

Intervention:

4th New Zealand Universal Periodic Review

11 October 2023

Intervention is by: An individual Civil Society Organization.

Organization: Te Waka Hourua (Māori climate justice activists and allies); supported by Pathway to Survival.¹

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Tēnā koutou/ greetings,

Introduction

1. Established in July 2019, Te Waka Hourua (TWH) was born out of the Extinction Rebellion Aotearoa New Zealand (XRANZ) movement.² TWH began as a response to a recognition by XRANZ that a set of XR demands and principles (D&P) unique to Aotearoa was needed. Māori XRANZ members led the process of creating that distinct list of D&P, in both the Māori and English language.³ Shortly thereafter, TWH became an affiliate, and ultimately an independent group in its own right, with the aim (in collaboration with mainstream allies) of amplifying Māori voices in our efforts to achieve climate justice.

1.1. Please note:

- a. All references in this intervention to NZ UPR 3rd cycle recommendations are sourced from the UPR's online matrix.⁴
- b. All TWH recommendations below contain the implicit expectation, that:
 - i. *to realise* the principle of free, prior and informed consent, and
 - ii. *otherwise comply* with (a) Te Tiriti o Waitangi and (b) human rights norms:-

the New Zealand Government is duty-bound to ensure meaningful participation of, and with, impacted Māori peoples in the implementation of said recommendations.

Indigenous Peoples

State misinformation and disinformation – Māori self-determination

2. Since 2021, TWH has campaigned⁵ to have Te Papa Tongarewa (New Zealand's National Museum, and an agency of the State⁶) remove its false and misleading English translation of Te Tiriti O Waitangi 1840 (Te Tiriti) from their "Treaty of Waitangi: Signs of a Nation" exhibit.⁷

2.1. The exhibit prominently displays the text of Te Tiriti (the Māori language version), together with an English version commonly known as "the Treaty". The clear impression from the exhibit is that the latter is an accurate translation of former.

2.2. However, as aggrieved Māori, the Waitangi Tribunal and experts in historical and related fields agree, the "Treaty" text contains significant and material translation

errors, notably that Māori ceded to the Crown their tino rangatiratanga (sovereignty) – including the authority to make and enforce their own law over their Indigenous peoples and territories.⁸ This is a gross misrepresentation of Māori-Crown history: it perpetuates profoundly destructive colonial myths which (among other prejudicial impacts):

- a. disempower Aotearoa’s Indigenous Peoples,
- b. legitimise ongoing violations of Māori self-determination and other human rights, and
- c. fuel ignorance of the populace, which then feeds into racism and discrimination against Māori.

2.3. Hundreds of thousands visit the Te Papa national museum annually: many are impressionable children and youth, others include foreigners and even dignitaries. Given that the majority do not have Māori language skills, it is all but assured that they will leave the exhibit critically misinformed.

2.4. Undeniably, this has contributed to the pandemic of misinformation and disinformation that, virus-like, has spread through the consciousness of Aotearoa and even the international community for the entirety of the 20-plus years of this exhibit’s existence. This, despite numerous complaints to Te Papa including:

- a. objections logged in Te Papa’s own visitors’ feedback monitoring system (copies of which TWH obtained through an Official Information Act request, and which TWH subsequently filed a complaint with the Ombudsman’s office about due to (i) the highly redacted information supplied, and (ii) information which TWH suspects has been omitted from Te Papa’s response); and
- b. TWH’s 2021 occupation of the exhibit space⁹: During this occupation, a Te Papa official¹⁰ advised how, in the exhibit’s planning stages, Te Papa ignored the recommendations of its own expert Māori advisory group¹¹ that a correct translation of Te Tiriti be displayed.¹²

Recommendations

3. In the context of resolving the abovementioned situation, TWH calls on the State to expedite the following previous UPR recommendations which it has only partially and underwhelmingly implemented:

3.1. “Strengthen joint work with the Māori people aimed at the implementation of the United Nations Declaration on the Rights of Indigenous Peoples”¹³;

3.2. “Continue with measures to promote the rights of ethnic minorities, in particular the Māori”¹⁴; and

3.3. “Design a strategy to tackle social inequalities experienced by Māori...in...justice”¹⁵.

4. TWH further recommends Te Papa:

4.1. *immediately remove* the English Treaty artefact from its prominent propagandising position; and

4.2. *give Te Tiriti the recognition it deserves* as our country's founding document by, and with all due haste, replacing the removed Treaty artefact with a translation approved through a meaningful consultation process undertaken in good faith with Māori.

