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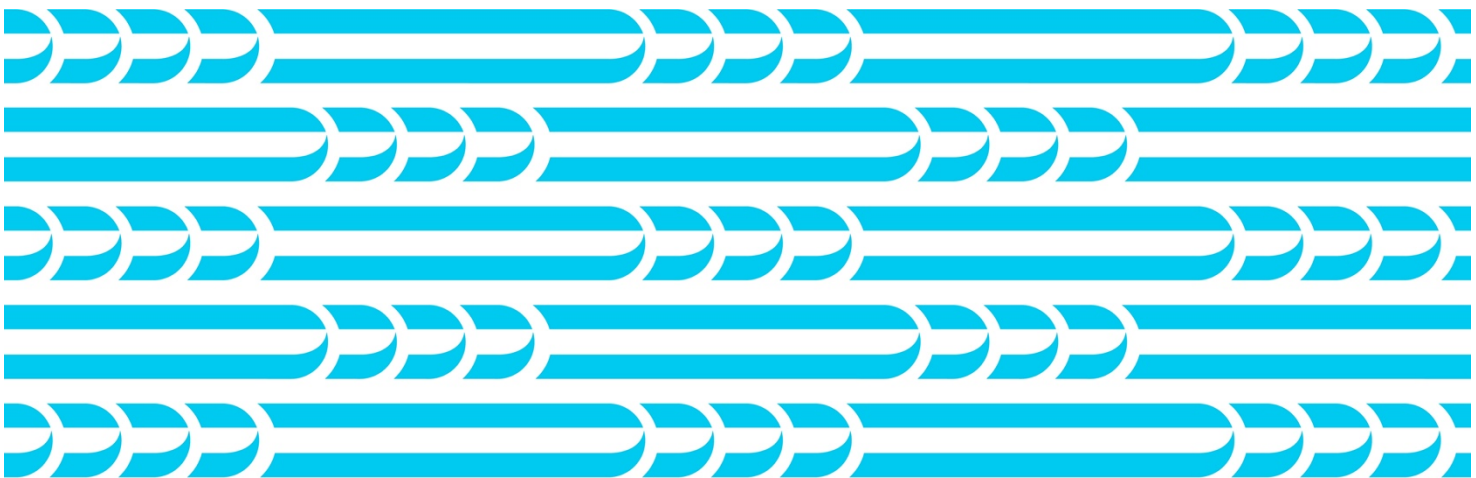
of Auckland



SUBMISSION IN RELATION TO AOTEAROA NEW ZEALAND'S TWENTY-THIRD AND TWENTY-FOURTH PERIODIC REVIEWS UNDER THE UN INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Te Puna Rangahau o te Wai Ariki | Aotearoa Centre for Indigenous Peoples and the Law

17 October 2025

1 INTRODUCTION

1.1 Te Puna Rangahau o te Wai Ariki | Aotearoa Centre for Indigenous Peoples and the Law (Te Wai Ariki) welcomes the opportunity to provide this submission to inform the UN Committee on the Elimination of Racial Discrimination's (CERD Committee) consideration of Aotearoa New Zealand's 23rd and 24th periodic reviews under the Convention on the Elimination of All forms of Racial Discrimination (ICERD).

1.2 Te Wai Ariki is based within the University of Auckland|Waipapa Taumata Rau Law School and is a nationally leading centre on law and policy in relation to Indigenous peoples' rights. Our work includes internationally published research, an array of courses, internships and scholarships, expert evidence submissions in legal proceedings, partnerships and collaborations with domestic and international organisations (including the UN) and scholars. We regularly contribute to public discourse in Aotearoa New Zealand and globally.

1.3 We agree with the shadow report submitted by Te Hunga Roia Māori|THRM (the New Zealand Law Society) and submit our report in tandem with THRM's, albeit focusing more on the need for constitutional transformation. We especially draw attention to THRM's analysis of specific legislation and policy of the current Coalition government, with which we agree, and do not repeat here.

1.4 We note that the combined 23rd and 24th New Zealand report is outdated and now obsolete as the entire legislative and policy direction of travel has changed under the current Coalition Government (NZ Coalition Government) – comprised of National, NZ First and the ACT party - elected in 2023 and currently in power.

