

Aotearoa Independent Monitoring Mechanism for the UN Declaration on the Rights of Indigenous Peoples

Annual Monitoring Report – July 2023

Introduction

This is the ninth annual monitoring report of the Aotearoa Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples (the Monitoring Mechanism).

The Monitoring Mechanism is an independent Māori working group created in 2015. Members of the Monitoring Mechanism have been selected by their Iwi (tribal nation) and endorsed by the National Iwi Chairs Forum (the Forum)¹ to act as independent experts. The Monitoring Mechanism is supported in its work by technical advisers. The objective of the Monitoring Mechanism is to promote and monitor the implementation of the UN Declaration on the Rights of Indigenous Peoples (the Declaration) in Aotearoa New Zealand. This report reflects the Monitoring Mechanism's independent view and does not purport to represent the views of individual iwi, hapū or other organisations.

Structure

This report outlines recent developments in relation to the Declaration and is structured, as in previous years, around the following key priorities:

- A. An overarching priority of Constitutional Transformation
- B. Self-determination, underpinned by participation in decision-making and free, prior and informed consent
- C. Lands, Territories and Resources – with a special focus on climate change/climate crisis
- D. Cultural Rights
- E. Equality and Non-discrimination – with a focus on child poverty
- F. Practical implementation of the Declaration and Technical Assistance.

Key issues

This year's report includes a focus on the impacts of Cyclone Gabrielle and other extreme weather events on Māori communities. These have thrown into sharp relief the impacts of the climate crisis on Māori, as well as issues of inequality, racism and the crucial importance of tino rangatiratanga and self-determination to Māori wellbeing, particularly in emergency response and recovery processes.

The report also provides an update on progress of a national action plan to implement the Declaration, noting with disappointment that this has been delayed, with completion postponed by the Government until 2024.

The stalling of this work highlights the fragility of progress on Te Tiriti and Indigenous Peoples' rights in Aotearoa, and the vulnerability of these rights to politicisation and regression. We agree with the Government that the Declaration requires more socialisation nationally. However, we are of the view that Aotearoa's human rights obligations require it to act now to realise Indigenous peoples' rights under the Declaration. Progress on Indigenous rights should not be subject to the political mood of the government of the day.

While this report notes numerous positive developments, a recurring stalling and regression of rights highlights the need for constitutional protection of Te Tiriti and human rights. Entrenched safeguards are needed to ensure the stability of gains made, continued and sustained progress, and protection against disinvestment and constant regression.

As happens frequently in Aotearoa, and with regularity in every election year, positive advances toward equity and realisation of Te Tiriti, are used by some to stoke fear and racism, with many politicians giving in to the backlash and some actively fuelling it. Disturbingly, there is increasing activity and visibility of white supremacist groups, including some calling upon New Zealanders to take up arms against Māori, who they say have "gone too far" in asserting their rights.

Conversely, many New Zealanders have been vocal in their support for work to advance Te Tiriti and the Declaration. In December 2022 an open letter was signed by 61 organisations and individuals, calling on the Government to continue work on the Declaration plan. The letter concludes:¹

Lately, we've seen some great progress towards honouring Te Tiriti o Waitangi...
But we've also seen backlash to that progress, just as other great moves toward equity from our past were met with attempts to drive us apart by stirring up fear over change.
We ask that leaders do not lose heart, or commitment to this work, which uplifts all of us and will strengthen our communities and relationships in the years to come.

Recommendations

This year's monitoring report makes four recommendations:

Recommendation 1:

That the EMRIP note the instability of Te Tiriti and Indigenous Peoples' rights in Aotearoa, the ongoing need for their constitutional protection and for safeguards to prevent continual regression.

Recommendation 2:

That the New Zealand Government engage with whānau, hapū and iwi on a Tiriti-based constitutional conversation aimed at protecting the rights of all New Zealanders.

¹ <https://medium.com/actionstation/open-letter-continue-work-on-the-united-nations-declaration-on-the-rights-of-indigenous-peoples-4f3c1e19b068>

Recommendation 3:

That the EMRIP note that whānau, hapū and iwi are expressing and exercising their tino rangatiratanga, mana motuhake and rights to self-determination in a variety of ways that protect and enhance wellbeing, and create positive outcomes.

Recommendation 4:

That the EMRIP continue its oversight of Aotearoa New Zealand’s development of a national plan of action to realise the Declaration, and that it consider undertaking a follow up visit to Aotearoa at its earliest convenience.

A. An overarching priority of Constitutional Transformation

The need for constitutional transformation remains an overarching priority for the Monitoring Mechanism. In the past year, the impacts of Cyclone Gabriel and other extreme weather events have highlighted the crucial importance of, and value in, Māori being able to exercise tino rangatiratanga and self-determination. Yet Government systems and structures do not readily recognise or enable this. Transformative change is needed to establish a Tiriti-based constitutional framework for Aotearoa that can realise the Declaration’s rights, in particular the right to self-determination, and enable Māori communities to lead solutions, share decision-making power and resources with the Crown, and ensure tikanga and Te Ao Māori are central to how systems operate.

Tangata whenua responses to the cyclone have demonstrated the resilience and effectiveness of Māori-led initiatives, and their ability to mobilise quickly to meet the needs of their people and wider communities. Marae, hapū, iwi, and Māori organisations across the country provided shelter, temporary housing, and food to their communities despite limited resourcing, regional isolation, and sometimes in the absence of state support. These acts of tino rangatiratanga were critical in ensuring whānau were kept safe and supported and have highlighted, as they did with the Māori-led Covid-19 response, that there is no need for government at any level to fear tino rangatiratanga or ignore its benefits.

Despite being inherent to tangata whenua, guaranteed in He Whakaputanga and Te Tiriti, and protected as a human right under international law, tino rangatiratanga is not constitutionally recognised in Aotearoa. Practices of central and local government rely on an assumption of ultimate Crown authority and continually subvert Tiriti rights. Fundamental changes are needed to re-balance the distribution of public power, and to fully discuss, explore and implement the constitutional models proposed in the report of *Matike Mai Aotearoa*, where Māori and the Crown have independent, but relational spheres of authority.

Declaration Whānau Rangatiratanga Project

Over the past two years The Ministry of Māori Development, the Human Rights Commission and Pou Tikanga have been working on engagement with whānau, hapū and iwi to develop a national plan of action on the Declaration. Government decided not to progress the final draft as it required significant legislative and policy reform to meet the standards of the Declaration.

However, they deemed that further engagement and development of ‘social license’ was required and have provided resourcing to Pou Tikanga for a 6-month project for community facilitators to develop 500 whānau rangatiratanga (self-determination) plans that aligned with the Declaration. We have produced more than 650 plans increasing knowledge and application of the Declaration at a whānau and community level.

A number of achievements for this project to date have been:

- The creation of an *empowering movement* for whānau/participants who are able to express how the Declaration applies to their liberation and rangatiratanga.
- *Whānau ki te whānau* – the provision of community (rather than agency or organisational) facilitated support for whānau to learn about the Declaration and develop whānau plans to enable rangatiratanga (whatever this means to them). Facilitators are working as brokers to support whānau to access resources and resourcing across their communities.
- *Development of whānau* through rights-based facilitation training and planning, resulting in ongoing and often unsolicited positive whānau feedback to facilitators on the progress of their plans.
- *Demand for rangatiratanga planning and learning more about rights and the Declaration.* We have reports of this project supporting submissions on proposed legislation, incorporation into council long term planning. Most participants expressed that they wish they knew about this and that the information and process should be offered in kura, prison and across communities. We have facilitators working with rough sleepers, many low-income families, those in justice residences and working on reintegration. These wānanga include discussions on discrimination and rights and are often about improving cultural, environmental, social and economic conditions through whānau rangatiratanga.
- *Rangatiratanga responses to health, economic, social and cultural rights, cost of living, housing challenges and recovery from Cyclone Gabrielle.* The plans often include a focus on whānau connecting with one another, their whakapapa, marae, hapū, iwi, reo, holding wānanga/reunions, mokopapa, support for kaumātua (elders), wāhine (women), tāne (men), purchasing and developing resources, addressing food security (maara kai, fruit trees, chicken coops) native replanting, marae, home and housing repairs and improvements (legal fees, off grid, maintenance, insulation, solar, and cyclone recovery – generator, toilet, water tank, water bore, clean up, furniture replacement, reburial boxes for urupā), business start-up, health and wellbeing (events, sport participation, health and wellbeing, dental work, medical expenses) for themselves and their communities, children’s activities and sports, drivers licensing and lessons, WOFs, and , improving education and employment skills.

This year important developments have been made that challenge the constitutional foundations of the Crown’s authority, and that have progressed the national conversation about how our constitution should be transformed to give greater effect to Te Tiriti and indigenous rights. Some of these developments are outlined below.

National Conference on Constitutional Transformation

In November 2022, the Borrin Foundation and the Aotearoa Centre for Indigenous Peoples and the Law hosted a national conference to progress discussions on constitutional transformation in Aotearoa.² The conference brought together experts from Aotearoa and around the world to share experiences and options for constitutional transformation to realise Māori rights in Te Tiriti o Waitangi, He Whakaputanga and the Declaration. Discussions considered the merits and pitfalls of comparative constitutional transformation; guidance for negotiating constitutional recognition of indigenous peoples' rights in democratic systems; the status of tikanga Māori as the first law of Aotearoa and its current and future place in our country's legal landscape; and the different ways pluralism can manifest in constitutional structures and how this might occur in Aotearoa.³

Moana Jackson Memorial Conference

A conference in memory of the late Dr Moana Jackson, lead author of the *Matike Mai Aotearoa* report was held 30 June-1 July at Te Wānanga o Raukawa. The conference focussed on two key areas of Moana's work: constitutional transformation and the criminal justice system.

