

# **Report of the Independent Monitoring Mechanism on implementation of the UN Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand: 2019**

## **I. Introduction**

1. This is the fifth annual monitoring report of the Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand (the Monitoring Mechanism).
2. The Monitoring Mechanism is an independent Māori working group created in 2015. Members of the Monitoring Mechanism have been selected by their iwi (tribal nation) and endorsed by the National Iwi Chairs Forum (the Forum)<sup>1</sup> to act as independent experts. The Monitoring Mechanism is supported in its work by technical advisers. The objective of the Monitoring Mechanism is to promote and monitor the implementation of the UN Declaration on the Rights of Indigenous Peoples (the Declaration) in Aotearoa/New Zealand. Since its first report in 2015, the Monitoring Mechanism has called on government to work in partnership with Māori to develop a national action plan to implement the Declaration.

## **II. Engagement with government**

3. Since the last EMRIP session, positive engagement with the New Zealand Government (the government) has continued. A formal relationship with Te Puni Kōkiri - the Ministry of Māori Development (TPK) is in the process of being renewed, and includes funding to enable the Monitoring Mechanism to participate in this year's annual session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) though at the time of writing, funding has yet to be received.
4. High-level government support for work with Iwi to progress and develop a Tiriti partnership was signalled in February this year. This was followed in March by a government decision to work in partnership with Iwi to develop a national action plan for the Declaration. The Mechanism has welcomed these developments, as well as opportunities for positive engagements with Ministers and TPK.

## **III. EMRIP Country Engagement**

5. The Monitoring Mechanism greatly appreciated the EMRIP's visit to Aotearoa in April 2019. The visit was in response to a request from the Monitoring Mechanism and the Human Rights Commission under the EMRIP's revised mandate. The purpose of the visit was to provide technical advice on the development of a national action plan for the Declaration, including advice on an engagement strategy.

---

<sup>1</sup> The 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 Tireni (He Whakaputanga), Te Tiriti o Waitangi (Te Tiriti) and the Declaration. It meets regularly to discuss and act collectively on issues ranging from constitutional transformation, resource protection and recovery and economic development. The Forum also addresses government policy and practice as it impacts on iwi and hapū and engages in regular dialogue with government on priorities, issues and projects.

6. The Monitoring Mechanism worked closely with the Human Rights Commission and TPK to organise a visit programme that included Māori community hui (public meetings) as well as meetings with a range of organisations, academics, judges, government ministers and agencies. Support was also provided by Ngā Pae o te Māramatanga – New Zealand’s Centre of Māori Research Excellence.
7. Issues raised during the EMRIP visit have informed this report. We note that many of the issues raised – including a strong call for constitutional transformation, and the crucial importance of Māori solutions and self-determination, partnership and full participation in decision-making – were consistent with the priorities and issues that the Monitoring Mechanism has addressed in previous annual monitoring reports.
8. The Monitoring Mechanism has had an opportunity to comment on the EMRIP’s draft Advisory Note and welcomes the valuable guidance it contains. We look forward to discussing the New Zealand country engagement further during the EMRIP’s twelfth session, and working with government and others to implement the Advice.

#### **IV. Structure of this Report**

9. This report is structured around the following key priorities:
  - A. An overarching priority of Constitutional Transformation
  - B. Self-determination, underpinned by participation in decision-making and free, prior and informed consent
  - C. Lands, Territories and Resources – with a special focus on climate change/climate crisis
  - D. Cultural Rights
  - E. Equality and Non-discrimination – with a focus on child poverty
  - F. Practical implementation of the Declaration and Technical Assistance.
10. In preparing this report, the Monitoring Mechanism held four thematic workshops with Iwi. The report is also informed by the hui that took place during the EMRIP visit. This report reflects the Monitoring Mechanism’s independent view, and does not purport to represent the views of individual Iwi, Hapū or other organisations.

#### **A. An overarching priority of Constitutional Transformation – Whakamana i te Tiriti**

11. The need for constitutional transformation remains an overarching priority for the Monitoring Mechanism. We have observed a consistent theme that current systems don’t work, and that what Māori want and need is to be able to exercise our own authority, self-determination, lead their own solutions, and maintain and revitalise their own systems without impediment. As noted throughout this report, there is growing recognition and acknowledgement in research and reviews, and by some parts of government, of the need for structural change and new approaches. In different contexts and in different ways – many people are calling for systemic change.
12. Constitutional and government structures are not grounded in Te Tiriti, and do not reflect Māori systems, laws or values. Yet these structures impact significantly on Māori life, and the ability to exercise and enjoy our rights as Indigenous peoples. New Zealand is an

exception globally in not having human rights included in a formal and written constitution. This lack of legal protection means that the legislature is able to breach Indigenous peoples' rights. The Monitoring Mechanism considers that establishing a Tiriti-based constitutional foundation is critical to making the Declaration's rights a reality, and making meaningful positive change for Māori.