1.5 The current NZ Coalition Government is fundamentally opposed to Māori rights, and intent on removing the protections of Māori rights in Aotearoa New Zealand. Indeed, the NZ Coalition Government is actively and profoundly aggravating New Zealand's constitutionally racist foundation in a way we have not seen for at least half a century.

1.6 Our primary submission is that constitutional transformation is required for Aotearoa New Zealand to address its fundamentally racist constitutional foundation, which enables – structurally – the breach of Māori rights when a government is in power that is opposed to such rights.

1.7 The existing Constitution is based on the erroneous assumption that the Crown (the state) acquired exclusive sovereignty over the territories of New Zealand, in breach of to the 1840 agreement between the Crown and some representatives of Māori nations, the Treaty of Waitangi|te Tiriti o Waitangi. On the contrary, te Tiriti guarantees Māori nations' ongoing tino rangatiratanga (sovereignty).

1.8 Without transformation, Parliament remains unchecked and continues to pass law, regulations and implement policy in breach of Indigenous peoples' rights, as outlined in detail in the THRM shadow report.

1.9 The CERD Committee has recommended constitutional change in previous reports on Aotearoa New Zealand, summarised below.

1.10 We also highlight particularly amendments to the Marine and Coastal Areas Act which are moving through Parliament now. The second reading took place in October 2025. In that legislation, the government is proposing to effectively extinguish Māori interests in the foreshore and seabed by overturning a Supreme Court decision to significantly restrict the ability of Māori claimants to satisfy legal tests to have those interests recognised. It is not dissimilar in impact to the Foreshore and Seabed Act, which was condemned by the CERD Committee in response to an urgent action and early warning claim in 2004.

1.11 Where appropriate, we have referred to CERD Committee jurisprudence, especially General Recommendation 23 on the rights of Indigenous peoples.

1.12 We also stress the significance of the UN Declaration on the Rights of Indigenous Peoples in interpreting the ICERD when Indigenous peoples' rights are scrutinised, as explained by the CERD Committee in paragraph 14 of its 2017 assessment of New Zealand's compliance with ICERD (CERD Committee New Zealand Report 2017).

1.13 We also highlight successive governments' failure to comply with CERD Committee recommendations to Aotearoa New Zealand.

2 CONSTITUTIONAL FRAMEWORK

2.1 Here we explain New Zealand's Constitution with attention to the ways in which it fundamentally breaches the ICERD and/or does not protect Māori individuals and Māori nations from discrimination. We also outline prior CERD Committee findings and recommendations and Aotearoa New Zealand's failure to give effect to those recommendations.

Te Tiriti o Waitangi|the Treaty of Waitangi

2.2 As the founding constitution of Aotearoa New Zealand, Te Tiriti is an important protection of Māori rights, at least in theory. Te Tiriti both affirms and preserves Māori tino rangatiratanga (sovereignty).[1]

2.3 The guarantee of tino rangatiratanga in te Tiriti is consistent with Aotearoa New Zealand's obligations under the UN Declaration on the Rights of Indigenous Peoples, specifically articles 3, 4 and 5, and common articles 1 of the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights.

2.4 The Constitution is based on the assumption that the British Crown – now the New Zealand Crown – legally acquired sovereignty over the territories. However, given that Māori nations did not consent to that under te Tiriti, the Crown's assumption of sovereignty is illegal (under both British and international law at the time).

2.5 Further, Māori tino rangatiratanga is not provided for in New Zealand's Constitution or law.

2.6 Te Tiriti is not legally enforceable unless incorporated into legislation by Parliament.

2.7 The few references to te Tiriti in legislation are being removed by the current government.

2.8 Māori nations continue to advocate for constitutional change.

2.9 The Matike Mai Report of the National Iwi Chairs' Forum|the National Tribal Nations Chairs' Forum of 2015 is the result of 252 consultations within tribal nations, including 70 workshops with Māori youth. The Matike Mai Report makes strong recommendations for constitutional change to recognise spaces for Māori to practice and realise their tino rangatiratanga. It has been ignored by successive New Zealand governments.

[1] Art 2.

2.10 The previous Government appointed Working Group on the Declaration on the Rights of Indigenous Peoples also recommended – in its report titled *He Puapua* – fundamental constitutional transformation to make provision for Māori tribal self-determination. It has been ignored by successive New Zealand governments.

