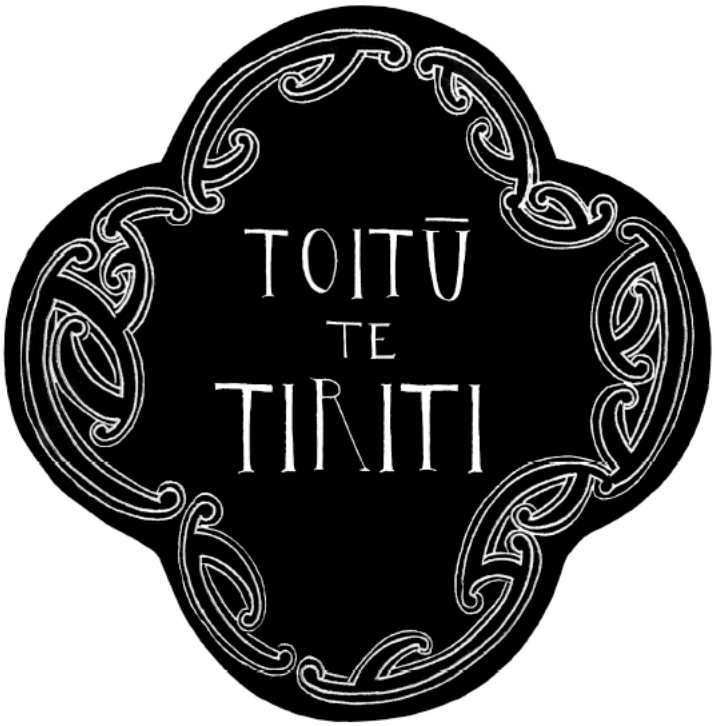
TUKU KŌRERO MŌ TE PIRE TAKAHI TIRITI



Maranga Mai

NICF Working Group on the People's Action Plan Against Racism

HONOUR TE TIRITI

Contents

All artwork by Amber Smith

IWI CHAIRS

Professor Makere Mutu

Kahurangi Dame
Rangimarie Naida Glavish
DNZM JP

Rahui Papa

Tina Ngata
Lead Advisor and Author

KĀHUI MEMBERS

Te Huia Bill Hamilton	Lorraine Toki	Donna Gardiner
Shae Brown	Hope Tupara	Pania Newton
Bianca Ranson	Toro Waaka	Mani Dunlop
Khylee Quince	Rawiri Taonui	Louisa Wall
Mereana Pitman	Iti Joyce	Therese Ford

Introduction

Maranga Mai, the working group towards a People's Action Plan Against Racism in Aotearoa, hereby present our position on the Treaty Principles Bill. We are appointed by the National Iwi Chairs' Forum to spearhead the development of an action plan towards racial justice in Aotearoa. Our collective includes noted scholars and experts in the fields of anti-racism, New Zealand history, global and domestic colonial history, international and domestic law, constitutional justice, grassroots activism and te Tiriti o Waitangi.

The National Iwi Chairs Forum embarked upon the national action plan against racism in partnership with the Ministry of Justice in 2022. A draft action plan was produced over the following 24 months. In both the preliminary reports, and draft action plan, colonial racism against Māori was centered as the foundation upon which other forms of racism have developed in Aotearoa.

In March 2024, the Crown indicated a shift away from the focus upon institutional racism, and away from colonial racism against Māori. For the Tangata Whenua caucus, this raised concerns that the Government's approach to a national action plan against racism would dilute attention to the systemic and entrenched nature of racism arising from New Zealand's colonial legacy. Consequently, the Tangata Whenua caucus withdrew from the Government's national action plan against racism, but have committed to progress an independent people's action plan against racism which would be used to hold the Government to account.

New Zealand's colonial history has left enduring effects on the social, economic, and political well-being of Māori, leading to persistent disparities across sectors such as health, education, and justice. The working group are clear that a pathway towards equity and justice can only come through explicitly addressing structural racism in Aotearoa, the bedrock of which is colonial racism against Māori.

The People's Action Plan Against Racism in Aotearoa has enabled focused strategy aimed at addressing the root causes of racism, including the specific impacts of colonialism, while allowing Māori leadership and other communities to play a central role in shaping culturally relevant solutions aligned with aspirations for tino rangatiratanga (self-determination) and systemic transformation. This approach ensures a comprehensive commitment to tackling racism in its various forms, while prioritising the unique challenges faced by Indigenous and marginalised communities.

