



# AOTEAROA INDEPENDENT MONITORING MECHANISM REPORT FOR THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

## MONITORING REPORT - JUNE 2024

### INTRODUCTION

This is the tenth annual monitoring report of the Aotearoa Independent Monitoring Mechanism ('the Monitoring Mechanism') for the UN Declaration on the Rights of Indigenous Peoples ('the Declaration').

The Monitoring Mechanism is an independent Māori working group created in 2015. Members have been selected by their Iwi (tribal nation) and endorsed by the National Iwi Chairs Forum ('the Forum') to act as independent experts.[1]

The Monitoring Mechanism is supported in its work by technical advisers. Its objective is to promote and monitor the implementation of the Declaration in Aotearoa/New Zealand. This report reflects the Monitoring Mechanism's independent view and does not purport to represent the views of individual Iwi, Hapū[2] or other organisations.

### STRUCTURE OF THE REPORT

This report outlines recent developments in relation to the Declaration and is structured around the following key priorities:

1. An Overarching Priority of Constitutional Transformation
2. Self-determination, underpinned by participation in decision-making and free, prior and informed consent
3. Lands, Territories and Resources – with a special focus on climate change/climate crisis
4. Cultural Rights
5. Equality and Non-discrimination – with a focus on child poverty
6. Practical implementation of the Declaration and Technical Assistance.

### KEY ISSUES

Our 2024 report includes a focus on the impact of the election of a centre-right coalition government ('the coalition government') formed in November 2023 that has implemented several regressive policies specifically targeting Māori rights or having a disproportionately negative impact on Māori. The coalition government oppose the Declaration: they will not support a national plan to implement the Declaration and say they will withdraw New Zealand's support for the Declaration. This stance was omitted from government statements at the Universal Periodic Review in April 2024.

The coalition government's policy and legislative agenda is overtly racist and hostile to Māori, actively attacking Māori rights. As a direct result, whānau[3] are reporting increased racist and white supremacist aggression across the country.

The combined effect of these actions puts progress towards realising Indigenous Peoples' rights in Aotearoa back at least 30-40 years. It does not fulfil Crown (i.e. government) obligations to be a good Te Tiriti o Waitangi ('Te Tiriti') partner.[4] As Opposition MP Hana Maipi-Clarke summarised:

In only a couple of weeks, in only 14 days, this Government has attacked my whole world from every corner. Health, taiao, wai, whenua, natural resources, Māori wards, reo, tamariki, and the right of me and you to be in this country under Te Tiriti. How can I not take anything personally when it feels like these policies were made about me?[5]

The coalition government's agenda is inconsistent with the human rights principle of non-regression, which prohibits 'backwards steps' and the erosion of the progressive realisation of human rights.[6] Indigenous Peoples' rights should not be subject to the political whims of the government of the day: New Zealand's lack of constitutional protections has left both Te Tiriti and Indigenous Peoples' rights open to attack, and the impacts of this are devastating.

## RECOMMENDATIONS

Our 2024 monitoring report makes the following recommendations:

- 1 That the EMRIP recommend the government cease its regressive policy and legislative programme and rhetorical attacks on Māori and instead refocus on fulfilling commitments already made to uphold Te Tiriti and Indigenous Peoples' rights.
- 2 That the EMRIP note the instability of Te Tiriti and Indigenous Peoples' rights in Aotearoa, the ongoing need for their constitutional protection and for safeguards to prevent continual violent regression.
- 3 That the EMRIP note that whānau, Hapū and Iwi are expressing and exercising their tino rangatiratanga, mana motuhake and rights to self-determination in a variety of ways that protect and enhance wellbeing, and create positive outcomes.
- 4 The EMRIP recommends that the government work in partnership with Māori to advance their participation in decision-making on matters that affect them.
- 5 That the EMRIP notes the Māori will continue to assert their rights and tino rangatiratanga to water and the foreshore and seabed and will continue to lead action on climate change to protect their lands, territories and resources.
- 6 That the EMRIP recommend the government continue its efforts to support te reo Māori both as a taonga protected by Te Tiriti o Waitangi and as an official language of Aotearoa/New Zealand.
- 7 That the EMRIP remind the government of its national and international human rights obligations to eliminate racism and discrimination against all marginalised groups and to advance equity.
- 8 That the EMRIP recommend that the government reverses its current position on the Declaration and resume work in partnership with Māori to develop a robust and ambitious Declaration plan.
- 9 That the EMRIP urgently conduct a country engagement follow-up in Aotearoa/New Zealand.



### 1. AN OVERARCHING PRIORITY OF CONSTITUTIONAL TRANSFORMATION

Constitutional transformation remains an overarching priority for the Monitoring Mechanism. The changes initiated by the coalition government since November 2023 have made this need even more pressing. There are few constitutional limits on their actions, which have abused democratic processes and represent a misuse of power. None of the changes the coalition government has made impacting tangata whenua<sup>[7]</sup> have been in consultation with them, undermining the principles of good faith and free prior and informed consent.

Per previous reports, the Monitoring Mechanism considers that establishing a Tiriti-based constitutional foundation is critical to making the Declaration's rights a reality, in particular the right to self-determination. Tino Rangatiratanga,<sup>[8]</sup> while inherent to Māori as tangata whenua, guaranteed in He Whakaputanga o te Rangatiratanga o Nu Tirene<sup>[9]</sup> and Te Tiriti and protected as a human right under international law, is not constitutionally recognised in Aotearoa. Practices of central and local government rely on an assumption of ultimate Crown authority and continually subvert Tiriti rights. Tikanga (customary law) has, however, been recognised as the first law of the land by the Supreme Court.<sup>[10]</sup> Fundamental changes are needed to re-balance the distribution of public power and to fully discuss, explore and implement the constitutional models proposed in the report of Matike Mai Aotearoa, where Māori and the Crown have independent but relational spheres of authority.<sup>[11]</sup>

The actions of the new government have been met with a powerful response from tangata whenua. Work on building momentum for constitutional transformation – led by tangata whenua – continues. In November 2023, Te Kāhui Tika Tangata Human Rights Commission released the results of a survey into attitudes towards Te Tiriti. The survey found that 70% of New Zealanders believed it was important for Māori and non-Māori to decide together how Te Tiriti was honoured. 80% of respondents thought a respectful discussion on racial issues was important.<sup>[12]</sup>



## **BILL ATTEMPTING TO REDEFINE TREATY PRINCIPLES**

One of the first actions of the coalition government was to draft legislation redefining Treaty principles.[13] The bill proposed three new principles.[14] The most egregious of these was to redefine tino rangatiratanga as applying to all New Zealanders, ignoring overwhelming historical evidence and legal precedent. Given the lack of consultation on any aspect of the bill, this marks a unilateral attempt by the government to redefine tino rangatiratanga and undermine Te Tiriti. This bill will cause considerable damage to the relationship between Te Tiriti partners and incites racism.