General human rights violations – Indigenous Peoples

5. TWH also brings to the Human Rights Council’s attention that Māori are identified as being at extra risk of rights violations on nearly all human rights (according to latest monitoring data by the Human Rights Measurement Initiative¹⁶). This includes:
 - 5.1. “Māori communities have only limited ability to exercise self-determination. When asked to provide more context about this right, respondents mentioned “widespread discrimination” which “marginalises Māori people”.
 - 5.2. Māori people are more at risk than others of missing out on their everyday rights, such as food, education, health, housing, and work.
 - 5.3. Māori are not fully enjoying their Indigenous land rights, or their cultural rights.

Recommendation

6. TWH’s recommendation here is simple and obvious: the State must respect the rights of the Māori Indigenous Peoples in Aotearoa New Zealand. More specifically however, the State should strengthen civics education so that all youth are empowered with the knowledge of what their human rights are, and how to protect them. This should incorporate a strong comprehension of the nation’s Te Tiriti-based constitutional arrangements, especially a correct understanding of Te Tiriti’s articles.

National Human Rights Institutions

Recommendations

7. In the context of helping to address the Te Tiriti/ Treaty misinterpretation issues mentioned under the “Indigenous Peoples” section above, TWH calls on the State to expedite the following previous UPR recommendations which it has failed to implement:
 - 7.1. “Continue to strengthen national human rights institutions”;¹⁷ and
 - 7.2. “Provide the New Zealand Human Rights Commission with sufficient financial and human resources to carry out its work”.¹⁸
8. TWH further recommends that the State expand the NZ HRC’s mandate to enable it to undertake effective advocacy and provide meaningful support to people experiencing environmental human rights and climate crisis-related injustices, particularly where such injustice intersects with Te Tiriti and UNDRIP violations.

Human Rights and Climate Change

9. Human rights experts suggest that the climate crisis has ‘somewhat’ to ‘moderately’ worsened human rights conditions in New Zealand in 2022, giving it a score of 3.7/ 6.¹⁹ In this context of the imperative for environmental protection and regeneration and climate crisis mitigation and adaptation, TWH reiterates that it is crucial that the Te Tiriti/ Treaty misinformation and disinformation perpetuated by the Te Papa national museum²⁰ be corrected. This is for reasons including:
 - 9.1. well-informed people accept that Indigenous expert, technical and traditional knowledge and practices offer solutions to the “most pressing global problems”.²¹ This

includes conservation and environmental management, where Indigenous knowledge and practices are highly effective – indeed, they are routinely proving to be *more* successful in the vast majority of cases than mainstream Western conservation efforts.²² Embracing this truth throughout society and by policy decision-makers is advanced by full respect for Māori; and that respect can only come from a true, empowering perspective of Te Tiriti; and

- 9.2. there is a strong correlation between protection and realisation of (a) Indigenous Peoples’ human rights to self-determination, their lands, territories and resources, and other rights, and (b) environmental wellbeing.²³ For Māori, a foundation of a well-informed citizenry is vital to accelerating full rights protection that will in turn enable Māori to achieve their true potential as expert duty-bearers in the context of environmental protection (a responsibility handed down by the ancestors, which We are compelled to fulfil for future generations’ wellbeing and survival).

Recommendations

10. TWH calls on the State to expedite the following previous UPR recommendations which it has only partially and underwhelmingly implemented:

- 10.1. in the context of helping to address the Te Tiriti/ Treaty misinterpretation issues mentioned under the “Indigenous Peoples” section above:
 - a. “encourage adopting climate change related planning and management strategies including conducting nationwide assessment of climate change risks”²⁴ – with (TWH would add) a particular focus on implementing Te Tiriti and UNDRIP rights for Māori as a precondition for optimized climate mitigation and adaptation response; and
 - b. “implement the Zero Carbon Bill and the Environmental Health Action Plan, having taken into account the special vulnerabilities, views and needs of women, children, youth, persons with disabilities, and local and marginalized communities”²⁵ – including (TWH would add) implementing Te Tiriti and UNDRIP rights for Māori as a precondition for optimized climate mitigation and adaptation response; and
- 10.2. “Clarify the definition of ‘terrorist’, and review the Terrorism Suppression Act so as to ensure that those designated as “terrorists” could enjoy justice”²⁶ – and, TWH would add, that any “terrorist” definition shall not be weaponized (legally or otherwise) against Māori who are exercising their human and Te Tiriti rights to protect a healthy environment.

Constitutional and Legislative Framework

11. Ref the “Indigenous Peoples” section above regarding Te Tiriti/ Treaty misinterpretation, and TWH’s filing of the complaint with the Ombudsman in 2022, currently, Our complaint is still in the queue to be assigned to an Ombudsman investigator. Under the principle of “justice delayed is justice denied”, the unduly long time for complainants to wait for an investigative outcome is unacceptable.