Summary Statement

The Treaty Principles Bill marks a disturbing regression in this nation's journey towards Tiriti justice, which is a foundational pre-condition for racial justice in Aotearoa-New Zealand. Our key points are as follows:

- The Crown has a moral obligation, monitored under multiple other international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination to respect te Tiriti o Waitangi and progress towards treaty justice in collaboration with iwi Māori.

- The bill will cause significant racialised harm against Māori, and further impair Māori-Crown relations.
- The bill perpetuates a logic that supports racialised harm against ethnic communities.
- There is a lack of clear rationale for the bill, which indicates a racialised political agenda rather than a remedial one.
- While the principles do not constitute Tiriti justice, there is no shortage of resources, and opportunities to understand their meaning, relevance and application. The treaty justice pathway from this point forward is to orient ourselves towards honouring the text of te Tiriti o Waitangi.
- The bill is itself a breach of the Crown's treaty obligations, ignoring positions on constitutional treaty justice held by national and international legal authorities.
- The bill continues an extensive history of legislative abuse of Māori rights, defeating the Crown proposition that it operates in everyone's best interests, or can deliver non-discriminatory governance.
- The bill is undemocratic, ignoring important democratic instruments such as the Waitangi Tribunal, New Zealand Courts, qualified expertise, and deemed inapplicable in relation to the New Zealand Bill of Rights.
- The bill violates the human rights of Māori by undermining their unique political status as the Indigenous treaty partner, and effectively makes the Crown's presence in Aotearoa an act of conquest.
- The bill constitutes persecution of Māori on political, racial, national, ethnic, and cultural grounds and as such is a crime against humanity, under Article 7 of the Rome Statute of the International Criminal Court.

Expectations

1. That this bill be rejected in its entirety
2. That the Government issue an apology to Māori for including this bill in the coalition agreement between National, ACT and New Zealand First
3. The establishment of an independent Tangata Whenua-led oversight body, appointed by Matike Mai and the Waitangi Tribunal. The committee should be tasked to:
    a. Develop a healing process that addresses the racialised harm caused by the Treaty Principles Bill and associated actions. This body will play a critical role in guiding, monitoring and evaluating the pathway towards constitutional justice.
    b. Direct targeted reparatory investment for kaupapa Māori initiatives, particularly in areas disproportionately affected by systemic racism, such as housing, healthcare, justice, and education. This would include funding directly allocated to iwi and hapū to lead solutions
    c. Guide the national conversation on the constitutional status of He Whakaputanga and te Tiriti o Waitangi.
    d. Review all existing legislation to assess alignment with te Tiriti o Waitangi. This process would identify and recommend amendments to laws that perpetuate inequities or fail to honour te Tiriti o Waitangi.
    e. Direct Crown investment towards education on the following matters in both formal (in school) and informal (community) settings, overseen collaboratively by Matike Mai and the Waitangi Tribunal. This should include:
        i. The history of colonial racism in Aotearoa-New Zealand
        ii. He Whakaputanga o Ngā Rangatira o Niu Tireni and te Tiriti o Waitangi

iii. te Paparahi o te Raki
iv. Matike Mai Aotearoa

f. Recommend the establishment of a publicly accessible digital archive documenting the history of racism in Aotearoa and the evolution of treaty justice. This repository should house resources such as expert reports, academic research, oral histories, and multimedia educational tools to foster national understanding and dialogue on the points listed in 3(e).
g. Establish intermediary co-governance models for Government agencies to minimise abrogation of te Tiriti o Waitangi whilst constitutional justice pathways are developed

4. Inclusion of rangatahi and marginalised voices in constitutional conversations to ensure intergenerational perspectives are considered and that the process reflects diverse lived experiences.
5. Implementation of all findings in the Ngā Mātāpono report by the Waitangi Tribunal.
6. Implementation of repeated recommendations from the Expert Mechanism for the Rights of Indigenous Peoples and the Committee for the Elimination of Racial Discrimination that the Crown Government respect, actively protect the integrity of te Tiriti o Waitangi, and progress towards constitutional treaty justice, informed by Matike Mai and the Constitutional Advisory Panel.
7. He Whakaputanga be formally recognised as foundational in any constitutional reform process. This would reaffirm the authority of Māori rangatira and hapū as sovereign entities and create a framework for shared governance based on mutual respect and co-determination.

Definition of Racism

Our kāhui works on the following definition of racism, a definition which aligns with leading conventions relating to anti-racism, and it will be through this definition that we will provide our advice to the select committee on the racialised dimensions of the Treaty Principles Bill:

Racism is a collection of ideas, actions, and institutional practices, backed by institutional and social power, that produce, maintain and normalise inequity and inequality for Tangata Whenua and other racialised groups.