Māori groups asked the Waitangi Tribunal[15] to urgently inquire into the Treaty Principles Bill. The Tribunal conducted an urgent hearing in May 2024 into the bill and a proposed review of all Treaty clauses in legislation.[16] Legal and constitutional experts gave evidence that the proposed bill was unconstitutional, violated Māori rights under Te Tiriti and undermined the legitimacy of the Crown's own authority to govern. Experts on te reo Māori (the Māori language) told the Tribunal that the nonsensical reo in the bill violated the government's obligations to protect the language.

## **VERBAL ATTACKS ON THE TRIBUNAL AND THE JUDICIARY**

In relation to the Treaty Principles Bill and in other matters, government ministers have made public attacks on both the Waitangi Tribunal and the courts, violating the constitutional principle of comity.[17] One Minister suggested the Tribunal should be wound up 'for its own good', while another looked forward to an imminent review of the organisation. Te Hunga Roia Māori o Aotearoa | The Māori Law Society said such comments 'hang an axe over the Waitangi Tribunal, threatening to drop if they behave and exercise their powers in a particular way'.[18] One of these Ministers also criticised the judiciary concerning the Supreme Court's decision in a climate change case and warned it was possible the government would intervene in such cases in the future.[19]

## **KOTAHITANGA GATHERINGS AND PROTESTS IN RESPONSE TO THE GOVERNMENT AGENDA**

In response to the actions of the government, Iwi, Hapū and other groups have organised opposition and built kotahitanga (solidarity) with one another.[20] In November 2023, Māori leaders called for a national gathering of Iwi and Hapū leaders to coordinate a response.[21] In January 2024, the Kīngitanga[22] hosted a national day of unity for Iwi from around the country, attended by more than 10,000 people.[23] Archbishop Don Tamihere, one of many speakers, emphasised the value of aroha (love, compassion) as 'a thing ... to capture our mana motuhake so that it never, ever, ever, is diminished ever again ... because this is for children and our children's children'.[24]

Dayle Takitimu criticised the coalition government, as 'Tiriti-illiterate', saying:

Māoridom and our iwi motuhake were not put on this earth to be subjugated to somebody else's power, lest of all the Crown in Wellington who are here at our invitation, to be clear. They have not conquered us. Our tapu and our mana remain intact.[25]

The Kīngitanga carried the kotahitanga messages from that hui to Ratana Pā, [26] upholding Te Tiriti and tangata whenua setting their own agenda for mana motuhake.[27] Kīngitanga spokesman Rahui Papa said if Māori and the Government could work together, 'only good things will happen right across the length and breadth of our country'. He warned 'if there is any measure of meddling with Te Tiriti o Waitangi, Māori will not sit idly by. We will pull every lever that we possibly can. We ... insist that you ... heed the call of Māori'.[28]

At Waitangi Day[29] in Northland, the message was clear: uphold Te Tiriti, oppose the proposed bill and enable rangatiratanga.[30] Ngāpuhi kaumatua Hone Sadler told the government:

We do not want us to be divided. However, in terms of the sacred agreements and in line with the aspirations of our ancestors, it's that we will exercise our tino rangatiratanga and that you will assist us with that.[31]

The government's 30 May 2024 Budget made cuts to targeted services for Māori (estimated to be around \$250 million) and universal services which benefit Māori.[32] Thousands of Māori and allies protested the coalition government's anti-Māori agenda around the country activating pro-Te Tiriti and self-determination campaigns such as #toitutetiriti and message boards promoting online and in-person events. These events supported both national and international Indigenous solidarity (e.g. by supporting "Free Palestine", Free Kanaky,[33] Climate Justice, Transgender/Rainbow community[34] protests or activities) for human rights and Indigenous Peoples' rights.

On 31 May 2024, Ngāti Kahungunu hosted a Hui Taumata or 'national day of unity' for Iwi from around the country. [35] More than 2000 people reviewed Kotahitanga papers, and speakers explored the form and function of a kotahitanga Māori entity.[36] Models proposed included a Federation of Māori Tribes and Indigenous models of national unity, reclaiming Hapū, Iwi and Māori independence and sovereignty.[37] Te Pāti Māori | The Māori Party called for the establishment of a Māori Parliament and issued Te Ngakau o te iwi Māori – the Declaration of Māori Political Independence, which asserted Māori sovereignty and invited people to sign.[38] More than 300 people also signed a letter to King Charles III asking him to intervene to ensure the coalition government does not continue diminishing the Crown's honour.

## WAIKATO-TAINUI HIGH COURT CHALLENGE

Waikato-Tainui Iwi has launched High Court action, seeking clarification on its position with the Crown. Waikato-Tainui seeks a declaration from the Crown to affirm their rights and interests. The government actions were noted as being 'in direct conflict with the Crown's commitments and related obligations to Waikato-Tainui'.[39]

Many tribes and groups have taken legal action, including lodging claims for urgency or priority inquiries with the Waitangi Tribunal. However, governments past and present have a tendency to override legal action with legislation, as with the Foreshore and Seabed Act 2004.

## MOMENTUM FOR CONSTITUTIONAL TRANSFORMATION

Tangata whenua continue to lead constitutional transformation discourse. Building on earlier ideas and discussions, particularly the Matike Mai Aotearoa report, the *Designing our Constitution* Conference was held in April 2024. The conference brought together speakers from across Aotearoa to build knowledge and momentum. Conference actions proposed included:

- Activating rangatiratanga/self-determination family, community, tribal and pan-Maori planning (mahere)
- Holding workshops and regular meetings with schools, families, workplaces and communities (wānanga)
- Strengthening Indigenous/Māori social media campaigns
- Consolidating Māori political, social, environmental and cultural activism (kotahitanga)
- Utilising legal, domestic and international channels to challenge the current unilateral decisions being made by the coalition government (ngā wero/tikanga pakanga).