The Report on Stage 2 of the Te Paparahi o Te Raki (Northland district) Inquiry

The Waitangi Tribunal has recently released its stage 2 report into the Te Paparahi o te Raki inquiry.⁴ The report concluded that various nineteenth century actions taken by the Crown to gain control over Māori land and establish its authority in Aotearoa were in breach of the principles of Te Tiriti. Among these actions was the Crown's assertion of sovereignty over Aotearoa despite it not being ceded by Māori under the Treaty;⁵ its imposition of English legal concepts over tikanga (Māori law); its enactment of the New Zealand Constitution Act of 1852 which transferred authority from the imperial to the colonial government;⁶ its rejection of proposals for Māori autonomy and self-government;⁷ and in its imposition, from 1862, of an English land-tenure system that individualised title to Māori land, making it more vulnerable to partition, fragmentation, and alienation.⁸

It was found that these actions led to significant land loss, the lasting erosion of Māori tino rangatiratanga (sovereignty) and independence, and the undermining of the communal control of land and the cultural, political and economic organisation of hapū (tribal nations).⁹ The Tribunal recommended that all Crown-owned land in the district be returned to Te Raki Māori (Northland Māori), and that a constitutional conversation is had between the Crown and Te Raki Māori to determine the appropriate constitutional processes and institutions at the national, iwi, and hapū levels to recognise, respect, and give effect to their Treaty rights.¹⁰ The Crown has yet to release a formal response to the Tribunal's report.

² <https://www.auckland.ac.nz/en/law/news-and-events/event-gallery/The-Constitutional-Korero-2022.html>

³ <https://www.scoop.co.nz/stories/PO2211/S00151/constitutional-korero-takes-off-in-tamaki-makaurau.htm>

⁴ Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry* (Wai 1040, 2022).

⁵ *Ibid*, at 274 & 275.

⁶ *Ibid*, at 983 & 984.

⁷ *Ibid*, at 1786.

⁸ *Ibid*, at 1432, 1433 & 1434.

⁹ *Ibid*, at 1800 & 1801.

¹⁰ *Ibid*, at 1832.

Family Court – Community Panels

As part of work with government on justice issues, Pou Tikanga have proposed that Family Court decisions on placements of children be made by community panels, including iwi representatives.¹¹ Ministry of Justice officials have raised concerns about the constitutional implications of the proposal, including in relation to the role and independence of courts and the judiciary. Their position in turn has implications for shared decision making in other areas.

Recommendation 1:

That the EMRIP note the instability of Te Tiriti and Indigenous Peoples’ rights in Aotearoa, the ongoing need for their constitutional protection and for safeguards to prevent continual regression.

Recommendation 2:

That the New Zealand Government engage with whānau, hapū and iwi on a Tiriti-based constitutional conversation aimed at protecting the rights of all New Zealanders.

B. Self-determination, underpinned by participation in decision-making and free, prior and informed consent

As noted above, and discussed further below, self-determined responses by Māori communities were quickly and effectively deployed in response to Cyclone Gabrielle. Māori resilience and manaakitanga was also highlighted as again, as in previous disasters and during Covid-19, Māori were quick to mobilise to provide shelter, food and support to affected communities. In the absence of government resource or recognition as “official” civil defence hubs, and often well before any government services or resources arrived on the ground (in some cases weeks), marae opened their doors to all in need during the cyclone and since.¹² Iwi, hapū, marae and Māori organisations have stood up emergency shelters, cleaned up flooded marae and homes, fed, clothed and sheltered communities and have continued to house and support displaced whānau and to rebuild homes.¹³ They have provided assistance with accessing services, navigating funding and insurance and working with the government and local councils.

We learnt from the COVID-19 response that once resources were provided to iwi, hapū, and community organisations, Māori flipped from having a low-uptake of vaccination rates to being on par with the rest of the population.

The recent cyclone and weather events have further highlighted the critical importance of self-determined Māori responses and of the need for adequate recognition and resourcing of these. Up-

¹¹ <https://waateanews.com/2023/03/09/community-panels-take-aim-at-family-violence/>

¹² <https://e-tangata.co.nz/reflections/why-our-marae-always-open-in-a-crisis/> ; <https://www.stuff.co.nz/opinion/300810491/marae-worked-tirelessly-through-cyclone-but-shouldnt-be-left-to-fill-in-gaps?rm=a> ;

¹³ <https://www.stuff.co.nz/pou-tiaki/131610231/iwi-delivering-homes-for-cyclone-gabrielle-impacted-whnau-in-wairoa>

front and ongoing resources are needed to support the critical role of iwi, hapū, marae and Māori organisations in emergency response and recovery.

Covid-19

Data on Covid-19¹⁴ demonstrates that once government resources were released to Māori (following court decisions and Waitangi Tribunal report) then the proportion of Māori cases and deaths declined. The figures went from: Māori being 40-50% of cases, to being 10%. This is an illustration of tino rangatiratanga being exercised, and how once iwi, hapū and Māori organisations were able to access resources, they were quickly able to protect their people more effectively than government.

The positive outcomes of Māori exercising tino rangatiratanga were reinforced by research published this year by the Mental Health and Wellbeing Commission.¹⁵ The report noted that Māori-led initiatives played a key role in protecting the health and wellbeing of communities, supporting connections and sharing information and resources during the Covid-19 pandemic.

Māori responded to Covid-19 through a plethora of actions underpinned by tikanga and mātauranga Māori. Much of this was built on established networks and relationships that enabled agile, effective and adaptive activities aimed at protecting communities. ...¹⁶

The exercising of tino rangatiratanga evident throughout the pandemic clearly showed the natural and intuitive nature in protecting and supporting communities with the knowledge, skills and relationships to effectively deliver for their communities. In this way, the pandemic responses have shone a light on how future government decisions regarding health and wellbeing can be built upon by including Māori as Te Tiriti o Waitangi partners and decision-makers for outcomes of all people living in Aotearoa.¹⁷

Lessons identified in the report included that:¹⁸

- Iwi and Māori communities should be recognised as self-reliant and strong in the face of myriad adversities, not vulnerable.
- Tino rangatiratanga should be recognised, respected and supported
- Opportunities to build true partnership abound, but the government and its representatives need to trust and be trustworthy in their approaches
- High quality research and data will support iwi and Māori responses and will help build the trust needed for partnership.

¹⁴ <https://www.tewhātuora.govt.nz/our-health-system/data-and-statistics/covid-19-data/covid-19-trends-and-insights>

¹⁵ Mental Health and Wellbeing Commission, (2023), *Exercising rangatiratanga during the COVID-19 pandemic*, at: <https://www.mhwc.govt.nz/assets/COVID-19-insights/Paper-6-Rangatiratanga/COVID-19-paper-6-Eng-Full.pdf>.

¹⁶ Ibid., at p3.

¹⁷ Ibid., at p 5.

¹⁸ Ibid., at p 5-6.

Research was also published by the Whānau Ora Commissioning Agency (WOCA) regarding its Covid-19 response.¹⁹ The report draws attention to the collective efforts involving iwi, Māori communities and Māori health networks, and the key innovations and initiatives that were undertaken to support the delivery of positive outcomes for Māori, noting that “it is imperative that these efforts are maintained”. The study “re-emphasises the value of Māori-led, whānau-centred and culturally informed initiatives and highlights the ability of WOCA and its partners to reorient their efforts to where the need is most compelling”, providing “an example of the inherent strengths of Māori communities when caring for and protecting others”.

The report concluded that: “Transformational change is urgently required to ensure whānau are supported by networks and service delivery models that enable confidence in overcoming systemic barriers to health and wellbeing”. The report’s 12 recommendations included in relation to: continued and increased resourcing of WOCA leadership and Whānau Ora services, Māori workforce, for capacity building and to plan for future emergencies; ensuring the Māori voice is heard in decision making; data sharing; and support for collaboration, improved coordination and resource sharing.²⁰

Similarly, a report into the Ministry of Health equity response to covid-19 by Te Rau Ora²¹ found that the Ministry of Health prioritised individuals over interconnected family structures, lack of diversity in public communications to support those most disadvantaged (including those with disabilities, or limited access to technology), and failed to consider the welfare of affected people.

Whānau Ora

In previous monitoring reports, the Monitoring Mechanism has discussed the value and potential of Whānau Ora as an approach, grounded in Indigenous values, to support whānau self-determination. The Monitoring Mechanism has recommended that the approach be extended across government, a recommendation that was also made by a 2019 review of the programme. In 2023 the Auditor General carried out a further review, finding that overall, the lack of clear expectations and barriers created by some public sector processes and practices, meant that limited progress had been made in expanding the use of whānau-centred approaches by public organisations.²²

Recommendation 3:

That the EMRIP note that whānau, hapū and iwi are expressing and exercising their tino rangatiratanga, mana motuhake and rights to self-determination in a variety of ways that protect and enhance wellbeing, and create positive outcomes.