Institutional practices includes cases where racialised disparity is caused by policies of the state as well as a lack of policy-based protection from racism.

We have heard the lead minister for this bill, Minister Seymour, describe racialised identities as "coarse, blanket ancestry-based groupings of people"[1] whilst also dismissing the concerns regarding racism raised by numerous public organisations[2], experts in law[3], Te Tiriti o Waitangi[4] and Te Reo Māori[5]. As a group with decades of experience in identifying and responding to racism, we share many of the concerns of those experts regarding the racialised impacts of this bill.

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[1] *Parliamentary Health Select Committee 2/12/24 (at 19m10s)*
[2] *David Seymour: My letter to the organisations who wrote the Prime Minister about Act's Treaty Bill 30 July 2024*
[3] *Treaty Principles Bill: Senior lawyers call for David Seymour's Treaty Bill to be abandoned*
[4] *Ibid*
[5] *Treaty Principles Bill: Māori translators pen letter over 'deeply flawed translations'*

The erasure of racism and racialised identities is a commonly heard conservative talking point, described by race-critical theorists as "colour-blind ideology". It functions to deny state responsibility for a legacy of state-sanctioned racism, and the structural racism it continues to operate within, by denying the existence of race. Colonial Governments created racialised hierarchies and have used that same hierarchical system in their recognition of human rights throughout history, to the point where it is deeply entrenched within global, national and local systems, perpetuating economic, social and justice inequities. To now attempt to ignore the legacy of colonial race-making by denying it even exists is an evasion of responsibility. Māori is an existing ethnicity, and a racialised identity. Denying Māori existence in theory and word is a pre-condition for much more harmful, and violent, forms of erasure.

This paper will provide analysis of the racialised aspects of the objectives, content, and the process for this bill to date.

Treaty Compliance as an Internationally Recognised Measure of Racial Justice

The New Zealand Crown government is under recommendation to take concrete action on racial discrimination from the United Nations Human Rights Council[6], United Nations Committee on the Elimination of Racial Discrimination[7], United Nations Committee on the Rights of the Child[8], United Nations Committee on Economic, Social and Cultural Rights[9], and the United Nations Committee on the Elimination of Discrimination against Women[10]. Across these bodies, the perseverance of racial inequity has been repeatedly tied to the lack of compliance and constitutional protection of Te Tiriti o Waitangi. This dates back to at least 2006 where UN Special Rapporteur Rodolpho Stavenhagen noted with concern the increasing promotion of an assimilationist position by the New Zealand Crown Government, and recommended enhanced protection for Te Tiriti o Waitangi.[11]

In particular, the most recent periodic review of the Committee on the Elimination of Racial Discrimination recommended that the New Zealand Crown Government:

- Ensure that its public policy and legislative initiatives comply with the participation principle of article 2 of the Treaty of Waitangi
- Give greater assurance that the State party recognizes the fundamental right to self-determination of Māori and the obligation to establish shared governance with hapū
- Provide adequate resources for the Waitangi Tribunal.[12]

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[6] *Report of the Working Group on the Universal Periodic Review, New Zealand, HRC 57th session 9 September–9 October 2024*

[7] *Committee on the Elimination of Racial Discrimination: Concluding observations on the combined twenty-first and twenty-second periodic reports of New Zealand, 2017*

[8] *Committee on the Rights of the Child: Concluding observations on the sixth periodic report of New Zealand, 2023*

[9] *Committee on Economic, Social and Cultural Rights: Concluding observations on the fourth periodic report of New Zealand 2018*

[10] *Committee on the Elimination of Discrimination against Women: Concluding observations on the ninth periodic report of New Zealand, 2024*

[11] *United Nations Economic and Social Council Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mission to New Zealand Rodolfo Stavenhagen*

[12] *Committee on the Elimination of Racial Discrimination: Concluding observations on the combined twenty-first and twenty-second periodic reports of New Zealand, 2017*

As recently as October this year, the Human Rights Council again made repeated recommendations that the New Zealand Crown Government work with Māori to strengthen its respect of, protections around and enforceability of te Tiriti o Waitangi as a constitutional document, and noted that treaties with Indigenous Peoples are useful mechanisms to guarantee Indigenous Peoples' rights, address past wrongs and prevent future violations.