13. We reiterate our view – which has been reflected in recent recommendations by UN human rights bodies<sup>2</sup> – that the recommendations proposed in the 2016 Matike Mai report offer a helpful and practical way forward and should be implemented by government. To date, the government has taken no steps to progress constitutional discussions or address the Matike Mai report recommendations.

**Recommendation 1: that the government prioritise taking concrete steps to progress constitutional conversations and implement the recommendations of the Matike Mai report.**

**B. Self-determination, underpinned by participation in decision-making and free, prior and informed consent – Mana motuhake me te tino rangatiratanga**

***Gisborne Workshop: Mana Motuhake***

14. Workshop participants identified the relevant term as Mana Motuhake, which entails the ability to make decisions over all aspects of their lives including in relation to resource management, economic development, environmental and social wellbeing. It is intrinsic to identity, inherent and unchanging. While constitutional transformation may be a potential avenue for enabling the exercise of mana motuhake, it is not the same as mana motuhake itself.
15. A key issue was that the Crown was not upholding its partnership responsibilities, and this negatively impacts the ability to exercise mana motuhake. Participants were clear that they hold the solutions but were often prevented from implementing these and from exercising mana motuhake. Impediments included: lack of recognition, imposed non-indigenous laws, a power and resource imbalance in the partnership, and government processes that continually changed. The need for immediate action and urgent change was emphasised.
16. Common themes from the workshop are:
- We have mana motuhake. We understand what our mana motuhake is. How mana motuhake is reflected is a Tairāwhiti Iwi issue for us to discuss amongst us.
  - We are a good Tiriti partner. We have fulfilled our obligations.
  - It is the Pākehā law (international, national and regional/district) and systems that impact on our ability to deliver on our mana motuhake
  - Our immediate solutions are:
    - Remove these laws and systems as they relate to our rohe and our whānau, hapū and Iwi;
    - Jointly determining new laws and systems for each of our Iwi;

---

<sup>2</sup> Committee on Elimination of Racial Discrimination (2017) CERD/C/NZL/CO/21-22 at para 12-13; Committee on Economic, Social and Cultural Rights (2018) E/C.12/NZL/CO/4 at para 8-9; Human Rights Council Working Group on Universal Periodic Review (2019) A/HRC/41/4 at para 122.32.

- Ensure that we/Iwi are the decision maker for all matters within our rohe and that we are resourced to do this. We are the solutions to the challenges that our people face.
- It is not about constitutional transformation, it is about getting to fulfil our mana motuhake.

**Recommendation 2: that the government remove laws that impede the exercise of mana motuhake by Iwi and Hapū; and develop any new laws through genuine, equitable partnership.**

### ***Participation in decision-making***

17. In 2018 Te Arawhiti (The Māori Crown Relationships Unit) was launched, following engagement hui around the country. Key themes from the hui<sup>3</sup> included in relation to: the benefits of genuine partnership; the importance of getting engagement right, including by empowering meaningful Māori participation; and building public sector capability. The role of local government was a further theme, noting the importance of the Crown upholding obligations that are delegated to local government. It was noted that improvements across government will be necessary to contribute to a successful Crown/Māori relationship.
18. Following this feedback, the functions of the new Māori Crown Relationships Ministerial portfolio and agency have been confirmed, with a strong focus on “making the Crown a better Treaty partner”.<sup>4</sup> Te Arawhiti has produced engagement guidelines that highlight the importance of early, inclusive and broad engagement.<sup>5</sup> The guidelines recognise that for some issues, the decision-making power must rest with Māori.
19. The importance of constitutional reform to create a durable Crown/Māori relationship was a common topic raised during the above hui, as well as the need for nationwide education about New Zealand’s history and the Crown/Māori relationship. Although constitutional issues were ultimately not included in the Māori Crown Relationships portfolio, two areas were identified as warranting further work: exploring institutional arrangements to better support Crown/Māori partnerships (such as the idea of a Treaty Commissioner and the future role of the Waitangi Tribunal); and in the medium to longer-term, conversations about the Treaty and New Zealand’s constitutional arrangements.<sup>6</sup>

---

<sup>3</sup> Ministry of Justice, (2018), *Crown/Māori Relations: Summary of Submissions*, at pp 5-6. Available at: <https://tearawhiti.govt.nz/assets/Māori-Crown-Relations-Roopu/3ca45b2b2b/Final-Submissions-Summary-Report.pdf>.

<sup>4</sup> Office of the Minister for Crown/Māori Relations, (2018), Cabinet Paper: ‘Proposed final scope of the Crown/Māori Relations portfolio and a Crown/Māori Engagement Framework and Guidelines’, accessible at: <https://tearawhiti.govt.nz/assets/Māori-Crown-Relations-Roopu/c879175460/Proposed-final-scope-of-the-Crown-Māori-Relations-portfolio-and-a-Crown-Māori-Engagement-Framework-and-Guidelines.pdf>.