¹⁹ Whānau Ora Commissioning Agency. (2022). *Herenga Tāngata Whānau Ora Response to COVID-19 Delta and Omicron*. <https://whanauora.nz/assets/resources/WOCA-Herenga-Tangata-COVID19-Delta-Omicron-Response-Report-0822-Digital-FINAL.pdf>.

²⁰ Ibid., at p 72.

²¹ Te Rau Ora, (2022), *Review of the equity response to COVID-19*, at: <https://terauora.com/moh-covid-review-case-studies/>.

²² Office of the Auditor General, (2023), *How well public organisations are supporting Whānau Ora and whānau-centred approaches*.

Participation in decision-making: Local government changes

The introduction of Māori wards has had a huge and positive impact on Māori representation in local government, with a significant increase in Māori councillors and mayors. Thirty-five local and regional councils established Māori wards.²³ Mana whenua report that in areas with increased Māori representation on councils, such as the Far North District Council, there has been a significant change in attitude and responsiveness to Māori communities.

Participation in decision-making: Independent Electoral Review

Aotearoa's electoral system is currently undergoing an independent review.²⁴ As a part of this review an interim report has been released focusing on ways to make our electoral system fairer, to enhance New Zealanders electoral participation and engagement, and to uphold Te Tiriti o Waitangi.²⁵ The report has concluded that decades of systemic breaches of Te Tiriti have led to a reduction in Māori voter participation and engagement,²⁶ and that the Crown has an obligation to redress these breaches, actively protect Māori electoral rights, and provide equitable opportunities for Māori electoral participation.²⁷

The report has issued a series of recommendations that attempt to ensure the electoral system upholds Te Tiriti. These include:²⁸

That the Electoral Act explicitly require decision-makers to give effect to Te Tiriti and its principles and be made a statutory objective of the Electoral Commission; that the Commission work with Māori to ensure Māori governance over Māori electoral data; that the Māori electorates are entrenched in the same way that general electorates are; that the voting age be lowered to 16, noting that keeping it 18 could be unjustified age discrimination against Māori due to the greater proportion of Māori aged 16 or 17 relative to the non-Māori population; that all prisoners should have the right to vote, considering the overrepresentation of Māori in prisons and therefore their disproportionate ineligibility to vote; that funding is provided for 'by Māori, for Māori' education and participation efforts, and initiatives promoting party and candidate engagement with Māori communities; that the board of the Electoral Commission be collectively required to have skills, experience, and expertise in te Tiriti, te ao Māori and tikanga Māori; and that processes for determining electoral boundaries are improved, including to ensure Māori data sovereignty and a more robust calculation of the population of Māori descent.

The panel is seeking public feedback on these draft recommendations before its final report is made to the Minister of Justice in November 2023.

²³ <https://www.votelocal.co.nz/maori-wards-and-constituencies/>

²⁴ <https://electoralreview.govt.nz/>

²⁵ Independent Electoral Review, (2023), *Interim Report: Our Draft Recommendations for a Fairer, Clearer, and More Accessible Electoral System*. Wellington: New Zealand. At: <https://electoralreview.govt.nz/have-your-say/interim-report/>.

²⁶ Ibid, at 54 and 55.

²⁷ Ibid, at 57.

²⁸ Ibid., a pp 57-61.

Participation in decision-making: Co-governance

The National Iwi Chairs Forum joined with the Māori Women's Welfare League and the New Zealand Māori Council to publicly express concern at efforts by some to stir up controversy around the notion of 'co-governance'. The joint statement by the three national organisations called on the government to actively promote co-governance because it is good for all New Zealanders, and to address misunderstanding and misinformation about Te Tiriti and the rights of Indigenous Peoples.

C. Lands, Territories and Resources – with a special focus on climate change/climate crisis

Cyclone Gabrielle and other severe weather events in the past year have highlighted the fact that Māori communities are highly vulnerable to the impacts of climate change. Māori are more likely to live in places vulnerable to climate change and severe weather – often as a result of previously being forced from traditional lands to onto sub-optimal river and coastal flood plains.²⁹

These events have had disproportionate impacts on Māori, exacerbating existing inequities. Regions significantly impacted by Cyclone Gabrielle have high Māori populations. Reports show that in some locations more than 70% of homes that were damaged by flooding were occupied by Māori, and more than 60% were rentals.³⁰ Māori are also less likely than other groups to have insurance or the extra resources to recover from emergency events.³¹ Housing and poverty were already an issue in many of these communities, now further devastated by the cyclone which has displaced over 10,000 people. Again, Iwi, hapū, marae and Māori organisations have led out swift and strong responses, providing temporary housing and rebuilding homes.

The cyclone also highlighted issues such as lack of investment in regional infrastructure and the unique issues faced by rural and isolated communities – many of which are predominantly Māori. Targeted government funding of \$15 million was announced following the cyclone, to support Māori communities.³² This sits alongside other mainstream funding and a cyclone recovery package announced in the May budget.³³

While targeted funding was directed to marae and Māori communities following the disaster, further investment and support to whānau, hapū, iwi, marae and Māori organisations is needed to recognise their tino rangatiratanga and self-determination and enable the critical role they play in local responses.

²⁹ <https://waateanews.com/2023/03/28/how-the-rain-falls-differently-upon-maori/>

³⁰ <https://www.stuff.co.nz/pou-tiaki/131610231/iwi-delivering-homes-for-cyclone-gabrielle-impacted-whnau-in-wairoa>

³¹ Retirement Commission, (2021), [2021 Financial Capability Survey](#) ; and [Financial Capability Barometer Survey 2018-19](#).

³² <https://www.tpk.govt.nz/en/nga-putea-me-nga-ratonga/community-and-commemoration/cyclone-gabrielle-maori-communities-response-fund>

³³ <https://www.beehive.govt.nz/release/flood-and-cyclone-recovery-package-covers-basics> ; <https://www.rnz.co.nz/news/political/489866/flood-cyclone-recovery-govt-to-spend-1b-on-education-transport-projects-mental-health> ; <https://www.nzherald.co.nz/kahu/cyclone-gabrielle-maori-fear-for-whenua-future-with-recovery-plans/MWKPWQ3DVNXC5B3R3ZUJFRCY/>

All of the above factors mean that Māori should be at the centre of response and recovery efforts, supported in the exercise of their self-determination, and involved as partners, participating meaningfully alongside government in all decision making around the response and recovery.

Yet Government-led responses have continued to demonstrate a failure to recognise the leadership and role of Māori in the community. Fast-track amendments to legislation were passed under urgency – providing little more than a day for public submissions, and without mention of Te Tiriti o Waitangi or the rights of Māori as Indigenous Peoples.³⁴ Further, the Bill’s provisions do not meet standards set out in a raft of international agreements, from the UN Declaration on the Rights of Indigenous Peoples, the OECD, to Climate Change agreements. It falls well short of the standards of free, prior, and informed consent. Use of urgency and centralised decision-making have also marginalised Māori and failed to reflect the obligations of partnership. Decisions continue to be made, for example in relation to roading, without adequate engagement or participation of tangata whenua.

The National Iwi Chairs Forum has therefore begun to develop a disaster preparedness strategy founded on tikanga, manaakitanga and mātauranga; which must give effect to Rangatiratanga/Mana Motuhake. The intention is to recognise and elevate the effectiveness of iwi leadership and the significant contribution that Māori make ‘on the ground’ within and across communities at the time of disaster and in recovery.

Forestry slash

The devastating effects of forestry waste, and its contributions to the cyclone and storm damage was investigated by a ministerial inquiry. In describing the impacts on the Tairāwhiti region, the inquiry report noted that the Indigenous Peoples of the region were “in peril, at risk of becoming homeless and landless”.³⁵ The report noted:

Ngati Porou communities took hit after hit in broken roads and bridges, lost power and communication, delayed and undependable emergency provision. ... the urgency of the situation across Ngati Porou is unassailable. An environmental disaster is unfolding in plain sight.

The report found that poor forestry practices mean the industry has lost its social licence. The report’s 49 recommendations included in relation to: establishing a taskforce to oversee the immediate clean-up of woody debris; an immediate halt to large-scale clear-fell harvesting in the region to be replaced with a mosaic of staged logging; changes to the regulatory regime for pine forestry; and to transition extreme erosion zones out of pasture and production forestry into permanent forest.

Other recommendations included: sustainable funding for infrastructure and management of waterways; conferring legal personality on the Waipua and Waipaoa Rivers; and a broad package of government support for clean-up, infrastructure and economic development in the region.

³⁴ <https://www.stuff.co.nz/national/politics/131491641/cyclone-recovery-bill-to-cut-red-tape-introduced-by-government>

³⁵ Ministry Inquiry into Land Uses in Tairāwhiti and Wairoa, (2023), *Outrage to Optimism*, at: <https://environment.govt.nz/assets/Outrage-to-Optimism-CORRECTED-17.05.pdf>

The Inquiry was critical of the Gisborne District Council, which it found had “unilaterally determined not to collaborate with mana whenua”, actions that were “neither Treaty-based partnership, nor recognition that over half the district’s population is Māori, most of whom are tangata whenua to one or more of the local iwi.” The Inquiry found that:

Maori landowners had a longer-term view and a more sustainable relationship with the environment, despite many obstacles. The land is generally located on the most marginal land zones, with poor or no accessibility, it cannot be sold and is constantly predated upon in the public interest.

