

Aotearoa New Zealand UPR pre-session 46
Tuesday, 13 February 2024
11:15am – 12:15pm

Statement of:

**Independent Monitoring Mechanism for the United Nations Declaration on the
Rights of Indigenous Peoples**
**Independent Monitoring Mechanism for the Convention on the Rights of Disabled
People**
**National Preventive Mechanism for the Optional Protocol to the Convention
Against Torture**

COVER SLIDE

Good morning, tēnā koutou katoa,

SLIDE 1

My name is Eleanor Vermunt. I am a Senior Legal Adviser at the New Zealand Human Rights Commission, and I am delivering this joint statement on behalf of the

1. National Preventive Mechanism under the Optional Protocol to the Convention Against Torture
2. Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples
3. Independent Monitoring Mechanism for the Convention on the Rights of Disabled People.

SLIDE 2

The first key issue for **the National Preventive Mechanism** is that Māori are grossly overrepresented across all detention settings.

Māori currently represent:

- 37 percent of people proceeded against by Police,
- 45 percent of people convicted, and
- 53 percent of people in prison, while only representing 17 percent of the national population.

Within places of detention, Māori also experience inequitable treatment and limited access to culturally safe practices. For example, Māori experience disproportionate rates of seclusion and use of force.

Second, the NPM have consistently observed a lack of specialist support to address the mental health needs of persons across all detention settings.

Lastly, there is inadequate human rights training for law enforcement and custodial personnel.

SLIDE 3

The NPM recommend that the New Zealand Government:

1. Adopt a timeline for implementing effective and measurable steps to: reduce the rate of detention for Māori in all places of detention; and reduce the rate of Māori experiencing restrictive practices (e.g. seclusion and restraint).
2. Adopt legislative and policy measures to ensure all detaining agencies are equipped to provide adequate mental health support to persons deprived of their liberty.
3. Ensure all law enforcement and custodial personnel receive adequate training in human rights obligations.

SLIDE 4

The Independent Monitoring Mechanism for the Declaration on the Rights of Indigenous Peoples would also like to highlight three key issues:

First, New Zealand's constitution provides limited protection of the Treaty of Waitangi and human rights. In the absence of a formal or written constitution, the New Zealand Parliament is supreme and can breach human rights and Treaty without court oversight.

In 2022 Parliament passed legislation to override an Indigenous peoples' land rights in the *Wairarapa Moana Incorporation* case. The Government recently announced plans to review references in all legislation to the Treaty principles, which have been developed over decades by the courts and Waitangi Tribunal.

Despite international recommendations for human rights and the Treaty to be protected as higher law, lack of State action has meant that Māori rights remain subject to the political climate of the day.

Second, numerous recommendations made during the previous UPR urged New Zealand to implement the Declaration and the Treaty through a national action plan, and/or by ensuring that law, policy and practice conform with these obligations. The development of a national action plan progressed until late 2022, when it was paused by the Government. In 2023 the new government similarly decided to halt any more work on a national plan of action.

The absence of any commitment to implement of the Declaration and Treaty obligations, in partnership with Māori, hinders progress on Māori rights.

Third, areas where action is urgently required include in relation to the rights to self-determination, participation in decision-making, and eliminating racism.

SLIDE 5

The IMM recommends that the Government:

1. Progress actions, in partnership with Māori, to determine and implement constitutional arrangements to recognise, protect and give effect to the Treaty of Waitangi and human rights.
2. Continues work to complete and implement the National Plan of Action to realise the Declaration on the Rights of Indigenous Peoples.
3. Commits to supporting Māori to exercise their rights to self-determination, including by enabling Māori participation in decision-making.
4. Strengthens efforts to combat racism, including by: continuing work on a National Action Plan Against Racism, in partnership with Māori.

SLIDE 6

The CRPD IMM are concerned around disabled peoples' rights to education and integrity of the person

First, New Zealand's education framework continues to exclude many disabled students at all levels of the system. Disabled learners continue to be disproportionately represented in separate learning environments, such as specialist schools and residential schools. Māori who are disabled experience lower rates of educational achievement than the general population.

Second, disabled people bear a disproportionate burden of the high rates of violence and abuse experienced in New Zealand, with disabled people experiencing much higher

rates of violence, sexual abuse and psychological distress than non-disabled people, as well as overall poorer health outcomes.

Third, the previous government acknowledged that the Mental Health Act needs to be repealed due to its adherence to an outdated substituted decision-making model.

Fourth, there is no legislation in place to prohibit sterilisation (or any other non-therapeutic medical procedure) on disabled children and adults.

SLIDE 7

The CRPD IMM recommends that the New Zealand Government:

1. Progress work on the introduction of new mental health legislation that aligns with human rights standards and elevates the voices of disabled Māori.
2. Ensure that disabled people, including disabled Māori lead in or are fully involved in) the development, delivery and evaluation of strategies to prevent violence and abuse.
3. Take an intentional and cohesive approach to creating an inclusive education system, with enforceable rights and reasonable accommodations for disabled students within mainstream settings, instead of expanding segregated settings.
4. Place a moratorium on sterilisation on sterilisation of disabled children or adults.