<sup>5</sup> Māori Crown Relations Unit, (2018), *Guidelines for Engagement with Māori*. Available at: <https://tearawhiti.govt.nz/assets/Māori-Crown-Relations-Roopu/6b46d994f8/Engagement-Guidelines-1-Oct-18.pdf>.

<sup>6</sup> Office of the Minister for Crown/Māori Relations, (2018), Cabinet paper, at para 41-43.

### ***Heretaunga Workshop: participation in local and regional government decision-making***

20. Workshop participants represented a diverse range of views and perspectives. However, common themes related to structural barriers to Māori participation; and a need for greater accountability for, and implementation of Tiriti obligations.
21. Existing provisions for Māori representation within local and regional government were largely viewed as inadequate. Processes for participation were seen as overly complex and not user friendly, with Māori viewpoints often ignored or opposed and Māori participation often seen as tokenistic. Participation processes were easily circumvented, and councils could pick and choose who they consulted. National monitoring and auditing of local government compliance with Tiriti obligations, raising cultural capability, and providing centralised resources, information and support, were some actions suggested.
22. Shortcomings were identified with the Local Government Act 2002, and its processes for creating Māori Wards to ensure Māori representation on local councils. Unlike the process for creating wards for other population groups, any proposals to establish Māori Wards can be overturned by a public vote. This was viewed as a clear example of the discrimination and structural racism that underpins local government, and which pervades council processes and practices.
23. Local government exercises powers delegated by the Crown, which directly impact the rights of Māori. However, distinctions are made between central and local government Treaty obligations, and there is no clear statement in the Act that local government is part of the Crown. This lack of clarity and accountability hinders Tiriti obligations.

**Recommendation 3: That the Local Government Act 2002 is amended to (a) clarify and confirm the Tiriti obligations of local and central government; (b) remove the discriminatory provisions that apply to the creation of Māori wards; and (c) ensure that the obligations of free, prior and informed consent are adequately reflected and upheld.**

#### **c. Lands, territories and resources – Toitū te whenua, toitū te mana**

24. The Monitoring Mechanism's 2018 report highlighted a case where Iwi opposed offshore seabed mining in their territory (off the Taranaki coast). The Environment Protection Authority had granted consent for seabed mining despite strong opposition from Iwi and others. Iwi appealed the decision to the High Court, who reversed the consent decision. The issue remains in the courts, as further appeals and cross-appeals are underway.
25. An amendment to the Crown Minerals Act was passed in November 2018, putting a stop to new permits for offshore oil and gas exploration. However the amendment allows for the continuation of existing permits. Live offshore exploration permits remain in Taranaki (West Coast) as well as Ikaroa Rāwhiti (East Coast). Onshore mining also continues, for example in Taranaki, where a block offer for oil and gas drilling has been recently announced – again

drawing concern from Iwi.<sup>7</sup> Concerns related to the adequacy of protections, the ability to override Iwi decisions, as well as an overall approach that does not reflect Tiriti partnership and which continually puts Iwi in a position of having to fight to exercise their rights and uphold their responsibilities to their lands.

26. Business activities impacting indigenous lands are also at issue in a situation involving land at Ihumātao in Auckland. A commercial developer was granted consent to build a major housing development on land which had the government confiscated in the 19<sup>th</sup> century, and then sold into private ownership. An Indigenous collective have called on the government and Auckland council to urgently intervene “to either buy the land ... or mandate a process that will enable all affected parties to come up with an outcome everyone can live with”.<sup>8</sup> The group’s petition is currently being considered by a Parliamentary Select Committee.<sup>9</sup>

### ***Kaitia Workshop: Lands, territories and resources***

27. Workshop participants were clear that their indigenous rights to land and kaitiakitanga (guardianship) responsibilities are enduring, despite the lack of recognition by government. They were clear that they retain their mana motuhake (authority, self-determination) and continue to exercise it, but are often hindered by local and central government laws, policies and practices.
28. The processes for dealing with land issues and Tiriti breaches were viewed as inadequate. The central failing being that such processes did not lead to land being returned to Māori. One Iwi had secured Waitangi Tribunal recommendations for the return of their land, but after 35 years the land has still not been returned.
29. The workshop highlighted one positive experience dealing with the private sector in relation to business activities impacting on Iwi lands and rights. What had been critical to that example had been the company’s willingness to develop a relationship with the Iwi, making an effort to understand each other’s culture and customs, and respecting Iwi authority and decisions.