In relation to Māori-owned land the report recommended the government agree to partner with whenua Māori landowners for a suite of investment-ready development projects and to provide capital for a proof-of-concept co-investment arrangement.

Water reforms

The Water Services Entities Act passed in December 2022 and further legislation has been introduced as part of freshwater management reforms.³⁶ The Water Service Entities Act retained provisions for Indigenous representation, establishing regional representative groups made up of equal numbers of council and mana whenua representatives.

These “co-governance” provisions drew vocal opposition from some quarters, with “stop co-governance” becoming a catch-cry against measures to advance Indigenous Peoples’ rights, including the national action plan for the Declaration. Concerted campaigns against “co-governance” have emerged, which themselves have drawn heated opposition and protest.³⁷

Return of lands and access to justice

In December 2022, the Supreme Court issued a landmark decision that enabled Wairarapa Māori to seek the return of land in the Waitangi Tribunal.³⁸ However, this decision was effectively rendered meaningless by the completion of a negotiated treaty settlement³⁹ for the wider Ngāti Kahungunu-ki-Wairarapa iwi (tribal nation).

The case followed a binding decision by the Tribunal, independent of the settlement, that required the Crown to return the land in question to Wairarapa Māori.⁴⁰ The Crown sought judicial review of the Tribunal’s decision and it was determined by the High Court, for various reasons, that the Tribunal was wrong to make the finding.⁴¹ That High Court decision was then partially overturned by

³⁶ <https://www.dia.govt.nz/Three-Waters-Reform-Programme>

³⁷ <https://www.newsroom.co.nz/fact-checking-the-co-governance-roadshow> ;
<https://www.nzherald.co.nz/nz/anti-co-governance-roadshow-orewa-protesters-clash-with-attendees/VZQOUBFFUFG65CAGXGLS35BDCI/>

³⁸ *Wairarapa Moana Ki Pouākani Incorporation v Mercury NZ Limited* [2022] NZSC 142.

³⁹ <https://www.govt.nz/browse/history-culture-and-heritage/treaty-settlements/find-a-treaty-settlement/ngati-kahungunu-ki-wairarapa-tamaki-nui-a-rua/ngati-kahungunu-ki-wairarapa-tamaki-nui-a-rua-deed-of-settlement-summary/>

⁴⁰ Waitangi Tribunal *Determinations of the Tribunal Preliminary to Interim Recommendations Under Section 8B and 8HC of the Treaty of Waitangi Act 1975* (Wai 863, 2020) [Preliminary Determinations].

⁴¹ *Mercury NZ Limited and others v The Waitangi Tribunal and others* NZHC 654 [2021].

the Supreme Court in the decision forementioned, which held that the case still had merits and could be referred back to the Tribunal to determine if returning the land was still appropriate.

Although Wairarapa Māori were entitled to continue their case before the Tribunal, the fact that their land claim was also included in the collection of claims being addressed by the wider treaty settlement meant that once the settlement legislation was passed, their claim would be considered settled and could not be heard. A few days after the Supreme Court decision, and without awaiting the outcome of the Tribunal litigation, parliament enacted the settlement legislation⁴² and the Wairarapa Moana land claim was effectively extinguished.⁴³ The Tribunal was blocked from returning the land.

Wairarapa Māori have since sought declarations in the High Court that the settlement legislation, so far as it extinguishes their claim, is inconsistent with the right to justice under the New Zealand Bill of Rights Act 1990, articles 2 and 14 of the International Convention on Civil and Political Rights, and the principles of Te Tiriti o Waitangi.⁴⁴ The issue highlights the complexity of the treaty settlement process, the emphasis on unilateral parliamentary sovereignty above all else, and that in the absence of any constitutional protection, the legislature continues to breach the fundamental civil and Tiriti rights of Māori.

Resource management reforms

Resource management reforms continue to progress, with further draft legislation introduced in December 2022.⁴⁵ A notable feature of the Natural and Built Environments Bill, is the requirement that “All persons exercising powers and performing functions and duties under this Act must give effect to” (rather than merely “take into account”) the principles of te Tiriti o Waitangi.⁴⁶ The bill also includes recognition of responsibilities to support intergenerational wellbeing, and to recognise and uphold te Oranga o te Taiao (a concept that encompasses both the health of the natural environment, and the intrinsic relationship between iwi and hapū and te Taiao).⁴⁷ The third piece of legislation, the Climate Adaptation Bill is due to be introduced this year.⁴⁸

Māori Climate Platform

Empowering Māori is one of the five key principles in Aotearoa’s emissions reduction plan and the national adaption plan recognises the importance of embedding Te Tiriti across the climate response. The Māori Climate Platform is a way of enabling this. The Government is developing a Māori Climate Platform in partnership with tangata whenua to enable Māori-led climate action, planning, and solutions that build climate resilience.⁴⁹ A Ministerial

⁴² Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua Claims Settlement Act 2022.

⁴³ <https://www.wairarapamoana.org.nz/update-on-wai-85-crown-forces-settlement-on-wairarapa-moana-owners/>

⁴⁴ <https://www.wairarapamoana.org.nz/update-on-wai-85-media-statement/>

⁴⁵ <https://bills.parliament.nz/v/6/267f6032-6ceb-482a-ac45-0c02dd1edc60?Tab=history>

⁴⁶ Clause 4 <https://www.legislation.govt.nz/bill/government/2022/0186/latest/LMS736285.html>

⁴⁷ Clause 3

⁴⁸ <https://environment.govt.nz/news/rm-reform-update-may-2023/>

⁴⁹ <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/maori-climate-platform/>

Advisory Committee has been appointed to engage with Māori and lead the design phase of the platform. The Government worked with the National Iwi Chairs Forum and Pou Take Āhuarangi to inform the approach to establishing the Ministerial Advisory Committee, including an independent Māori nominating panel.

D. Cultural Rights

Te Matatini

The national kapa haka (Māori performing arts) festival was held in February, attended by tens of thousands and viewed live online by over a million more. Normally a biennial event, the festival had not been held for four years, due to Covid-19.

A funding boost in the May budget recognises the national significance of the event, and long held concerns about the inequity in funding provided to it. An increase in Government funding from \$2.9 million to \$32 million over two years, brings the festival in line with other arts funding, such as for the Symphony Orchestra and Royal New Zealand Ballet.⁵⁰

Mātauranga Māori (Māori knowledge)

Eleven years on from the release of the Waitangi Tribunal's report on the Wai 262 claim concerning Māori culture and identity, and 30 years since the filing of the original claim, research has been published revisiting the Tribunal's recommendations and examining whether positive progress had been made.⁵¹ The Tribunal's 2011 report, *Ko Aotearoa Tēnei* found that the Crown had intentionally damaged mātauranga and its traditional systems of transmission, and advocated for a principled partnership between Māori and the Crown in the support, oversight, ownership and custody of mātauranga Māori held or managed by the Crown.⁵²

The research found little progress, noting that "the level of collaboration across departments and with Māori on the protection of mātauranga Māori has not improved much since the *Ko Aotearoa Tēnei* report and almost none of the recommendations in Chapter Six have been implemented by

⁵⁰ <https://www.rnz.co.nz/news/te-manu-korihi/484854/te-whanau-a-apanui-take-te-matatini-kapa-haka-title>
<https://waateanews.com/2023/05/18/te-matatini/>
<https://www.rnz.co.nz/news/te-manu-korihi/490176/absolutely-over-the-moon-te-matatini-gets-large-funding-boost-in-budget-2023>
<https://www.nzherald.co.nz/nz/politics/budget-2023-breakdown-maori-initiatives-get-825m-te-matatini-kapa-haka-festival-receives-massive-boost/2TE237HTENH2LC45E4IFLUCBSQ/>

<https://www.nzherald.co.nz/kahu/te-matatini-hailed-as-a-huge-success/TTSW4N5RCVBAPKOPU5WZVU72G4/>

⁵¹ A.T.P. Mead, V. Smith, J. Ataria, T.P. Wilson-Leahy, S. Ogilvie, E. Watene-Rawiri, H. Potter and M. Shadbolt. "When The Crown Controls Mātauranga: A Report on a Survey of Crown Policies, Programmes, Legislation, Funding, and Impact Assessment Relating to Mātauranga Māori," Biological Heritage National Science Challenge, Christchurch, October 2022. https://bioheritage.nz/wp-content/uploads/2019/04/When-the-Crown-controls-matauranga_Full.pdf; https://bioheritage.nz/wp-content/uploads/2019/04/When-the-Crown-controls-matauranga_Summary.pdf

⁵² Waitangi Tribunal, (2011), *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, at: <https://waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>

the Government”.⁵³ The report highlighted a lack of a whole-of-government approach to, and policy for, mātauranga. It revealed a lack of legislative protections for mātauranga Māori and few funding opportunities available specifically to uplift mātauranga Māori. The report concluded that it is inappropriate and unacceptable for the Crown to continue its current work regarding mātauranga Māori without overarching policy and objectives. It noted that a co-developed mātauranga Māori policy is required, to guide how the Crown will uphold its obligations of active protection and setting out protocols for the Crown’s access to and use of mātauranga. The report noted that such a policy would help the Crown meet its domestic and international obligations in relation to mātauranga.

