

**SUBMISSION OF THE MONITORING MECHANISM OF THE  
NATIONAL IWI CHAIRS FORUM**

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

The National Iwi Chairs 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 Tirenī*<sup>1</sup> (*He Whakaputanga*), *Te Tiriti o Waitangi*<sup>2</sup> (*Te Tiriti*) and the UN Declaration on the Rights of Indigenous Peoples. It meets regularly to discuss and act collectively on issues ranging from constitutional transformation, resource protection and recovery and economic development. The National Iwi Chairs Forum also addresses government policy and practice as it impacts on Māori and engages in regular dialogue with government representatives on priorities, issues and projects.

The Monitoring Mechanism provides the following information on issues affecting the rights of Māori.

**The Waitangi Tribunal and the Treaty settlement process**

The Waitangi Tribunal is a statutory body with the power to inquire into claims by Māori that the government has acted in breach of Treaty principles. The Tribunal can make recommendations however, these are not binding on the government. The government has rejected the recommendations of the Waitangi Tribunal on a number of occasions and including in cases

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<sup>1</sup> *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.

<sup>2</sup> *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.

involving the protection and recognition of Maori land rights.<sup>3</sup> Other UN human rights committees have been critical of New Zealand in this respect as has the UN Special Rapporteur on the Rights of Indigenous Peoples.<sup>4</sup>

The government has also created the Treaty settlement process whereby it negotiates settlements of historical claims directly with claimant groups. The Treaty settlement process is not based on a human rights framework, nor indeed *Te Tiriti* but is a creation of government policy which is weighted heavily in favour of political considerations such as acting in the best interests of all New Zealanders and limiting fiscal and economic redress.<sup>5</sup> The objective of the process is to “strike a balance to negotiate fair, just, and practical settlements.”<sup>6</sup> However, these processes are in practice less than fair or just from a human rights perspective.

It is government policy to negotiate claims with ‘large natural groupings’ rather than individual *whānau* (family) and *hapū*.<sup>7</sup> According to the government this policy is “workable... cost-effective... and meets a greater number of needs.”<sup>8</sup> In practice however, this policy conflicts with one of the core government principles upon which Treaty settlements are based - that in attempting to resolve outstanding claims the government should not create further injustices.<sup>9</sup>

The government has also prescribed a mandating process which heavily favours its desire to complete settlements with large natural groupings. Serious concerns have been raised by Māori

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<sup>3</sup> See for example, Waitangi Tribunal *Report into Claims concerning Proposed Reforms to Te Ture Whenua Maori Act 1993* (Wai 2478, 2016) and government response <http://www.radionz.co.nz/news/political/295943/waitangi-tribunal's-findings-bizarre-minister> and Waitangi Tribunal National Fresh Water and Geothermal Resources (Wai 2358, 2012) and government response <http://www.radionz.co.nz/news/political/118246/soe-sale-won't-include-special-shares-for-maori>.

<sup>4</sup> Committee on the Elimination of Racial Discrimination *Concluding Observations on the Eighteenth to the Twentieth periodic reports of New Zealand* 2230th meeting CERD/C/NZL/CO/18-20 (2013) paras 11 and 26, Committee on Economic, Social and Cultural Rights *Concluding Observations of the Committee on Economic, Social and Cultural Rights: New Zealand* 48th session E/C.12/NZL/CO/3 (2012) paras 11 and 26, Human Rights Council *Report of the Special Rapporteur on the Rights of Indigenous Peoples: The situation of Maori people in New Zealand* 18th session A/HRC/18/35/Add.4 (2011) paras 70-72 and Human Rights Council *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: Mission to New Zealand* 62nd session E/CN.4/2006/78/Add.3 (2006) paras 89-90 and 93-95.

<sup>5</sup> Office of Treaty Settlements *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown Part 1* (OTS, Ministry of Justice, Wellington, 2002) at 28.

<sup>6</sup> Above at 29.

<sup>7</sup> Above at 32

<sup>8</sup> Office of Treaty Settlements *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown Part 2* (OTS, Ministry of Justice, Wellington, 2002) at 44.