Human Rights

2.11 New Zealand's primary human rights legislation, the Bill of Rights Act 1993 (BORA) is expressly subject to any other legislation. This means that Parliament can freely pass legislation in breach of the BORA, and does so on a number of occasions (as outlined in the THRM Shadow Report).

2.12 Courts do not have the authority to overturn legislation in breach of human rights. In other words, Parliament is not constrained by human rights. We set out some specific examples below that illustrate Parliament's use of its legislative override of human rights in breach of Māori rights under te Tiriti of Waitangi, the ICERD and the BORA.

2.13 Additionally, human rights statutes within Aotearoa New Zealand's legal system do not have special constitutional protection and can be amended by only simple Parliamentary majority.

2.14 The only protections for human rights in Aotearoa New Zealand are procedural. For example, the Attorney General is required to submit BORA reports to Parliament when they isolate a breach of the BORA in "bills", meaning draft law. However, there is no legal obligation on Parliament to comply with those BORA reports. Parliament at times ignores those reports and continues on to pass BORA-breaching law.

2.15 Further, opportunities for public, including Māori, input into legislation has regularly been truncated, effectively denied or peoples' voices have been ignored when in opposition to the Government's objectives. This is because there is no requirement on Parliament to take into account the public's views. There are many examples where public objection to a law has been resounding and the Government has still gone on to pass the law.

CERD Committee recommendations with respect to Aotearoa New Zealand's Constitution

2.16 To paraphrase the CERD Committee's recommendations to Aotearoa New Zealand in 2017, the Committee expressed its concern with the Aotearoa New Zealand

Constitution and noted Māori-led initiatives proposing models for constitutional transformation. Further, it noted:

> "that little progress has been made during the reporting period in securing indigenous rights to self-determination under the Treaty or the power-sharing arrangement between hapu and the State party required by the Treaty."

2.17 In paragraph 13, the Committee recommended timetabling a debate on the role of the Treaty of Waitangi in its constitutional arrangements, to ensure public policy and legislative initiatives comply with the participation principle in the Treaty and that Aotearoa New Zealand give assurance that it recognises the "fundamental right of self-determination of Māori and the obligation to establish shared governance with hapū".

2.18 In paragraph 14, the Committee notes that its General Recommendation 23 and the United Nations Declaration on the Rights of Indigenous Peoples "make unequivocal the requirement that any decision affecting the rights and interests of indigenous peoples must be subject to their free, prior and informed consent".

New Zealand's Response

2.19 As is also the case with the *Matiki Mai Report* and *He Puapua*, the New Zealand Government has ignored the CERD Committee's 2017 recommendations.

2.20 In its Report for this session, the former NZ Government stated,

> "New Zealand is not currently progressing constitutional transformation as envisaged by the Matike Mai report. However, New Zealand domestic law and constitutional settings continue to evolve in relation to te Tiriti. This is an incremental exercise rather than a single step and the notion of ongoing constitutional dialogue remains a key part of New Zealand's civic identity."

2.21 "Incremental constitutional change" is a euphemism for "not transformation" as required to realise Māori tribal nation self-determination with spaces where nations can practice their sovereignty (as do many Indigenous peoples in other states such as the United States of America, Mexico and Canada).

2.22 Indeed, the current NZ Coalition Government has doubled down on its rejection of te Tiriti o Waitangi for, by example, passing at first reading in Parliament, the Treaty Principles Bill (more detail in the THRM Shadow Report).

3 ONGOING BREACHES OF ICERD OBLIGATIONS

3.1 The NZ Coalition Government is fostering a current political climate of hostility towards Māori, their human rights and Indigenous peoples' rights.

3.2 This climate has parallels with the New Zealand government's exploitation of "racial tensions for their own political advantage" in 2004 and 2005, which was the subject of a CERD Committee Urgent Action.[2]

3.3 Now, as then, the NZ Coalition Government is pushing a false narrative that recognition of Māori rights amounts to racial discrimination against non-Māori, ignoring the impact of land taking and decades of systemic injustice and discrimination towards Māori in breach of Māori rights as Indigenous peoples (which the CERD Committee has described as permanent rights i.e., not "special measures", which are only temporary in nature).

