**Joint input from Aotearoa Independent Monitoring Mechanism and**

**Te Kāhui Tika Tangata | New Zealand Human Rights Commission**

**To the Expert Mechanism on the Rights of Indigenous Peoples**

**Report on “Establishing monitoring mechanisms at the national and regional level for implementation of the UN Declaration on the rights of Indigenous Peoples”**

17 March 2023

The Aotearoa Independent Monitoring Mechanism (AIMM) and Te Kāhui Tika Tangata | New Zealand Human Rights Commission (the Commission) appreciate the opportunity to provide input to the Expert Mechanism’s forthcoming report.

The AIMM was established by the National Iwi Chairs Forum (NICF), which is comprised of representatives of the national tribal nations’ chairs body, to monitor each year New Zealand’s progress in implementing the UN Declaration on the Rights of Indigenous Peoples. As detailed below, the AIMM and the Human Rights Commission work together on this project.

Further to the presentations provided to the recent Expert Seminar on this topic at the University of British Columbia, Vancouver, below we provide comments on areas of our work related to the Expert Mechanism’s report.

## Overall Comment on Monitoring

Monitoring of implementation of the Declaration has come mainly from the AIMM, the Commission and civil society and includes tracking of developments and progress, advocacy on policy and legislation, and reporting to international human rights bodies. However in the absence of an enforcement mechanism to hold government to account for its obligations, and domestic legal framework where rights are subordinate to legislation generally, progress remains largely reliant on political will and expediency.

## Indigenous Peoples’ Monitoring Mechanism

The Commission continues to support the operations of the AIMM. This support includes secretariat support and assisting with the preparation of the Monitoring Mechanism’s annual monitoring reports.

Priorities for those reports have remained consistent over the eight years of the AIMM’s operation, and are determined by the Monitoring Mechanism members, with the wider membership of the Forum invited to provide input should they wish.

The Commission is part of other formal monitoring mechanisms, established under UN human rights treaties, namely: the Independent Monitoring Mechanism for the Convention on the Rights of Persons with Disabilities, and as part of the National Preventive Mechanism for the OPCAT. We can raise Indigenous peoples’ rights issues within these processes. There are some benefits of having these sorts of formally established mechanisms, in particular clearer obligations on government to fund and respond to them. However, in our experience, that hasn’t necessarily translated into adequate funding support or response.

In our view, the AIMM does not seem to be particularly disadvantaged by not being formally established under legislation. Rather, its own clear mandate and accountabilities as an Indigenous-led initiative has several advantages, including not having to rely on government priorities, support or political will.

The AIMM has submitted its monitoring reports to the EMRIP each year. Up until 2018, the reports were published as conference papers on the EMRIP website. Reinstating this practice, and publishing reports of national monitoring mechanisms on the EMRIP website, would in our view assist the profile and influence of the reports at the national level.

The AIMM has received some government funding for its activities in recent years, and as the relationship with government has developed, has had increasing engagement with government agencies. For example, in 2022, Te Puni Kōkiri (the Ministry for Māori Development) coordinated a meeting of senior government officials from a range of agencies, to engage in the development of the report and collect relevant information from their agencies. Last year, government took up the offer to contribute information to the Monitoring Mechanism’s report. While this information was used in the report, some issues with timing, and with the different perspectives and priorities of the Government and Monitoring Mechanism, created challenges around incorporating some of the information provided.

In previous years, the AIMM has held workshops with iwi groups to gather information from Indigenous communities for the monitoring report. This was stopped during Covid-19, and attempts to organise workshops in 2022 were unsuccessful, partly because iwi continued to be heavily engaged in responding to the ongoing pandemic and recovery.

The AIMM’s reports to the Expert Mechanism prompted some Government response, most significantly the decision in 2018/19 by then Minister for Māori Development Nanaia Mahuta to develop a national action plan to implement the Declaration. That process was greatly supported by the visit of the Expert Mechanism to New Zealand to guide New Zealand and the NICF in their efforts to draft a National Plan of Action (see below for more information). It set a baseline of expectations around the need for Māori participation and rights to self-determination.

### Partnership between Human Rights Commission and National Iwi Chairs Forum

In addition to its work with the AIMM, the Commission’s relationship with the National Iwi Chairs Forum has developed and expanded, to the point where our two organisations signed an agreement in February to formalise the relationship. A shared work programme based on mutual priorities is now being developed.

