

Intellectual Property Issues and Concerns with the Commercialisation of Taonga Species

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Overview

1. What are the issues?
2. What is the legal framework?
3. Where to next?



What are the issues?

1. Ownership
2. Representation
3. Knowledge holders
4. What knowledge
5. Capacity
6. Benefit sharing
7. Expectations
8. Nature of the taonga species



Access and benefit sharing

What concepts of justice should underpin such agreements?

- desert - contribution only;
- distributive justice - entitlement which goes to ownership;
- cognitive justice - plurality of knowledge systems, equality of difference;
- procedural justice - processes and participation;
- equitable justice - address existing inequalities with special measures



What is the legal framework?

1. State law
2. Māori law
3. International law



What is the legal framework?

State law

1. No specific law or policy that deals with bioprospecting in Aotearoa
2. Some government departments implement specific statutes but no coordinated approach amongst them



What is the legal framework?

State law

“Most of New Zealand’s terrestrial and aquatic flora and fauna are not subject to any comprehensive bioprospecting regime. Access to and scientific research into some species is entirely unregulated.”

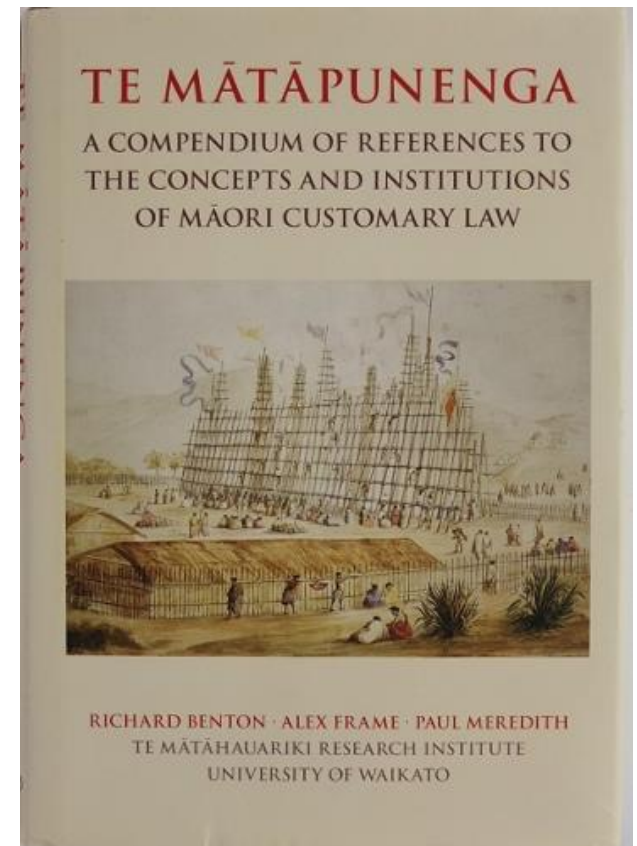
Ko Aotearoa Tenei Vol 1 p 187

What is the legal framework?

Māori law

Sources: oral tradition, written records, tikanga/practices

Purpose: Provide a framework for the relationship as well as address the substantive issues



What is the legal framework?

Māori law

How did our ancestors deal with strangers
(commercial entities)?

What values underpinned those relationships?

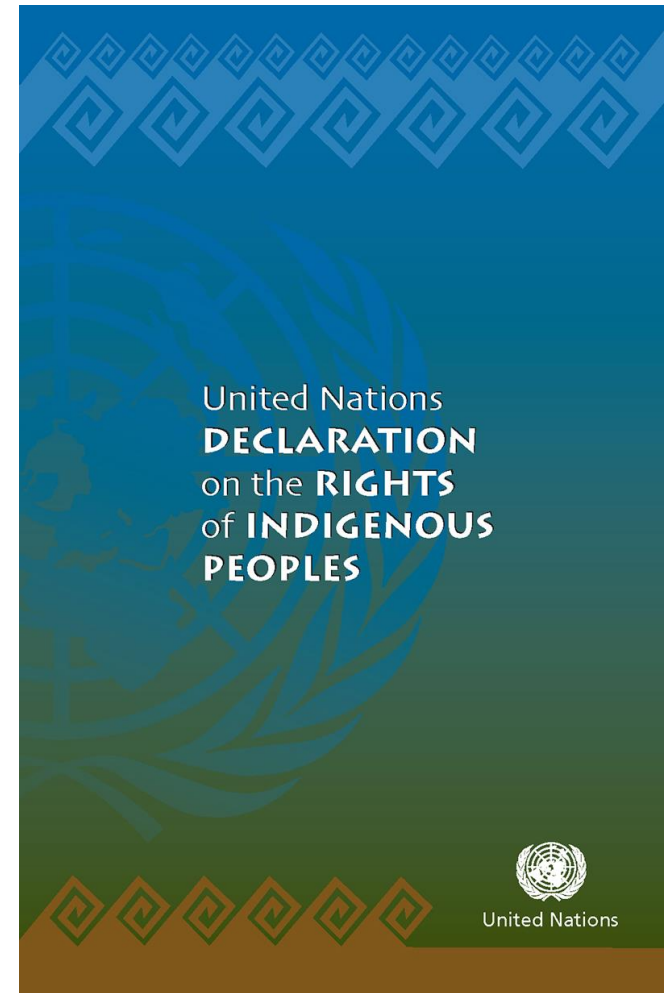
How were benefits shared?

How were disputes settled?

What is the legal framework?

International Law

Sources: Te Tiriti o Waitangi
and the UN Declaration on the
Rights of Indigenous Peoples



What is the legal framework?

UN Declaration on the Rights of Indigenous Peoples

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

What is the legal framework?

UN Declaration on the Rights of Indigenous Peoples

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

What is the legal framework?

UN Declaration on the Rights of Indigenous Peoples

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

What is the legal framework?

UN Declaration on the Rights of Indigenous Peoples

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Where to next?

1. Acknowledging there are many complex issues to be addressed, will take time
2. Opportunities to invigorate Māori law and use international law
3. Negotiated agreement





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Kia ora mai ra.