Recommendations

12. TWH calls on the State to:

- 12.1. Ensure the Office of the Ombudsman is sufficiently resourced to complete complaint investigations in a comprehensive and timely manner; and
- 12.2. expedite the following previous UPR recommendations which it has only partially and underwhelmingly implemented, i.e.:
 - a. “Consider the possibility of developing and adopting a written Constitution, as well as adequately ensure constitutional or legislative recognition of the Treaty of Waitangi”²⁷ – to which TWH would amend to read “develop and adopt a written Constitution, as well as adequately ensure constitutional or legislative recognition of Te Tiriti o Waitangi” (given the material differences between Te Tiriti and the Treaty as discussed under the Indigenous Peoples section, above).
 - b. “Give constitutional rank to the Bill of Rights Act and incorporate therein the right to privacy, and economic, social and cultural rights”;²⁸ and
 - c. “Adopt an appropriate procedure so that, in the future, any law or legislative reform is subject to a prior analysis of its impact on human rights”.²⁹
 - i. As a pre-emptive strike, TWH also calls on the State to strengthen and, where necessary, implement new provisions and measures to ensure that the law, legislative or policy reform – including the adoption or ratification of international agreements – shall not be weaponized to unjustly violate human rights, in particular (but not exclusive to) civil and political rights,³⁰ and the rights of environmental human rights defenders (Māori, or otherwise). This recommendation is in response to (among other data points) the Human Rights Measurement Initiative Rights (HRMI) Tracker score for New Zealand’s respect for civil and political rights in 2022: HRMI scored New Zealand 7.4/10,³¹ indicating that “a significant number of people are not safe” from New Zealand government reprisals and hostility, with the main group at risk being Indigenous Peoples.³² In addition, there are revelations that during the Covid-19 pandemic in 2020 in New Zealand, human rights violations worsened as a result of government agents’ actions.³³ Combined with other reports (such as governments in the Asia-Pacific region using “the COVID-19 pandemic...as an excuse...to violate people’s rights to information and privacy”³⁴), it’s obvious that a need exists to protect human rights from State violation under the guise of “emergency response” or some other false pretext.

Acceptance of international norms

Recommendations

13. TWH recommends the New Zealand government:
 - 13.1. expedite the following previous UPR recommendation which it has failed to implement, i.e. “Ratify the broad range of international human rights instruments such as the...Optional Protocol to the [ICESCR},...and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization”³⁵; and
 - 13.2. meaningfully support efforts to urgently implement recommendations of successive Asia-Pacific environmental human rights defender forums,³⁶ in particular, to create an effective environmental justice and environmental human rights defender mechanism in the Asia-Pacific and/ or Pacific region.³⁷

ENDS

¹ P2S is a group affiliated with Extinction Rebellion Aotearoa New Zealand who advocate for the New Zealand government to take urgent decisive action on the intersecting crises of ecosystem collapse, climate and social injustice and colonisation. Website, <https://www.pathwaytosurvival.nz/>, email pathwaytosurvival@pathwaytosurvival.nz.

² For more, see <https://extinctionrebellion.nz/2021/02/25/xr-aoteoras-new-demands-principles-a-journey/>. Broadly speaking, XR's goals are (1) to tell the truth about the climate crisis, (2) act now to achieve absolute zero emissions and mitigate the crisis' worst impacts, and (3) go beyond failed conventional politics by implementing People's Assemblies and other mechanisms for the people to lead action.

³ See <https://extinctionrebellion.nz/about/>.

⁴ Accessible at <https://www.ohchr.org/en/hr-bodies/upr/nz-index>.

⁵ See TWH's ActionStation petition at <https://our.actionstation.org.nz/petitions/time-s-up-te-papa-tell-the-truth-about-te-tiriti-o-waitangi>.

⁶ "Te Papa's Board is accountable to the Minister for Arts, Culture and Heritage. The Minister appoints the Board": <https://www.tepapa.govt.nz/board>.

⁷ For exhibit information, see <https://www.tepapa.govt.nz/visit/exhibitions/treaty-waitangi-signs-nation>.

⁸ The recent ground-breaking Ngāpuhi (Te Paparahi o te Raki) WAI 1040 claim is one of hundreds of Māori grievances filed with the Waitangi Tribunal asserting, and calling for Crown recognition of, Māori self-determination. For more on the Tribunal's 2022 Inquiry report findings and recommendations, see <https://www.rnz.co.nz/news/te-manu-korihi/481336/crown-overstepped-authority-to-govern-northern-maori-in-19th-century-waitangi-tribunal>.