E. Equality and Non-discrimination – with a focus on child poverty

UN Committee on the Rights of the Child

New Zealand was reviewed by the UN Committee on the Rights of the Child in January 2023. Areas of urgent concern identified by the Committee included in relation to Māori children (as well as non-discrimination, violence, children in state care, disabled children, standard of living and child justice).⁵⁴

The Committee expressed deep concern that discrimination persists against Māori children, and urged the Government to prioritise action against racism and discrimination, including by analysing data on disparities, confronting the barriers and measuring progress on improving outcomes.⁵⁵ The Committee also noted it “is deeply concerned... about the inequitable survival and development outcomes for Māori children, including the disproportionate mortality rate for Māori infants and the suicide rate of Māori youth, the overrepresentation of Māori children who are victims of homicide, family violence, child abuse and neglect, and the number of Māori children in State care and in conflict with the criminal justice system”.⁵⁶

The Committee made numerous recommendations that Government take specific actions to address discrimination and inequality affecting tamariki Māori. These included:⁵⁷

(a) To systematically assess the impact of policies, legislation and government services in addressing the root causes of the vulnerability experienced by Māori children and their families, including the higher likelihood of living in deprivation and poverty;

(b) In line with the recent legislative developments, to strengthen the duties of schools and child protection and youth justice sector decision makers to recognize and uphold the right to identity of Māori children, systematically ensure that the voices of Māori children are heard and that their

⁵³ Above note 51.

⁵⁴ UN Committee on the Rights of the Child, (2023), *Concluding observations on the sixth periodic report of New Zealand*, CRC/C/NZL/CO/6, at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC%2FC%2FNZL%2FCO%2F6&Lang=en

⁵⁵ *Ibid.*, at para 15-16.

⁵⁶ *Ibid.*, at para 39.

⁵⁷ *Ibid.*, at para 40.

views are considered in decisions that affect them and strengthen support for organizations promoting and protecting their rights and those of their families;

(c) To finalize the national action plan against racism and the action plan on the United Nations Declaration on the Rights of Indigenous Peoples and include Māori children in their development.

Child poverty

At a national level there has been progress toward the child poverty reduction targets set by Government as required in the Child Poverty Reduction Act 2018. However, the persistent gap between tamariki Māori and other children remains. The latest child poverty statistics show that Māori children continue to be more likely to live in hardship and inadequate housing. While material hardship decreased overall for children in 2021, there remains a persistent high level of disparity between groups, with Māori children twice as likely than Pākehā children to be living with material hardship (20% compared with 8%).⁵⁸

They are more likely to live in unaffordable and poor quality housing, with 10% of Māori children living in damp or mouldy homes (national average 6%).⁵⁹ Māori (26%) and Pacific (37%) whānau are most likely to sometimes, or often, run out of food, compared with European children (11%).⁶⁰ The *Child Poverty Monitor* identifies an “an urgent need to prioritise childhood vaccinations and to overturn the inequity in vaccine delivery that has increased markedly during the pandemic and response”.⁶¹ Immunisation rates for Māori babies have fallen further behind those of other groups, with 72% fully vaccinated at age 8 months (down from 77%, and compared with a national rate of 86%). The hospitalisation rate for vaccine-preventable diseases for Māori children was twice as high as the rates for European/Other and Asian children.⁶²

The latest *Child and Youth Wellbeing Strategy Annual Report for the year ending 30 June 2022*⁶³ reiterated the persistence of disparities for Māori children and young people, noting that these “reflect the long-term impacts of colonisation as well as racism, discrimination and intergenerational disadvantage”.⁶⁴ Ongoing disparities are further recorded in the latest *Child Poverty Indicators Report 2023*, with Māori children experiencing poorer outcomes across all indicators.⁶⁵

⁵⁸ Duncanson M, Roy M, van Asten H, Oben G, Wicken A, Tustin K, McAnally H and Adams J. (2022) *Child Poverty Monitor 2022 Technical Report*. Dunedin. NZ Child and Youth Epidemiology Service, University of Otago, at p15. Accessible at <https://nzchildren.co.nz/>.

⁵⁹ Ibid., p 17

⁶⁰ Ibid., p 16

⁶¹ Ibid., p 16

⁶² Ibid., p 16

⁶³ Department of the Prime Minister and Cabinet (DPMC) (April, 2023), *Child and Youth Wellbeing Strategy Annual Report for the year ending 30 June 2022*, at: <https://www.chilyouthwellbeing.govt.nz/resources/child-and-youth-wellbeing-strategy-annual-report-20212022>

⁶⁴ Ibid., at p17

⁶⁵ Department of the Prime Minister and Cabinet (DPMC), (June 2023), *Child Poverty Related Indicators Report 2023*, at: <https://www.chilyouthwellbeing.govt.nz/sites/default/files/2023-06/Child%20Poverty%20Related%20Indicators%20Report%202023.pdf>

Research published by the Whānau Ora Commissioning Agency on a pilot whānau-centred programme, found it had positive effects in reducing child poverty and increasing wellbeing of whānau and their tamariki.⁶⁶ The Ngā Tini Whetū pilot programme was launched in 2019 with funding from three government agencies.⁶⁷

The report found that Whānau Ora approaches are effective in supporting whānau to address poverty-related issues. Key levers of change identified include: a holistic, wrap-around approach; a focus on whakawhanaungatanga to build trusting relationships; connecting whānau to their whakapapa and identity based in te ao Māori; using a trauma-informed and healing-focused approach; and utilising Te Kete Oranga (direct funding to whānau to access the services and supports they needed). The report noted that these levers of change not only created the support and environment where whānau can achieve their aspirations, but had a ripple effect leading to broader outcomes such as a sustained reduction in child poverty. Outcomes included in relation to: Debt Reduction and Financial Resilience, Housing, Employment/Education, Transport, Building Business Development Capability. The report concluded that:

Solutions lie within the whānau, and Ngā Tini Whetū has provided the platform for a cross-sectoral, strengths-based and kaupapa Māori approach to reducing child poverty and improving the hauora of whānau.

Recommendations made to New Zealand by the UN Committee on the Rights of the Child included:

Para 32(a) Strengthen its response to reducing the prevalence of preventable and infectious diseases, including by prioritizing the delivery of immunization programmes, especially for Māori and Pasifika children and children living in poverty, and by monitoring the strict application of the healthy homes standards (2019) to improve the quality of rental properties;

Para 36(a) To ensure that measures taken to end child poverty are linked to expected time frames, are allocated adequate resources and are assessed, with a view to ensuring that such measures are impactful, comprehensive and comply with a child rights-based approach, specifically prioritizing groups disproportionately impacted by poverty, including Māori children, Pasifika children and children with disabilities;

⁶⁶ Whānau Ora Commissioning Agency, (2022), *E Tipu E Rea. Ngā Tini Whetū: The Collateral Change for Reducing Child Poverty Report*, at: <https://whanauora.nz/assets/resources/E-Tipu-E-Rea-Reducing-Child-Poverty-Report-Digital-FA.pdf>.
<https://www.rnz.co.nz/news/te-manu-korihi/489878/we-can-achieve-wonderful-things-reducing-child-poverty-for-maori-whanau>

⁶⁷ Accident Compensation Corporation, Oranga Tamariki and Te Puni Kōkiri.

Housing

Housing remains a major issue for tangata whenua, with current Māori home ownership rates sitting below 50% compared to the 70% ownership rate for New Zealand Europeans,⁶⁸ and tangata whenua making up 60% of the average 9000 New Zealander's living in emergency housing.⁶⁹

As part of its ongoing Inquiry into the right to a decent home, the Human Rights Commission released a report exploring ways to make the housing system more accountable to Māori. The February 2023 discussion paper, *Understanding Accountability for Māori* outlines three possible models for an accountability structure, including: a Māori Housing Authority; an independently appointed body reporting to Parliament; and an independent entity with mutual accountabilities (to government / Māori).

A 2022 report released on youth homelessness in Tāmaki Makaurau (Auckland) outlined the disproportionate impact of homelessness on tangata whenua, particularly those living in Tāmaki Makaurau, where 43% of homeless people are Māori (despite making up only 11.5% of the population in this region).⁷⁰

The report commented on the role of colonisation in the creation and perpetuation of Māori homelessness. It noted that significant government land purchases, land confiscations, and instances of disease and war associated with Aotearoa's colonisation resulted in wide-scale Māori urbanisation, displacement, and land-loss. They also led to a prevention of Māori land ownership and occupation, and a degradation of Māori kinship systems, economic capacity and culture,⁷¹ collectively compounding to create the necessary conditions for Māori homelessness. The report also noted that continual acts of state abuse are among the key factors driving Māori homelessness, with recent research finding that "Māori adults who have experienced homelessness, have attributed their earliest entrance into homelessness to their removal from whānau by social services in childhood, and the abuse, neglect and discrimination endured while in State care."⁷²

Recommendations from the report included the need to review definitions of homelessness to include youth and rangatahi; and resetting policies and processes to enable Kaupapa Māori and youth organisations to lead housing solutions.⁷³

⁶⁸ <https://www.stuff.co.nz/pou-tiaki/131474755/social-housing-has-potential-to-lift-mori-wellbeing-research-shows>

⁶⁹ Te Kāhui Tika Tangata Human Rights Commission *Homelessness and human rights: A review of the emergency housing system in Aotearoa New Zealand* (December 2022) at 50. Accessible at: https://assets.nationbuilder.com/nzhrc/pages/3403/attachments/original/1670900354/Report_-_Homelessness_and_human_rights_review.pdf?1670900354

⁷⁰ Paul, J., & Ratana, M. (2022). *Youth homelessness in Tāmaki Makaurau, Aotearoa New Zealand: A scoping report prepared for Manaaki Rangatahi ki Tāmaki Makaurau Youth Homelessness Collective*, at 16.