This is layered upon a longstanding history of United Nations rapporteurs noting the connection between dishonouring Indigenous treaties, and enduring racial disparity in colonised nations. This includes the United Nations Study On Treaties, Agreements And Other Constructive Arrangements Between States And Indigenous Populations by Alfonso Martinez who noted:

"… with rare exceptions, the discourses of law itself, including that on treaties and treaty-making in the context of European expansion overseas and that of their successors in the territories conquered, are not impervious to anachronism and ex post facto reasoning, thus condoning discrimination of indigenous peoples rather than affording them justice and fair treatment." [13]

That is to say that treaties with Indigenous peoples are vulnerable to being removed from the context within which they were signed, and subjected to attempts by colonial governments to adapt them after they are signed. This report also supports previous rapporteur findings that the abrogation of treaties with Indigenous peoples is both a form of racial discrimination against Indigenous peoples as well as a precursor for continued racial discrimination against Indigenous peoples[14]. Indeed it is colonial discrimination against Indigenous peoples that necessitated te Tiriti o Waitangi in the first place, has driven Māori campaigns for Tiriti compliance, contextualised the 1975 Treaty of Waitangi Act, and has necessitated further watchdog mechanisms such as the United Nations Declaration for the Rights of Indigenous Peoples. The connection between poor outcomes for Indigenous peoples today and colonial Government violation of Indigenous rights is well evidenced and supported at International and national levels.

Proposed Objectives of the Bill

The bill's proposed objectives are as follows:

- create greater certainty and clarity to the meaning of the principles in legislation:
- promote a national conversation about the place of the principles in our constitutional arrangements:
- create a more robust and widely understood conception of New Zealand's constitutional arrangements, and each person's rights within them:
- build consensus about the Treaty/te Tiriti o Waitangi and our constitutional arrangements that will promote greater legitimacy and social cohesion.

[13] United Nations Economic and Social Council Final report of the study on treaties, agreements and other constructive arrangements between States and indigenous populations

[14] *United Nations Economic and Social Council Study of the problem of discrimination against indigenous populations*

There is a connective theme across all three objectives which infers there is a lack of clarity regarding te Tiriti o Waitangi, the principles, and our constitutional arrangements, which we would like to address directly in this paper.

We would like to preface our response to the rationale by noting that that if the problem identified by the bill's authors is a lack-of-understanding, the remedy should be educational in nature, not legislative reform. The fact that the authors have sought legislative reform as a remedy to inadequate understanding suggests that the underlying driver for this legislation is political rather than remedial.

We reiterate the broader position statement of the National Iwi Chair's Forum: that the principles are a dilution of the text of te Tiriti o Waitangi, and do not constitute Tiriti justice. We uphold the position that te Tiriti o Waitangi is the only valid treaty signed between Māori and the Crown in 1840. Accordingly, we stand by the findings of the Waitangi Tribunal that there is no moral obligation to find a middle ground between Hobson's English draft text and te Tiriti o Waitangi[15], a task for which the principles were initially developed.

This is not to say, however, that an inadequate understanding of the principles legitimises this bill. The principles have been discussed through the court system and the tribunal since 1975, defined and applied since 1987, are today taught through the New Zealand school system, and are broadly accessible to the public through Treaty workshops in all major cities and townships across Aotearoa. There are peer reviewed papers, books, reports and other online and printed resources. There is no shortage of information that speaks to the meaning of the principles in legislation. The fact that they are debated and applied differently depending on the context is not unique to the Treaty principles. Other fundamental constitutional principles such as the separation of powers, and human rights principles such as freedom of expression are debated within parliament or the judiciary, and applied in accordance with the context at hand.

In short, any lack of clarity towards the meaning of the principles in legislation ignores the considerable body of discourse regarding the treaty principles. We note that the ACT party and its leader have dis-characterised expert concerns regarding the treaty, the bill and its impacts in ways that are harmful, dismissive and inflammatory. Where translation experts have raised concerns about the mistranslation of te Tiriti o Waitangi that this bill is based upon, and senior legal experts have raised concerns about the constitutional implications of the bill, Minister Seymour has suggested that such concerns deny other people their opinion, suppress the democratic rights of New Zealanders, and makes broad, and unsubstantiated accusations of misinformation[16].Such commentary from a senior minister carrying a considerably privileged public platform curates a social climate of fear and hate. This hate is directed primarily towards Māori in general but also towards qualified experts who, under a functional democracy, should be valued assets to our legislative process. It is precisely the contribution of expertise and sound evidence which underpins rationale governance and social cohesion. These are not the grounds upon which to initiate a healthy, safe conversation about te Tiriti o Waitangi and our constitution. Quite the contrary, this has contributed to a climate of racialised hostility and distrust, particularly towards Māori. We echo the concerns of the Human Rights Commission that this bill will create uncertainty, unpredictability, and confusion, and give rise to even more