3.4 For example, the current Attorney General stated in 2021 that "separate systems of governance" in recognition of Māori rights under te Tiriti would be divisive, calling such policy "racist separation and segregation".[3]

3.5 Of especial concern to the CERD Committee: the Deputy Prime Minister responded vehemently and contrary to protocol to the UN Special Rapporteur on the rights of Indigenous peoples' allegation letter outlining reports from Māori that the NZ Coalition Government is in breach of Indigenous peoples' rights. He described the letter as an "affront to New Zealand's sovereignty", "presumptive, condescending, and wholly misplaced", and "offensive". He stated,[4]

> "We neither require nor welcome external lectures on our governance, particularly from bodies whose understanding of our nuanced historical, cultural, and constitutional context is so clearly deficient."

[2] Committee on the Elimination of Racial Discrimination Decision 1(66): New Zealand Foreshore and Seabed Act 2004 UN Doc CERD/C/66/NZL/Dec.1 (11 March 2005) at [3].
[3] "Government plans may lead to Māori systems for education, justice - Collins" RNZ (online ed, 1 May 2021).
[4] See: "David Seymour criticises UN official over indigenous rights letter" (13 July 2025): https://www.nzherald.co.nz/nz/politics/david-seymour-criticises-un-official-over-indigenous-rights-letter/6GD7D4334RFSVBXCQDT4U4VWJ4/.

3.6 The Minister of Justice approved the Deputy Prime Minister's letter before it was sent.[5]

3.7 The Prime Minister said he "fully agreed" with the Deputy Prime Minister's response and that the Special Rapporteur's letter as "a total waste of time", and "total bunkum".[6]

3.8 The NZ Coalition Government has passed many specific and varied racially discriminatory laws since its election in October 2023. These laws include those described and critiqued in detail in the THRM Shadow Report, some of which are also canvassed in brief below. They are in breach of Aotearoa New Zealand's CERD obligations to not engage in racial discrimination,[7] to guarantee Māori the full and equal enjoyment of human rights and fundamental freedoms and to respect the right to free, prior and informed consent.[8]

4 SPECIFIC EXAMPLES OF RACIALLY DISCRIMINATORY LAWS

4.1 We express again our support for the description of laws inconsistent with ICERD in the Shadow Report from THRM (the Māori Law Society). To that we only add a comment on the amendments to the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA 2011) currently be considered by Parliament, and the Electoral Act Amendment Bill, and some brief notes on some of the laws and bills outlined by THRM.

Marine and Coastal Area (Takutai Moana) Act

4.2 In 2004 the CERD – under its urgent action and early warning procedure – found New Zealand to be acting inconsistently with the ICERD in passing what was then called the Foreshore and Seabed Act 2004. In that Act, contrary to a judgment from the New Zealand Court of Appeal, Māori extant title to the foreshore and seabed was extinguished.

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[5] "Another Cabinet Minister Caught Up in United Nations Letter Writing Saga" (RNZ, 16 August 2025) https://www.rnz.co.nz/news/political/570177/another-cabinet-minister-caught-up-in-united-nations-letter-writing-saga.

[6] "Christopher Luxon tells off David Seymour over letter to United Nations" (RNZ, 15 July 2025): https://www.rnz.co.nz/news/political/566941/christopher-luxon-tells-off-david-seymour-over-letter-to-united-nations.

[7] Art 2(1)(a).

[8] Art 2(2).

4.3 The Foreshore and Seabed Act 2004 was eventually repealed and replaced with the MACA 2011, which provided an avenue for tribes to prove they had rights to the forehore and seabed, albeit not amounting to title. Public access was guaranteed under that Act.

4.4 Various tribes have engaged with MACA 2011 to seek customary marine title and rights.

4.5 In mid-October this year, Parliament passed at second reading an amendment to MACA 2011 to – again legislatively overring a court ruling, this time by New Zealand's highest court, the Supreme Court – to effectively extinguish tribal rights to the foreshore and seabed. The amendments would make it extremely difficult for tribes to prove they meet the tests to establish rights to the foreshore and seabed.

4.6 Of especial concern, the amendments have retrospective effect. This means that they nullify recognition of some tribes foreshore and seabed rights already recognised and determined in the courts.

4.7 The proposed amendments to MACA 2011 contravene the rule of law in overturning the decision of the Supreme Court, discriminate against Māori by not recognising their rights to their traditional lands, territories and resources while recognising the titles of others in this area.