<sup>9</sup> Above n 3 at 28.

about this process with a number of urgent claims being made to the Waitangi Tribunal<sup>10</sup> providing evidence of a lack of representativeness and accountability, unfair processes and marginalisation of smaller groups. This has resulted in poor outcomes leading to some claimant's rights and interests not being adequately represented within the settlement process.

A flow on effect when *hapū* and *iwi* are excluded from the settlement process is that lands and resources they have an interest in are offered by the government to other claimant groups. This has been the experience of the *hapū* *Āraukūkū* and the *iwi* *Ngāti Kahu*. *Āraukūkū* were only able to voice their concerns when the draft settlement legislation was in its final stages<sup>11</sup> while *Ngāti Kahu* chose direct action by occupying a domestic airport situated on land that was to be offered to other claimants.<sup>12</sup>

Other concerns raised by Māori in relation to the Treaty settlement process include but are not limited to the negotiation process,<sup>13</sup> the narrow scope and nature of settlements,<sup>14</sup> and the limited statutory options available to claimants.<sup>15</sup>

The Human Rights Committee has previously considered these issues and made a specific recommendation that “the State party should ensure that the views expressed by different Māori groups during consultations in the context of the historical Treaty claims settlement process are duly taken into account.”<sup>16</sup>

The Committee on Economic, Social and Cultural Rights has also recommended that “the State party ensure that the inalienable rights of Māori to their lands, territories, waters and marine areas and other resources as well as the respect of the free, prior and informed consent of Māori on any

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<sup>10</sup> For example, Waitangi Tribunal *The Ngapuhi Mandate Inquiry Report* (Wai 2490, 2015), Waitangi Tribunal *The Te Aroha Maunga Settlement Process Report* (Wai 663, 2014) and Waitangi Tribunal *The Final Report on the Impacts of the Crown's Treaty Settlement Policies on Te Arawa Waka and Other Tribes* (Wai 1385, 2007).

<sup>11</sup> See the case of *Āraukūkū* who argue that their historical claims to lands are being settled without them as reported by Radio New Zealand <http://www.radionz.co.nz/news/te-manu-korihi/290034/south-taranaki-hapu-fears-losing-remaining-lands>

<sup>12</sup> Radio New Zealand <http://www.radionz.co.nz/news/regional/283623/kaitaia-airport-occupied,-flights-cancelled>

<sup>13</sup> See for example, Waitangi Tribunal *East Coast Settlement Report* (Wai 2190, 2010) and Waitangi Tribunal *Tāmaki Makaurau Settlement Process Report* (Wai 1362, 2007).

<sup>14</sup> ET Durie “Land Claims, Treaty Claims and Self-determination” in Selwyn Katene and Malcolm Mulholland (eds), *Future Challenges For Māori: He Kōrero Anamata*, (Huia Publishers, Wellington, 2013) at 37.

<sup>15</sup> B Vertongen “Legal Challenges to the Treaty Settlement Process” in N Wheen & J Haywood (eds) *Treaty of Waitangi Settlements* (Bridget Williams Books and New Zealand Law Foundation, Wellington, 2010) at 65 and DV Williams, “Supreme Court orders Waitangi Tribunal to consider making binding orders for return of land” in *Public Law* (January 2012) at 140.

<sup>16</sup> Committee on Human Rights *Concluding observations of the Human Rights Committee: New Zealand* 98th session CCPR/C/NZL/CO/5 (2010) para 21.

decisions affecting their use are firmly incorporated in the State party's legislation and duly implemented."<sup>17</sup>

The two previous Special Rapporteurs on the Rights of Indigenous Peoples have also issued recommendations that the government reach agreement with Māori on a more fairer process that complies with international human rights standards.<sup>18</sup>

Unfortunately, the government is not prepared to address the problems associated with the Treaty settlement process leading to increasing Māori frustration and disillusionment. The Treaty settlement process is in dire need of review and reform. This must be undertaken with the full and effective participation of Māori. Failure to do so will lead to further injustices and will continue to undermine the relationship between the government and Māori.

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<sup>17</sup> Committee on Economic, Social and Cultural Rights *Concluding observations of the Committee on Economic, Social and Cultural Rights: New Zealand* 48th session E/C.12/NZL/CO/3 (2012) para 11.

<sup>18</sup> Above n 4.