Most recently, the Commission has partnered with the Forum to address a longstanding gap in Indigenous representation and leadership at the governance level of the Commission. As a result of this initiative, the Commission has appointed Professor Claire Charters as Rongomau Taketake to lead work on Indigenous Peoples’ rights. [[1]](#footnote-2)

## National Action Plan for the Declaration

This has been an area of shared priority for the Commission and NICF, and since mid-2021 we have worked in partnership with Government (through Te Puni Kōkiri) to develop a national action plan. The plan was to include robust monitoring processes.

The partnership was reflected in the project structure, which included:

* A Governance Group – made up of four Government Ministers and five NICF representatives, and co-Chaired by the Minister for Māori Development and the Chair of NICF Pou Tikanga (Prof Margaret Mutu)
* A Steering Group – comprising representatives from the Human Rights Commission, Te Puni Kōkiri and Pou Tikanga of the NICF
* A Working Group – made up of representatives from each partner organisation, essentially working collaboratively together to implement the directions given by the Steering Group and Governance Group.

The partnership process represented an innovation and departure from established government practices, and some considerable efforts were made by the parties involved to try to ensure that it operated collaboratively and equitably. This included provision of funding from government.

### Challenges

The role of the Governance Group was to provide oversight and final approvals of the action plan. It was intended to operate by consensus. In practice, the Governance Group met rarely, and when consensus was not reached on significant decisions (namely the decision to defer completion of the plan), the Government decision held sway.

As a piece of Government work, the process was set up by a decision of Cabinet, and included reports back to Cabinet for approval at various points. One of the innovative features of this work was that there was an intention amongst the partners that the Governance Group would have the final say on decisions. However, the need to obtain Cabinet sign off meant that in the end, decisions were ultimately driven by what would meet Cabinet approval.

The parameters for the national action plan were set out in several Cabinet papers.[[2]](#footnote-3) These confirmed that the plan should:[[3]](#footnote-4)

* come from the intersect between government priorities, Māori aspirations and international Indigenous rights discourse;
* contribute to enhancing the self-determination of Māori as the Indigenous peoples of Aotearoa / New Zealand;
* contribute to improving intergenerational Māori wellbeing; and
* demonstrate ambitious action as opposed to business as usual.

In 2021, Cabinet also noted that the implementation of the Declaration in New Zealand should:[[4]](#footnote-5)

* be consistent with international law, and New Zealand law and policy;
* protect the rights of all citizens; and
* safeguard territorial integrity and political unity as well as the responsibility of all democratically elected governments to govern for the welfare of all their citizens.

These points highlight a further tension, that is also reflected in New Zealand’s 2010 announcement of support for the Declaration.[[5]](#footnote-6)

In moving to support the Declaration, New Zealand both affirms those rights and reaffirms the legal and constitutional frameworks that underpin New Zealand’s legal system. Those existing frameworks, while they will continue to evolve in accordance with New Zealand’s domestic circumstances, define the bounds of New Zealand’s engagement with the aspirational elements of the Declaration.

There is an inherent tension in the fact that, while the New Zealand Government recognises the rights in the Declaration to an extent, and has made commitments to implementing them, it continues to view many of these as merely aspirational, and seems to continue to be resistant to the idea that changes may be required to New Zealand’s laws and constitutional frameworks in order to bring these into line with the Declaration.

### Targeted engagement

In 2022 the three partners carried out targeted engagement with Māori groups and organisations, seeking their views on what should be included in an action plan. A summary report of the feedback received was published,[[6]](#footnote-7) and an update report provided to Cabinet in April 2022.[[7]](#footnote-8)

Feedback from targeted engagement confirms what has been expressed over the years in a range of reports and through previous engagement, including the EMRIP’s 2019 visit. While a broad array of issues were raised, an overarching theme and issue of concern clearly emerged. Strengthening Māori self-determination and tino rangatiratanga was the most consistent matter raised. It was discussed at every engagement held and was a central theme for all the discussions. A key call was for the Government to share its power, resources and support Māori to be involved in and make decisions that impact them. This applies to a range of areas including justice, health and education, housing, the environment and cultural expression and identity. The feedback from targeted engagement highlighted that the rights guaranteed in Te Tiriti and the Declaration still aren’t a reality for whānau, hapū, iwi and Māori. Greater participation in decision making was another key theme, along with addressing racism and discrimination, and improving understanding of Te Tiriti and Indigenous peoples’ rights.

