

# Expert Mechanism on the Rights of Indigenous Peoples – Report on the right to self-determination

## Input from the Aotearoa Independent Monitoring Mechanism

March 2021

This input is provided by the Aotearoa Independent Monitoring Mechanism (the Monitoring Mechanism), 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 to act as independent experts. The Monitoring Mechanism is supported in its work by technical advisers.

The Monitoring Mechanism sits alongside another working group of the Forum, Matike Mai Aotearoa the Independent Working Group on Constitutional Transformation (Matike Mai).

This paper outlines work being undertaken by the National Iwi Chairs Forum (the Forum), Matike Mai and the Monitoring Mechanism focussed on strengthening the exercise and recognition of self-determination. This work includes:

- Strengthening rangatiratanga
- Constitutional transformation
- Monitoring the Declaration and advocating for a national action plan for its implementation.

### Self-determination, tino rangatiratanga and mana motuhake

There are parallels between the rights to self-determination affirmed in the Declaration, and the Māori concepts of mana motuhake<sup>1</sup> and rangatiratanga.<sup>2</sup> These pre-existing rights were affirmed in Aotearoa in the 1835 Declaration of Independence He Whakaputanga o te Rangatiratanga o Niu Tirenī, and in the 1840 treaty with the British Crown, Te Tiriti o Waitangi. All three concepts reflect the notion of Māori authority – expressed collectively through iwi, hapū and whānau<sup>3</sup> – to determine our own destinies and make decisions about our own lives, lands and resources.

In recognising and upholding these rights, the role for government includes to:

- Understand Rangatiratanga/Mana Motuhake by educating public servants about it;
- Value and respect Rangatiratanga/Mana Motuhake by including it in legislation, policy and practice; and
- Enable Rangatiratanga/Mana Motuhake by providing skills, knowledge, information, data, systems, resources and funds.

### Strengthening rangatiratanga

In November 2020, the Forum approved a stream of work focussed on Strengthening Rangatiratanga. This followed a series of videoed interviews with Iwi Chairs sharing their views on

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<sup>1</sup> Mana motuhake: paramount power and authority derived originally from the gods. exercising authority to determine our own political, social, cultural, environmental and economic development.

<sup>2</sup> Rangatiratanga: the exercise of mana motuhake 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.

<sup>3</sup> Iwi: tribal nation; hapū: subtribe; whānau: extended family.

what Rangatiratanga/Mana Motuhake looks like in 2020.<sup>4</sup> A paper, **Strengthening Rangatiratanga Background Paper** (attached as Appendix 1) summarises the discussion and outcome.

The background paper was also discussed as part of the Māori Constitutional Convention held on 3 February (discussed further below).<sup>5</sup>

Further actions underway are two pilot projects looking at how Rangatiratanga/Mana Motuhake is exercised by Iwi and the support and/or barriers provided by the Government. A report on the pilots is expected in August.

### **Constitutional transformation**

The need for constitutional transformation remains an overarching priority for the Monitoring Mechanism. Current 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 our rights to self-determination, rangatiratanga and mana motuhake. 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, in particular the rights to self-determination.

Building on decades of Māori debate on these issues, in 2016, Matike Mai Aotearoa – the Independent Working Group on Constitutional Transformation issued its report recommending constitutional transformation after undertaking extensive consultation over five years.<sup>6</sup>

The report proposed models for an inclusive constitution, which have a focus on improved relationships that reflect self-determination. The indicative models suggested included “spheres of influence” that include a Rangatiratanga Sphere where Māori make decisions for Māori, and a Kāwanatanga Sphere where the Crown will make decisions for its people. A relational sphere is where the Crown and Māori can engage with each other on matters of mutual interest and concern.

The report recommended further dialogue over the next five years – amongst Māori and with other groups and the government – to develop, agree and implement an inclusive, Tiriti-based constitution. A further recommendation of the Matike Mai report was:

“That a Māori Constitutional Convention be called in 2021 to further the discussion and develop a comprehensive engagement strategy across the country.”