## MATAATUA DECLARATION 30TH ANNIVERSARY

The Mataatua Declaration on Cultural and Intellectual Property (Whakatane, 1993) had its 30th anniversary in June 2023, and celebrations were marked in 2024.[40] Indigenous Peoples' representatives from 14 countries affirmed Indigenous control over their cultural and intellectual property and the value of Indigenous knowledge, biodiversity and biotechnology, customary environmental management, arts, music, language and other physical, spiritual, and cultural forms.

## TE ORA O TE WHĀNAU - NATIONAL WELLBEING HUI

The Forum's Pou Tāngata convened national hui to achieve Te Ora o Te Whānau (wellbeing). Key messages from the hui were:

- We must be the change-makers – Iwi Māori are the only ones who can determine what our future can and should look like;
- A 'by Māori, for Māori, with Māori' solution still has some way to go when it comes to government policy and investment in resources to improve Māori well-being and addressing inequities in health, education, justice, training, and employment;
- For too long, government agencies have been the authoritative voice on the status of our whānau wellbeing, and this coloniality of power must change;
- Scaling up the investment into our Iwi, Hapū, and whānau needs to continue and ensure devolution of resources for Iwi, Hapū and whānau to determine where investment should be given; however, the Crown must be realistic in the expectation to address long-standing trauma and multi-generational impacts of colonisation while serving our whānau;
- Mō tatou katoa: there is a responsibility on all of us, both as members of the collective and individually, to support and facilitate intergenerational conversations to strengthen whānau connections and to foster whānau leadership.



## SUMMARY AND RECOMMENDATIONS

With the formation of the coalition government, Aotearoa now has the most overtly racist and white supremacist government it has had in decades. The constitutional relationship between the Crown and Māori has been seriously damaged by the actions of this government. While Māori continue to push for constitutional change founded on Te Tiriti, the government has instead sought to redefine Te Tiriti in defiance of existing legal and constitutional norms.

- 1** That the EMRIP recommend the government cease its regressive policy and legislative programme and rhetorical attacks on Māori and instead refocus on fulfilling commitments already made to uphold Te Tiriti and Indigenous Peoples' rights.
- 2** That the EMRIP note the instability of Te Tiriti and Indigenous Peoples' rights in Aotearoa, the ongoing need for their constitutional protection and for safeguards to prevent continual violent regression.
- 3** That the EMRIP note that whānau, Hapū and Iwi are expressing and exercising their tino rangatiratanga, mana motuhake and rights to self-determination in a variety of ways that protect and enhance wellbeing, and create positive outcomes.



## 2. SELF-DETERMINATION, PARTICIPATION IN DECISION-MAKING AND FREE, PRIOR AND INFORMED CONSENT

Under Article 3 of Te Tiriti and Article 5 of the Declaration, Māori have the right to participate in government decision-making as an expression of tino rangatiratanga or self-determination.

### PARTICIPATION - VOTING IN CENTRAL GOVERNMENT ELECTIONS

The Forum's Pou Tikanga undertook a short-term project, 'Vote Māori Vote', to encourage Māori enrolment and participation in the 2023 central government elections. Key outcomes from this project included new enrolments on the electoral roll, many of which were from rangatahi. Project activities supported more than 30 Iwi/Hapū groups and communities to enrol to vote. The project found that whānau want more opportunities to hear from political parties and candidates across the political spectrum and to discuss and understand the electoral system. The project highlighted how a Māori-led and local approach to encouraging whānau to vote can be more effective than traditional methods. More work is required to achieve equity and enhance Māori voter education, enrolment and participation in elections.[41]

### PARTICIPATION - CO-GOVERNANCE

Our previous report outlined an increase in anti-co-governance controversy and rhetoric. Alongside action and public statements from the Māori Women's Welfare League and the New Zealand Māori Council, we remain extremely concerned about the rhetoric surrounding co-governance – the Deputy Prime Minister has compared it to Nazi Germany's race-based theories.[42]

The coalition government has pledged to remove any co-governance arrangements with Māori from legislative or regulatory settings. This has already taken effect in the repeal of water-management reforms, which had provided for co-governance in decision-making. Iwi have signalled that the question of water ownership will now likely end up in the Courts.[43]

### PARTICIPATION - MĀORI WARDS AND CONSTITUENCIES IN LOCAL GOVERNMENT

In 2021, the previous government passed the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021, eliminating a poll provision for establishing Māori wards and constituencies. This was intended to enable greater Māori representation at the local level and give better effect to Te Tiriti. In nearly all cases, such a poll—requiring the support of only five per cent of a council's constituents—overrode council decisions to implement these wards/constituencies. Prior to 2021, only three of 78 local authorities had dedicated Māori representation.

At the 2022 local elections, six of the eleven regional councils (54.5%) had Māori constituencies, while 29 of 67 territorial authorities (43.3%) had Māori wards.[44] Without any consultation with tangata whenua, the coalition government has introduced legislation to repeal this amendment and reintroduce the requirement for a poll to be held. At the local elections in 2025, every council that has since 2021 established Māori wards or constituencies will have to either hold a poll or remove the ward or constituency.[45]

The Waitangi Tribunal found the proposed repeal breached Te Tiriti, particularly in not consulting with Māori, and was discriminatory to Māori. The Tribunal called for a halt to the legislation, which the government ignored.[46] The bill was introduced with only four days for the select committee to hear public submissions.[47] These measures have and will continue to incite racism and social division.

## **PARTICIPATION - PUBLIC SERVICE CUTS AND CHANGES**

To fund tax cuts that primarily benefit the wealthy, the coalition government has required public service agencies to make cuts of 6.5 -7.5 per cent to their budgets. In many cases, this has meant cuts to operational funding as well as staffing, including significant cuts or disestablishment of dedicated Māori teams within agencies. This not only affects the people in these roles and their families, it also diminishes the capability of the Crown as a Te Tiriti partner to engage with Māori and to develop robust Māori policy.[48]

The government has instructed diplomats to make foreign policy changes, focusing on a shift from Indigenous Peoples' rights and Pacific priorities (particularly climate change) to focus on military and economic alliances with the US and other Anglosphere partners. It has said that it did not recognise the Declaration 'as having any binding legal effect on New Zealand'.[49]

Despite the coalition government policies, many agencies are working hard to build good relationships with whānau, Hapū and Iwi. They have policies that aim to improve their cultural competence and services to whānau. However, agencies are required to take a 'needs-based' approach rather than one based on rights and responsibilities. Whānau, hapū and iwi are rarely involved in the development of policies and legislation that affect them and their rights, subjected to processes for meagre resources that government departments decide they 'need'.

