

Indigenous Peoples' Rights and the Treaty of Waitangi

Joint NGO submission: New Zealand's 2nd Universal Periodic Review, January 2014



Aotearoa Indigenous Rights Trust and Peace Movement Aotearoa, et al ¹



The joint submission provides information about New Zealand's international obligations to hapu and iwi Maori (the indigenous peoples of Aotearoa New Zealand, hereinafter referred to as Maori) with regard to the internationally recognised 1835 Declaration of Independence, the Treaty of Waitangi² (the Treaty) and the international human rights instruments, including - but not limited to - the two International Covenants, and the UN Declaration on the Rights of Indigenous Peoples.

New Zealand's ability to protect the human rights of Maori, and others, is seriously hampered by its constitutional, legislative and legal framework. There is little protection from violations of the Treaty and human rights arising from Acts of Parliament, and government policy and practice.

***Recommendation:** that New Zealand puts in place mechanisms - developed through a process of negotiation with Maori - to ensure all of its international obligations with regard to the collective and individual human rights of Maori are met.*

There is no provision for the continuance of tino rangatiratanga (sovereignty or independence) as guaranteed in the Treaty, or even for any power sharing among the parties to the Treaty; rather the constitutional arrangements emanate from a historically imposed Westminster system based on majority rule. While this lack of protection applies to everyone, it is a particular concern for Maori as minorities within a majoritarian political system.

***Recommendation:** that New Zealand begins a process of negotiation with Maori on Treaty-based constitutional arrangements to ensure the full protection of the collective and individual rights of Maori.*

New Zealand fails to:

- **recognise the right of self-determination** in relation to Maori, which is not only problematic in itself, but is also the underlying foundation from which other human rights violations arise. These violations have been well documented by the UN human rights treaty monitoring bodies and Special Procedures³.

***Recommendation:** that New Zealand establishes mechanisms to ensure that all legislation, policy and practices are consistent with the right of self-determination and the other rights of indigenous peoples articulated in international human rights instruments.*

- **respect the right of free, prior and informed consent** in relation to the rights and interests of Maori. Two examples are provided in the submission: New Zealand granting permits to extractive industries and partially privatising state-owned energy companies, without the free, prior and informed consent of Maori and despite their clearly stated opposition.

***Recommendation:** that New Zealand takes immediate action to ensure that the inalienable rights of Maori to their lands, territories, waters and marine areas and other resources, as well as the respect of the free, prior and informed consent of Maori on any decisions affecting their use are incorporated in legislation, policy and practice.*

• **ensure the right to freedom from racial discrimination** in relation to the collective and individual rights of Maori. The submission includes an outline of ongoing concerns about the foreshore and seabed legislation, and about New Zealand's approach to structural discrimination.

Recommendation: that New Zealand repeals the Marine and Coastal Area (Takutai Moana) Act and enters into proper negotiation with Maori about how their rights and interests in foreshore and seabed areas can best be protected; and

Recommendation: that New Zealand takes immediate steps to identify and eliminate structural discrimination in access to, and provision of, all public services.

• **provide fair and adequate redress for Treaty breaches.** Of particular concern is the way in which the settlements process, intended to resolve historical Treaty breaches, is creating contemporary Treaty breaches. Treaty settlements policy and processes are determined wholly by the government, meaning that one party to the Treaty is also the arbiter of the fairness of the measures to provide redress for historical breaches; the government sets the terms of all settlements and decides what is on offer; and has treated hapu and iwi inequitably. The government also decides who it will negotiate with, which has resulted in claims for redress by some hapu and iwi being denied, and unnecessary conflict.

Recommendation: that New Zealand ensures that Treaty settlements comply, and can be legally compelled to comply, with the Treaty of Waitangi and its other international human rights obligations; enables historical claims to be lodged at any time; takes the time to fairly settle all claims; and enforces the recommendations of the Waitangi Tribunal.

The submission also includes information about local authorities' statutory obligations to Maori, and provides an example of racially discriminatory treatment of Maori communities in the name of counter-terrorism.

Links:

- NGO submissions and analysis - www.nzupr.org
- Joint NGO Submission on Indigenous Peoples' Rights and the Treaty of Waitangi submission
Full submission - www.converge.org.nz/pma/nzupr2-ipr.pdf
Summary of submission - www.converge.org.nz/pma/nzupr2-iprsum.pdf
- Comments on New Zealand's draft report - www.converge.org.nz/pma/nzupr2-pma-govt.pdf

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¹ Jointly submitted by the Aotearoa Indigenous Rights Trust and Peace Movement Aotearoa, fifteen other non-governmental and Maori organisations, and supported by a further seven non-governmental organisations.

² Signed by representatives of the British Crown and of more than 500 hapu and iwi in 1840; the Treaty guaranteed the continuance of tino rangatiratanga (sovereignty or independence), which is somewhat analogous to the right of self-determination of all peoples as articulated in the shared Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the UN Declaration on the Rights of Indigenous Peoples, and elsewhere.

³ Including the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, and the UN Special Rapporteur on the Rights of Indigenous People during two country visits.