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Expert Mechanism on the Rights of Indigenous Peoples

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United Nations Declaration on the Rights of Indigenous Peoples

**Submission from the Monitoring Mechanism regarding the
implementation of the United Nations Declaration on the
Rights of Indigenous Peoples in Aotearoa/New Zealand**

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Introduction

The Expert Mechanism on the Rights of Indigenous Peoples takes note of the Inaugural Report of the Monitoring Mechanism regarding the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand.

The report was submitted to the Expert Mechanism by the monitoring mechanism, which is a working group created by indigenous peoples and is independent of government. Members of the monitoring mechanism have been selected by their iwi (nation) and endorsed by the National Iwi Chairs Forum to act as independent experts.

This experience is an example of a country-wide coordinated analysis by indigenous peoples of the implementation of the Declaration at the national level.

The full text of the report is included in Annex 1 below.

Annex 1: Inaugural Report of the Monitoring Mechanism regarding the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand

Inaugural Report of the Monitoring Mechanism regarding the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand

23 June 2015

1. Introduction

This inaugural report canvasses the steps taken by the New Zealand government to implement the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration).

The Monitoring Mechanism is a working group created by Tangata Whenua (indigenous people) and is independent of government. Members of the Monitoring Mechanism have been selected by their iwi (nation) and endorsed by the National Iwi Chairs Forum (the Forum) to act as independent experts. The Monitoring Mechanism is supported in its work by technical advisers.

The Forum is the national collective of iwi chairpersons who represent hapū (groupings of extended families) and iwi. It functions in accordance with tikanga (Māori law) and on the basis of He Whakaputanga o te Rangatiratanga o Nu Tirenī¹ (He Whakaputanga), Te Tiriti o Waitangi² (Te Tiriti) and the Declaration. It meets regularly to discuss and act collectively on issues ranging from constitutional transformation, resource protection and recovery and economic development. The Forum also addresses government policy and practice as it impacts on Tangata Whenua and engages in regular dialogue with government representatives on priorities, issues and projects.

2. Recommendations

The Monitoring Mechanism makes the following recommendations:

That the EMRIP:

1. notes that the National Iwi Chairs Forum has established a Monitoring Mechanism to independently monitor the New Zealand government's implementation of the

¹ He Whakaputanga is the 1835 declaration of sovereignty of New Zealand which declares that sovereignty lies with hapū throughout New Zealand and will never be transferred to any other authority; and that diplomatic relations with England will be established by the King of England sending an ambassador.

² Te Tiriti is the 1840 treaty of peace and friendship between Māori and the Queen of England. It confirms He Whakaputanga and devolves authority to the Queen of England to govern and control her English subjects who had recently emigrated to New Zealand and those still to come.

Declaration and that the Monitoring Mechanism plans to report regularly to the EMRIP on its work;

2. notes the inaugural report of the Monitoring Mechanism at the 8th session of EMRIP;

3. notes that the New Zealand government has yet to develop and implement a national plan of action for the implementation of the Declaration;

4. recommends to the Human Rights Council that the mandate of EMRIP be modified and improved so that it can more effectively promote respect for the Declaration by receiving monitoring reports from Indigenous Peoples and States, evaluating States' compliance with the Declaration, providing advice and recommendations on States' initiatives to implement the Declaration and providing advice and recommendations to States and Indigenous Peoples on how to best implement the Declaration.

That the New Zealand government:

- work with Tangata Whenua to develop a national action plan to promote and implement the Declaration.

3. The Monitoring Mechanism

The purpose of the Monitoring Mechanism is to promote and monitor the implementation of the Declaration in Aotearoa/New Zealand. The Monitoring Mechanism will report on the New Zealand government's commitment to and implementation of the Declaration. It plans to work in partnership with government and others to develop and implement a national plan of action for the full realisation of the rights and responsibilities agreed to in He Whakaputanga, Te Tiriti and the Declaration.

The Monitoring Mechanism will promote and monitor the implementation of the Declaration by:

- developing indicators to measure government implementation of the Declaration;
- identifying priority areas for whānau (extended families), hapū and iwi³;
- analysing legislation, policy and practice affecting the human rights of Tangata Whenua;
- advocating for the rights of the most marginalised and vulnerable whānau and their members;
- strengthening reo (Māori language), tikanga and mātauranga Māori (Māori knowledge);
- providing expert reports to a range of local, national, and international forums, bodies, groups and organisations.

³ The Monitoring Mechanism has and will continue to seek the views of a diverse range of whānau groups and individuals. These include rural whānau, pakeke and kaumātua (elders), whānau hauā (disabled Māori), transgender people, gangs, rangatahi (youth), prisoners and whānau in the public service.