⁷¹ Ibid at 19.

⁷² Ibid.

⁷³ Ibid, at 49.

This research was recently reinforced by the Waitangi Tribunal's *Kainga Kore: Māori homelessness* report.⁷⁴ Released in May this year, the report found that between 2009 and 2016 the Crown breached the Tiriti principles of active protection, equity, and good government by failing to address rising rates of Māori homelessness; by not effectively implementing its Māori housing strategy; and in reducing access to social housing despite Māori reliance on it.⁷⁵ In the period since 2016, the Tribunal found that despite Crown actions to combat Māori homelessness, it has continued to breach the Treaty through poor consultation on its strategies; its failure to collect detailed homelessness data; the gaps in inter-agency coordination; and its lack of support for homeless rangatahi.⁷⁶ The Tribunal recommended that the Crown and claimants work in partnership to develop a new definition of homelessness that incorporates Māori perspectives.

Meanwhile, Māori-led and partnership housing initiatives continue to reap positive outcomes.⁷⁷

State care system

Tamariki and rangatahi Māori continue to be significantly overrepresented in State care, making up 57% of children in state care and 66% of young people in youth justice custody.⁷⁸

In its review of New Zealand, the UN Committee on the Rights of the Child noted the persistent overrepresentation of Māori children in State care, including babies, and the incidents of harm disproportionately experienced by those children.⁷⁹ The Committee's recommendations to Government included to:⁸⁰

To strongly invest in measures developed and implemented by Māori children and communities to prevent their placement in out-of-home care, limit removal, when it is deemed necessary, to the shortest time possible, provide them with adequate support while in alternative care, including access to mental health and therapeutic services, and facilitate reintegration into their families and communities

A joint review of six children's sector agencies including the Department of Corrections, the New Zealand Police, and the Ministry for Children was conducted in December 2022, in response to the murder of a child by his caregiver.⁸¹ The review identified significant gaps in the system's protection framework, including shortcomings in identifying the needs of a dependent child when charging and prosecuting sole parents, when assessing the risk of harm to a child, a lack of proactive information

⁷⁴ Waitangi Tribunal *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* (Wai 2750, 2023).

⁷⁵ *Ibid*, at 194 & 195.

⁷⁶ *Ibid*.

⁷⁷ For example, see: <https://www.teaomaori.news/iwi-councils-homebuilding-partnership-wins-award>

⁷⁸ Oranga Tamariki, *Quarterly Report - September 2022*, accessible at: <https://www.orangatamariki.govt.nz/about-us/performance-and-monitoring/quarterly-report/text-only/>

⁷⁹ UN Committee on the Rights of the Child, (2023), *Concluding Observations – New Zealand*, CRC/C/NZL/CO/6, at para 27(a).

⁸⁰ *Ibid.*, at para 28(a)

⁸¹ Dame Karen Poutasi [Ensuring strong and effective safety nets to prevent abuse of children](#) (November 2022).

sharing and reporting risk of abuse, and in effectively allowing a child to be invisible.⁸² Among recommendations issued was the need for improvements in cross-agency information sharing, mandatory reporting, improved vetting of proposed cares, and increasing agency partnerships with iwi Māori.⁸³

New laws have also been passed that remove the investigation and monitoring functions of the Office of the Children’s Commissioner, that transfer monitoring of the Ministry for Children to a new entity under two departmental agencies⁸⁴ and establish a new Children and Young Peoples’ Commission.⁸⁵ In passing these laws the government has ignored various calls for greater independence of the oversight mechanisms proposed,⁸⁶ for improved compliance with Te Tiriti and Indigenous rights,⁸⁷ and for the reforms to be put on hold until the findings of the Royal Commission are made later this year.

These developments demonstrate a failing of the state care system and an uninformed approach by the government to improving its performance. The findings and recommendations of the reports mentioned, the UN committee on the rights of the Child, and other reports such as the Waitangi Tribunal’s *He Pāharakeke, he Rito Whakakīkinga* on the Oranga Tamariki System⁸⁸ and the Māori-led inquiry into Oranga Tamariki,⁸⁹ must guide transformation in this area.

Abuse in care

As a part of the ongoing Royal Commission of Inquiry into Abuse in Care, research was conducted on the link between children and young people who had been placed in state care between 1950 and 1999 and then going on to serve a prison sentence.⁹⁰ The August 2022 research paper, *Care to Custody: Incarceration Rates* found that up to 42% of Māori who were in State care over this time received a prison sentence later in life.⁹¹ These Māori were found to have been up to 7 times more likely to receive a custodial sentence than Māori who had not been in state care,⁹² and this figure was consistently higher than that of non-Māori in state care over the same time.⁹³

⁸² Ibid, at 27.

⁸³ Ibid, at 58.

⁸⁴ Oversight of Oranga Tamariki System Act 2022.

⁸⁵ Children and Young People’s Commission Act 2022.

⁸⁶ <https://nzfvc.org.nz/news/oranga-tamariki-legislative-updates-new-reports-and-new-resources>

⁸⁷ Dr Fleur Te Aho and Claire Mason *Time to taihoa : the need to pause on the Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill and give effect to te Tiriti o Waitangi and Indigenous rights* (Te Puna Rangahau o te Wai Ariki, Aotearoa Centre for Indigenous Peoples and the Law, University of Auckland, July 2022).

⁸⁸ Waitangi Tribunal *He Pāharakeke, he Rito Whakakīkinga* (Wai 2915, 2021).

⁸⁹ Whānau Ora Commissioning Agency *Ko te wā whakawhiti – It’s time for change: a Māori inquiry into Oranga Tamariki* (August 2020).

⁹⁰ Royal Commission of Inquiry in Abuse in Care *Care to Custody: Incarceration Rates* (August 2022).

⁹¹ Ibid, at 9.

⁹² Ibid, at 12.

⁹³ Ibid, at 9.

The Royal Commission has also recently heard evidence from Māori and tangata whaikaha gang members about their experiences with the state care system.⁹⁴ At an inter-gang hui held in February 2023, participants spoke about being removed from their whānau, hapū, iwi, and cultural foundations by the state, and gave accounts of extensive physical, mental, and sexual abuse they suffered in its care.⁹⁵ A recurring theme across groups was the direct impact this abuse and disconnection had in their eventual involvement with gangs and the support systems, protection, and sense of belonging they provided.⁹⁶ Figures noted by the Waitangi Tribunal estimate that about 80-90% of Mongrel Mob and Black Power gang members have been wards of the State.

Over the course of its inquiry, the Royal Commission has made findings and heard evidence from Māori that directly reinforce the correlation between colonisation, Māori involvement and abuse in State care, and eventual engagement with gangs and the criminal justice system. They have also highlighted the systemic nature of the issues which both allowed abuse to occur and hindered the efforts of survivors to seek redress from the state.

The Royal Commission's final report is due to be issued in March 2024 and will conclude its comprehensive investigation into the nature, extent, and impact of abuse suffered in state and faith-based care.

Education

Pre-COVID-19 figures show that 79% of Kura Kaupapa Māori students left school with NCEA level 2 compared to the 64% of Māori students in mainstream education, and that in the last year of school, 58% of Kura Kaupapa Māori students left school with NCEA level 3 and only 35% of Māori students in mainstream education did the same.⁹⁷ Despite these numbers, as of March 2022 there were only 6773 students spread across the 62 official Kura Kaupapa Māori.⁹⁸ This is only a small fraction of all Māori students who are in education.

In 2022, Te Pae Roa (an independent Māori Education Oversight Group) conducted a series of nation-wide engagements and produced two reports informing the direction of a government work programme focused on growing Māori medium and Kaupapa Māori education. In its first report,⁹⁹ Te Pae Roa highlighted that no participants supported the Ministry of Education's continued governance of Kaupapa Māori education, instead strong support was expressed for Māori exercising

⁹⁴ <https://www.abuseincare.org.nz/our-progress/news/gangs-first-ever-joint-hui-to-discuss-states-role-in-their-formation-royal-commission-invited/>

⁹⁵ <https://www.stuff.co.nz/pou-tiaki/131283038/gangs-come-together-for-royal-commission-abuse-in-care-hui>

⁹⁶ <https://www.abuseincare.org.nz/our-progress/news/gangs-first-ever-joint-hui-to-discuss-states-role-in-their-formation-royal-commission-invited/>

⁹⁷ <https://www.newshub.co.nz/home/politics/2023/04/why-kura-kaupapa-is-telling-government-it-needs-more-funding-doesn-t-want-to-be-assimilated-into-mainstream.html>

⁹⁸ <https://www.rnz.co.nz/news/te-manu-korihiki/489616/waitangi-tribunal-hearing-undercores-concern-over-kura-kaupapa-autonomy>

⁹⁹ Te Pae Roa, (April, 2022), *The Future of Kaupapa Māori and Māori medium education - Report back and independent advice following Te Pae Roa's engagement process*, at: <https://assets.education.govt.nz/public/Documents/our-work/information-releases/Issue-Specific-release/Grow-Maori-Medium/The-Future-of-Kaupapa-Maori-and-Maori-medium-education-Te-Pae-Roa-April-2022..pdf>.

their tino rangatiratanga over Kaupapa Māori and Māori medium education, with consistent calls for the establishment of an independent Māori education authority. The report also found that all participants agreed that Māori medium and Kura Kaupapa Māori education was inequitably funded, and many sharing concerns over shortages in the Māori education workforce and the need to incentivise and provide targeted qualification programmes for Māori to join the teaching profession. The report recommended that the Minister work with Te Pae Roa to develop a new regulatory system and structure for Māori education, with the intention of devolving decision making processes and funding to this new structure.