[15] *Waitangi Tribunal He Whakaputanga me te Tiriti: the Declaration and the Treaty (Wai 1040, 2014). p22*

[16] *David Seymour: My letter to the organisations who wrote the Prime Minister about Act's Treaty Bill 30 July 2024*

systemic racism. We further note that the Crown received official advice[17] preceding the introduction of the bill, describing it as "likely contentious" and advising that:

- The bill has the potential to come into conflict with the rights or interests of Māori under the Treaty because it is not derived from the spirit or the text of the Treaty.
- Developing a bill that purports to settle the Treaty principles without working with the Treaty partner could be seen as one partner (the Crown) attempting to define what the Treaty means and the obligations it creates.
- The bill will likely breach relevant binding international standards and obligations, such as the international covenant on Economic, Social and Cultural Rights.
- The bill removes an effective measure in our legal system to enforce the right of Māori to exercise self-determination, and cultural aspirations in the international standards and obligations of binding agreements.

We conclude that the proposed rationales for the bill are flawed and disingenuous in nature. The Crown was pre-advised that it would be contentious, thereby reducing social cohesion. The lack of clarity proposed in the bill's rationale is not due to a lack of opportunity to understand the principles, but a lack of willingness to engage with the expertise and evidence relating to te Tiriti o Waitangi. We further suggest that this bill is the wrong mechanism for achieving greater clarity and understanding, nor does it attempt to, rather it creates further confusion and discord in its rhetoric and shortcuts the process of understanding by replacing the principles altogether. We support and echo the position of Te Kāhui Tika Tangata, Human Rights Commission, that the most appropriate mechanisms for enhanced understanding, and achieving consensus on the constitutional status of te Tiriti o Waitangi and He Whakaputanga are Matike Mai and the Waitangi Tribunal, through the Constitutional Kaupapa Claim[18].

The attempt to replace the existing principles, while suggesting that there is still a lack of clarity about the benefits or harm of those principles, indicates a lack of good faith. The bill's authors are not seeking to understand, they are seeking to replace. This amounts to an egregious abuse of legislative power and disregard for basic democratic processes.

Racial Dimensions of the Proposed Principles

Proposed Principle 1

The Executive Government of New Zealand has full power to govern, and the Parliament of New Zealand has full power to make laws,—

(a) in the best interests of everyone; and
(b) in accordance with the rule of law and the maintenance of a free and democratic society.

We agree with the Waitangi Tribunal that in spite of the third article of te Tiriti o Waitangi which promises the same rights and privileges as British subjects, and in spite of sending our ancestors to fight for the Crown, across several generations and in two world wars to achieve equal rights of citizenship, it is clear that Māori have not received equal treatment at the hands of this Crown government.[19] The Waitangi Tribunal archives are replete with historical and contemporary examples where Māori have been unfairly discriminated against by the Crown, hence the importance of independent watch-dog instruments. There is simply no historical

[17] *Government confirms leaked document was a ministry Treaty Principles bill memo RNZ 19/1/2024*
[18] *Te Kāhui Tika Tangata New Zealand Human Rights Commission Treaty Principles Bill Submission*
[19] *Ngā Mātāpono p166*

basis upon which to accept that the Crown operates in everyone's best interests and even if this were demonstrable, this principles holds no basis in either Te Tiriti o Waitangi or Hobson's English text.

Further to the suggestion that this is done in accordance with the rule of law and maintenance of a free and democratic society, we again note that the most senior legal experts in the country have raised concerns about the bill, which were dismissed by Minister Seymour as elitist and undemocratic in nature.[20] We also note that the Waitangi Tribunal, as a judicial body of this Government, and the Human Rights Commission are essential components to New Zealand's democratic structure. Importantly, both of these bodies provide important functions within our democratic processes in limiting racist inequity resulting from racist institutional practices of the Crown. Both of these bodies have been ignored, dismissed and disrespected by senior members of this Government, including Minister Seymour[21] other senior ACT MPs[22] and Minister Jones[23]. These incidents underscore valid concerns for the ability of this Government in particular to operate in accordance with the rule of law and the maintenance of a free and democratic society.