The first **Māori Constitutional Convention** was held on 3 February 2021, with the aim of bringing together whānau, hapū, iwi and leaders of peak Māori organisations to develop a strategy and plan to unite and strengthen the Tino Rangatiratanga Sphere as described in the Matike Mai report. Originally scheduled to take place in Waitangi, the convention was moved online due to community Covid-19 concerns, and had more than 120 participants from across the country as well as being

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<sup>4</sup> The *Tino Rangatiratanga* video can be viewed at: <https://tehiku.nz/te-hiku-radio/matike-mai-maori-constitutional-convention/15711/tino-rangatiratanga>

<sup>5</sup> See: <https://tehiku.nz/te-hiku-radio/matike-mai-maori-constitutional-convention/>

<sup>6</sup> *He Whakaaro Here Whakaumu mō Aotearoa: Report of the Independent Constitutional Transformation Working Group* (2016). Accessible at: <http://www.converge.org.nz/pma/MatikeMaiAotearoaReport.pdf>

recorded and livestreamed by Te Hiku Media.<sup>7</sup> A report of the Convention is currently being prepared.

Building on the Matike Mai report along with the Aotearoa 2020 Vision project<sup>8</sup> undertaken in 2020, the Convention had a focus on the values and vision that must underpin an inclusive, Tiriti-based constitution.

Discussions during the Convention highlighted a strong level of support for the Matike Mai report, and willingness to continue discussions to advance its implementation.

The government is familiar with the Matike Mai report but has avoided discussing it. The government needs to take the advice already provided by UN Treaty bodies to discuss the report with Māori as a matter of urgency.<sup>9</sup>

### **National Action Plan for the Declaration**

In 2019, the government agreed to work with the Aotearoa Independent Monitoring Mechanism and National Iwi Chairs Forum to draw up a national plan of action to implement the UN Declaration on the Rights of Indigenous Peoples. A ministerial working group completed a report, *He Puapua*, in November 2019. An executive summary was released in October 2020 following intervention by the Ombudsman.<sup>10</sup>

The executive summary indicates that *He Puapua* is a very helpful report, with a significant focus on rangatiratanga and self-determination. The Working Group draws on the report of Matike Mai and the 'spheres of authority' approach, noting that a national action plan can provide a road map for rebalancing the spheres and giving greater space for the operation of rangatiratanga over time.

The report outlines some indicative steps and actions, while noting the importance of not pre-determining matters that should be informed by a participatory engagement process, and/or are best determined by Māori through the exercise of rangatiratanga. One recommended immediate action is the establishment of a high-level co-governance body comprised of equal numbers of government ministers and Māori representatives to lead further development of the action plan.

It is imperative that the full report be released as a matter of urgency and for engagement on it to be undertaken with Māori so that there is more rapid progress with the National Plan of Action to implement the Declaration.

### **Recommendations for the EMRIP's thematic study**

In developing its thematic study on the right to self-determination, the Monitoring Mechanism recommends that the EMRIP highlight:

- The importance of Indigenous-led initiatives to define, revitalise and strengthen their self-determination;

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<sup>7</sup> See: <https://tehiku.nz/te-hiku-radio/matike-mai-maori-constitutional-convention/>

<sup>8</sup> See: <https://www.facebook.com/aotearoa2020vision>

<sup>9</sup> For example: UN Committee for the Elimination of Racial Discrimination, (2017), *Concluding Observations: New Zealand*, CERD/C/NZL/CO/21-22, at para 13(a). UN Committee on Economic, Social and Cultural Rights, (2018), *Concluding Observations on the fourth periodic report of New Zealand (Advanced Unedited Version)*, E/C.12/NZL/CO/4, at para 9(a).

<sup>10</sup> *He Puapua: Report of the Working Group on a Plan to realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand*, (2019). Executive summary available at: <https://www.tpk.govt.nz/docs/undrip/tpk-undrip-he-puapua.pdf>

- The need for governments to support such initiatives, and to understand, respect and enable the exercise of self-determination by Indigenous Peoples;
- The importance of constitutional transformation in order to ensure that legal and constitutional systems and structures adequately reflect and uphold Indigenous Peoples' rights to self-determination; and
- The role of national action plans in implementing the Declaration, and the need to ensure that such plans are grounded on the right to self-determination.

We ask the EMRIP urge the New Zealand government to:

- join with Māori in the national conversation that has developed from the 2016 Matike Mai Aotearoa report on constitutional transformation; and
- take urgent action to progress and implement the National Plan of Action to implement the United Nations Declaration on the Rights of Indigenous Peoples.

## Appendix 1:

### Strengthening Rangatiratanga – Background Paper

In November 2020 the National Iwi Chairs Forum made a decision to facilitate the strengthening of Rangatiratanga in whānau, hapū, iwi and Māori organisations both locally and nationally. This decision was inspired by the report of Matike Mai Aotearoa – the independent working group on Constitutional Transformation and promoted by a series of interviews with Iwi Chairpersons.