⁹ The occupation was held with the support of XRANZ and other allies:

<https://www.stuff.co.nz/environment/climate-news/126779415/climate-protests-kick-off-as-council-issues-disruption-warning-for-wellington>.

¹⁰ The "Director of Audience and Insight", Puawai Cairns.

¹¹ Including esteemed Māori advocate, Moana Jackson.

¹² The premise offered by the Te Papa official was that "New Zealand is not ready for that yet".

¹³ Recommendation 122.174, A/HRC/41/4/Add.1 - Para. 56-63, El Salvador. Refer also recommendations 122.173 and 122.181. Ref also recommendation 122.173, A/HRC/41/4/Add.1 - Para. 56-63, Canada:

"Develop, in partnership with Māori, a national strategy or plan of action to align public policy and legislation with the [UNDRIP]".

¹⁴ Recommendation 122.164, A/HRC/41/4/Add.1 - Para. 56-63, Senegal.

¹⁵ Recommendation 122.182, A/HRC/41/4/Add.1 - Para. 56-63, United Kingdom of Great Britain and Northern Ireland.

¹⁶ <https://rightstracker.org/country/NZL?tab=atrisk>.

¹⁷ Recommendation 122.37, A/HRC/41/4/Add.1 - Para. 7-12, Nepal.

¹⁸ Recommendation, 122.38, A/HRC/41/4/Add.1 - Para. 7-12, Spain.

¹⁹ Human Rights Measurement Initiative, "The state of human rights in Aotearoa New Zealand" (2022), p16.

²⁰ as explained above under the "Indigenous Peoples" section.

²¹ <https://www.un.org/es/desa/traditional-knowledge-%E2%80%93-answer-most-pressing-global-problems>.

²² <https://www.globalcitizen.org/en/content/IFAD-indigenous-peoples-forum-climate-biodiversity/>.

²³ E.g., see <https://forestsnews.cifor.org/67515/respect-for-indigenous-land-rights-key-in-fight-against-climate-change?fnl=en>.

²⁴ Recommendation 122.54, A/HRC/41/4/Add.1 - Para. 19, Maldives.

²⁵ Recommendation 122.56, A/HRC/41/4/Add.1 - Para. 19, Fiji. Ref also recommendation 122.55, A/HRC/41/4/Add.1 - Para. 19, Lao People's Democratic Republic, "Continue its efforts to address the ongoing challenges, including the impact of environment through the implementation of the Environmental Health Action Plan".

²⁶ Recommendation 122.59, A/HRC/41/4/Add.1 - Para. 22, Islamic Republic of Iran.

²⁷ Recommendation 122.32, A/HRC/41/4/Add.1 - Para. 7-12, Russian Federation.

²⁸ Recommendation 122.33, A/HRC/41/4/Add.1 - Para. 7-12, Bolivarian Republic of Venezuela.

²⁹ Recommendation 122.35, A/HRC/41/4/Add.1 - Para. 7-12, Spain.

³⁰ See for example <https://www.ohchr.org/en/press-releases/2020/07/covid-19-pandemic-exposes-repression-free-expression-and-right-information?LangID=E&NewsID=26075>.

³¹ Accessible at <https://rightstracker.org/country/NZL>. This is a decisively average score when compared to the five high-income OECD countries HRMI has data for.

³² See <https://rightstracker.org/country/NZL?tab=report-physint>.

³³ Human Rights Measurement Initiative, "Human Rights During the Pandemic" (2021), p10, <https://web.archive.org/web/20221220180255/https://humanrightsmeasurement.org/wp-content/uploads/2021/06/Human-Rights-During-the-Pandemic.pdf>.

³⁴ Asia-Pacific Environmental Human Rights Defenders Forum (2022), p14, <https://bangkok.ohchr.org/wp-content/uploads/2023/04/Report-of-the-Asia-Pacific-Environmental-Human-Rights-Defenders-Forum-Final.pdf>.

³⁵ Recommendation 122.2, A/HRC/41/4/Add.1 - Para. 5-6, Russian Federation.

³⁶ The latest 2022 report is available at <https://bangkok.ohchr.org/wp-content/uploads/2023/04/Report-of-the-Asia-Pacific-Environmental-Human-Rights-Defenders-Forum-Final.pdf>.

³⁷ See discussion starting at p26 of the Asia-Pacific 2022 report, IBID. This theme was highlighted and reinforced in the Asia-Pacific EHRD Forum, 20-23 September 2023: see the programme at <https://bangkok.ohchr.org/apehrdf2023/>. The 2023 written report is currently in production.