

BOOK REVIEW

HANDBOOK OF INDIGENOUS PEOPLES' RIGHTS edited by Corinne Lennox and Damien Short, Routledge, London and New York, 2016, 442 pp, recommended retail price NZ\$195.00.

The *Handbook of Indigenous Peoples' Rights* is a collection of scholarly works which highlights many important contemporary Indigenous rights issues. The collection focuses principally upon the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration),¹ which has been hailed as a comprehensive, ground-breaking document. However, critical analysis in a number of chapters demonstrates that there are limitations to the Declaration.²

The collection is divided into eight parts. Chapter titles are detailed and informative with the content of the 28 chapters providing short, intensive discussions of the topics one would expect to see in such a handbook: Indigenous identity, land rights, development and the environment, the rights of Indigenous women, mobilisation for rights, justice and reparations, and international protection mechanisms. The four regional surveys which form the final part of the collection provide valuable case studies from Africa, Asia, Latin America and the Nordic countries.

This review highlights the key ideas from each part, and offers some observations on the relevance and value of this handbook for New Zealand readers.

Part I comprises three chapters on “indigeneity”. The philosophical justifications for attributing distinctive rights to Indigenous peoples within liberal democratic communities is a topic of ongoing debate in New Zealand³ and is the subject of chapter 2. The following chapters canvas arguments for more nuanced approaches to affirmative action and a discussion of how tribal groups decide their membership. The latter refers to membership issues arising in Treaty of Waitangi settlements and the “pan-tribal” settlement of commercial fishing claims. Comparisons are drawn with other jurisdictions where potential members are excluded on the basis of blood quantum, and claims of gender discrimination that arise where legislation allows for loss of membership “status”.

Part II is entitled “Right and Governance”. In chapter 5, Marco Odello sets out the background to the drafting of the Declaration to explain some of the Declaration’s “shortcomings” (such as the lack of a definition of “Indigenous peoples”, the incompatibility of individual and collective rights and the clash between claims for self-determination and the sovereign independence and territorial integrity of states). Despite the shortcomings, the author points to recent developments in law and policy that demonstrate an “evolution of the international consensus” towards the new legal standards embodied in the Declaration.

The impact of development projects on Indigenous peoples’ land is identified in chapter 6 as one of the “foremost concerns of Indigenous peoples worldwide”. The author discerns the emergence of a more flexible approach in determining the scope of free, prior and informed consent. This theme is continued in the following two chapters through a review of seven case studies⁴ and an exploration of Indigenous self-government and forms of autonomy.

1 *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 61/295, A/Res/61/295 (2007).

2 For example, chs 5, 10 and 27.

3 Particularly following the speech by politician Don Brash at Orewa in 2004, and opposition to the Local Electoral (Equitable Process for Establishing Māori Wards and Māori Constituencies) Amendment Bill 2017 (261–1), that proposed reserved seats for Māori at local government level.

4 Bangladesh, Indonesia, Bolivia, Ecuador, Mexico, Venezuela and Colombia.

In a chapter discussing reparations for Indigenous peoples in Canada, New Zealand and Australia, Andrew Erueti argues that the better pathway for Indigenous peoples is not to seek recognition of existing rights (such as via the judge-made doctrine of native title) but rather to seek reparations for enduring injustices. Concluding that measures such as New Zealand's Treaty of Waitangi settlement processes are incomplete and incoherent, the author promotes the Declaration as a means for setting out a path for political and legal reform.

Chapter 9 delves into the "dizzily complex bureaucratic maze" that is the Canadian land claims process,⁵ concluding with the recommendation that Canada develops a system of land conflict resolution that recognises Indigenous ideas about sovereignty in order to accord with Canada's obligations under the Declaration.

Part III deals with Indigenous women's rights. Despite existing international human rights instruments, Indigenous women's rights remain an overlooked issue both at international and local levels. The Zapatista Women's Revolutionary Law in Mexico is proffered as a positive example of Indigenous women's rights developed at grassroots level and in chapter 10, Rauna Kuokkanen laments the absence of such an affirmation of these rights in the Declaration. In chapter 11, citing gender discrimination through tribal disenrolment in the United States, violence against Indigenous women and the lack of access to justice, and the "gendered injustice of Indian land claims",⁶ Cheryl Suzack calls for human rights organisations and nation-state actors to develop political strategies that endorse the remedies that Indigenous women have developed.

Part IV deals with development and the environment. In arguing that the existing sustainable development agenda has not delivered on its promise of improved environmental sustainability, Deborah McGregor postulates, in chapter 12, that many international undertakings, often led by the United Nations (UN), continue to marginalise the involvement and voice of Indigenous peoples. An alternative vision of "living well with the Earth"⁷ is proposed based on Indigenous concepts of relationships, responsibilities and obligations to Mother Earth. Examples referred to include constitutional provisions in Bolivia and Ecuador and the recent New Zealand example of the Whanganui River Iwi settlement, which resulted in the river being recognised as a living and legal entity.