The Electoral Amendment Bill 2025

4.8 The Electoral Amendment Bill, in short, changes Aotearoa New Zealand law that allows registration to vote up until and including voting day. The Amendment requires peoples to register 13 days before voting day. The effects of that include biasing the right-leaning parties and discriminating against Māori, Pasifika, Asian and Youth voters, who are more likely to vote close to or on election day. This proposed draft law is a cynical and rights-offensive step in the political interests of the current NZ Coalition Government. It is an abuse of power and contrary to the rule of law.[9]

4.9 Under the Bill, prisoner voting rights will again be restricted. The impact will fall more on Māori given "[t]he well-traversed, underlying issues of over-policing, overcharging and over-convicting of Māori have led to an overrepresentation of Māori in prison."[10]

[9] Claire Charters "Planned Voting Changes Could be a Civil Rights Breach" (9 August 2025) https://www.auckland.ac.nz/en/news/2025/08/09/Planned-voting-changes-could-be-civic-rights-breach.html.

[10] Carwyn Jones "Reinstating a blanket ban on prisoners voting is retrograde and harmful" Spinoff (online ed, 30 April 2025).

The Waitangi Tribunal has commented on the racial implications of blanket voting bans for prisoners.[11]

Other rights-breaching bills and legislation

4.10 Comments on other legislation, in addition to that from THRM, are set out below.

4.11 The clearest example of legislatively pushing a false and racially discriminatory narrative in contravention of the ICERD is the failed **Treaty Principles Bill**. While the Bill ostensibly sought to legislatively define the principles of the Treaty of Waitangi to promote cohesion and a national constitutional conversation, the Bill is best understood as an attempt to illicitly, illegitimately and factitiously rewrite te Tiriti.

4.12 The Waitangi Tribunal found the Bill breached te Tiriti, and that the Bill disingenuously distorted te Tiriti with a novel interpretation, meaning its passage would reduce the constitutional status of te Tiriti, limit Māori rights and Crown obligations, and undermine social cohesion.[12]

4.13 The government's actions around the Bill have breached both art 2(1)(a) and art 2(2) of the CERD.

Equal Justice

4.14 Aotearoa New Zealand is obligated to eliminate racial discrimination in the enjoyment of rights to equal treatment before justice institutions.[13] Contrary to this obligation, the government has passed the following legislation.

4.14.1 The **Corrections Amendment Act 2024** would have compelled the agency to improve outcomes for Māori in the corrections system. The NZ Coalition Government deleted Te Tiriti clauses in the Bill. This has removed a key response to the overrepresentation of Māori in the criminal justice system.

4.14.2 The **Gangs Act 2024** bans gang insignia and gang congregation. This Act disproportionately impacts Māori, as three-quarters of gang membership are estimated to be Māori, and Māori family of gangs make up around 5% of the

[11] Waitangi Tribunal He Aha I Pērā Ai? - The Māori Prisoners' Voting Report (Wai 2870, 2020).
[12] Te Rōpū Whakamana i te Tiriti o Waitangi | Waitangi Tribunal Ngā Mātāpono: the Principles, Part I (Wai 3300, 2024) at 133–138.
[13] Art 5(a).

Māori population.[14] Despite this, the Act does not provide a response to gang harm.

4.14.3 The Legal Services Amendment Act 2024 (LSA) removes funding for cultural reports. These reports provide background to offenders charged of crimes that can inform judicial sentencing decisions.

4.14.4 The cultural reports have been significant in ensuring relevant cultural and personal characteristics of offenders are considered as they go through the criminal justice system. This LSA will likely exacerbate the extant overrepresentation of Māori in the criminal justice system, as a higher proportion of Māori offenders receive a legally aided cultural report, compared with non Māori.[15] A Cabinet paper acknowledged this funding change may exacerbate the extant overrepresentation of Māori in the criminal justice system.[16]

4.14.5 The Sentencing (Reinstating Three Strikes) Amendment Act 2024 brings back a sentencing policy that was originally revoked largely for its racially discriminatory effects. This Act disproportionately impacts Māori, resulting in unequal rights, with Māori being more likely to be sentenced disproportionately than non-Māori.[17]

4.14.6 The Sentencing Amendment Act 2024 caps prison sentence reductions for mitigating factors at 40% of the sentence unless manifestly unjust. The Ministry of Justice has acknowledged Māori will be disproportionately affected by these sentencing policies.[18] In particular, the addition of 1,350