**Recommendation 4: that the government (a) Amend the Treaty claims and settlement processes to better provide for the return of land in accordance with articles 25, 26, 27 and 28 of the Declaration; and (b) Strengthen Waitangi Tribunal powers to issue binding recommendations and require Crown response and action on its recommendations.**

---

<sup>7</sup> <https://www.rnz.co.nz/news/te-manu-korihi/388521/Māori-disappointed-ancestral-land-up-for-tender-for-oil-and-gas-drilling-in-taranaki?fbclid=IwAR0o2HEX5nHgKmm7MYZx2KRGa10q91DD0CThLileGEUcah0dgpnmPImy50>

<sup>8</sup> <https://our.actionstation.org.nz/petitions/toitu-te-whenua-protectihumaatao>

<sup>9</sup> <https://www.rnz.co.nz/news/te-manu-korihi/391887/ihumatao-campaigners-seek-to-avoid-repeat-of-orakei-bastion-point-occupation>

## **Climate change**

30. Several local government councils, including the largest city Auckland, have declared a climate emergency.<sup>10</sup> At the national level, draft legislation introduced in May includes provisions to: require government to develop and implement policies for climate change adaptation and mitigation; establish an independent Climate Change Commission; and set new targets for greenhouse gas emissions.<sup>11</sup> The draft bill proposes to cut net emissions to zero by 2050 for all greenhouse gases except methane – as a compromise with farmers. The bill includes lesser reduction targets for methane.

### **Wellington Workshop: Climate change**

31. Participants in this workshop discussed the impacts of climate change in their communities. These included: increasing storms and flooding; rising sea levels affecting coastal communities (and whole communities in the Pacific already on the move); and disrupted seasonal weather patterns. The psychological impact of the climate crisis was also raised as an issue that needs to be carefully worked through. While both devastated at the problem and frustrated by the lack of action, participants were hopeful about growing recognition of the urgency of the problem and acceptance that systemic change is needed.
32. Workshop participants raised the need to fully embed Māori values and perspectives into decision-making. There was a firm view that indigenous paradigms offer effective solutions for the climate crisis, but that Māori are not empowered to drive forward the changes needed. The need for constitutional change was identified as a key action, in order to ensure that Māori aspirations are not at the whim of a three-year electoral cycle, and that Māori values and perspectives cannot be ignored or manipulated by governments.
33. It was noted that lack of action and poor decisions by previous governments has meant that New Zealand is trailing the rest of the world in responding to climate change thereby putting everyone at risk. There was a strong view that resistance from the agricultural sector, and the three-year electoral cycle were key factors in the lack of effective government action.

**Recommendation 5: that the government (a) ensures that climate crisis responses reflect Te Tiriti and the Declaration, and adequately address the urgency of the climate crisis; and (b) establishes bi-partisan forums where significant environmental decisions can be addressed in partnership with Iwi, Hapū and whānau and independently of party politics.**

#### **D. Cultural rights – Ngā taonga tuku iho**

34. In 2011 the Waitangi Tribunal published its report on Māori knowledge and cultural heritage.<sup>12</sup> The report (often referred to as the Wai-262 report) recommended a whole of

---

<sup>10</sup> <https://www.rnz.co.nz/news/national/391929/climate-emergency-declarations-councils-warned-to-proceed-with-caution>

<sup>11</sup> <https://www.mfe.govt.nz/news-events/landmark-climate-change-bill-goes-parliament>

<sup>12</sup> Waitangi Tribunal, (2011), *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*. Available at: <https://www.waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>.

government approach to better protect Māori culture, language and taonga however, the government has not formally or fully responded to it. In December 2018, the government's annual progress report in relation to Waitangi Tribunal recommendations was publicly released in a new format, that included a section focussed on the Wai-262 report. It outlined areas of progress, including the Ture mō te Reo – Māori Language Act 2016).<sup>13</sup>

35. In February, the government launched the Maihi Karauna Crown Māori Language Strategy.<sup>14</sup> The strategy sets out the Crown's responsibilities to revitalise te reo Māori and sets clear goals to achieve by 2040. It sits alongside a Māori-led Maihi Māori Strategy developed by and for Iwi, Māori and Māori language communities.

36. Public engagement in relation to government reforms of the education system has included a series of hui on Māori education.<sup>15</sup> Key themes from the hui include:

- The importance of tino rangatiratanga and genuine partnership across the education system
- Racism and bias continue to impact Māori achievement and outcomes
- The need for culturally responsive teaching and learning, and for the education system to better reflect and foster Māori identity, culture and values
- Te reo Māori provision needs to be a priority and access to Māori medium education needs improvement, through equitable investment, support and resources
- Support and investment in the education workforce, particularly in relation to te reo Māori provision.