There was much discussion about the correct term to use, Some made reference to *mana*, *mana Motuhake*, *mana taketake*, *mana torangapū*, *mana i te whenua* and *tino Rangatiratanga*. It was decided to use *Rangatiratanga* and *Mana Motuhake* together, So, when *Rangatiratanga* is used in this paper, it also includes the use of *Mana Motuhake*.

There was discussion about human rights standards that apply to Rangatiratanga and the following standards were established:

- Authority to self-determination
- Authority to self-government
- Authority to maintain and strengthen our institutions
- Right to participate fully in the State
- Right to choose our own representatives
- Free, prior and informed consent

One important aspect of these standards is that they can be measured.

It was asserted that if Rangatiratanga is to be strengthened, that mahi needs to be lead by whānau, hapū, iwi, Māori organisations and the National Iwi Chairs Forum. The Forum also made a decision to be proactive with this mahi and as a first step there will be a Māori Constitutional Convention in Waitangi on 3 February 2021. The aim of the Convention will be to strengthen alliances between Iwi and National Māori organisations and develop a strategy for moving forward. In addition, two Iwi-based pilot case studies are being developed that will give us better insight into what could be done to strengthen Rangatiratanga at Iwi level and what lessons could be applied both locally and nationally.

It is anticipated that by strengthening Rangatiratanga there will be better outcomes for Māori and all New Zealanders. For example, Kaupapa Māori kura (Kōhanga Reo, Kura Kaupapa Māori, Whare Wānanga) have improved Māori participation in the education system and they are producing young leaders who are confident, talented with skills and knowledge to make better decisions for their own development and future. The recent checkpoints put in place by Iwi during the Covid-19 lock down prevented people from carrying the virus into communities. That benefited all New Zealanders.

Recent government reports on the Justice sector and Oranga Tamariki advocate for greater Māori authority (Rangatiratanga) over our whānau as a key solution to improving the horrendous performance of those agencies. Sharing power and authority over resources has been advocated by Māori for years. “He Whaipānga Hou,” a report on the criminal justice system in 1987, advocated for Rangatiratanga as did the 1988 report on the social welfare system “Pūao-Te Ata-Tū.” In 1990, Māori teachers and parents held a “Hui Rangatiratanga” that called for the establishment of a Māori education authority. To date, despite the partnership provisions of Te Tiriti o Waitangi, governments

have avoided sharing power and authority over the resources the State provides. Instead, the Crown has a habit of trying to “empower” us. That means they believe they can give us permission or authority or provide us with opportunities to assert Rangatiratanga. That is condescending and another less than subtle form of colonisation. Rangatiratanga cannot exist in Parliament or any agency of the State. Those are the sites of Kāwanatanga authority.

However, the Crown does have an obligation to work with Tangata Whenua to strengthen Rangatiratanga. Through Te Tiriti the Crown promised to protect Rangatiratanga and the taonga owned by us. The Treaty settlements programme is evidence that they failed to meet that obligation. The need now is to revitalise our taonga (for example; reo, relationship to whenua, tikanga, our institutions). The role of the Crown is to “enable” that to happen. This involves sharing skills, knowledge, systems, data, information, resources and funds. It involves ensuring all parts of government, and communities, understand Rangatiratanga and respect and value it. That was the promise of Te Tiriti.

There is often discussion about “equity” in regard to funding, resources and outcomes. Based on the current Māori population, an equitable distribution would be at least in excess of 16%. For example, if education funding was to be distributed equitably, whānau, hapū, iwi and Māori would have control of more than 16% of Vote: Education. We are a long way from achieving that but it is certainly a goal to aim for. The main reason is that government and its agencies have a fear of sharing power, authority and resources. Despite years of them getting it wrong for Māori, they don’t trust that we might get it right.

The Forum has a “levels of engagement” agreement with government which aims to whakamana the Te Tiriti partnership. This requires Iwi Chairs to engage with Ministers at the structural level and deal primarily with strategic decisions, CEOs and senior managers to engage with lead technicians at the institutional level and deal mainly with issues of management and for technicians and kaimahi to work together to implement or operationalise the decisions. Our expectation is that the partnership will apply at all levels and include the shaping of new legislation, policies and practices in those areas that affect whānau, hapū, iwi and Māori organisations.

There are some human rights standards that guide how partnership can be achieved. These include:

- The right to participate in decisions that affect us
- Good faith cooperation; and
- Free, prior and informed consent

Human rights standards also help us achieve better outcomes in all areas of society including those that relate to equality and non-discrimination.

We expect that the first Māori Constitutional Convention to be held in Waitangi on 3 February will help us develop strategies and plans to strengthen Rangatiratanga.