[14] Ministry of Justice Regulatory Impact Statement: Responding to Gang Harms (14 February 2024) at [9].
[15] Ministry of Justice Departmental Disclosure Statement: Legal Services Amendment Bill (19 January 2024) at [3.1].
[16] Marc Daalder "Goldsmith says nixing cultural reports likely to put more Māori in prison" Newsroom (online ed, 28 February 2024).
[17] Ministry of Justice Regulatory Impact Statement: Reinstating three strikes sentencing law (11 April 2024) at [73].
[18] Ministry of Justice Departmental Disclosure Statement: Sentencing (Reform) Amendment Bill (September 2024) at [3.2].

people to the current prison population [19] is likely to continue disproportionate Māori incarceration.[20]

Political Rights

4.15 Aotearoa New Zealand is obligated to eliminate racial discrimination in the enjoyment of political rights, especially participation in public affairs.[21] Contrary to this obligation, the government has passed the following legislation.

4.15.1 The **Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024** requires the reinstatement of referendums on the establishment of Māori wards or constituencies at the local government level. This makes it much harder for Māori wards to be established as they subject them to majoritarian will in a context where Māori make up less than 20% of the population. The impact has been the disestablishment of Māori wards and constituencies across the country. This Act regresses Aotearoa New Zealand's progress of art 5 of the CERD,[22] and is racially discriminatory as it imposes a different, higher threshold for establishing Māori wards as compared to others.[23]

4.15.2 The **Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023** replaces reference to "te Tiriti" with "Treaty" and largely limits consultation with Māori to only recognized "iwi authorities".

4.15.3 The **Fast-track Approvals Act 2024** accelerates the process for granting resource consents for development activities. In so doing, it does not adequately provide for Māori input in the granting of resource consents. The

[19] Ministry of Justice Regulatory Impact Statement: Amendments to the Sentencing Act 2002 (30 May 2024) at [255].
[20] Kris Gledhill "Dogma or data? Why sentencing reforms in NZ will annoy judges and clog the courts" The Conversation (online ed, New Zealand, 23 September 2024).
[21] Art 5(c).
[22] Department of Internal Affairs Departmental Disclosure Statement: Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill (15 May 2024) at [3.1]; see Committee on the Elimination of Racial Discrimination Combined twenty-third and twenty-fourth periodic reports submitted by New Zealand under article 9 of the Convention, due in 2021 UN Doc CERD/C/NZL/23-24 (15 February 2021) at [381].
[23] Te Kāhui Tika Tangata | Human Rights Commission "Proposed Legislation on Māori wards discriminatory, says Commission" (6 June 2024) <https://tikatangata.org.nz/our-work/proposed-legislation-on-maori-wards-discriminatory-says-commission>.

2024 Act poses substantial threat to Māori participation in decision-making. There has been widespread opposition on the grounds that it will result in environmental hard and breaches of Māori nations' right to tino rangatiratanga and self-determination.

4.15.4 The Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Act 2024 discriminatorily bypasses the central consultation and veto rights of Māori under the Marine and Coastal Area (Takutai Moana) Act 2011.[24]

4.15.5 The Resource Management (Freshwater and Other Matters) Amendment Act 2024 loosens environmental restrictions relating to water and water-adjacent land. This process leading to this Act breaches tino rangatiratanga and the right to self-determination as there was little consultation with Māori.

4.15.6 In parallel, the Local Government (Water Services Preliminary Arrangements) Act 2024 has also reduced Māori participation in water governance by removing te Mana o te Wai (the value and authority of water) as a mandatory consideration in the decision-making of Aotearoa New Zealand's water services regulator, Taumata Arowai.

Equal Rights in Employment and Work

4.16 Aotearoa New Zealand is obliged to eliminate racial discrimination in the enjoyment of rights to work, to just and favourable conditions of work, to equal pay for equal work, and to just and favourable remuneration.[25] Contrary to these obligations, the government has passed the following legislation.

4.16.1 The Social Security (Benefits Adjustment) and Income Tax (Minimum Family Tax Credit) Amendment Act 2024 indexes social benefits with inflation. Māori are overrepresented within the main benefit population and so will be disproportionately affected by changing benefit settings. The Ministry of Justice has acknowledged that in the long-term, with benefits likely to

[24] Ministry for the Environment and Minister for Primary Industries Regulatory Impact Statement: Extending the duration of existing amrine farm consents (4 April 2024) at 29.
[25] Art 5(e)(i).

increase at a lower rate, Māori are likely to be disadvantaged in comparison to status quo settings.[26]

Housing

4.17 Aotearoa New Zealand is obligated to eliminate racial discrimination in the enjoyment of rights to housing.[27] Contrary to this obligation, the NZ Coalition Government has passed the following legislation.