37. Whether te reo Māori should be a compulsory subject in schools has been the topic of public debate, with a "desperate shortage" of trained teachers identified as a major barrier.<sup>16</sup> Research highlights a shortage of qualified teachers and inconsistent government support for te reo as issues to be addressed.<sup>17</sup>

**Recommendation 6: that the government increase resourcing and support for te reo initiatives, including subsidies and incentives to encourage people to learn and teach te reo Māori.**

#### **E. Equality and non-discrimination – He taonga te mokopuna**

38. Māori continue to experience inequalities, including in health, education, employment, justice and standard of living. Statistics highlighting these disparities are attached as Appendix 1. Attendees at hui held during the EMRIP visit highlighted the added barriers

---

<sup>13</sup> Te Puni Kōkiri, (2018), *The Section 8I Report*. Available at: <https://www.tpk.govt.nz/en/a-matou-mohiotanga/crownMāori-relations/the-section-8i-report>. Section 8i of the Treaty of Waitangi Act 1975 requires the Minister for Māori Development to table a report annually in Parliament on progress being made in the implementation of recommendations made to the Crown by the Waitangi Tribunal.

<sup>14</sup> <https://www.tpk.govt.nz/en/mo-te-puni-kokiri/our-stories-and-media/crown-launches-commitment-to-te-reo-Māori2>

<sup>15</sup> <https://conversation.education.govt.nz/conversations/maori-education/>

<sup>16</sup> [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12123262](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12123262);  
[https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12123496](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12123496).

<sup>17</sup> NZ Council for Educational Research, (2018), *Tautokona te reo: The wellbeing of te reo Māori in kura and schools*, at pp viii-ix. Accessible at: [https://www.nzcer.org.nz/system/files/Tautokona\\_te\\_reo\\_report\\_0.pdf](https://www.nzcer.org.nz/system/files/Tautokona_te_reo_report_0.pdf).

that affect particular groups, such as: Takatāpui whānau (Māori LGBTQI communities), Tāngata Whaikaha (Māori with disabilities), Māori women, children and young people, Māori living with HIV/AIDS, and Māori within the criminal justice system.

### **Whānau Ora**

39. Previous reports of the Monitoring Mechanism have endorsed the Whānau Ora approach (which is grounded in Māori values and approaches) and called for this to be extended across government. A government review of Whānau Ora this year affirmed it is an approach that works, but needs greater investment from government and increased collaboration across agencies to expand its implementation.<sup>18</sup> The programme received a significant funding boost in the 2019 government budget: to increase the Whānau Ora workforce and to fund TPK to build support across government.<sup>19</sup>
40. Tāngata Whaikaha (Disabled Māori) are promoting the use of a Whānau Ora approach to transform the disability support system. A working group comprising of tāngata whaikaha, parents, whānau, Māori disabled people organisations, Māori advisers and government officials are designing the framework to interweave whānau ora with the service model 'Enabling Good Lives'.

### **Child poverty**

41. Māori children and whānau are over-represented in poverty and inequality measures. An academic discussion paper released in May outlines the everyday experiences of Māori in poverty.<sup>20</sup> The paper argues that a shift is required away from punitive approaches, and that significant structural change is required. This should include work across issues such as income, employment, housing, healthcare, and environmental protection. It notes that many initiatives are hindered by operating in silos, being reactive rather than proactive, and failing to address the structural factors involved in poverty and inequity. Effective solutions must address inequity, engage with whānau and prioritise Whānau Ora approaches.
42. Research and initiatives focused on Māori child poverty have highlighted the inextricable connection between the wellbeing of Māori children and that of their whānau. These also stress the importance of whānau-centred and Māori-led approaches and of acknowledging and addressing the intergenerational nature of the issues. A recent report notes:<sup>21</sup>

Māori poverty is considered here within the context of the impact of colonisation, the alienation of land and resources, and the consequent loss of a cultural,

---

<sup>18</sup> Independent Whānau Ora Review Panel, (2018), *Whānau Ora Review: Tipu Matoro ki te Ao, Final Report to the Minister for Whānau Ora*. Available at: <https://www.tpk.govt.nz/en/whakamahia/whānau-ora-review>.

<sup>19</sup> <https://www.budget.govt.nz/budget/2019/wellbeing/Māori-pasifika/boost-for-whānau-ora.htm>

<sup>20</sup> Rua, M., Hodgetts, D., Stolte, O., King, D., Cochrane, B., Stubbs, T., Karapu, R., Neha, E., Chamberlain, K., Te Whetu, T., Te Awekotuku, N., Harr, J., Groot, S., (2019). *Precariat Māori Households Today* (Te Arotahi Series Paper, May 2019 No. 02). Auckland: N.Z. Published by Ngā Pae o te Māramatanga New Zealand's Māori Centre of Research Excellence. Accessible at: [http://www.maramatanga.ac.nz/sites/default/files/teArotahi\\_19-0502%20Rua.pdf](http://www.maramatanga.ac.nz/sites/default/files/teArotahi_19-0502%20Rua.pdf).