The remaining chapters in this Part deal with diverse topics: development and climate governance, citing the Peoples' Agreement of Cochabamba 2010 as an example of a new paradigm for challenging neo-liberal capitalism's so-called "green economy"; corporate responsibility to respect human rights; the impacts on the Indigenous peoples of the Atacama Desert as a result of privatisation of copper in Chile and the impact upon water supply; and the evolution of Indigenous peoples' rights and the Indigenous knowledge debate.

The two chapters in Part V cover the important issue of mobilisation for Indigenous peoples' rights. Chapter 17 discusses strategies for mobilisation at the UN that achieved significant international change. Chapter 18 shares the strategies and achievements of the San (Bushmen) of Botswana and the African Indigenous movement.

5 Elizabeth Cassell and Colin Samson "The long reach of frontier justice: Canadian land claims as a human rights violation" in Corinne Lennox and Damien Short (eds) *Handbook of Indigenous Peoples' Rights* (Routledge, London and New York, 2016) 111 at 123.

6 Cheryl Suzack "Human rights and Indigenous feminisms" in Corinne Lennox and Damien Short (eds) *Handbook of Indigenous Peoples' Rights* (Routledge, London and New York, 2016) 146 at 155.

7 Deborah McGregor "Living well with the Earth: Indigenous rights and the environment" in Corinne Lennox and Damien Short (eds) *Handbook of Indigenous Peoples' Rights* (Routledge, London and New York, 2016) 167.

Part VI chapters discuss reparations, compensation and self-determination in respect of the mandate and work of the Indian Specific Claims Commission in the United States and the stolen generations in Australia respectively.

The focus of Part VII is the story behind the establishment of the three mechanisms for monitoring and implementing the rights of Indigenous peoples: the Special Rapporteur, the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. Historical events that led to the inclusion of Indigenous peoples' issues into the work of the UN are recounted, such as the visits to the League of Nations by Iroquois Chief Deskaheh and Māori leader TW Rātana in the 1920s.

In chapter 22, Rodolfo Stavenhagen, a former UN Special Rapporteur on the Rights of Indigenous Peoples, draws upon personal experience to explain the mandate and work of the Special Rapporteur. The author shares his view that while the Special Rapporteur's reports are instruments in the struggle for human rights, due to the lack of enforcement mechanisms there is an "implementation gap". States seem to disregard the reports and are becoming increasingly immune to "blame and shame".

In chapter 23, Lee Swepston reminds us of the importance of the International Labour Organisation (ILO) Convention – Indigenous and Tribal Peoples 1989 (No 169),⁸ which can be ratified and thereby become binding in national and international law, and subject to supervision by the ILO's supervisory bodies. This Convention offers an alternative monitoring pathway as the Declaration sets out aspirations and creates standards, but is not subject to direct reporting and supervision. Exemplars of certain rights which may be more effectively addressed outside the specific "Indigenous rights" framework are provided.

In chapter 24, Cynthia Morel recounts a handful of well-known cases (*Awás Tingni*; *Lovelace*; and *Endorois*)⁹ to illustrate the role that litigation plays as a means to achieve strategic leverage for highlighting indigneous rights issues.

The final Part contains four regional case studies: an overview of international human rights standards and Indigenous peoples' land and human rights in Asia; the struggle by Indigenous peoples in Africa for recognition and protection of their human and peoples' rights; the major achievements that have come about as a result of decades of Indigenous struggle in Latin America; and the struggles of the Sami and the Inuit in the Nordic countries.

Observations and recommendation

New Zealand was one of the few states that participated from the outset in the drafting of the Declaration. Māori made a significant contribution to both the text and the process for drafting the Declaration. Despite descriptions of the Declaration by our government representatives as being purely aspirational, Māori leaders and communities have strongly endorsed the Declaration.

8 Convention concerning Indigenous and Tribal Peoples in Independent Countries ILO No 169 (adopted on 27 June 1989, entered into force 5 September 1991).

9 See *The Mayagna (Sumo) Awás Tingni Community v Nicaragua* Inter-Am Ct HR No 79 (Ser C, 2001); *Lovelace v Ontario* [2000] 1 SCR 950, 2000 SCC 37; *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* 276/2003 African Commission on Human and Peoples' Rights, 4 February 2010.

Sir Edward Taihākurei Durie,¹⁰ for example, cites the Declaration as the most significant international development for Māori since the Treaty of Waitangi.

Important contemporary issues are discussed in this collection and its relevance to New Zealand readers is enhanced by the use of New Zealand examples in a number of key themes. Academics and students alike will find the *Handbook of Indigenous Peoples' Rights* a useful and valuable resource.

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