



**TE RUNANGA O TE RARAWA**  
16 Matthews Avenue P.O. Box 361, KAITAIA

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*Tinana, Kurahaupo, Ngatokimatawhaorua me Maamari nga waka  
Tumoana, Puhi, Nukutawhiti me Ruanui nga tangata  
Panguru, Whakakoro me Whangatauatia nga maunga,  
Hokianga, Whangape me Karirikura nga moana  
Te Rarawa te iwi*

**NEW ZEALAND UNIVERSAL PERIODIC REVIEW**

**Submission by Te Rūnanga o Te Rarawa  
May 2013**

**1. INTRODUCTION**

1.1. The following are submissions by Te Rūnanga o Te Rarawa (the Rūnanga) concerning the New Zealand Universal Periodic Review (UPR). These are based on our understanding of the New Zealand Government's current state of progress concerning implementation of the UN Human Rights Council Working Group (HRC Working Group) recommendations 2009<sup>1</sup> as indicated by the UPR Progress Chart (July 2011).<sup>2</sup>

**Who we are**

1.2. The Rūnanga, established since 1986, is the governing authority representing the interests of the marae (traditional meeting houses) and hapū (large family groupings) that make up the iwi or Māori peoples of Te Rarawa. The Rūnanga comprises one Trustee for each of the 23 affiliated hapū marae in the traditional territories of Te Rarawa located in the north of the North Island of Aotearoa, New Zealand. The 'official' population of Te Rarawa members is estimated at the last Government census to be around 12,000. However, our estimates show that we are closer to 30,000.

1.3. For the purposes of this submission, please email [brony@terarawa.co.nz](mailto:brony@terarawa.co.nz), attention "Bronwyn Hun, Principal Advisor, Strategy and Policy".

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<sup>1</sup> [http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/international-human-rights-instruments/universal-periodic-review/upr-documents-relating-to-new-zealand-1/first-report-2009/NZ\\_UPR\\_Report\\_of\\_Working\\_Group\\_incl\\_Recs\\_June2009.pdf](http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/international-human-rights-instruments/universal-periodic-review/upr-documents-relating-to-new-zealand-1/first-report-2009/NZ_UPR_Report_of_Working_Group_incl_Recs_June2009.pdf).

<sup>2</sup> [http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/international-human-rights-instruments/universal-periodic-review/upr-documents-relating-to-new-zealand-1/first-report-2009/NZ\\_UPR\\_Progress\\_Chart\\_July2011.doc](http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/international-human-rights-instruments/universal-periodic-review/upr-documents-relating-to-new-zealand-1/first-report-2009/NZ_UPR_Progress_Chart_July2011.doc).

## 2. HRC WORKING GROUP RECOMMENDATIONS

- 2.1. The Rūnanga calls on the New Zealand Government to implement in an urgent and timely manner the following recommendations of the HRC Working Group 2009 (further elaboration included below where useful):
- 2.2. **Recommendation 4.** - *Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.*
- 2.3. **Recommendation 5.** - *Ratify International Labour Organization (ILO) fundamental conventions, and in particular the Indigenous and Tribal Peoples Convention No. 169.* The Government's reasoning that it will not ratify conventions or apply international standards that are inconsistent with New Zealand's "unique legal, constitutional and Treaty of Waitangi arrangements" (i.e. ILO Convention No. 169.) is no justification.
  - a. Just because something is "unique" is not to say it equates with "fair or just" (take the 'unique' system of Apartheid, for example). Therefore, to the extent that New Zealand's arrangements continue to enable the violation of international human rights standards is a surely a signal that New Zealand's "unique" situation still requires serious attention and review.
  - b. Further, pressure upon the Government to conduct a Constitutional Review, and the establishment of the Māori Independent Constitutional Working Group (both currently operating) is evidence that there is tremendous dissatisfaction among not only Māori today, but also wider civil society. Therefore, Government claims that New Zealand has our own constitutional arrangements cannot be relied upon to justify its ongoing position of avoiding any international standard-setting human rights instruments such as ILO 169. On the contrary, ILO 169 is a key mechanism by which the Government can be held accountable for compliance with such human rights standards.
- 2.4. **Recommendations 8-10.** – *Support and implement the UN Declaration on the Rights of Indigenous Peoples (DRIP):* While the Government has supported the DRIP, such support is conditional on the legal and constitutional New Zealand's legal system defining the bounds of New Zealand's engagement with the DRIP. This is a deliberate limitation on evolving New Zealand's legal and constitutional frameworks to align with internationally agreed human rights standards. This is concerning, to the extent that such frameworks enable the continued violation of human rights standards.
- 2.5. **Recommendation 12.** - *Consider accepting the individual complaint procedure under article 14 of the International Convention on the Elimination of all Forms of Racial Discrimination.*<sup>3</sup>