4. Engagement with EMRIP

The reports of the Monitoring Mechanism will regularly be submitted to EMRIP. While EMRIP's mandate currently focuses on thematic studies and advice, the Monitoring Mechanism believes that EMRIP could provide a valuable role as an overall monitoring body for the implementation of the Declaration.

Paragraph 28 of the Outcome Document of the World Conference on Indigenous Peoples 2014 invites the Human Rights Council to review EMRIP's mandate thus providing an opportunity to enhance EMRIP's role.

The Monitoring Mechanism strongly supports an expanded monitoring role for EMRIP, as outlined in the report of the Open-Ended Meeting of Indigenous Peoples on the Follow-Up to the World Conference on Indigenous Peoples.⁴ In particular, we would welcome a mandate for the EMRIP to:

- receive monitoring reports from Indigenous Peoples and States evaluating States' compliance with the Declaration;
- provide advice and recommendations on States' initiatives to implement the Declaration; and
- provide advice and recommendations to States and Indigenous Peoples on how to best implement the Declaration.

5. Engagement with other UN bodies and their findings

As well as EMRIP, it is intended that the monitoring information and reports of the Monitoring Mechanism will be submitted to the UN Permanent Forum on Indigenous Issues and UN treaty bodies to inform their consideration of New Zealand's periodic reports. The Monitoring Mechanism will also draw on the reports and recommendations of UN treaty bodies and special procedures to assess government progress on advancing the rights of Tangata Whenua.

Key issues raised by international bodies in recent years in relation to Indigenous People in New Zealand, include:

- the prevalence of violence against Māori women and children;⁵
- disparities and structural discrimination, particularly in relation to education, health, employment and justice;⁶

⁴ Report on the Discussion on Improving EMRIP's Mandate and Participation of Indigenous Peoples' Representative Institutions, open-ended meeting of Indigenous Peoples held on 3-6 March 2015 in Geneva Switzerland. Accessible online at: http://cdn7.iitc.org/wp-content/uploads/Report-of-the-Geneva-meeting-FINAL_web.pdf.

⁵ Committee on Economic, Social and Cultural Rights (2012), Concluding observations: New Zealand, E/C.12/NZL/CO/3, at para 18; Committee on the Elimination of Discrimination against Women (2012), Concluding observations: New Zealand, CEDAW/C/NZL/CO/7, at para 24-25; Report of the Working Group on the Universal Periodic Review: New Zealand (2014), A/HRC/26/3, at para 128.127; Committee Against Torture (2015), Concluding Observations: New Zealand, CAT/C/NZL/CO/6, at para 11.

⁶ Committee on the Rights of the Child (2011), Concluding Observations: New Zealand, CRC/C/NZL/CO/3-4, at para 24-25, 37-42; CESCR (2012), at para 12, 25; CEDAW (2012), at para

- the need to strengthen government responses to the Treaty settlement processes, particularly redress and implementation of Waitangi Tribunal recommendations;⁷
- the need for greater protection of culture and language;⁸
- legal and constitutional recognition and protection of the Treaty of Waitangi and indigenous rights;⁹ and
- Māori rights to lands, territories and resources.¹⁰

The Universal Periodic Review process has also produced a number of recommendations that either deal explicitly with Indigenous Peoples' rights or with human rights issues that disproportionately affect Tangata Whenua. These include:

- constitutional issues;¹¹
- consultation, partnership and Māori participation;¹²
- addressing poverty and inequalities in employment, health and education;¹³ and
- combating structural discrimination in the justice system.¹⁴

6. Engagement with government

In November 2014, the Minister of Māori Development was invited to meet with the Monitoring Mechanism to discuss working together to develop a national action plan to implement the Declaration. A similar invitation was sent to the Prime Minister in March 2015. On 20 May 2015 the Minister for Māori Development informed representatives of the Monitoring Mechanism that the Forum would be invited by the Minister responsible for Treaty of Waitangi negotiations to discuss how the Monitoring Mechanism request could be advanced. To date the Forum has yet to meet with the Minister responsible for Treaty of Waitangi negotiations. An invitation for the Ministry of Māori Development to contribute to the preparation of this report has also been declined.

7. Government implementation of the Declaration

There are some strategies that government purports to deliver against the Declaration (e.g., in its statements to the UN and reports to UN treaty-monitoring bodies).¹⁵ These include:

30-37; Committee on the Elimination of Racial Discrimination (2013), Concluding observations: New Zealand, CERD/C/NZL/CO/18-20, at para 15; CAT (2015), at para 14.

⁷ CERD (2013), at para 14; Report of the Working Group on the Universal Periodic Review: New Zealand (2014), at para 128.41, 128.87.