<sup>21</sup> Child Poverty Action Group, (2017), *Whakapono: End Child Poverty in Māori Whānau – A preliminary report*, at p 4. Accessible at: <https://www.cpag.org.nz/assets/171208%20CPAG%20Whakapono%20Māori%20poverty.pdf>.

spiritual and economic base. ... Poverty and hardship create and contribute to present and future health, wellbeing and education risks for children. Mitigating these destructive influences requires systemic and constitutional change. Solutions require a strengths-based, kaupapa Māori approach to building the capability of whānau to design and implement solutions to ensure the wellbeing of their tamariki.

43. The Child Poverty Reduction Act 2018, passed in December, requires government to measure and report on child poverty. The first set of 3-year and 10-year government targets reflect a government aim to halve child poverty rates by 2030.<sup>22</sup> The 2019 government budget also reflects the government focus on wellbeing. The budget included a range of targeted funding to support kaupapa Māori (indigenous) programmes and services aimed at improving outcomes for Māori.<sup>23</sup>
44. TPK has proposed an indigenous approach that could be applied to public policy responses and measurement frameworks around wellbeing (the Living Standards Framework).<sup>24</sup> This approach emphasises the centrality of whānau wellbeing, and the need for consideration of Te Tiriti, Māori world views, and whānau-centred thinking in order to achieve sustainable improvements to Māori wellbeing. Such an approach must be implemented across the whole of government and requires government systems to adapt to better meet Māori needs.<sup>25</sup>

**Recommendation 7: that the government (a) implement the recommendations of the Whānau Ora review; and (b) apply indigenous, whanau-centred approaches and frameworks across government.**

### **State care**

45. Māori children make up a significant majority (69%) of those in the care of the state agency, Oranga Tamariki (OT).<sup>26</sup> They are removed into care at a rate double the overall national rate. Since 2013, the number of Māori children in state care has increased whereas the number of Pākehā children has declined.<sup>27</sup>
46. Law changes in 2016 provide that if a parent has previously had a child removed, they are required to prove they are capable of keeping any new baby. In December 2018, a media investigation found "more children are now born into care than at any time in the past

---

<sup>22</sup> <https://www.beehive.govt.nz/release/targets-set-help-break-cycle-child-poverty>

<sup>23</sup> These include funding: to extend Whānau Ora; support Māori housing initiatives and development of Māori land; promote Māori language; address bias in the education system; and for Māori suicide prevention and mental health initiatives.

<sup>24</sup> Te Puni Kōkiri and the Treasury, (2019), *An Indigenous Approach to the Living Standards Framework: Treasury Discussion Paper 19/01*. Available at: <https://www.tpk.govt.nz/en/mo-te-puni-kokiri/our-stories-and-media/providing-a-Māori-perspective-on-wellbeing>.

<sup>25</sup> Ibid., at p14.

<sup>26</sup> Oranga Tamariki, (2018), Safety of children in care data. <https://www.orangatamariki.govt.nz/assets/Uploads/safety-of-children-in-care/OT-SOCIC-Q2-2018.PDF>

<sup>27</sup> <https://www.stuff.co.nz/national/108092032/10000-child-removal-orders-in-five-years-is-this-system-working>; <https://orangatamariki.govt.nz/assets/Uploads/OIA-responses/children-in-care/20190628-Babies-and-children-entering-Oranga-Tamariki-care.pdf>

decade, with around five babies a week now separated from their mothers. The majority of these are Māori."<sup>28</sup>

47. The Children's Commissioner and the Ombudsman have announced separate inquiries into OT's policies and practices, following an incident in May where OT attempted to enforce a court order and remove a new born baby from his mother in hospital. The incident caused wide concern and has highlighted the high rate of state removal of Māori babies; and lack of compliance with obligations to ensure that whānau are at the centre of decisions. A Māori-led inquiry has also been announced, to be discussed at a national Māori hui in July.<sup>29</sup>
48. Law changes coming into force in July strengthen requirements for OT to seek partnerships with Iwi and Māori organisations.<sup>30</sup> The Children's Commissioner has commented that these changes are "long overdue" and reflect "the revolutionary approach that is required" in relation to OT.<sup>31</sup> Funds to support the changes have been allocated in the recent government budget.
49. Iwi leaders, national organisations, academics and child advocates continue calls for fundamental changes to the current system.<sup>32</sup> An open letter which has so far received over 15,000 signatures stresses the urgent need for transformative systemic change. It notes:<sup>33</sup>

The government continues to ... fail to undertake a meaningful Treaty relationship that would see our people exercise our right to being self-determining in regards to the wellbeing of our children.

Efforts from Iwi/Māori to address and support vulnerable whānau, are continually stifled by the government legislation, limited resourcing and denying whānau, hapū and iwi authority to care fully for our tamariki. Furthermore it has been well documented that Māori children are placed into contexts by the government agencies where their needs remain largely unmet because the legislation, policies and interventions lack cultural context or appropriateness.