## **PARTICIPATION - MEDIA**

There has been a significant change in the media landscape in Aotearoa in 2024, with the closure of Newshub and cuts to news programming at TVNZ.[50] While Māori media remains intact at the time of writing, the closure of these media outlets is concerning at a time when attacks on Māori rights and on democratic processes are prevalent. Fewer news media outlets means less scrutiny and accountability for those in power. Members of the coalition government have also avoided directly answering media questions about their actions, instead resorting to attacking rhetoric (e.g. attacking state-funded news media for their lack of independence and alleging media bribery and corruption).[51]

## **SUMMARY AND RECOMMENDATION**

The coalition government have sought to undo the incremental progress that has been made over the years to facilitate Māori participation in decision-making in matters that affect them. All of these changes have been made unilaterally with no consultation with Māori, much less their free, prior and informed consent (on the contrary, Māori have been vociferously opposed to these actions, which go to the heart of the relationship between tangata whenua and the Crown). These rollbacks have also come at a time of significant change in the public service and in the media, eroding the ability of both 'pillars of democracy' to advocate for Indigenous Peoples' rights.

**4** The EMRIP recommends that the government work in partnership with Māori to advance their participation in decision-making on matters that affect them.



## **3. LANDS, TERRITORIES AND RESOURCES**

### **RESOURCE MANAGEMENT LAWS**

In August 2023, under the previous government, new resource management laws came into effect. The legislation included a new Te Tiriti provision requiring decision-makers to give effect to Treaty principles, recognising responsibilities to support intergenerational wellbeing and to recognise and uphold Te Oranga o te Taiao (a concept encompassing both the health of the natural environment and the intrinsic relationship between it and Iwi/Hapū).

These reforms were repealed by the coalition government, with Parliament sitting under urgency. In March 2024, the coalition government introduced a Fast Track Consenting Bill that enables cronyism and 'significant' national and regional infrastructure developments to be fast-tracked, notably without any reference to sustainable resource management or to Te Tiriti. The changes were made with minimal tangata whenua consultation. There is no Te Tiriti clause in the bill, nor does it take account of broader Māori rights and interests. The hierarchy of considerations for decision-making in the bill prioritises delivering infrastructure and development projects over agreements with Iwi and Hapū and all New Zealanders to protect Papatuanuku.[52] Despite more than 27,000 submissions, most against the proposal, the coalition government still intends to pass the bill.



## CLIMATE CHANGE AND CYCLONE RECOVERY

Tangata whenua are leading action in respect of climate change. Two claims for a priority hearing into climate change have been lodged with the Waitangi Tribunal, which it has granted. The claimants say that the government is not doing enough to protect Māori by not requiring big polluters to cut their emissions and protect communities. [53] A Supreme Court ruling in February 2024 in favour of Mike Smith, who leads the Forum's Climate Change arm (Pou Take Āhuarangi), enables him to sue the top seven New Zealand-based companies trading in dairy, mining and fossil fuels. [54] This follows the trend detailed in the 2023 UN global climate litigation report and provides a means to secure climate justice.

As in other nations, tangata whenua and especially rangatahi are at the vanguard of climate action in Aotearoa with regular strikes and protests, with the most recent school strike for climate on 5 April 2024. This action was criticised by the coalition government, which stated that students should be in school rather than advocating for planet protection. [55]

Per previous reports, Māori are more likely to live in places vulnerable to climate change and severe weather – often as a result of previously being forced from traditional lands onto sub-optimal river and coastal flood plains. Some Iwi can no longer get insurance on their marae or associated housing because of increased risk, as well as having sacred sites and urupā (burial grounds) in low-lying coastal areas. The after-effects of Cyclone Gabrielle in early 2023 are still being felt. Despite months of clean-up, some communities still have unusable marae, limiting gatherings and customary practices such as tangihanga. [56] Iwi and Hapū are actively planning and implementing mitigation strategies and plans for managed retreat. [57] The government still fails to value Māori exercising their rangatiratanga to address climate change and protect their lands, territories and resources.

## WATER REFORM

The coalition government has targeted water reforms, which sought to consolidate the management of wastewater, stormwater and drinking water (known as 'three waters') and establish co-governance of water resources at the regional level with tangata whenua. The coalition government repealed the reform legislation, restoring ownership and control of water services to 67 local councils. [58] Councils will determine the level of Iwi involvement in water management. [59] Neither model made provision for the recognition of Māori ownership rights in freshwater, and water ownership will now likely end up in the Courts – Māori have never ceded the Crown rights to water. [60]

## MĀORI RIGHTS IN THE MARINE AND COASTAL AREA

The Waitangi Tribunal found in October 2023 that the Marine and Coastal Area (Takutai Moana) Act 2011 does not sufficiently support Māori in their kaitiakitanga (guardianship) duties and rangatiratanga rights. The Act fails to provide a fair and reasonable balance between Māori rights and other public and private rights and is in breach of Te Tiriti. [61]

The coalition government has signalled its intention to narrow the scope of the Act further. In light of a Court of Appeal judgement in October 2023, to make it easier for Iwi and Hapū to apply to have their rights recognised, the new government proposes to legislate for a more stringent test. A higher statutory threshold means fewer Iwi and Hapū will have rights recognised under the Act. [62]

In May 2024, it was revealed that government funding to support tangata whenua to make applications under the Act was grossly insufficient. The 2024 Budget provided money to settle unpaid debts, but funding issues remain. Hearings have, therefore, been halted for the foreseeable future, impacting the rights of tangata whenua to access justice to recognise their rights. [63]

## SUMMARY AND RECOMMENDATION

The Crown continues to assert ownership over water and to set discriminatory parameters for Māori rights in the foreshore and seabed to be recognised. It also fails to take effective action to address climate change, nor does it recognise the customary obligations of Māori to do so. Māori will continue to assert tino rangatiratanga – which was never ceded – for these resources and will continue to press for action on climate change.

