

**United Nations Human Rights Council Universal Periodic Review of New
Zealand 2024**

**Report of the Aotearoa Independent Monitoring Mechanism for the
UN Declaration on the Rights of Indigenous Peoples, October 2023**

A. Introduction

1. This report is prepared by the Aotearoa Independent Monitoring Mechanism (Monitoring Mechanism) for the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration). Members of the Monitoring Mechanism are selected by their iwi (tribal nation) and endorsed by the National Iwi Chairs Forum (national body of Māori leaders) as independent experts.
2. The objective of the Monitoring Mechanism is to promote and monitor the implementation of the Declaration in Aotearoa New Zealand. Attached as **Appendix 1** is a copy of our ninth annual Monitoring Report.

B. Recommendations

3. The Monitoring Mechanism has the following recommendations for the Human Rights Council's review of Aotearoa New Zealand:

1. **In line with UN and Waitangi Tribunal recommendations, the New Zealand Government progress discussions and actions, in partnership with whānau, hapū and iwi, to determine and implement the appropriate constitutional arrangements to recognise, protect and give effect Te Tiriti o Waitangi and human rights.**
2. **The New Zealand Government to continue work to complete and implement the National Plan of Action to realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa.**
3. **The New Zealand government commit to supporting whānau, hapū and iwi to exercise their tino rangatiratanga and fundamental rights to self-determination, and strengthen efforts to enable Māori participation in decision-making.**
4. **That the Government strengthen efforts to combat racism, including by:**
 - a. **continuing work on a National Action Plan Against Racism, in partnership with Māori;**
 - b. **by implementing the recommendations of the Human Rights Commission's report *Maranga Mai!*;**
 - c. **by repudiating the Doctrine of Discovery; and**
 - d. **by calling for a cross-party commitment to anti-racism from all political parties and MPs.**

C. Constitutional transformation

4. New Zealand's constitutional arrangements provide limited protection of Te Tiriti o Waitangi¹ and human rights. Within these arrangements, and in the absence of a formal or written constitution, the New Zealand legislature/Parliament is supreme and is able to breach human rights without court oversight.

¹ Aotearoa New Zealand's founding treaty, signed in 1840 between Indigenous peoples and the British Crown

5. A recent example of this is the Wairarapa Moana Incorporation case, where Parliament enacted legislation² to override an Indigenous peoples' rights to lands, territories and resources, which had been recognised by the independent Waitangi Tribunal and the Supreme Court.³
6. Despite international recommendations for human rights to be protected as higher law,⁴ and for a Crown-Māori dialogue to determine the constitutional arrangements needed to give effect to Te Tiriti,⁵ lack of State action has meant that Māori rights remain subject to the political climate of the day.

Recommendation 1:

In line with UN and Waitangi Tribunal recommendations, the New Zealand Government progress discussions and actions, in partnership with whānau, hapū and iwi, to determine and implement the appropriate constitutional arrangements to recognise, protect and give effect Te Tiriti o Waitangi and human rights.

D. National Action Plan to implement the Declaration

7. A further example of the fragility of Te Tiriti and Indigenous peoples' rights in Aotearoa New Zealand, is the stalling of work on a national action plan to implement the UN Declaration on the Rights of Indigenous Peoples.⁶
8. Numerous recommendations made during the 3rd Cycle UPR, urged New Zealand to implement the Declaration and Te Tiriti through a national action plan, and/or by ensuring that law, policy and practice conform with these obligations.⁷ These recommendations were supported by Government, and it made commitments in 2019 to develop an action plan in partnership with Māori.
9. 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 2019.⁸ The process was commendable for the equal governance authority of both Māori and the Crown.
10. The plan was based on feedback received from engagement with Māori⁹ which stressed the need to strengthen Māori self-determination and tino rangatiratanga (sovereign authority), including in relation

² Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Act 2022.

³ Wairarapa Moana Ki Pouākani Incorporation v Mercury NZ Limited [2022] NZSC 142

⁴ UN Human Rights Committee, (2016), *Concluding Observations on the sixth periodic report of New Zealand*, CCPR/C/NZL/CO/6, at para 9-10(c).

⁵ UN Committee on Economic, Social and Cultural Rights, (2018), *Concluding Observations on the fourth periodic report of New Zealand (Advanced Unedited Version)*, E/C.12/NZL/CO/4, at para 9(a).