---

<sup>28</sup> <https://www.stuff.co.nz/national/107671720/the-number-of-newborn-babies-removed-from-their-parents-is-rising>

<sup>29</sup> <https://www.rnz.co.nz/news/te-manu-korihi/392968/maori-leaders-to-launch-fourth-inquiry-into-oranga-tamariki>

<sup>30</sup> <http://www.legislation.govt.nz/act/public/2017/0031/24.0/DLM7064559.html>

<sup>31</sup> <https://www.newshub.co.nz/home/new-zealand/2019/06/children-s-commissioner-reviewing-oranga-tamariki-s-uplift-policies.html>

<sup>32</sup> Williams, T., Ruru, J., Irwin-Easthope, H., Quince, K., Gifford, H. (2019). *Care and protection of tamariki Māori in the family court system* (Te Arotahi Series Paper, May 2019 No. 01). Accessible at: [http://www.maramatanga.ac.nz/sites/default/files/teArotahi\\_19-0501%20Ruru.pdf](http://www.maramatanga.ac.nz/sites/default/files/teArotahi_19-0501%20Ruru.pdf).

See also: [https://www.tvnz.co.nz/one-news/new-zealand/oranga-tamariki-sees-increasing-number-child-removals-over-systemic-racism-researcher?fbclid=IwAR2d4Ow3yuSIHcx50q\\_9MGIwthqCL-paiEjribG9DF1R86Sq88wPKpZQMs8](https://www.tvnz.co.nz/one-news/new-zealand/oranga-tamariki-sees-increasing-number-child-removals-over-systemic-racism-researcher?fbclid=IwAR2d4Ow3yuSIHcx50q_9MGIwthqCL-paiEjribG9DF1R86Sq88wPKpZQMs8);  
[https://www.waateanews.com/waateanews/x\\_story\\_id/MjE5MjU=/League-ignored-as-M%C4%81ori-babies-grabbed](https://www.waateanews.com/waateanews/x_story_id/MjE5MjU=/League-ignored-as-M%C4%81ori-babies-grabbed)

<sup>33</sup> <http://www.scoop.co.nz/stories/PO1906/S00152/call-for-the-government-to-stop-stealing-maori-children.htm>; <https://tewhareporahou.wordpress.com/2016/10/09/hands-off-our-tamariki-an-open-letter/?fbclid=IwAR3OkHrN9quQUg1gE-hsQhLSALIE8vWQ2H8qORfcthIO3TdbywSpU-AFOoo>

**Recommendation 8: that the government urgently act to ensure:**

- a) **A halt to the removal of Māori children from whānau, hapū and iwi**
- b) **Meaningful Tiriti partnership that upholds self-determination and the exercise of Māori authority for the wellbeing of Māori children**
- c) **Iwi and Māori involvement in co-designing legislation, policy and in reviewing the current system**
- d) **That any state child protection system meets Tiriti, Declaration and human rights obligations.**

### ***Justice***

50. The interim report of the Advisory Group examining reform of the justice system, notes that “the number of Māori in the justice system is a crisis”.<sup>34</sup> Overall, it concluded that transformative change is urgently needed, and that this would entail systemic reform and long-term commitment. The interim report outlines the themes raised in public engagement and the Advisory Group is now developing responses to those issues.

51. Core messages that the Advisory Group heard from Māori, include:

- the effects of colonisation undermine and trap Māori in the criminal justice system, and racism is embedded in every part of it
- that incremental, targeted changes would not be enough, and complete structural change is required
- that constitutional change also needs to be addressed and the promises of Te Tiriti realised
- Effectively addressing entrenched racism would involve upskilling the justice workforce and ensuring Māori exercise rangatiratanga in all elements pertaining to Māori
- Tikanga-based solutions must be a priority, Māori need to exercise rangatiratanga (self-determination) over funding and that partnerships must be properly resourced.
- Māori know what works for them and must, therefore, lead the development and implementation of solutions and responses, with government support.

52. The 2019 government budget includes significant funding for measures aimed at reducing Māori imprisonment and reoffending. Described as a “whānau-centred pathway”, the new initiative provides for Māori trauma and mental health support, expanded rehabilitation services, housing transition support, dedicated employment services and increased whānau, hapū and iwi engagement.

**Recommendation 9: that the government continue to support the work of the Safe and Effective Justice Advisory Group Te Uepū Hāpai i te Ora, and once it has completed its work, ensure that proposals and recommendations are urgently implemented.**

---

<sup>34</sup> Te Uepū Hāpai i te Ora, (2019), *He Waka Roimata – Transforming Our Criminal Justice System*, at p3. Accessible at [https://www.safeandeffectivejustice.govt.nz/assets/Uploads/fa55462d44/teuepureport\\_hewakaroimata.pdf](https://www.safeandeffectivejustice.govt.nz/assets/Uploads/fa55462d44/teuepureport_hewakaroimata.pdf).