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**That the EMRIP notes the Māori will continue to assert their rights and tino rangatiratanga to water and the foreshore and seabed and will continue to lead action on climate change to protect their lands, territories and resources.**



## 4. CULTURAL RIGHTS

Te Ture o te Reo Māori (the Māori Language Act) 2016 was reviewed. The review found that there was goodwill amongst the agencies working to revitalise te reo but that the relationship between Māori and the Crown needed rebalancing to become a more equal partnership. A framework to guide agencies on to how to use and implement existing Māori language strategies was needed.[64]

The coalition government has signalled that it will focus on English as the primary language within the public sector, including the names of public sector agencies. Allowances for te reo Māori skills have been removed as part of wider cost-saving measures across the public service. The Waitangi Tribunal held an urgent hearing into these issues on 10-14 June 2024.[65]

In response to the coalition government's stance, Te Korowai o Ngāruahine Trust said its board and employees would all seek to use te reo when engaging with the Government. The aim is to increase demand for services in te reo and increase resourcing pressure on the government.[66]

### SUMMARY AND RECOMMENDATION

Despite New Zealanders from all backgrounds embracing te reo Māori, the coalition government's actions could seriously impact work to revitalise te reo since the early 1970s. Iwi, Hapū, and whānau Māori will continue to work for its revitalisation.

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**That the EMRIP recommend the government continue its efforts to support te reo Māori both as a taonga protected by Te Tiriti o Waitangi and as an official language of Aotearoa/New Zealand.**



## 5. EQUALITY AND NON-DISCRIMINATION

Several of the coalition government's policies undermine equity measures and initiatives in child poverty/social welfare, health, justice, child protection and employment.

### CHILD POVERTY

In early 2024 it was reported that, in the year to end June 2023, one third of measures showed that child poverty had increased, including an increase in material hardship (meaning children lacked the essentials of life such as food and warm clothing).[67] The overall percentage for children living in material hardship increased from 10.5 per cent to 12.5 per cent. For tamariki Māori, the figure is 21 per cent.[68] These rates are the highest since reporting was introduced in 2019.

The coalition government has not prioritised action on child poverty. However, another of its initiatives – indexing benefits to inflation rather than wages (which the previous government had done, as wages tend to rise more quickly) – will push more families into poverty,[69] affecting an estimated 7-13,000 children within four years.[70] This change will disproportionately impact whānau Māori, who are over-represented in the benefit system (at 36 per cent of benefit recipients).[71]

Other cuts introduced by the coalition government that will impact whānau are reducing funding by up to 50 per cent to a school lunch programme that feeds up to 200,000 children and cuts to funding for food banks.[72] Whānau, Hapū and Iwi have solutions for addressing child poverty. One example was the prototype whānau-centred programme, Ngā Tini Whetū, which was evaluated in May 2023, showing evidence of improved outcomes for 800 whānau.[73]

### HEALTH MATTERS

The coalition government has passed legislation to disestablish Te Aka Whai Ora – the Māori Health Authority under urgency, impacting Māori health rangatiratanga.[74] Only in operation for 18 months, Te Aka Whai Ora had been established in part to address the breaches of Te Tiriti identified by the Waitangi Tribunal in its Hauora report (2019). [75] Passing legislation under urgency not only removed the select committee process,[76] in which the public could comment on the bill, it also removed the Waitangi Tribunal's jurisdiction to consider whether the proposals breached Te Tiriti.[77]



In March 2024, with little warning and no consultation, the government announced cuts to funding for carers for disabled people. The Forum and Chairs of Iwi Māori Partnership Boards condemned the cuts, saying the changes to essential funding undermined efforts to address the disparate health outcomes of tangata whaikaha[78] (people who are determined to do well – despite disabilities). Restrictions limit tangata whaikaha access to customary practices, such as tangihanga (funerals), which often require travel.[79]

The coalition government plans to repeal the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022, which came into force in January 2023. This legislation accelerated progress towards becoming smoke-free and reducing the harm caused by tobacco products. [80] As a disproportionate number of Māori smoke, Māori health experts, community advocates and academics say the government has failed to meet its Tiriti obligations in repealing the legislation.[81] Tobacco lobbyists are alleged to be driving the repeal.

## **JUSTICE MATTERS**

The coalition government has abolished legal aid funding for cultural reports for Judges to consider in sentencing processes and introduced legislation to ban gang patches in public places.[82] They have also indicated that they will reintroduce the ‘three-strikes’ sentencing policy, targeting repeat offenders with a mandatory maximum sentence on their third ‘strike’ by the end of June 2024.[83]

In addition, a significant new investment in Budget 2024 of \$2.5 billion to the Department of Corrections and Police disregards Universal Periodic Review recommendations to address Māori incarceration levels. These actions will disproportionately impact Māori, who, like Indigenous Peoples globally, are subject to over-policing and over-incarceration and who most acutely experience poverty and social harms that often lead to justice issues.

The coalition government has pledged to amend the Waitangi Tribunal’s legislation to refocus the scope, purpose and nature of its inquiries back to the original intent. If it does so, this may mean halting the district inquiry programme into historical breaches of Te Tiriti since 1840, which has documented many human rights violations against Māori. This programme is nearing conclusion, shifting to more contemporary matters (the Tribunal’s original function).

## **CHILD PROTECTION**

In February 2024, the Ombudsman released his report on complaints his office has received concerning children in care. The report found multiple incidences of unjust or discriminatory decisions, procedural failures, factual or legal errors, inadequate advice or reasons, and more.[84] Opposition MP Mariameno Kapa-Kingi rebuked the government:

The theory of the Minister is that Oranga Tamariki's governing principles should be colour-blind, which is just another word for white supremacy, because to say we are all one people is really to say we should all be white people, erasing the very hue of our identity and culture that makes us whole as tangata Māori, tamariki Māori, mokopuna Māori.[85]

The coalition government has introduced legislation to remove section 7AA of the Oranga Tamariki Act, which sets goals for tamariki Māori, provides for strategic relationships with Iwi and Māori organisations and requires reporting on outcomes for tamariki. The Waitangi Tribunal reported on urgent claims on this issue in May, finding that the ‘rushed and arbitrary’ repeal was in breach of Te Tiriti and likely to cause harm to vulnerable children.[86]

## **NATIONAL ACTION PLAN AGAINST RACISM**

On recommendations from the Committee on the Elimination of Racial Discrimination (2017), the government, Te Kāhui Tika Tangata and communities have been collaborating on the development of a national action plan against racism. The working group included a tangata whenua caucus; however, the coalition government changed the focus of the plan, advising the caucus that any focus on colonial racism and institutional racism would be out of scope.[87] Caucus members withdrew from work on the plan in April 2024. The coalition government’s broader agenda was another reason for withdrawal.[88] The Forum is considering establishing its own mechanism to monitor racism.