Moreover, we note that this principle seeks to erase not only fetters placed upon the Crown through its own democratic checks and balances of the Human Rights Commission and the Waitangi Tribunal, but also that it seeks to erase the fetters placed upon kāwanatanga by rangatiratanga. We agree with the Waitangi Tribunal opinion that the assertion of unilateral authority of kāwanatanga, with no mention of rangatiratanga and the limitations that places upon rangatiratanga, contradicts rulings by both the tribunal and other New Zealand courts of law[24]. The erasure of rangatiratanga within this context is not only a standalone act of racism, as it is exercised against a right that is unique to Māori, but it will also undoubtedly exacerbate racial inequity for Māori, as the principle of rangatiratanga affords important protections for Māori against colonial harm.

We note that Minister Seymour has characterised the unique protections afforded to Māori through te Tiriti o Waitangi as unfair privilege and a form of inequity[25]. That language again inflames racial tensions across Aotearoa and directs hate and mistrust towards Māori. We strongly refute Minister Seymour's position that the unique rights of Māori affirmed in te Tiriti o Waitangi are in any way unjust. Indigenous rights stem not only from an inherent relationship to place, but also from a longstanding history of colonial abuse and denial of Indigenous humanity. Such a history necessitates unique protections both to protect Māori from new harm, as well as an opportunity and breathing space to address and heal from historical harm. The removal of unique protections would therefore expose Māori to new harm, whilst exposing them to ongoing harm.

This again casts doubt upon the capability of this Government to operate within the rule of law, and we note from the report Ki te Whaiao, Ki te Ao Mārama that this doubt is cast not only in relation to Māori, but also in relation to ethnic communities, who identified that their own experiences of racism in Aotearoa were inextricably connected to the fact that New

[20] *David Seymour: My letter to the organisations who wrote the Prime Minister about Act's Treaty Bill 30 July 2024*,
[21] *ibid*
[22] *ACT responds to Court of Appeal decision*
[23] *Māori lawyers call Shane Jones' Waitangi Tribunal comments 'inappropriate'*
[24] *Ngā Mātāpono p111*
[25] *'Corrosive obsession with a person's race': David Seymour on Māori Wards*

Zealand is a colonised nation[26]. Finally we note that the finding of the Waitangi Tribunal in the 2014 Paparahi o te Raki Claim, that Te Tiriti o Waitangi was not a treaty of cession[27] has given rise to important questions about the constitutional arrangements of this Government, particularly regarding limitations to Crown authority, however this is a different conversation entirely to that which is engendered by this bill, and one best suited to the Constitutional Kaupapa Claim and Matike Mai.

Proposed Principle 2

(1) The Crown recognises, and will respect and protect, the rights that hapū and iwi Māori had under the Treaty of Waitangi/te Tiriti o Waitangi at the time they signed it.

(2) However, if those rights differ from the rights of everyone, subclause (1) applies only if those rights are agreed in the settlement of a historical treaty claim under the Treaty of Waitangi Act 1975.

We support the broader National Iwi Chairs position that the Crown has no authority to define or determine Rangatiratanga, which is a collective and inalienable right. Indigenous rights are not sourced from treaty settlements, or even from treaties themselves. Indigenous rights are inherent, and formed from Indigenous primacy on this land and these waters. This principle erases the inherent nature of rangatiratanga and makes it subject to Crown processes, which is in itself an act of racialised subjugation. Iwi are not compelled to undertake a settlement process, and many have very valid reasons for not settling with the Crown. To make the recognition of Māori inherent rights dependent upon Māori participation in Crown processes amounts to an act of state coercion upon Māori, an objective act of racial inequity and undoubtedly one that will continue to produce and normalise racial inequity for Māori. To this end, we bring to the attention of the select committee the recent ruling of the International Court of Justice in June 2024 in relation to Israel and Palestine which found that in matters of human rights, domestic policy of colonial states cannot override the international human rights entitlements of Indigenous peoples, nor should Indigenous peoples be constrained to domestic instruments in the remediation of human rights abuses by the state.[28]

Furthermore, there are multitudes of Māori who have been culturally dispossessed by the historical actions of this Crown, and are yet to identify their iwi. Their participation in te Ao Māori may occur through urban settings, and they passionately identify as Māori, however they are still on their journey to heal the cultural and familial rifts created through Crown policies of displacement and assimilation. Making the inherent rights of these mokopuna conditional upon their connection to the iwi, compounds the already manifest injustice of being culturally dispossessed and displaced by the Crown in the first place.

Proposed Principle 3

(1) Everyone is equal before the law.