4.17.1 The Residential Tenancies Amendment Act 2024 provides for easier tenancy termination in a way that is likely to disproportionately affect Māori. This is because Māori are more likely to live in rented accommodation, have a lower overall median income, and to experience discrimination than the general population.[28]

4.17.2 The Waitangi Tribunal has investigated Māori homelessness, finding that the Government failed to consult with Māori concerning the definition of homelessness, failed to collect data on homelessness, inequitably provided inadequate housing for Māori, failed to implement or monitor progress with its own housing policy, and failed to protect the particularly vulnerable group of young Māori.[29] The government has not addressed the Tribunal's findings in its 2021 report.

4.17.3 The Taxation (Budget Measures) Act 2024 discriminatorily cuts funding for services to support Māori employment and housing to fund tax cuts.

Health

4.18 The CERD Committee has expressed concern that

> "Maori and Pasifika have poorer health outcomes than other groups, including with respect to life expectancy, mortality and disability. It notes with concern reports that despite the existence of the Maori health strategy, entitled He Korowai Oranga, and the Healthy Families NZ initiative, Maori needs are not adequately integrated in health

[26] Ministry of Social Development Supplementary Analysis Report: Indexing Main Benefits to Inflation (18 January 2024) at [25]–[27].
[27] Art 5(e)(iii).
[28] Ministry of Housing and Urban Development | Te Tūāpapa Kura Kāinga Departmental Disclosure Statement: Residential Tenancies Amendment Bill (1 May 2024) at [3.2].
[29] Waitangi Tribunal Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness (Wai 2750, 2024) at 192–193.

policies or in the administration of health services, and that Maori encounter significant barriers in accessing basic health services on an equal footing with other New Zealanders. The Committee is concerned by reports that structural biases exist in the health care system, that Maori providers are marginalized and their input into policy decisions is discounted and that a negative differential compensation for Maori providers is maintained (arts. 2 and 5)."

It recommended that New Zealand:

> "robustly increase the provision and accessibility of primary health - care services to Maori and Pasifika communities and ensure they are equally represented and empowered in decision-making processes concerning health and disability policy planning and in service delivery and evaluation."

4.19 Aotearoa New Zealand is obligated to eliminate racial discrimination in the enjoyment of rights to public health.[30] Contrary to this obligation, the government has passed the following legislation.

4.19.1 The Pae Ora (Disestablishment of Māori Health Authority) Amendment Act 2024 disestablished the Māori Health Authority, which was created in 2022 as a body to oversee health systems, with a particular focus on a Māori framework to respond to disparities in Māori health outcomes. The removal of it was in breach of tino rangatiratanga and the right to self-determination and contrary to extensive available evidence concerning both Māori health disparities and the importance of a Māori-led health system.

4.19.2 Health outcomes for Māori continue to be disproportionately poor in comparison to other population groups, for example with Māori life expectancy falling approximately 7 years below non-Māori life expectancy.[31] A comparable health institution or structure has not replaced the Māori Health Authority, despite Government assurances to the contrary.[32] The government justifies this saying that Māori Health Authority was replaced with a new vision and plan for Māori health. However, to date, such a vision and plan have not been developed.

[30] Art 5(e)(iv).
[31] Ministry of Health Tatau Kahukura: Māori Health Chart Book 2024 (4th ed, Te Kāwanatanga o Aotearoa | New Zealand Government, Wellington, 2024) at 27.
[32] (27 Feb 2024) 773 NZPD 1532.

4.19.3 The Waitangi Tribunal [33] has investigated Māori health inequities and provided recommendations for the government to address them, particularly in the areas of hospital services, health services and outcomes, COVID-19 response and the disestablishment of the Māori Health Authority.[34]

4.19.4 The Smokefree Environments and Regulated Products Amendment Act 2024 repeals many restrictions on retail of nicotine- and tobacco-based products. Māori are disproportionately vulnerable to this Act, as Māori have the highest daily smoking rate of any ethnic group at 17.1%, compared to 6.8% of the total population.[35]

4.19.5 The Therapeutic Products Act Repeal Act 2024 does not provide for protection of rongoā Māori,[36] nor tino rangatiratanga over the regulation and governance of rongoā Māori.