In its second report,¹⁰⁰ Te Pae Roa concluded that Māori must have more agency and authority over its future if the government wants to increase the number of tamariki in kaupapa Māori education, recommending that progress be made towards establishing a new statutory entity in partnership with Māori.

The Waitangi Tribunal has recently concluded hearings into an urgent claim brought by Te Rūnanga Nui o Ngā Kaupapa Māori o Aotearoa (the body which oversees Kura Kaupapa Māori).¹⁰¹ The claim alleges the Crown has breached its Tiriti obligations through its lack of recognition and protection of the unique status of Kura Kaupapa Māori. Among the allegations was the Crown's failure to meaningfully engage with Te Rūnanga Nui regarding issues affecting Kura Kaupapa Māori, including in relation to the pending reforms proposed by the Crown that could reduce the rangatiratanga (autonomy) of Kura Kaupapa Māori and bring them further into the mainstream schooling system.¹⁰²

Evidence presented over the hearing period highlighted the historical and ongoing lack of support provided to Kura Kaupapa Māori by the Ministry of Education,¹⁰³ concerns about the Crown's pending proposals,¹⁰⁴ the inequitable state funding models for Kura Kaupapa Māori, and the inadequate condition of infrastructure across many Kura Kaupapa Māori. Claimants are calling for authority over Kura Kaupapa Māori to be returned to Māori under a Māori education stream that runs parallel to the mainstream system, and that is equitably resourced. Once the Tribunal has drawn conclusions on the inquiry it will release a report outlining any treaty breaches it has identified and may issue recommendations to remedy those breaches.

In November 2022, the Education Review Office (ERO) released a report that considered why children are not going to school in New Zealand.¹⁰⁵ For Māori learners and parents, key reasons included prioritising whānau or cultural events over school, responsibilities to look after sick or younger whānau and family members, and mental health challenges associated with bullying and tiredness. The report recommended a collaborative approach be taken between government,

¹⁰⁰ <https://assets.education.govt.nz/public/Documents/our-work/information-releases/Issue-Specific-release/Grow-Maori-Medium/Te-Pae-Roa-Final-Report.pdf>

¹⁰¹ <https://www.rnz.co.nz/national/programmes/morningreport/audio/2018889504/kura-kaupapa-maori-airs-grievances-to-waitangi-tribunal>

¹⁰² <https://www.raineycollins.co.nz/your-resources/articles/article-9-5-23>

¹⁰³ <https://www.rnz.co.nz/news/national/488994/waitangi-tribunal-hears-urgent-kura-kaupapa-maori-claim>

¹⁰⁴ <https://www.teaomaori.news/crown-intent-on-absorbing-kura-kaupapa-mainstream-system-waitangi-tribunal-told>

¹⁰⁵ Education Review *Office Missing Out: Why Aren't Our Children Going to School?* (Education Review Office, November 2022).

schools, and families aimed at improving mental health support, tackling racism and discrimination in schools, and identifying barriers to attendance.

The Government has recently allocated an additional \$76 million over the next five years to improve pay parity for Kōhanga Reo teachers.¹⁰⁶ Around 2000 staff stand to benefit from the pay rises, with most teachers set to receive a 35% pay rise. These efforts come almost a decade after the Waitangi Tribunal found that the Government's policies were failing Kōhanga Reo, and that their teachers were under-paid, under-resourced, and struggling. While parity is a positive development, Kōhanga Reo leaders say that in many instances Kōhanga Reo are unable to meet the demand from tamariki and whanau Māori for a range of reasons including poor infrastructure.

In its review of New Zealand, the UN Committee on the Rights of the Child recommended that New Zealand:

Para 37(c) Address the racism, discrimination, stigma and bias experienced by Māori and Pasifika children in school, including by strengthening efforts to promote and foster the Māori language, cultural identity and history in education;

Mental health

A recent report highlights the lack of research on experiences in compulsory treatment, particularly on Māori experiences and Māori-led studies.¹⁰⁷ The report notes that:¹⁰⁸

The disparities faced by Māori in relation to legal coercion are extreme, with them being over-represented in every statistic associated with use of the MHA including both compulsory community and inpatient treatment orders and rates and duration of seclusion. With explanatory models by Māori for these disparities being race, discrimination, cultural competence in practitioners, and colonisation, the urgent need for Māori-led research into disparity rates between Māori and non-Māori has been raised. However, this has not yet resulted in any in-depth inquiry or examination that could provide critical insights into what sits behind these disparities and the resulting impact of them.

The report was commissioned to support advocacy in the context of current processes to repeal and replace mental health legislation. An analysis of submissions to that process highlighted that Māori were more likely to advocate for complete abolishment of compulsory treatment and that all submissions advocated for more recognition of Te Tiriti o Waitangi in mental health law and practice. The report stressed the importance of all repeal and replace work involving a partnership

¹⁰⁶ <https://waateanews.com/2023/05/05/pay-boost-for-kohanga-reo-staff/>

¹⁰⁷ Schneller, A., Thom, K., Jenkin, G., Butler, K., Black, S., Every-Palmer, S., NewtonHowes, G., & Gordon, S. (2022). *Privileging the focus and voices/voices and focus of tāngata whaiora: Mental health act review and replacement*. New Zealand: Mental Health Foundation of New Zealand and Nōku te Ao Like Minds programme, Te Whatu Ora. Accessible at: <https://mentalhealth.org.nz/resources/resource/tangata-whaiora-experiences-of-compulsory-treatment>

¹⁰⁸ At p 4

with Māori, including tāngata whaiora, with any new legislation needing to reflect a Māori world view and for the necessary changes in practice to be particularly considered from this perspective.¹⁰⁹ Government initiatives funded through the Wellbeing Budget 2019 to expand primary mental health and addiction support services, have been independently evaluated.¹¹⁰ A two-year evaluation of the targeted kaupapa Māori primary mental health and addiction services found that contracting processes and inputs into service design have been free flowing and enabling for Kaupapa Māori health providers.¹¹¹ The evaluation found that providers were “unanimously energised and encouraged by the activation of their new kaupapa Māori Access and Choice services” begun to deliver genuinely Māori-centric mental health and addiction support services. The evaluation noted that “It is early days, but the roll out to date is encouraging for all providers”. A primary barrier to success was identified as a shortage of suitable clinical staff.

The latest annual monitoring report by the Mental Health and Wellbeing Commission (MHWC)¹¹² also notes the uptake of new services through the Access and Choice programme, and an increase in funding for kaupapa Māori services. It noted however, that Māori made up 39% of those subject to a compulsory community treatment order, and that:

Coercive practices continue to be widely used, particularly for Māori and Pacific peoples. All services need to urgently address these inequities, and we want to see more by Māori, for Māori approaches, such as kaupapa Māori services

A further report on youth wellbeing from the MHWC¹¹³ found declining mental health outcomes and increasing distress among rangatahi Māori. The report identified racism and discrimination, whānau wellbeing and uncertainty about the future as key issues affecting rangatahi wellbeing.

Recommendations included:¹¹⁴

- Greater coordination and resourcing to involve rangatahi in decision making about their futures, where their mana is upheld
- Supporting and empowering youth inclusive climate change actions
- Increased interventions against racism in media and on social media platforms
- Increased autonomy for iwi, hapū and whānau to make and operationalise decisions about their lives on their terms, as expressed in Te Tiriti o Waitangi.

¹⁰⁹ At p6

¹¹⁰ <https://www.beehive.govt.nz/release/more-m%C4%81ori-getting-access-mental-health-and-addiction-services>

¹¹¹ Awa Associates, (February 2023), *Te Waka Waiora: Mai Waikareī ki Waiwhetū Evaluation Report*. Accessible at: <https://www.wellbeingsupport.health.nz/assets/Access-and-Choice-Kaupapa-Maori-Te-Waka-Waiora-2023.pdf>

¹¹² Mental Health and Wellbeing Commission, (May, 2023), *Te Huringa Tuarua 2023: Mental Health and Addiction Service Monitoring Report*. At: <https://www.mhwc.govt.nz/assets/Te-Huringa/Te-Huringa-2023/Summary-report/Te-Huringa-Tuarua-2023-SummaryReport.pdf>. <https://www.mhwc.govt.nz/our-work/our-reports/> <https://www.mhwc.govt.nz/news-and-resources/more-action-needed-to-address-mental-health-and-addiction-service-challenges/>

¹¹³ Mental Health and Wellbeing Commission, (2022), *Young people speak out about Wellbeing: An insights report into the Wellbeing of Rangatahi Māori and other Young People in Aotearoa*. At: <https://www.mhwc.govt.nz/assets/Youth-wellbeing-/Youth-Wellbeing-Insights-Report-Full.pdf>

¹¹⁴ At p6-7

Health

Māori Health Authority

The Māori Health Authority, Te Aka Whai Ora was officially established in July 2022 as part of health system reforms.¹¹⁵ Affirming its commitment to Te Tiriti, Te Aka Whai Ora describes key elements of its role as to:¹¹⁶

- Guide and lead the hauora health system to give full effect to Te Tiriti o Waitangi and bring tino rangatiratanga, equity and evidence to the heart of decision-making
- Connect with iwi, hapū and whānau to create wellbeing supporting environments, improve service quality, whānau service experiences and outcomes
- Monitor system performance on whānau health and outcomes.