(2) Everyone is entitled, without discrimination, to—

(a) the equal protection and equal benefit of the law; and

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[26] *Ki te whaiao, ki te ao Mārama Community Engagement Report for developing a National Action Plan Against Racism*

[27] Waitangi Tribunal He Whakaputanga me te Tiriti: the Declaration and the Treaty (Wai 1040, 2014).

[28] International Court Of Justice Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem Summary of the Advisory Opinion of 19 July 2024
See also The World Court has ended the Oslo ruse

(b) the equal enjoyment of the same fundamental human rights.

We find this principle to be disingenuous in light of the well documented history of the Government policies and legislation which discriminate against Māori and other marginalised, racialised groups in Aotearoa – which forms the context for racialised inequity, and the basis for targeted policies and unique protections for racialised minorities. As outlined earlier in this paper, it is disingenuous and ahistorical to frame unique protections for racialised minorities and their inherent rights as a form of unfair privilege. While principles and values of equal treatment are important, they must be approached within the context of the history that has created inequity in the first instance, or else they will have the converse consequence of maintaining and perpetuating racialised inequality of outcomes. Further, when Europeans arrived, the inherent rights of Māori to the maintenance of our distinct legal and political systems remained. They did not magically appear due to European presence, nor did European presence extinguish such rights, although they did routinely violate them. Nevertheless, the rights of Māori which Minister Seymour routinely characterises as being unequal (and therefore unfair and undemocratic), are unique because they reflect the status of Māori as first peoples. Such rights are necessarily unique because they describe the difference between who was here first, and who arrived later, and the subsequent unique experience of having ones Indigenous rights consistently, and very unfairly, violated by colonial force.

We agree with the findings of the Waitangi Tribunal who noted that Māori served the Crown in two world wars seeking the equal treatment they had been promised through Te Tiriti. However, New Zealand's history clearly shows that Māori have still not been treated equally. We honour the words of Sir Bom Gillies who notes that "everything is worse now than when we went to war"[29]. These inequities have persisted into the 20th century, and data as well as reports from the United Nations Human Rights Council and Committee on the Elimination of Racial Discrimination continues to highlight the disadvantages and discrimination Māori experience today in areas such as health, justice, housing, child welfare, education, employment, and poverty[30]. This is contrasted by the immigration of British settlers who fled the inequity of their own homelands, arriving here on these shores with a vision of establishing a new just future for themselves, and then, as early settler politicians, replicated the inequitable systems of Britain but placed themselves in positions of privilege to reap the benefits, at the expense of Māori and then other racially marginalised populations.

Further, we point to the 1900 treaties that the New Zealand Crown Government is party to, with 202 political authorities. te Tiriti o Waitangi is the only treaty that the New Zealand Government handles with unilateral authority. We further note that there is a documented history of colonial Governments applying unilateral force to treaties with Indigenous peoples around the world[31], a phenomena that can be framed as "treaty racism", as it is a unique treatment of Indigenous treaties that is anti-Indigenous in nature.

The racialised, unequal treatment towards te Tiriti o Waitangi exemplified by this bill again underpins the inability of this Government to secure equal protection and equal benefits for Māori, and the importance of listening to and respecting important democratic institutions

[29] *Te Rau Aroha Museum, Waitangi Treaty Grounds (2024)*

[30] ibid

[31] United Nations Economic and Social Council Study of the problem of discrimination against indigenous populations and United Nations Economic and Social Council Final report of the study on treaties, agreements and other constructive arrangements between States and indigenous populations

such as the Waitangi Tribunal, the Human Rights Commission, and New Zealand's own Courts of Law.

Racial Dimensions Of The Referendum Process

The past decade has seen a rise in populist nationalism around the world, within right-wing conservative politics. Populist nationalism refers to a political ideology that combines populism—a focus on appealing to the ordinary people against perceived elites—with nationalism, which emphasizes promoting the interests and identity of a specific nation, often to the exclusion or detriment of racialised minorities. It typically portrays the nation as a homogenous mono-cultural ethnic identity based on nationhood and seeks to unify the population upon those ideals. Leaders or movements associated with populist nationalism often present themselves as defenders of "the people" against "others", whether the "others" be Indigenous peoples, ethnic minorities, or other groups. The weaponising of referendums against racialised minorities features within this sphere of populist nationalism.