## **EMPLOYMENT**

In December 2023, the coalition government passed legislation removing fair pay agreements, focussed on the most vulnerable and poorly paid workforces (including cleaners, bus drivers, security guards and carers). The agreements, which were introduced in December 2022, would have likely benefitted several groups disproportionately represented in low-paid work, including Māori.[89]

## SUMMARY AND RECOMMENDATION

The coalition government has taken both targeted action to erode Māori rights – changes to the Oranga Tamariki legislation and ‘watering down’ of the national action plan against racism – and more general actions that impact Māori rights and equity – cutting welfare and removing employment protections. The combined effect of these actions is to further embed institutional racism against Māori and set back progressive realisation of equity and equality for Māori.

- 7 That the EMRIP remind the government of its national and international human rights obligations to eliminate racism and discrimination against all marginalised groups and to advance equity.**



## 6. PRACTICAL IMPLEMENTATION OF THE DECLARATION

The previous government shelved work on a Declaration action plan in December 2022, prior to the election year of 2023. The coalition government publicly signalled opposition to the Declaration, saying it would reverse New Zealand’s 2010 stance affirming it. Any work to practically implement the Declaration involving the State party has stopped. However, Iwi, Hapū and whānau Māori continue to build their own knowledge about the Declaration and put it to practical use to advance their own aspirations. Following the derailed action plan, the Government agreed that further engagement and development of a ‘social license’ was required. It resourced a 6-month project for community facilitators to develop 500 whānau rangatiratanga plans that aligned with the Declaration. 820 plans, along with seed funding, have supported whānau.[90] The project achieved its aims of increasing knowledge and application of the Declaration for whānau and communities.

### VISIT OF UN SPECIAL RAPPORTEUR - APRIL 2024

UN Special Rapporteur on the Rights of Indigenous Peoples, Jose Francisco Cali-Tzay was invited by Wairarapa Moana, Wakatū Incorporation in the South Island and the Forum, together with Te Kāhui Tika Tangata, to visit Aotearoa in 2024.[91] Mr Cali-Tzay visited these groups and other Iwi around the country to better understand the human rights issues that they are facing and also spoke at the *Designing the Constitution* conference. Mr Cali-Tzay noted that the population of Māori in Aotearoa is significant (recent Census data shows that one in five people in Aotearoa are Māori, worth more than \$2.4 billion in social investments).[92] Given the current political circumstances, there is greater interest among Māori leaders in engaging with the international community via the UN to put pressure on the government to realise Indigenous Peoples’ rights.

### UNIVERSAL PERIOD REVIEW PROCESS - APRIL 2024

New Zealand’s fourth Universal Periodic Review took place on 29 April 2024. Our report, lodged with the UN, made recommendations on constitutional transformation to recognise, protect and give effect to Tiriti, continue work on the Declaration action plan, support Iwi, Hapū and whānau to advance tino rangatiratanga and strengthen efforts to combat racism.

In the preliminary country report released on 31 May 2024, more than forty nations called for improved responses to Indigenous Peoples’ rights by the government. States recommended that the government effectively provide for Te Tiriti in Aotearoa/New Zealand’s constitutional arrangements. Recommendations were made concerning Indigenous education, climate change, decreasing over-incarceration of Māori, addressing the findings of the Royal Commission of Abuse in State Care and for the government to intensify their efforts to combat racism and discrimination against Māori.[93]

## SUMMARY AND RECOMMENDATION

Indigenous Peoples’ rights are not protected in Aotearoa/New Zealand because we do not have constitutional certainty and protection for Te Tiriti and Indigenous Peoples’ rights. This lack of constitutional protection has been exploited since the coalition government took office. The Monitoring Mechanism urges the New Zealand Government not to be swayed from its commitment to realising the Declaration through a robust and ambitious national action plan.

- 8 That the EMRIP recommend that the government reverses its current position on the Declaration and resume work in partnership with Māori to develop a robust and ambitious Declaration plan.**

- 9 That the EMRIP urgently conduct a country engagement follow-up in Aotearoa/New Zealand.**



