) and the first thing we do is burn it off so we can raise sheep and cattle. I don't know how many times I have listened to people, including the current Minister of Maori Affairs, who are almost incensed that pockets of Maori land are left 'dormant'. They view the land as unproductive and the land-owners, lazy and wasteful. But how much of this nation's

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<sup>2</sup> Technology Transfer: 100+ Examples of the South's Informal Innovation Systems Contribution to the North's Development, Rural Advancement Foundation International (RAFI), Ottawa, 1992

biodiversity, particularly indigenous flora and fauna have been lost because of the push to raise livestock or farm genetically-improved super-crops? The guardianship responsibilities which indigenous peoples universally refer to, demand that our environmental management withstands the needs of future generations. A principle which industrialised countries, including New Zealand, could well benefit from.

Biodiversity mining is a billion dollar industry made a lot easier for industrialised countries (the North) by the General Agreement on Trade and Tariffs (GATT)<sup>3</sup>. In a history-making contract, Merck pharmaceuticals signed a \$US1 million (over 2 years) deal with Costa Rica for bio-prospecting rights to one-third of the country's land area. The Canadian-based RAFI (Rural Advancement Foundation International) published in 1993 a Report on Technology Transfer entitled "100+ Examples of the Southern Informal Innovation Systems Contributed to the North's Development". Amongst the examples are the following:

- New Zealand's modest wheat industry has gained well over \$5 billion in seed from developing countries since the creation of the International Germplasm Board in 1974.
- Plant collector Clive Francis of Australia violated his contract and pocketed lucerne (alfalfa) seed he was sent to study in Libya and, returning to Australia, now claims the seeds are worth millions to Australia's livestock industry.

How do these relate, you might ask, to indigenous peoples? Biodiversity mining is based on the philosophy that the resources of one country can be commercially exploited by another. The GATT makes it legal. In a country such as Aotearoa New Zealand, where ownership and management of our natural resources rests with two Treaty of Waitangi partners, it is morally unacceptable for the Crown Treaty partner to enter into an international agreement which could allow for our country's natural resources to be commercially exploited by outsiders without consultation with the Iwi Treaty partners. In other countries the morality of commercialisation of natural resources is equally difficult. In all cases, national sovereignty is threatened as well as the rights of indigenous peoples.

The main players in biodiversity mining are multinational pharmaceutical companies who rely a great deal on local indigenous knowledge to identify the plants with healing properties. The motives of such companies are clearly commercial.

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<sup>3</sup> The Uruguay Round of the General Agreement on Tariffs and Trade (1948 GATT) were concluded on December 15, 1993. The information released to New Zealanders concerning the pros and cons of the issues agreed to in this Round of GATT was minimal and yet the GATT signals substantive changes in the lives of individuals. Copies of the Uruguay Round Agreement can be obtained from the Ministry of External Relations and Trade at a cost of \$15. On April 1st 1994 countries will be participating in the signing ceremonies in Marakesh.

We are faced with the same dilemma referred to earlier, that in the absence of being able to ascertain customary 'ownership' of a native plant, what right does the government have to grant patent/plant variety rights to an international or even national company? What right does the company have to patent? The immorality of the situation is multi-tiered. Governments - Companies - Research Scientists.

Inherent in the GATT Agreement is approval in principle to the patenting of all life forms, a principle directly stated in current NZ legislation (NZ Patents Act). Not surprising therefore is confirmation that patenting has recently extended into human genetic material. RAFI state that the US Government has over 1000 Patent Claims currently being considered of human genetic material.

One of those claims include:

**International Publication No.:** WO93/03759

**Inventor:** Yanagihara-R, Nerurkar-V-R, Jenkins-C, Miller-M-A,

**Patent Title:** Papua New Guinea Human T-Lymphotropic Virus

**Description:** The Patent Claim is on the cell line of the Hagahai tribe of PNG. The Patent Claim describes the Hagahai as "a 260 member hunter-horticulturalist group which first made sustained contact with government and missionary workers in 1984 occupy an area totally 750 km<sup>2</sup> in Madang Province PNG. In May 1989, 25mg of heparinized blood was drawn from 24 Hagahai men and women. The Human T-cell line PNG-1 was deposited on August 14, 1990 at the American Type Culture Collection (Rockville MD).<sup>4</sup>

A US-European Consortium of Scientists have established the Human Genome Diversity Project.<sup>5</sup> Dubbed 'The Vampire Project' by indigenous peoples, its task is to collect DNA specimens of 700 endangered ethnic (indigenous) communities identified as "Isolates of Historic Interest'. The Project has been rigorously criticised and the researchers involved claim that they are using the genetic material to find treatments to cure cancer and AIDS. For the sake of humanity, one might possibly excuse the collection procedure. But how can one explain the Patent Claims?