Referendums are intended to enhance democracy, but only insofar as they assist to determine whether an issue is popular or not, a measure which should not apply to human rights. Te Tiriti o Waitangi is a recognised human rights document, and it protects the human rights of Māori which are threatened by colonialism. Human rights apply to every human, whether they are popular or not. Over and above supporting popularity, democracy also involves safeguarding equal rights for everyone in society and ensuring opportunities for personal and collective freedom are not restricted. However, minorities are especially at risk in referendums since these votes prioritize the majority's will. Rights that are unpopular with the majority, such as women's access to abortion, can be particularly vulnerable in this context. A functional democracy should fundamentally seek to shield minorities from the "tyranny of the majority" and uphold rights regardless of popular opinion. Therefore, matters of human rights should not be subjected to referendums. Human rights are enshrined for all peoples to retain, even when they are unpopular to others. Other rights that we now take for granted, such as a woman's right to work or inter-racial marriage, were also at times deeply unpopular and would not have passed a referendum in previous eras of humanity.

Simply put, human rights should not be up for the impulses of the majority – that is why they are *rights.*

Racial Dimensions of the Process (from the coalition agreement through to the referendum)

Research has shown that placing the rights of marginalised groups to a public vote leads to higher experiences of racial discrimination against that group and an increased burden upon that group to debate their existence, humanity and entitlement to human rights, resulting in higher levels of psychological distress and burnout for that minority[32]. In this instance, Māori are already experiencing this through the current process of this bill and the way it has been handled by the Government. Undoubtedly, the distress and energetic burden upon Māori will be exacerbated by a referendum. This holds particularly concerning implications on rangatahi

[32] *Ecker, S., Riggle, E. D. b., Rostosky, S. S., & Byrnes, J. M. (2019). Impact of the Australian marriage equality postal survey and debate on psychological distress among lesbian, gay, bisexual, transgender, intersex and queer/questioning people and allies. Australian Journal of Psychology, 71(3), 285–295.*

Māori for whom racist or divisive comments and actions made by peers, politicians, whanau, friends etc. could be a catalyst for mental distress and self-harm.

The distress resulting from racist discourse is not constrained to that generated by the public. Māori have endured consistent erasure of their identity and political status as Indigenous peoples and treaty partners, have been insulted, verbally abused, and have had their generations of efforts towards Tiriti justice on behalf of all Aotearoa erased, minimised and even condemned, off the back of inflammatory and misleading talking points by senior politicians including Minister Seymour.

Moreover, we note with concern that there have been ongoing acts of procedural discrimination from this Government towards Māori that we raise in the spirit of a national conversation about the meaning and importance of the treaty principles, including:

- The inclusion of this very harmful bill within the coalition agreement, which set in train the distressing process that has played out to date
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- The early introduction of the Treaty Principles Bill to parliament
- Timing the written submission period to be over the holidays, forcing people to choose between their right to enjoy the holiday period or their democratic right to organise a response to the bill
- Removal of treaty clauses from legislation

We draw to the select committee's attention that the Rome statute of the International Criminal Court, Article 8 describes "Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court" as a crime against humanity[33]. Our position is that the Treaty Principles bill meets this definition.

Discriminatory for Non-Māori Minorities

We further note that the logic and content of this bill holds impacts beyond that upon Māori communities. The dis-framing of unique protections as unfair privilege is a dangerous premise that could also be applied to diminish the rights of other marginalised communities such as migrant groups, ethnic communities, whānau whai kaha/whānau hauā and disabled communities, and rainbow communities including the distinctly oppressed irawhiti/transgender and intersex communities whom, like Māori, have endured a history of discrimination that remains baked into today's systems, requiring unique legislative and policy protections. Of course, for those that sit at the intersections of these communities (i.e those who are Māori, as well as disabled, irawhiti and lesbian) the discrimination and resulting distress and injustice of this bill and its consequences will be multiply compounded.

Conclusion

In conclusion, the Treaty Principles Bill not only presents significant challenges to addressing the entrenched structural racism rooted in New Zealand's colonial history, but also exacerbates

[33] *Rome Statute of the International Criminal Court*

racial tensions, compounds racial injustice, and further corrodes the relationship between Māori and the Crown. By weakening the political status and protective provisions of Te Tiriti o Waitangi, the bill risks perpetuating racial inequities and eroding the foundations of social cohesion and justice. As such, the bill represents a further stain upon New Zealand's democratic integrity and national character. Our paper highlights the need for a genuine commitment to upholding Indigenous rights, embracing expert input, and fostering an inclusive national dialogue grounded in good faith and historical context. We urge the select committee and the government to reject this bill in its entirety and prioritize collaborative pathways with Māori that honour the text of Te Tiriti o Waitangi, uphold human rights, and move towards a more equitable Aotearoa.