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<sup>3</sup> This is especially important as the Government continues to produce and administer discriminatory laws, policies and procedures such as the Marine and Coastal Area (Takutai Moana) Act 2011.

- 2.6. **Recommendation 13.** - *Adopt / Endorse the final outcome document approved during the Durban Review Conference, in view of its unanimous adoption.*
- 2.7. **Recommendation 14.** - *Accomplish progressively the human rights goals set forth in Human Rights Council resolution 9/12.*
- 2.8. **Recommendation 15.** - *Further incorporate, as appropriate, its international human rights obligations into domestic law: the Rūnanga considers that the Government could be progressing this work in a more systematic and timely way. Furthermore, we note that simultaneously the Government is creating new laws, policies and procedures that breach international law – including violation of Indigenous Peoples rights (for example, the 2013 Amendment to the Crown Minerals Bill – now law – which criminalizes certain crucial rights to peaceful protest out at sea within New Zealand’s Exclusive Economic Zone,<sup>4</sup> or ‘in secret’ negotiations of the Trans Pacific Partnership Agreement which essentially give overseas interests undemocratic and unconstitutional levels of influence and power over domestic law making<sup>5</sup>).*
- 2.9. **Recommendation 16.** – *Ensure that the Bill of Rights Act appropriately reflects all of New Zealand’s international human rights obligations and that all subsequent legal provisions, including immigration laws, are in accordance with it and cannot limit its scope: The Government has stated that the Ministry of Justice and the Crown Law Office review all draft legislation for compliance with national and international human rights standards. However, given that bills are still passed into law which violate internationally recognized human rights standards (ref commentary above re recommendation 15 for example), it is obvious that the Government’s review mechanisms are insufficient to provide the necessary protection and promotion of New Zealand’s human rights obligations. The extent to which Parliamentary powers remain unchecked equates to the extent to which citizens’ human rights remain vulnerable.<sup>6</sup>*
- 2.10. **Recommendations 17.- 20.** – *(integration of certain other instruments and standards into domestic law).*
- 2.11. **Recommendation 21.** - *Continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm: While the Government is acknowledged for establishing its Review Panel to consider constitutional issues:*

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<sup>4</sup> For a legal opinion on [http://www.greenpeace.org/new-zealand/Global/new-zealand/P3/publications/other/Legal opinion proposed crown minerals act%20 amdts.pdf](http://www.greenpeace.org/new-zealand/Global/new-zealand/P3/publications/other/Legal%20opinion%20proposed%20crown%20minerals%20act%20amnds.pdf).

<sup>5</sup> For discussion on concerns regarding the TPPA, see <http://www.itsourfuture.org.nz/>.

<sup>6</sup> The Government itself admits that consistent with New Zealand’s present constitutional structure, the Bill of Rights Act and other human rights instruments do not directly limit Parliament’s legislative powers. This is in effect the heart of the problem concerning the ineffectiveness of the Government’s human rights protection mechanisms systems – that Parliament’s power is unfettered in this regard.