This targeted engagement was intended to be the first of two engagement phases. The targeted engagement feedback informed the preparation of a draft Declaration plan, which would then be released for broad public engagement, before being finalised by February 2023.

The three partner organisations worked collaboratively on both the engagement and drafting.

### Deferral of national action plan

Despite the best efforts to prepare a draft that could be agreed by all three partner organisations, ultimately the Government was not prepared to publish a draft plan for public consultation in the current environment and in an election year. The need for greater public understanding and stronger public ‘buy in’ to the Declaration was seen as necessary before a national action plan could be achieved. Other government initiatives that would advance Māori rights have proved controversial and have attracted vocal criticism, including proposed law reforms regarding water, that include “co-governance” arrangements with Māori.

We were not able to finalise a draft Declaration plan within the planned timeframes, and accordingly were unable to complete public engagement by the end of 2022. In January 2023 Cabinet confirmed the decision to pause work the draft Declaration plan until 2024.

While the Minister has made public comments signalling this decision, an official announcement has not been made. This was expected in late January, early February, but has also been delayed. The January 2023 Cabinet decision will also be publicly released at the same time.

### Education, awareness raising and supporting Indigenous self-determination

While deferring the completion of the action plan, the Government has affirmed its commitment to the Declaration, and has agreed to provide funding to Pou Tikanga to support ongoing work in two areas:

* Building awareness and understanding of the Declaration
* Activities to supporting Indigenous Peoples to exercise their self-determination and achieve their aspirations. This work involves facilitating ‘Peoples’ plans’ to support Indigenous groups/families to achieve their self-determination aspirations.

The Commission is discussing with Pou Tikanga ways it might support these activities, as well as progressing its own activities focussed on education and awareness raising.

In conclusion, we hope you find our submission useful when considering how to monitor states’ implementation of the Declaration.

We are available to discuss any of the issues outlined above.

1. <https://tikatangata.org.nz/news/renowned-indigenous-rights-expert-joins-the-human-rights-commission> [↑](#footnote-ref-2)
2. **In March 2019, Cabinet approved a process to develop a Declaration plan. Accessible at:**

<https://www.tpk.govt.nz/mo-te-puni-kokiri/corporate-documents/cabinet-papers/all-cabinet-papers/develop-plan-on-nz-progress-un>

**In June 2021 Cabinet approved the next steps for developing a Declaration plan. Accessible at:**

<https://www.tpk.govt.nz/mo-te-puni-kokiri/corporate-documents/cabinet-papers/all-cabinet-papers/next-steps-for-declaration-plan>.
**In April 2022 Cabinet received the Māori targeted engagement feedback and agreed the process for drafting a Declaration plan** Cabinet paper. Accessible at: <https://www.tpk.govt.nz/mo-te-puni-kokiri/corporate-documents/cabinet-papers/all-cabinet-papers/united-nations-declaration-on-the-rights-of-indige> [↑](#footnote-ref-3)
3. April 2022 update report to Cabinet, ibid., at p6. [↑](#footnote-ref-4)
4. Ibid. [↑](#footnote-ref-5)
5. Hansard, ‘Ministerial Statements — UN Declaration on the Rights of Indigenous Peoples—Government Support’, 20 April 2010. Accessible at: <https://www.parliament.nz/en/pb/hansard-debates/rhr/document/49HansD_20100420_00000071/ministerial-statements-un-declaration-on-the-rights-of> [↑](#footnote-ref-6)
6. The report of targeted engagement is available at: <https://www.tpk.govt.nz/docs/tpk-undrip-keythemesm%C4%81oritargetedengagement-april2022v2.pdf> [↑](#footnote-ref-7)
7. Accessible at: <https://www.tpk.govt.nz/mo-te-puni-kokiri/corporate-documents/cabinet-papers/all-cabinet-papers/united-nations-declaration-on-the-rights-of-indige> [↑](#footnote-ref-8)