⁶ <https://www.newsroom.co.nz/co-governance-plan-kicked-down-the-road-to-2024>

⁷ For example: recommendations 122.167-172, A/HRC/41/4/Add.1 - Para. 56-63

⁸ EMRIP (2019), *Expert Mechanism on the Rights of Indigenous Peoples Country Engagement Mission (8 – 13 April 2019) – New Zealand, 14 July 2019*, accessible at:

<https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Session12/EMRIPAdvisoryNoteNZ2019.docx>

⁹ The report of targeted engagement is available at: <https://www.tpk.govt.nz/docs/tpk-undrip-keythemesm%C4%81oritargetedengagement-april2022v2.pdf>

to health, justice, housing, and the environment; to ensure greater Māori participation in decision-making; to address racism and discrimination; and to improve understanding of Te Tiriti and Indigenous peoples' rights.

11. 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. Ultimately, the Government unilaterally decided to pause the process rather than agree a draft for public consultation.¹⁰ Reasons included timing, the need for greater public awareness and acceptance of the Declaration, and because of the significant legislative and policy reform required to meet the Declaration's standards.
12. 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 2:

The New Zealand Government to continue work to complete and implement the National Plan of Action to realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa.

A. Self-determination and participation in decision-making

Whānau Rangatiratanga Plans

13. Following the pausing of work on a Declaration action plan, the Government did agree that further engagement and development of 'social license' was required, and provided resourcing for a 6-month project for community facilitators to develop 500 whānau rangatiratanga (self-determination) plans that aligned with the Declaration. From January to July 2023, 820 plans were completed with whānau (family groups), along with seed funding to support the achievement of their plans. The project achieved its aims of increasing knowledge and application of the Declaration at a whānau and community level, and included actions in relation to: identity, language, culture and connection; support for elders; addressing food security; housing repairs; health and wellbeing; children's sports and activities; education and employment skills.
14. Other achievements included: empowering participants to apply the Declaration; supporting whānau to access community resources; developing whānau through rights based education and training; and creating demand for further planning and learning about the Declaration.

Tino Rangitiratanga responses

15. Māori-led action during the COVID-19 pandemic and recent severe weather events were instrumental in protecting the health and wellbeing of communities throughout the country.

¹⁰ <https://www.newsroom.co.nz/co-governance-plan-kicked-down-the-road-to-2024>

16. Initiatives such as iwi checkpoints proved essential in managing the impact of the pandemic on rural and isolated communities.¹¹ Throughout Cyclone Gabrielle, marae, hapū and iwi stood up emergency shelters, cleaned up flooded homes, provided clothing and food, and have continued to house and support displaced whānau.¹²
17. These efforts illustrate the effectiveness of a tino rangatiratanga (Māori sovereign authority) approach, based in te ao Māori (the Māori world) and mātauranga Māori (knowledge systems), in successful national and regional responses to health crises and the impacts of climate change.

Participation

18. Despite the swift and effective Māori response to these major events, and despite being disproportionately at risk/impacted, Government-led responses have often failed to recognise the leadership and role of Māori in the community, or enable meaningful Māori participation in decisions. 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.¹³ The resulting legislation does not meet standards set out in a raft of international agreements, from the Declaration, 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 with, or participation of Māori.
19. In these, and other areas where Māori experience inequities – including homelessness¹⁴, children in State care¹⁵, health¹⁶, imprisonment¹⁷ – the Waitangi Tribunal has continued to report breaches of Tiriti obligations, and to highlight the critical importance of the Crown working in partnership with Māori, and enabling Māori leadership and tino rangatiratanga.
20. Positive progress in improving Māori participation in decision-making has involved:
 - a. the introduction of Māori wards in local governments, resulting in a significant increase in Māori councillors;¹⁸
 - b. an independent report recommending improvements to New Zealand’s electoral system, including by enhancing Māori electoral data governance, entrenching Māori electorates, lowering the voting age to 16 to address current age discrimination towards Māori, allowing all prisoners to vote, and providing funding for “by Māori for Māori” electoral education and participation efforts;¹⁹

¹¹ Annie Te One and Carrie Clifford “Tino Rangatiratanga and Well-being: Māori Self-Determination in the Face of Covid-19” (2021) 6 Front. Sociol available at <https://www.frontiersin.org/articles/10.3389/fsoc.2021.613340/full>

¹² <https://www.stuff.co.nz/pou-tiaki/131610231/iwi-delivering-homes-for-cyclone-gabrielle-impacted-whnauin-wairoa>

¹³ <https://www.stuff.co.nz/national/politics/131491641/cyclone-recovery-bill-to-cut-red-tape-introduced-by-government>

¹⁴ Waitangi Tribunal, *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* (Wai 2750, 2023).

¹⁵ Waitangi Tribunal, *He Pāharakeke, he Rito Whakakīkinga: Oranga Tamariki Urgent Inquiry*, (Wai 2915, 2021).