- a. “The Treaty” is the English version which states Māori ceded sovereignty to the Crown: a view which the Rūnanga strenuously opposes, and which the Waitangi Tribunal<sup>7</sup> has debunked. Rather, it is the Māori version (Te Tiriti o Waitangi) which maintained Māori absolute authority<sup>8</sup> (tino rangatiratanga) that should be given primacy<sup>9</sup> in any such constitutional review; and
- b. In our view, Te Tiriti is not merely something who’s role within the New Zealand constitution should be ‘considered’. Rather, it’s the bedrock foundation of this Nation, and must therefore *form the basis of any New Zealand constitution*.

2.12. **Recommendations 22.-58, & 61.-64.** (Especially as they apply to protecting Māori rights and interests) – Re Adopting a National Plan of Action for Human Rights, implementing the observations and recommendations of different UN Treaty bodies, eliminating discrimination, socio-economic disparities, strengthening economic and social rights, institutional bias and overrepresentation of Māori in the criminal justice system, women’s rights, children’s rights, those with disabilities, so-called anti-terrorism measures, and consultation with civil society on the UPR review.

- a. The Rūnanga also advocates the Government including in its considerations how to progressively realize a more equitable distribution of wealth.<sup>10</sup>

2.13. **Recommendation 59. & 60.** - *Pursue efforts to settle comprehensively land claims of the indigenous population:* The Rūnanga was one of several northern iwi/ Māori peoples who recently signed historical land claims Deeds of Settlement with the Government. Despite this however, the Rūnanga recognises the inherent imbalance of power within the settlement negotiation process, including barriers to full and effective participation (such as limitations on Māori claimant access to legal aid funding). Furthermore, the average value of such settlements is also still in the region of 1-3% of the total value of the loss and prejudice suffered by the Māori claimant group. As a consequence, while there is some room for innovation in certain areas, we find the Government still to be inflexible on others. While the settlement was as “fair” as it could have been “in the circumstances”, the Rūnanga argues that had the circumstances themselves been fairer (i.e. aligned with international human rights standards), the outcome also would have been more just.

### 3. FURTHER RECOMMENDATIONS

3.1. In addition, the Rūnanga considers that implementation of the following recommendations would greatly assist in the protection and promotion of Māori rights in Aotearoa<sup>11</sup>:

<sup>7</sup> The expert Commission of Inquiry into the nature of the Crown-Māori relationship.

<sup>8</sup> Te Tiriti states that Māori ceded only kawanatanga (governance) to the Crown.

<sup>9</sup> A perspective supported by the internationally recognized legal doctrine of *contra proferentem*.

<sup>10</sup> Including, but not limited to, recommendations in para 3.4.d below concerning corporations.

## Free, prior and informed consent

3.2. That the Government shall consult and cooperate in good faith with Māori concerned through their own representative institutions in order to obtain Māori free, prior and informed consent (FPIC) when developing and before adopting and implementing legislative or administrative measures that may affect them (ref DRIP, Article 19), including in relation to all the recommendations which follow below.

## Justice, and Self-Determination

### Constitutional matters

3.3. That the Government:

- a. entrench He Whakaputanga (the Declaration of Independence) 1835 and Te Tiriti o Waitangi<sup>12</sup> 1840 as the basis of any New Zealand constitution, including:
  - i recognition of the unique status of Māori as First Peoples; and
  - ii full commitment to effectively enabling the progressive realisation of Māori self-determination in accordance with the DRIP;
- b. ensure also constitutional entrenchment and protection of international human rights standards including Treaties such as the Convention on the Elimination of Racial Discrimination, and the DRIP;
- c. ensure that all national and local body laws, regulations and policies are compliant with such international human rights standards by:
  - i conducting an independent comprehensive review of those laws, regulations and policies, and implementing those review findings and recommendations; and
  - ii establishing an effective monitoring and enforcement mechanism that ensures ongoing compliance with international human rights standards, including (where necessary to achieve that aim) the ability to restrain the legislature;
- d. ensure compliance by national and transnational corporations with domestic laws, regulations and policies, including:
  - i elevating constitutionally the human rights of actual living persons above the rights attached to corporations as ‘legal persons’;

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<sup>11</sup> These recommendations draw also on the discussions at the Pacific Indigenous Peoples preparatory conference 19-21 March 2013 concerning the UN World Conference on Indigenous Peoples 2014.