⁸ CESCR (2012), Concluding observations: New Zealand, E/C.12/NZL/CO/3, at para 26; Committee on the Elimination of Racial Discrimination (2013), Concluding observations: New Zealand, CERD/C/NZL/CO/18-20, at para 17; Report of the Working Group on the Universal Periodic Review: New Zealand (2014), at para 128.85.

⁹ CERD (2013), at para 7; Human Rights Committee (2010), Concluding observations: New Zealand, CCPR/C/NZL/CO/5, at para 20.

¹⁰ CERD (2013), at para 13; CESCR (2012), at para 11; HRC (2010), at para 19.

¹¹ Report of the Working Group on the Universal Periodic Review: New Zealand (2014), at para 128.37-38, 128.88.

¹² *Ibid.*, e.g., para 128.40, 128.83, 128.90.

¹³ *Ibid.*, e.g., para 128.72-84, 128.87.

¹⁴ *Ibid.*, e.g., para 128.81-84.

- Whānau Ora;¹⁶
- the Treaty Settlements programme;¹⁷
- He Korowai Oranga – Māori Health Strategy (refreshed in 2014);¹⁸
- Ka Hikitia – Māori Education Strategy (refreshed in 2013) and Tau Mai Te Reo – Māori Language in Education Strategy (2013);¹⁹
- He Whare Āhuru He Oranga Tāngata – Māori Housing Strategy (2014);²⁰
- Turning the Tide Crime and Crash Prevention Strategy (2012);²¹
- Youth Crime Action Plan (2013);²²
- Various initiatives and programmes by Department of Corrections;²³
- Rangatahi Courts (which locate youth justice processes on marae (ancestral meeting house and its surrounds));²⁴ and
- Better Public Service targets.²⁵

Since endorsing the Declaration, the New Zealand government has not undertaken any comprehensive planning across government to determine whether existing or new legislation, policies or activities are consistent with the Declaration. This is no focal point within government who is responsible for the implementation of the Declaration and no targeted resources to ensure its implementation. Initiatives to advance Tangata Whenua development to date have been largely ad hoc or driven by Tangata Whenua, sector or community action. The absence of proactive government and departmental commitment to develop a national plan to deliver on its obligations under the Declaration make it difficult for the government and for independent bodies to monitor and measure progress, impact or performance against the Declaration. In light of this approach, the Monitoring Mechanism strongly recommends that the New Zealand government recall its commitment as set out in paragraph 8 of the outcome document of the World Conference on the Rights of Indigenous

¹⁵ For example, in government statements to the UN (available at: <http://www.mfat.govt.nz/Media-and-publications/Media/MFAT-speeches/2014/index.php>) and in the most recent state party reports to: the Committee Against Torture (CAT/C/NZL/6, December 2013), the Human Rights Committee (CCPR/C/NZL/6, May 2015), the Committee on the Elimination of Racial Discrimination (CERD/C/NZL/Co/18-20/Add.1, May 2014) and the government report (A/HRC/WG.6/18/NZL/1, November 2013) and response (A/HRC/26/3/Add.1, May 2014) to the Universal Periodic Review.

¹⁶ See: <http://www.tpk.govt.nz/en/whakamahia/whanau-ora/>;

<http://www.health.govt.nz/our-work/populations/maori-health/whanau-ora-programme>.

¹⁷ <https://www.govt.nz/organisations/office-of-treaty-settlements/>.

¹⁸ <http://www.health.govt.nz/our-work/populations/maori-health/he-korowai-oranga>.

¹⁹ <http://www.education.govt.nz/ministry-of-education/overall-strategies-and-policies/tau-mai-te-reo-the-maori-language-in-education-strategy-2013-2017/>.

²⁰ <http://www.mbie.govt.nz/what-we-do/housing/he-whare-ahuru-he-oranga-tangata-maori-housing-strategy>.

²¹ <http://www.police.govt.nz/about-us/maori-police/turning-tide>.

²² <http://www.justice.govt.nz/policy/crime-prevention/youth-justice/youth-crime-action-plan>.

²³ http://www.corrections.govt.nz/working_with_offenders/prison_sentences/employment_and_support_programmes/rehabilitation_programmes.html.

²⁴ <http://www.justice.govt.nz/publications/global-publications/r/rangatahi-court-evaluation-of-the-early-outcomes-of-te-kooti-rangatahi/early-outcomes-for-the-whanau-agencies-and-the-marae-community>.

²⁵ <http://www.ssc.govt.nz/better-public-services>.

Peoples and urgently develops a national action plan in partnership with Tangata Whenua to implement the Declaration.