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<sup>4</sup> Papua New Guinea and Solomon Island: US Government Claims Patents on People, News Bulletin by Miges Baumann, SWISSAID, Electronic Mail Network, January 1994.

<sup>5</sup> The Human Genome Diversity Project, funded by the US National Institute of Health has identified just over 700 communities for DNA sampling. At least 400 of these communities are indigenous. The 5-year project will cost between \$23 -35 million (US) and will allow sampling from 10,000-15,000 human specimens. At an average total cost of US \$2300 per sample, the project will spend more money gathering the blood of indigenous peoples than the per capita GNP of the any of the world's poorer 110 countries. (Source: RAFI).

## INITIATIVES OF INDIGENOUS PEOPLES AND THE UNITED NATIONS

Through the annual sessions of the UN Working Group on Indigenous Populations (WGIP)<sup>6</sup> indigenous peoples have established an international forum for information exchange and discussion of issues of national as well as international concern.

The WGIP forum is tasked with developing a draft Universal Declaration on the Rights of Indigenous Peoples. The current Draft refers to aspects of cultural and intellectual property in 4 of the 31 Articles. Article 29 which has the broader application states:

"Indigenous Peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and genetic resources, seeds, medicines, knowledge of the properties of flora and fauna, oral traditions, literatures, designs and visual and performing arts."

Agenda 21 of the 1992 UN Conference on Environment and Development (UNCED), popularly known as the Earth Summit, also makes specific mention to the intellectual property rights of indigenous peoples.

"In full partnership with indigenous people and their communities, Governments, and where appropriate, intergovernmental organisations, should aim at fulfilling the following objectives:

Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices. (26.4(b))"

In commemoration of the 1993 UN International Year for the World's Indigenous Peoples, the nine Iwi of Mataatua (the Bay of Plenty Region) lead by Ngati Awa, convened the world's First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples.

Participants came from the Pacific, South America, Europe, Asia and North America. The week-long Conference focused on the commodification of indigenous cultural and intellectual property throughout the public and private sectors. An International Declaration was subsequently developed and named the MATAATUA DECLARATION in honour of the Conference hosts.

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<sup>6</sup> WGIP has worked since 1985 on the development of a Draft Declaration on the Rights of Indigenous Peoples. It has set a new precedent within the UN for its commitment to consultation with indigenous peoples. Maori have participated in the WGIP Drafting process since 1988.

The MATAATUA DECLARATION<sup>7</sup> has moved on to occupy a place in history as one of the first international indicators identified by indigenous peoples of the ethics and protocols which should be considered by any individual or organisations accessing indigenous cultural and intellectual property.

### WHERE TO FROM HERE?

Through the Mataatua Declaration and other national and international agreements, there now exists minimum guidelines which researchers and policy makers should observe. Some of these include:

- Developing a Code of Ethics for Collecting and Using Indigenous information
- Ensuring that the maximum standards of Free and Informed Consent are obtained from indigenous informants
- Sharing any financial benefits

Reading the Mataatua Declaration is a must for any researcher. Implementing it is a responsibility of every research project. Ensuring that the Declaration is adhered to, should be the responsibility of every government.

Indigenous peoples for their part, must embark on a separate journey to protect the treasures of their ancestors.

### CONCLUSION

The new wave of colonisation leaves indigenous peoples in a position of enormous vulnerability. International agreements such as the G.A.T.T. provide international acceptance for the principle of patenting all life forms, human as well as flora and fauna. The basic right of a citizen must surely be the right to exist without being genetically tampered with. We do not know that all citizens face this threat, but we do know that indigenous peoples, through projects such as the Human Genome Diversity Project, do.

It can be referred to as 'tampering', it can also be referred to as 'misappropriation'. Either way it is immoral and brings back painful memories of the attitudes of the first colonists, who regarded indigenous people as savages not deserving of negotiation, consultation or consensus agreement.

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<sup>7</sup> The 1992 Mataatua Declaration comprises recommendations to indigenous peoples, to States and national institutions, and to the United Nations. For further information, write to: Mataatua Declaration Association, P.O. Box 76, Whakatane, Aotearoa New Zealand. Or FAX (04)479-7781.

What has changed? Is the role of indigenous peoples and their resources, including DNA (whakapapa), simply to improve the livelihoods of colonists?

Researchers must be aware of these issues and ensure that through the development of Research Codes of Ethics they do not contribute further to the problem.

**AROHA TE PAREAKE MEAD, NGATI AWA**

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P.O. Box 76  
Whakatane or

Fax: Wellington (04) 479-7781