<sup>12</sup> As distinct from the English version of this instrument, the Treaty of Waitangi.

- ii equitable levels of corporate tax payment, and mechanisms which sufficiently deter tax avoidance and evasion (e.g. through tax havens);
- iii full accountability (e.g. remedies) for corporate breaches of such laws, regulations and policies, including:
  - violations of Māori collective and individual rights; and
  - making 'negative externalisation' of the costs of production of goods and services unlawful;
- e. implement all the recommendations of the Special Rapporteur on the Rights of Indigenous Peoples as contained in his two New Zealand Country Reports<sup>13</sup>;
- f. recognize the customs, traditions, rules and legal systems of affected Māori; and
- g. enable integration of such Māori customs, traditions, rules and legal systems into mainstream justice systems, including the provision of meaningful support for the administration and use of the same by and for Māori.

#### Other matters

- 3.4. That the Government create a mechanism to support the establishment and ongoing operation of a national Māori group tasked with engaging with the Government and monitoring its compliance with human rights standards.
- 3.5. That the Government support Māori to develop programs for specific groups including Māori men, women, young people and Māori communities to collectively improve access to justice.
- 3.6. That the Government develop processes to increase Māori engagement, participation and contribution in justice systems including as lawyers, judges and support staff.
- 3.7. That the Government takes a strategic and holistic approach to crime and justice with Māori that is informed by effective and accurate data collection and focused on prevention and diversion as well as protection and rehabilitation.
- 3.8. That the Government ensures that all people incarcerated are granted their right to vote.
- 3.9. That the Government develops just and fair procedures for the resolution of conflicts, grievances and disputes between it and Māori, including engagement with appropriately mandated Māori representatives concerning settlements or other constructive arrangements regarding Māori self-determination, and their own lands, territories, resources and associated traditional knowledge.

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<sup>13</sup> 2006 and 2010.

- 3.10. That the Government provides financial and technical support for Māori organisations to provide legal services, including:
- a. community legal education;
  - b. policy and law reform advice;
  - c. information and assistance to Māori regarding national and international human rights, to carry out activities for protecting those rights and to promote the capacity-building and participation of Māori;
  - d. ensuring that non-Indigenous bodies and service providers respond appropriately to Māori justice needs.
- 3.11. That UPR reports include mandatory consideration of Indigenous rights as outlined in the DRIP, alongside the Universal Declaration of Human Rights (UDHR), and the UN Charter.

### **Lands, territories and resources**

- 3.12. That the Government and Industry stakeholders work with Māori to develop a strategy for implementing the DRIP that ensures that the human rights of Māori are understood, promoted and observed where extractive industries operate.
- 3.13. That the Government work with Māori to develop redress mechanisms that enforce good faith negotiations, are informed by best practice standards, and include remediation and compensation for the taking of and/ or damage to lands, territories and resources without FPIC.
- 3.14. That the Government integrate meaningful and effective protection and promotion of Māori rights regarding their traditional territories and natural resources into any and all natural resource protection strategies or extraction laws and policies, including:
- a. recognition of the inherent spiritual and cultural relationships of Māori with their oceans and the flora, fauna and natural resources therein;
  - b. recognition that in terms of lands, territories and natural resources, Māori consider “dry” and “wet” lands as being of equal significance.
- 3.15. That the Government protect Māori natural resource-related rights, and Māori ability fulfil their natural resource-related responsibilities, including the right to obtain FPIC concerning the development and implementation of state policy that affects such natural resources (including the allocation and management of associated property rights).
- 3.16. That the Government recognises the unacceptably harmful effects on the natural environment of fossil fuel extraction, use and dependence, and therefore design and implement a practical, comprehensive and meaningful strategy to urgently transition to clean, renewable and/or free energy based systems and infrastructure.