4.20 Education and Training

4.20.1 Aotearoa New Zealand is obliged to eliminate racial discrimination in the enjoyment of rights to education and training.[37] Contrary to this obligation, the government has passed the following legislation.

4.20.2 The Education and Training Amendment Act 2024 provides for charter schools but does not formally require those schools to ensure that their plans, policies and curricula reflect local tikanga Māori, mātauranga Māori and te ao Māori, or to take reasonable steps to instruct in tikanga Māori and te reo Māori.

4.20.3 The Ministry of Education changed its school transport assistance policy to be only available to young people attending the state or state-integrated school

[33] A permanent commission of inquiry into the Crown's breaches of its obligations under te Tiriti. The Tribunal's recommendations are generally not binding on the government.
[34] Waitangi Tribunal The Napier Hospital and Health Services Report (Wai 692, 2001); Waitangi Tribunal Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry (Wai 2575, 2019); Waitangi Tribunal Haumaru: The COVID-19 Priority Report (Wai 2575, 2023); Waitangi Tribunal Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report, Part 1 (Wai 2575, 2024).
[35] Ministry of Health Departmental Disclosure Statement: Smokefree Environments and Regulated Products Amendment Bill (February 2024) at [3.2].
[36] Māori health knowledges and practices.
[37] Art 5(e)(v).

closest to their home.[38] This discriminates against Māori children attending Māori immersion schools.

4.20.4 The government has proposed removing affirmative action provisions from medical schools in the **Education and Training (Equal Treatment) Amendment Bill**, contrary to the ICERD.

4.21 Remedies against Racial Discrimination

4.21.1 Aotearoa New Zealand is obligated to assure effective protection and remedies against racial discrimination which violates human rights and fundamental freedoms contrary to the ICERD.[39]

4.21.2 For Māori, the Waitangi Tribunal is one of the most crucial institutions available for the CERD-mandated protection and redress. For example, over the past year and a half, the Tribunal has conducted urgent inquiries into the government's proposed legislative and policy changes

4.21.3 The United Nations has repeatedly and in different fora recommended that the Tribunal be strengthened in terms of its membership, resourcing and powers. However, the NZ Coalition Government has exhibited a contrary intention, with its consistent criticism of the Tribunal as having "gone off script, pursuing ideological fantasy", needing "a statutory haircut"[40] and needing "to rein in the activist Tribunal".[41] This attitude towards the Tribunal is concerning for being illustrative of its dismissive approach to Tiriti obligations into which the Tribunal inquires.

5 RECOMMENDATIONS IN CONCLUSION

5.1 Constitutional transformation is required to legally prevent Aotearoa New Zealand governments from breaching Māori rights under the ICERD, te Tiriti o Waitangi and other international and domestic human rights instruments.

[38] Jack Riddell "Desperate Hawke's Bay dad teaches kids to hitchhike 45km due to school bus cut" Hawke's Bay Today (online ed, 12 February 2025).
[39] Art 6.
[40] Jamie Ensor "Waitangi Tribunal review to kick off this year, Government confirms" New Zealand Herald (online ed, 9 May 2025).
[41] David Seymour "ACT welcomes review to rein in activist Waitangi Tribunal" ACT <www.act.org.nz/act_welcomes_review_to_rein_in_activist_waitangi_tribunal>.

5.2 Te Wai Ariki is deeply concerned about the NZ Coalition Government's exacerbation of racial discrimination towards Māori through the unconstitutional and mass passage of harmful legislation. These acts are in contravention of Aotearoa New Zealand's international obligations under the ICERD.

5.3 There are insufficient protections of human rights and te Tiriti within the current constitutional framework of Aotearoa New Zealand. Te Tiriti, Indigenous peoples' rights and human rights are vulnerable to the political climate of the day..

5.4 Constitutional transformation in Aotearoa New Zealand must be centred on te Tiriti (and He Whakaputanga) in recognition of their status as the founding constitutional documents of this nation. Such constitutional transformation would also result in greater compliance with recommendations from UN human rights treaty bodies, special procedures and other international mechanisms designed to monitor Aotearoa New Zealand's human rights record.