## GLOSSARY

#toitutetiriti	Māori organised activation campaign 2024 to demonstrate the beginning of a unified Aotearoa response to the Government's assault on tangata whenua and Te Tiriti o Waitangi.
Aotearoa	The Maori name for New Zealand - literally meaning 'the land of the long white cloud'
Aroha	to love, feel pity, feel concern for, feel compassion, empathise.
Coalition Government	The New Zealand Government is a coalition government comprising the National Party, ACT Party and New Zealand First that has governed New Zealand since November 2023.
Hapū	kinship group, clan, tribe, subtribe - section of a large kinship group and the primary political unit in traditional Māori society.
He Whakaputanga o te Rangatiratanga o Nu Tirene	Signed in 1835 the "Magna Carta of New Zealand Independence", He Whakaputanga was a declaration of Indigenous power and authority. Officially recognised by the United Kingdom, it signalled the emergence of Māori authority on the world stage.
Hui Taumata	the second national hui for unity at Omāhu Marae, in Hawke's Bay- the Hui Taumata, or summit is a continuation of a series of hui put on to strengthen and action Māori unity.
Iwi	extended kinship group, tribe, nation, people, nationality, race - often refers to a large group of people descended from a common ancestor and associated with a distinct territory.
Iwi motuhake	Tribal identity, autonomy, self-government, self-determination, independence, sovereignty, authority.
Kīngitanga	One of New Zealand's most enduring political institutions, the Kīngitanga (Māori King movement) was founded in 1858 with the aim of uniting Māori under a single sovereign
kotahitanga	unity, togetherness, solidarity, collective action.
mahere	plan, chart, map.
mana motuhake	separate identity, autonomy, self-government, self-determination, independence, sovereignty, authority - mana through self-determination and control over one's own destiny.
Māori	Māori, indigenous New Zealander, indigenous person of Aotearoa/New Zealand - a new use of the word resulting from Pākehā contact in order to distinguish between people of Māori descent and the colonisers.
Māori Women's Welfare League	Founded in 1951, Te Ropu Wahine Maori Toko i te Ora (Maori Women's Welfare League Inc.) is the only national charitable Maori Womens Organisation in Aotearoa. Since the League was founded, it remains principally concerned with the wellbeing of Maori women and their whanau.
Mataatua Declaration on Cultural and Intellectual Property	The Mataatua Declaration of Indigenous Rights (the Declaration) in June 1993 reaffirmed the undertaking of United Nations Member States to "Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices."
Matike Mai Aotearoa	Report by the Working Group on Constitutional Transformation 2016
Mō tatou katoa	For us all
mokopuna	Grandchild, descendent
National Iwi Chairs Forum	The National Iwi Chairs Forum: Share information; Work collaboratively on key priorities of iwi within the National Iwi Chairs Forum; and advocate the collective priorities of the iwi within the National Iwi Chairs Forum in discussions with others, recognising the rangatiratanga/independence of iwi.
New Zealand Māori Council	A statutory representative body under the Māori Community Development Act 1962. The Act sets out the statutory role of the Council as a national policy-making body for Māori with regard to the cultural, economic, social and political wellbeing of Māori.
Ngā Tini Whetū	Ngā Tini Whetū is a government-funded prototype that resources whānau Māori to provide their own solutions to best meet their aspirations. It is grounded in te ao Māori, delivered through the Whānau Ora approach and focused on whānau centred outcomes. It extended early support to 800 whānau Māori across Te Ika-a-Māui, to prioritise tamariki and whānau wellbeing between 2020-2022.
ngā wero/tikanga pakanga	Formal and traditional challenges and war customs

Ngāpuhi	Northland tribe
Oranga Tamariki	Oranga Tamariki, the Ministry for Children and previously the Ministry for Vulnerable Children, is a government department in New Zealand responsible for the well-being of children, specifically children at risk of harm, youth offenders and children of the State
Papatūānuku	In Māori tradition, Papatūānuku is the land. She is a mother earth figure who gives birth to all things, including people.
Pou Take Āhuarangi	One of five National Iwi Chairs Pou – this pou or pillar focusses on climate risk and issues
Pou Tāngata	One of five National Iwi Chairs Pou – this one focusses on the wellbeing of people
Rātana Pā	a Māori Christian church and movement, headquartered at Rātana Pā near Whanganui, New Zealand
Reo	language, dialect, tongue, speech
Taiao	world, Earth, natural world, environment, nature, country
tamariki	children
tāngata whaikaha	In 2016, as a founding member of the Māori Disability Leadership Group, Maaka Tibble is quoted saying "Tāngata Whaikaha means people who are determined to do well, or is certainly a goal that they reach for. It fits nicely with the goals and aims of people with disabilities who are determined in some way to do well and create opportunities for themselves as opposed to being labelled, as in the past."
Tangata whenua	local people, hosts, indigenous people - people born of the whenua, i.e. of the placenta and of the land where the people's ancestors have lived and where their placenta are buried.
tangihanga	weeping, crying, funeral, rites for the dead, obsequies - one of the most important institutions in Māori society, with strong cultural imperatives and protocols
Te Aka Whai Ora	The Māori Health Authority est. 2022, disestablished in 2024 by the coalition government
Te Hunga Roia Māori o Aotearoa	Māori Law Society formally established in 1988
Te Kāhui Tika Tangata	The Māori name of the NZ Human Rights Commission
Te Korowai o Ngāruahine Trust	Te Korowai o Ngāruahine Trust (Te Korowai) is the Post Settlement Governance Entity established in 2013 as part of the Ngāruahine Settlement process.
Te Ngakau o te iwi Māori	A Declaration of Māori Political Independence made by The Māori party/Te Paati Māori - a political party in Aotearoa New Zealand
Te Ora o Te Whānau	The life and wellbeing of families
Te Pāti Māori	The Māori party/Te Paati Māori - political party in Aotearoa New Zealand
te reo Māori	The Māori or indigenous language of Aotearoa/New Zealand
Te Tiriti o Waitangi – Te Tiriti	An agreement made in 1840 between representatives of the British Crown and (ultimately) more than 500 Māori chiefs.
Te Ture o te Reo Māori	The Maori Language Act 2016
Tikanga	correct procedure, Māori custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention, protocol - the customary system of values and practices that have developed over time and are deeply embedded in the social context
tino rangatiratanga	self-determination, sovereignty, autonomy, self-government, domination, rule, control, power.
Wai	Water
Waikato-Tainui	a group of Māori tribes based in Waikato Region, in the western central region of New Zealand's North Island
Wairarapa Moana	Wairarapa Moana represent tribal shareholders and descendants of the original owners located in the lower North Island of New Zealand