**F. Practical implementation of the Declaration and technical assistance – Whakamana kia tū rangatira ai**

53. In March, the Minister for Māori Development announced the cabinet decision to develop a National Plan of Action to implement the Declaration. The initial process outlined in the decision is the establishment of a technical working group to advise the Minister on: the form and content of a Declaration plan and an engagement process that involves iwi, hapū and whānau.
54. The Monitoring Mechanism welcomed this decision and is committed to continued involvement in the development of the Plan. In particular, the Monitoring Mechanism is keen to see a process of extensive engagement with whānau, hapū and iwi, underpinned by a Tiriti partnership approach. To help facilitate this, the National Iwi Chairs Forum has established an Iwi Leaders Group (ILG) for this purpose.
55. The Monitoring Mechanism also considers it imperative that the plan is underpinned by whānau, hapū and iwi priorities and that there is commitment to the plan and actions across the whole of government. The EMRIP country visit and Advice provide valuable practical guidance and instruction on how these aims may be achieved.

**Recommendation 10: that the government implement the recommendations made by the EMRIP in its Advice Note.**

## Appendix 1: Statistics

### **Employment, income and housing**<sup>35</sup>

- Māori have a lower average income than non-Māori, with an income gap of about 25 percent below European/Pākehā household incomes.
- The unemployment rate for Māori is 8.9%, more than double the rate for non-Māori
- Māori are almost nine times more likely to be on waiting lists for social housing, and are overrepresented in homelessness statistics<sup>36</sup>
- Māori disabled are more likely to have lower incomes and to be unemployed than non-disabled Māori (17% compared with 11%). They are more likely than other Māori to live in the most deprived areas and to have housing problems<sup>37</sup>
- Māori children are twice as likely to be living in households facing food insecurity<sup>38</sup>

### **Health**

- Māori have “on average, the poorest health status of any ethnic group in New Zealand”<sup>39</sup>
- Māori have higher rates of disability than other ethnic groups<sup>40</sup>
- Māori have the highest levels of mental illness and/or addiction – almost one in three Māori will experience mental illness and/or addiction in a given year, compared to one in five in the general population<sup>41</sup>

### **Education**

- Māori children are less likely to achieve at least Level 1 NCEA at school
- They are stood down from school at double the rate of non-Māori students

### **State care system**

- Māori make up 69 per cent of children in state care, and 76 per cent of those harmed while in care. The rate of removal of Māori children into state care is double the national rate.

### **Justice**

- Māori are more likely to be victims of crime
- Māori are more likely to be arrested, charged and imprisoned and are over-represented at all stages of the criminal justice system
- Māori men make up over half of the male prison population, while Māori women are more than 60 per cent of the female prison population
- The imprisonment rate for Māori is 5.7 times more than the rate for non-Māori
- 1 in 5 Māori males have been imprisoned by age 35 (compared with 1 in 12 of all males)<sup>42</sup>

---

<sup>35</sup> Unless otherwise indicated, the statistics in this section are taken from: Salvation Army (2019), *Are you well? Are we safe? State of the Nation Report 2019*, Appendix: ‘Māori-Non-Māori Gaps Table’, at p81. Accessible at: [https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile\\_field%3Atype%5D/20190228spputsa\\_sotn2019final3.pdf](https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/20190228spputsa_sotn2019final3.pdf).

<sup>36</sup> Housing First Auckland and Auckland Council, (2018), *Ira Mata Ira Tangata - Auckland’s Homeless Count: Point in Time Count 2018*. Available at: <https://www.aucklandshomelesscount.org.nz/homeless-count-findings>.

<sup>37</sup> Statistics New Zealand, (2015), *He Hāua Māori: Findings from the 2013 Disability Survey*.

<sup>38</sup> Child Poverty Monitor 2018 <http://www.nzchildren.co.nz/>

<sup>39</sup> Waitangi Tribunal. (2019), *Hauora: Report on Stage 1 of the Health Services and Outcomes Kaupapa Inquiry*, Wai 2575, at p 24. Accessible at: [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_150429818/Hauora%20Pre-PubW.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_150429818/Hauora%20Pre-PubW.pdf).

<sup>40</sup> Statistics New Zealand, (2015), *He Hāua Māori: Findings from the 2013 Disability Survey*.

<sup>41</sup> Office of the Health and Disability Commissioner, (2018), *New Zealand’s mental health and addiction services: The monitoring and advocacy report of the Mental Health Commissioner*, at p80 <https://www.hdc.org.nz/media/4688/mental-health-commissioners-monitoring-and-advocacy-report-2018.pdf>

<sup>42</sup> Te Uepū Hāpai i te Ora (2019), *supra* at p 22.