Te Aka Whai Ora sits alongside and is to work in partnership with Te Whatu Ora Health New Zealand. The agencies released an *Interim New Zealand Health Plan* that identifies six priority actions, including: placing whānau at the heart of the system to improve equity and outcomes; and embedding Te Tiriti across the health sector.¹¹⁷

The National and Act political parties have pledged to disestablish the Māori Health Authority if elected.

Therapeutic Products Bill

Proposed legislation introduced in 2022 dealing with regulation of natural health products, attracted intense opposition from Māori, due to the potential overreach into rongoā Māori (Indigenous medicine and health practices) and impacts on tino rangatiratanga and self-determination over these.¹¹⁸ In response, the Government has recently announced intended changes to the bill so that “in most cases Government will not regulate rongoā in the new regulatory system”, and has said it will establish an advisory committee of rongoā experts and Māori health leaders to implement the new provisions in the Bill.¹¹⁹

While a more positive outcome has been achieved, the exercise has demonstrated the issues that arise when Tiriti partnership and Māori participation and free, prior and informed consent are not adequately addressed from the outset of policy and legislative processes.¹²⁰

Racism

As also noted above, the inclusion of measures to uphold Māori rights has led to huge backlash, including racist and misogynist backlash against Māori ministers and MPs. This backlash in turn has

¹¹⁵ <https://www.teakawhaiora.nz/about-us/a-matou-whakapapa-our-narrative/> ; <https://www.futureofhealth.govt.nz/maori-health-authority/>

¹¹⁶ <https://www.teakawhaiora.nz/>

¹¹⁷ https://www.teakawhaiora.nz/assets/Uploads/Publications/TePaeTata_Oct_2022_a5_A4s.pdf

¹¹⁸ Therapeutic products bill <https://www.nzherald.co.nz/kahu/therapeutic-products-bill-crown-has-no-place-in-regulating-rongoa-says-expert/TLHZLLVL2ZBXHCCGOCTNW5MOFU/>

¹¹⁹ <https://www.beehive.govt.nz/release/therapeutic-products-bill-reduces-regulation-small-scale-producers-exclude-rongo%C4%81>

¹²⁰ <https://thespinoff.co.nz/atea/15-06-2023/rongoa-and-the-therapeutic-products-bill-explained>

meant that progress in other areas has been blocked – namely, the work on a Declaration action plan being stalled. Hostility to Māori rights has ranged from: organised speaking tours against co-governance initiatives; publication and sale to schools of purported ‘history’ books described by an historian as “racist propaganda”;¹²¹ to overt, violent threats. Disturbing videos have emerged of white supremacist groups urging members to take up arms to “control” Māori who “have gone too far” in asserting their rights and “can’t be allowed” to continue.

Recent articles by Louisa Cleave, Paula Penfold highlight the right wing and white supremacist agendas behind the protests at Parliament, along with the violent threats and abuse they promote.¹²² Their investigation into those groups identify the individuals who are behind them.¹²³

This year the Human Rights Commission released two reports on racism. The first stems from engagement to inform the development of a National Action Plan Against Racism. The report describes the long history of racism in Aotearoa affecting tangata whenua and ethnic and religious communities. It has more than 40 recommendations including: eliminating racism in key sectors (housing, employment, work and income, health, education, criminal justice); constitutional transformation; education about the history of colonisation and racism in Aotearoa; a campaign to encourage anti-racist action.¹²⁴

The second, a research report entitled *Maranga Mai!* explores the impacts of colonisation and racism on Māori.¹²⁵ The report recommends appointing a permanent Indigenous Rights Commissioner, establishing a Truth and Reconciliation Commission and that the government commits to constitutional transformation.

F. Practical implementation of the Declaration and Technical Assistance.

National action plan for the Declaration

As noted in previous reports, from mid-2021 to late 2022, representatives from Pou Tikanga of the National Iwi Chairs Forum, alongside representatives from the Human Rights Commission and Ministry for Māori Development worked in partnership to develop a national action plan to implement the Declaration. The process drew on the Advice provided by the Expert Mechanism following its country visit to New Zealand in 2019. The process was commendable for the equal governance authority of both iwi and the Crown.

¹²¹ <https://www.stuff.co.nz/national/education/300899633/racist-propaganda-the-undercover-campaign-to-infiltrate-school-libraries>

¹²² <https://interactives.stuff.co.nz/2022/08/circuit/why-we-made-fire-and-fury/>

¹²³ <https://interactives.stuff.co.nz/2022/08/circuit/fire-and-fury-disinformation-in-new-zealand/>

¹²⁴ Human Rights Commission, (2023), *Maranga Mai! The dynamics and impacts of white supremacy, racism and colonisation upon tangata whenua in Aotearoa New Zealand*, at:

https://tikatangata.org.nz/cms/assets/Documents/Ki-te-whaiao-ki-te-ao-Marama_Full-Report_PDF.pdf

¹²⁵ Human Rights Commission, (2023), *Ki te whaiao, ki te ao mārama: Community Engagement Report for developing a National Action Plan Against Racism*, at:

https://tikatangata.org.nz/cms/assets/Documents/Maranga-Mai_Full-Report_PDF.pdf

During 2022, representatives from each organisation worked collaboratively to prepare a draft action plan, based on the feedback received from targeted engagement with Māori.¹²⁶ Strengthening Māori self-determination and tino rangatiratanga was the most consistent matter raised. It was discussed at every engagement held and was a central theme for all the discussions. Greater participation in decision making was another key theme, along with addressing racism and discrimination, and improving understanding of Te Tiriti and Indigenous peoples' rights.

The targeted engagement was intended to be the first of two engagement phases. A draft action plan was intended to be released for broad public engagement, before being finalised by February 2023.

Despite the best efforts to prepare a draft that could be agreed by all three partner organisations, ultimately the Government unilaterally postponed the finalisation of the plan.¹²⁷

We agree with the Government that the Declaration requires more socialisation nationally. However, we are of the view that New Zealand's human rights obligations require it to act now to realise Indigenous peoples' rights under the Declaration.

Recommendation 4:

That the EMRIP continue its oversight of Aotearoa New Zealand's development of a national plan of action to realise the Declaration, and that it consider undertaking a follow up visit to Aotearoa at its earliest convenience.

¹²⁶ The report of targeted engagement is available at: <https://www.tpk.govt.nz/docs/tpk-undrip-keythemesm%C4%81oritargetedengagement-april2022v2.pdf>

¹²⁷ <https://www.newsroom.co.nz/co-governance-plan-kicked-down-the-road-to-2024>

Glossary

Hapū	Collective of extended families
He Whakaputanga	He Whakaputanga o te Rangatiratanga o Niu Tirenī, Declaration of Independence 1835
Iwi	Indigenous nation
Kai	Food
Kaupapa	Topic, issue or theme
Kaupapa Māori	Māori ideology and approach
Kōhanga reo	Meaning 'Language nest', Kōhanga Reo are pre-schools operating in Māori language and based on Māori culture and values. The Kōhanga Reo movement has been a core part of Māori language revitalisation.
Kura	School
Kura Kaupapa Māori	Māori language immersion schools, where teaching is in the Māori language and based on Māori culture and values. Alongside Kōhanga Reo, Kura Kaupapa Māori are part of the Māori-led Māori language revitalisation movement.
Manaakitanga	Care for others
Mana motuhake	Paramount power and authority
Mana whenua	Authority over land, and the Indigenous peoples who hold such authority
Māra kai	Gardens
Mātauranga	Māori knowledge and knowledge systems
Mokopapa	A gathering for the purpose of receiving traditional tattoo
Ngā Kura ā Iwi	Tribal schools providing Māori medium education from a tribal perspective, identity and culture.
Pākehā	New Zealander of European descent
Rangatahi	Young people
Rongoā	Traditional Māori health practices and medicines
Te taiao	The natural world, environment
Tamariki	Children
Tāngata whaikaha Māori	Māori persons with disabilities
Tāngata whenua	People of the land, Indigenous peoples
Te ao Māori	The Māori world
Te reo Māori / reo	Māori language
Te Tiriti o Waitangi / Te Tiriti	The 1840 treaty between Indigenous leaders and the British Crown
Tikanga	Māori law
Tino rangatiratanga	Absolute authority
Urupā	Cemetery
Whakapapa	Genealogies, lineage
Whānau	Extended family
Whānau hauā	Māori persons with disabilities
Whānau Ora	A programme and approach to services, based on Māori values and centred on whānau (extended families) and taking a strengths-based approach to support wellbeing and development.