## ENDNOTES

- [1] Founded in 2005, the National Iwi Chairs Forum brings together the chairs of several Iwi from around Aotearoa. They meet four times a year to share information and work together on strategic issues.
- [2] Hapū is a kinship group, clan, tribe or sub-tribe; it was the primary political unit in traditional Māori society.
- [3] Whānau is an extended family or family group.
- [4] Te Tiriti o Waitangi was a treaty signed between Māori Rangatira (leaders) and the British Crown in 1840, creating a partnership between them.
- [5] New Zealand Parliament, 'Hana-Rawhiti Maipi-Clarke – Address in reply debate', 12 December 2023. Accessed at: [https://www.parliament.nz/en/pb/hansard-debates/rhr/document/HansS\\_20231212\\_062118000/maipi-clarke-hana-rawhiti](https://www.parliament.nz/en/pb/hansard-debates/rhr/document/HansS_20231212_062118000/maipi-clarke-hana-rawhiti)
- [6] Global Campus on Human Rights, 'Using the non-regression principle to prevent far-right erosion of rights', 2 November 2023. Accessed at: <https://gchumanrights.org/gc-preparedness/preparedness-economic-social-and-cultural-rights/article-detail/using-the-non-retrogression-principle-to-prevent-far-right-erosion-of-rights.html>
- [7] Tangata whenua is literally 'people of the land' in te reo Māori (the Māori language), meaning the Indigenous People of Aotearoa/New Zealand.
- [8] Rangatiratanga is the exercise of mana motuhake (see footnote 16 below) to determine our own political, social, cultural, environmental and economic development and in doing so, weaving people together with integrity, through leading by example, humility, generosity, altruism, and diplomacy. Leadership is strong and well supported. Tino Rangatiratanga amplifies this meaning, with 'tino' meaning true, genuine, or absolute.
- [9] He Whakaputanga, sometimes referred to as the Declaration of Independence of the United Tribes of New Zealand, was signed in 1835 by 34 Rangatira in the north of Aotearoa. It asserted their rangatiratanga and sovereign status.
- [10] *Ellis v R* [2022] NZSC 114. Accessed at: <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-114.pdf>
- [11] *Report of Matike Mai Aotearoa – the Independent Working Group on Constitutional Transformation* (2018). Accessed at: <https://nwo.org.nz/wp-content/uploads/2018/06/MatikeMaiAotearoa25Jan16.pdf>
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- [13] Treaty principles are not the same as Te Tiriti. They are a series of principles developed by the Courts and the Waitangi Tribunal to try and give practical effect of both Te Tiriti (the Māori language version) and The Treaty (the English version). Unlike Te Tiriti, Treaty principles are referenced in several Acts of Parliament, placing obligations on the government.
- [14] Alan Pearce, 'Leaked Ministry advice suggest proposed Treaty principles bill “highly contentious”', *New Zealand Herald*, 19 January 2024. Accessed at: <https://www.nzherald.co.nz/nz/politics/leaked-ministry-advice-suggests-proposed-treaty-principles-bill-highly-contentious/QIBNNLDMVZBK3HWNMJIJDJIZ6M/>
- [15] The Waitangi Tribunal is a permanent commission of inquiry established by the government in 1975 to inquire into claims made by Māori that Crown actions and omissions breach Te Tiriti. Its establishing legislation gave the Tribunal authority to determine the meaning of both Te Tiriti | the Treaty.
- [16] Early scoping work identified that around 40 Acts would be subject to this review, covering areas important to Māori, including resource management, conservation, and health.
- [17] Prima facie, the principle of comity exists to preserve the autonomy of Parliament's actions without undue scrutiny from the Judiciary or Executive, which would interfere with its sovereignty. P A Joseph *Constitutional and Administrative Law in New Zealand*, 2nd ed., (Brookers, Wellington, 2001), p 474. The principle also works the other way – the executive is not to interfere with judicial processes. This mutual obligation was affirmed by the Court of Appeal in *Colleen Skerret-White & ors. v Minister for Children* [2024] NZCA 160 at [2](e).
- [18] Ella Stewart, RNZ, 'Increasingly activist Waitangi Tribunal under renewed attack from senior ministers', *Te Ao Māori News*, 17 May 2024. Accessed at: <https://www.teaonews.co.nz/2024/05/17/increasingly-activist-waitangi-tribunal-faces-its-future-under-renewed-attack-from-senior-ministers/>
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- [20] Kotahitanga means unity, solidarity and collective action.
- [21] Tema Hemi, 'Turia, Mair call for Māori leaders' national hui to fight new government's Treaty dumping', *Te Ao News*, 30 November 2023. Accessed at: <https://www.teaonews.co.nz/2023/11/30/turia-mair-call-for-maori-leaders-national-hui-to-fight-new-governments-treaty-dumping/>
- [22] The Kīngitanga (Māori King Movement) was founded in 1858 with the aim of uniting independent Iwi and Hapū under a single Sovereign. Centred in the Waikato, the Kīngitanga continues today headed by Kingi Tuheitia.
- [23] 'Waikato-Tainui welcome mass contingent at Turangawaewae marae', *Radio New Zealand*, 20 January 2024. Accessed at: <https://www.rnz.co.nz/news/national/507137/waikato-tainui-welcome-mass-contingent-at-turangawaewae-marae>
- [24] Transcription of speech of Archbishop Don Tamihere, Tūrangawaewae marae, 20 January 2024.
- [25] Transcription of speech of Dayle Takitimu, Tūrangawaewae marae, 20 January 2024.
- [26] Jessica Tyson, 'Kīngitanga arrives at Ratana with a clear message for the coalition government: “work with us or get out of the way,”' *Te Ao News*, 23 January 2024. Accessed at: <https://www.teaonews.co.nz/2024/01/23/kingitanga-arrives-at-ratana-with-a-clear-message-you-work-with-us-or-get-out-of-our-way/>



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- [27] Mana Motuhake means paramount power and authority derived originally from the gods; it is exercising authority to determine our own political, social, cultural, environmental and economic development.
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- [29] A public holiday that commemorates the signing of Te Tiriti on 6 February 1840.
- [30] Pokere Paiwai, 'Waitangi 2024: Thousands stand in unity to challenge government on Treaty principles', *Radio New Zealand*, 6 February 2024. Accessed at: <https://www.rnz.co.nz/news/te-manu-korihi/508462/waitangi-2024-thousands-stand-in-unity-to-challenge-government-on-treaty-principles>
- [31] 'Live updates from Waitangi', *The Spinoff*, 6 February 2024. Accessed at: <https://thespinoff.co.nz/politics/05-02-2024/live-updates-from-waitangi-tame-iti-hikoi-government-powhiri-and-more>
- [32] This is the first budget for many years when the Treasury has been unable to define budget allocation for Māori.
- [33] <https://e-tangata.co.nz/history/calling-for-a-free-kanaky/>
- [34] [nz-first-tries-to-introduce-controversial-bathroom-bill](https://www.huitaumata.co.nz/nz-first-tries-to-introduce-controversial-bathroom-bill)
- [35] <https://www.huitaumata.co.nz/>
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- [42] 'Christopher Luxon to speak to Winston Peters over Nazi comments', *Radio New Zealand*, 19 March 2024. Accessed at: <https://www.rnz.co.nz/news/political/512056/christopher-luxon-to-speak-to-winston-peters-over-nazi-comments>
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- [45] 'Māori wards ultimatum for councils as coalition government imposes referendums', *Radio New Zealand*, 4 April 2024. Accessed at: <https://www.rnz.co.nz/news/political/513401/maori-wards-ultimatum-for-councils-as-coalition-government-imposes-referendums>
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