¹⁶ Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*, (Wai 2575, 2023)

¹⁷ Waitangi Tribunal, *Tū Mai te Rangī! Report on the Crown and Disproportionate Reoffending Rates*, (Wai 2540, 2017)

¹⁸ <https://www.votelocal.co.nz/maori-wards-and-constituencies/>

¹⁹ 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-yoursay/interim-report/>.

- c. recent policy and Treaty settlement developments expanding joint governance initiatives between Māori and the Crown over natural resources²⁰ and regional infrastructure;²¹
 - d. the government’s active development of a Māori Climate Platform in partnership with Māori, to enable Māori-led climate action, planning, and solutions that build climate resilience;²²
 - e. increasing recognition of the value and effectiveness of ‘by Māori for Māori’ initiatives, and establishment of entities such as a Māori Health Authority (Te Aka Whai Ora) to lead efforts to advance health equity for Māori.²³
21. These and other efforts to realise Māori rights, including the national action plan for the Declaration, have faced significant political backlash, with some political parties campaigning to reverse many of these initiatives. With a General Election underway in New Zealand at the time of writing this report, it is imperative that any incoming Government:
- a. respect, protect and fulfil the rights of Māori as Indigenous peoples;
 - b. continue efforts to achieve equity for Māori;
 - c. recognise, enable and support the exercise of self-determination and tino rangatiratanga; and
 - d. ensure that positive progress on Te Tiriti and the rights of Māori as Indigenous peoples, is not reversed.

Recommendation 3:

That the New Zealand government commit to supporting whānau, hapū and iwi to exercise their tino rangatiratanga and fundamental rights to self-determination, and strengthen efforts to enable Māori participation in decision-making.

B. Racism

22. The advancement 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 meant that progress in other areas has been blocked – namely, the work on a Declaration action plan being stalled.
23. 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”;²⁴ to overt, violent threats and harassment of Māori political candidates. 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. Media investigations have highlighted the right wing and white supremacist agendas behind the 2022 protests at Parliament,

²⁰ <https://www.rnz.co.nz/news/national/497083/taranaki-iwi-sign-settlement-maunga-and-park-to-be-recognised-as-a-person>

²¹ <https://www.waterservicesreform.govt.nz/the-case-for-change/policy-and-legislation/>
<https://www.dia.govt.nz/Three-Waters-Reform-Programme>

²² <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/maori-climate-platform/>

²³ <https://www.teakawhaiora.nz/about-us/a-matou-whakapapa-our-narrative/>; <https://www.futureofhealth.govt.nz/maori-health-authority/>

²⁴ <https://www.stuff.co.nz/national/education/300899633/racist-propaganda-the-undercover-campaign-to-infiltrate-school-libraries>

along with the violent threats and abuse they promote.²⁵ Independent research group, the Disinformation Project has reported that disinformation is contributing to a rise in anti-Māori racism and exposure to white supremacist beliefs.²⁶ Their report noted that the pre-election period has been characterised by increased antagonism, contributing to offline violence, with Māori women the most impacted.

24. Racism in the lead up to the General Election recently prompted Māori leaders to release an open letter, calling on all politicians to end to race-baiting, dog-whistling and racist comments in the election campaign, noting that these have reached unacceptable levels.²⁷

Recommendation 4:

That the Government strengthen efforts to combat racism, including by:

- a. continuing work on a National Action Plan Against Racism, in partnership with Māori;
- b. by implementing the recommendations of the Human Rights Commission's report *Maranga Mai!*;²⁸
- c. by repudiating the Doctrine of Discovery; and
- d. by calling for a cross-party commitment to anti-racism from all political parties and MPs.

25. While this report notes a range of 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.

²⁵ <https://interactives.stuff.co.nz/2022/08/circuit/why-we-made-fire-and-fury/> ;

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

²⁶ The Disinformation Project, (2023), *Race and rage: Examining rising anti-Māori racism and white supremacist ideologies in Aotearoa New Zealand*. Accessible at: <https://thedisinfoproject.org/2023/10/09/race-and-rage-examining-rising-anti-maori-racism-and-white-supremacist-ideologies-in-aotearoa-new-zealand/>

²⁷ <https://www.nzherald.co.nz/kahu/opinion-maori-leaders-open-letter-to-politicians/KBKA2KA7XJHKDFFAHLGYUFHVFVFM/>

²⁸ Human Rights Commission, (2023), *Maranga Mai! The impact of colonisation, racism and white supremacy on tangata whenua in Aotearoa New Zealand*. Accessible at: <https://tikatangata.org.nz/our-work/maranga-mai>