## **Climate Change**

3.17. That the Government ensure the full Māori participation in initiatives to address climate change, including:

- a. a DRIP implementation strategy;
- b. the implementation of the UN Conference on Sustainable Development (Rio+20) Indigenous Peoples Declaration on Sustainable Development; and
- c. international fora under the UN Framework Convention on Climate Change.

## **Oceans**

3.18. That the Government:

- a. take urgent and active measures to more sustainably protect New Zealand fisheries, recognizing the dual and devastating threat of climate change and unsustainable harvesting practices on this significant natural resource;
- b. ensures that all entities engaging in activities in New Zealand waters are made accountable for any pollution or other adverse effects that are generated from such activity; and
- c. obtains Māori FPIC before any commercial exploitative activities, particularly any harvesting of threatened or at risk flora and fauna (such as whales), or any natural resource extraction, are carried out in New Zealand waters.

## **Health and Wellbeing**

3.19. That the Government enshrine the right to health<sup>14</sup> in domestic law and regulation<sup>15</sup> to ensure that effective legal protection (including redress for violations of that right) is guaranteed.

3.20. That the Government adopt and implement a clear, concrete and comprehensive long-term national plan of action to achieve the full realisation of the right to Māori health and health equality which:

- a. Is adequately resourced on a long-term basis to meet the complex and multiple determinants of health, including funding to ensure FPIC of Māori communities and their representative organisations.
- b. Incorporates a broad and holistic definition of health, which:
  - i. encompasses social, economic, environmental, political, cultural and spiritual determinants;

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<sup>14</sup> Incorporating the right of non-discrimination as an essential measure to address institutional and systemic racism and to ensure health equality for Indigenous Peoples (consistent with Article 2 of ICESCR).

<sup>15</sup> For example, regulation of health professionals to demonstrate cultural competence in Aotearoa.



- ii. has a collective dimension;
  - iii. acknowledges that there is no perfect way to treat disease and that western medicine is suitable to resolve some health issues, whilst traditional medicine is more suited for others;
  - iv. recognises the ongoing impacts of colonisation, and historical and contemporary Government policies and practices on the health of Māori; and
  - v. is consistent with a rights-based approach to health as outlined in the DRIP, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and General Comment 14 of the Committee on Economic, Social and Cultural Rights.
- c. Gives high priority to understanding and addressing the disproportionately high rates of Māori suicides (particularly youth) and incarceration;
  - d. Is actioned by the Government in a comprehensive, integrated and culturally appropriate way, including linkages with all Government agencies and initiatives that impact on Māori health.

3.21. Consistent with the principle of 'progressive realisation' contained in the ICESCR, that the Government:

- a. maintain effective accountability and monitoring processes, including improved efficacy of disaggregated data collection on Māori; and
- b. use real and quantifiable health improvements as its measure of success (as opposed to merely enhancing access).

3.22. That the Government:

- a. develop and implement a Genuine Progress Index/Indicator as a true means of measuring wellbeing of their citizens, including Māori, as aligned with the UN Charter and International Treaties; and
- b. Recognises the increasing and disturbing trend of technology replacing humans in the labour market, and in consultation with Māori develop and implement an effective, strategic response.

## **Education, and Cultural Heritage**

3.23. That the Government:

- a. explicitly enshrines the rights to education and cultural heritage in domestic law, regulation and policy consistent with the DRIP;
- b. recognises the recommendations from the Expert Mechanism on the Rights of Indigenous Peoples study on the role of languages and culture in the

promotion and protection of the rights and identity of Indigenous Peoples;  
and

- c. implement the findings and recommendations in its own “Mauri Ora Report” on Māori Language, including making the Māori language compulsory in all New Zealand schools.