Mandate of the Special Rapporteur on the rights of Indigenous Peoples

Ref.: AL NZL 2/2025
(Please use this reference in your reply)

12 June 2025

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of Indigenous Peoples, pursuant to Human Rights Council resolution 51/16.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **concerning an ongoing trend of a persistent erosion of the rights of Maori Indigenous Peoples rights through regressive legislations and policies that would breach New Zealand's international obligations. The alleged worrying actions by the Government include: the proposed Regulatory Standards Bill, which excludes Māori legal traditions and undermines Treaty of Waitangi obligations; the enactment of the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Settlement Act, which overrode a Supreme Court ruling and extinguished a land claim without free, prior, and informed consent; and the Nelson Tenths case, where the Government appealed a High Court ruling in favor of Māori land return and compensation**.

The potential violation of Indigenous Maori rights was the subject of a previous communication sent by the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the rights of Indigenous Peoples on 28 June 2024 (see AL NZL 1/2024). I appreciate the reply received from your Excellency's Government on 22 October 2024. However, I would like to raise the following issues in the light of the recent developments.

According to the information received:

Since taking office, the current Government has reportedly undertaken a series of measures aimed at curtailing the rights of Indigenous Peoples, particularly those of the Māori, and diminishing the State's obligations under the Treaty of Waitangi. These actions are said to stem from the terms of the coalition agreement, which enabled the formation of the government on the condition, put forward by one of its partners, that legislation be introduced to the effect of weakening the Treaty's provisions. For example, in addition to the disbanding of the Māori Health Authority, the agreement includes a clause asserting that the Coalition Government does not recognize the United Nations Declaration on the Rights of Indigenous Peoples as having any binding legal effect in New Zealand.

Regulatory Standards Bill

In May 2025, the Government proposed a Regulatory Standards Bill (2024/2025), currently under consideration by the Parliament, which introduces a significant transformation in how legislation is evaluated and validated. It presents a framework that prioritizes principles rooted in Western traditions, which are not derived from the Treaty of Waitangi (Te Tiriti o Waitangi) or the

pluralistic legal traditions of New Zealand, particularly the customary practices and protocols (tikanga) of the Māori. Instead, the Bill excludes Indigenous jurisprudence from the legal framework that will guide future legislative interpretation, judicial review, and policy development. The Waitangi Tribunal, recently found that that the Government had breached its obligations under Te Tiriti o Waitangi by failing to consult Māori and conduct a Treaty Impact Assessment during the Bill's development.[1] This breach is central to the Bill's legitimacy, as it reflects a unilateral approach that disregards the principles of partnership and co-governance, foundational to the country's constitutional framework.

The Bill represents a significant departure from established domestic legal norms. It disregards the Supreme Court's recognition[2] that tikanga Māori is part of New Zealand's common law. By omitting tikanga from its evaluative criteria, the Bill undermines the legal recognition of Māori customs and values. If enacted, it would override existing legislation that operationalizes Treaty obligations, including laws related to Māori land, fisheries, language, and environmental stewardship. This shift would not only limit the state's ability to uphold these obligations but also create legal grounds to challenge and potentially repeal laws that embody collective or Indigenous Peoples' values. The Bill's advancement through Parliament under urgency, despite widespread public opposition and expert critique, signals a constitutional concern and a regression in the country's commitment to bicultural governance.

It is alleged that the Bill constitutes a direct breach of Te Tiriti o Waitangi. As mentioned, the Waitangi Tribunal confirmed that the Government's actions violated articles II and III of Te Tiriti, which guarantee Māori self-determination (tino rangatiratanga), partnership, and active protection. The absence of consultation and the exclusion of tikanga Māori from the Bill's framework are not merely procedural oversights. The Bill also has no Treaty Impact Statement, a safeguard that should be standard for legislation affecting Māori interests. These omissions constitute a failure to uphold the constitutional expectation that Māori are co-governors in decisions that affect them.

In addition to breaching Te Tiriti, it is reported that the Bill undermines the New Zealand Bill of Rights Act 1990 (NZBORA). It departs from Section 19, which guarantees freedom from discrimination, by threatening the validity of Māori-specific laws such as the Te Ture Whenua Māori Act 1993 and the Māori Language Act 2016. These laws are designed to address structural inequalities and affirm Māori rights, but the Bill's imposed framework fails to recognize Māori as the people of the land (tangata whenua), thereby neutralizing these legal protections. Furthermore, the Bill also contravenes Section 27 of NZBORA, which ensures the right to justice, by restricting judicial discretion and narrowing the scope of legal interpretation, by requiring all laws to conform to externally imposed principles of liberty and property. This obstructs Māori access to culturally responsive legal redress and undermines procedural fairness.

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1 WAI 3300 report from May 2025.
2 Ellis v R (2022).

The Bill's impact on Māori legal and political rights is profound. It threatens to nullify or erode statutes grounded in Māori rights, including those affirming collective land tenure, Treaty settlement redress, and the status of te reo Māori as an official language. In addition, it becomes as a constitutional mechanism to silence tikanga Māori, effectively excluding it from influencing the design, evaluation, or survival of legislation. By establishing a monocultural legal standard, the Bill reduces Māori to legal subjects without recourse to their own frameworks for governance, land tenure, dispute resolution, or environmental stewardship. This represents a statutory colonization of indigenous law and rights, reversing decades of progress in recognizing legal pluralism and co-governance in New Zealand.

The Wai 85 land claim and the enactment of the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Settlement Act

In 1916, the Crown granted 10,695 hectares of land at Pouākani to the Wairarapa Moana people as compensation for failing to provide promised lands in the Wairarapa region. This land, however, was far from their ancestral home and situated within the traditional territory of other Māori communities (iwi), the Raukawa and Ngāti Tūwharetoa. Over time, this created tensions between the Wairarapa Moana and the local Māori authorities (mana whenua). In the 1940s, the Crown confiscated 787 acres of this land under the Public Works Act to construct the Maraetai hydro dam, without consulting or obtaining the free, prior, and informed consent (FPIC) of Wairarapa Moana.

In 2017, the Wairarapa Moana ki Pouākani Incorporation (WMI) initiated a claim seeking the return of the Pouākani lands. This was done through a legal mechanism that was introduced the late 1980s to seek the return of land transferred to State-Owned Enterprises. In 2020, the Waitangi Tribunal issued preliminary determinations suggesting that while the land should be returned, it should not go to WMI but rather to a broader entity, the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Settlement Trust.

WMI challenged this determination. The High Court quashed the Tribunal's preliminary findings, and the case proceeded to the Supreme Court, which in December 2022 affirmed WMI's right to seek the return of the land. However, just days after this ruling, the New Zealand Parliament passed the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Claims Settlement Act, effectively extinguishing WMI's claim and finalizing the settlement with the Trust. This legislative move was, in practice, a way of bypassing the Supreme Court's decision, and was delegitimised for lacking free, prior and informed consent.

In AL NZL 1/2024, above referenced, special procedures mandate holders had already expressed concern over the enactment of the Settlement Act without free, prior and informed consent and its implications for Indigenous Peoples' rights. They also highlighted systemic issues, particularly the supremacy of Parliament over judicial decisions to undermine Māori land rights and examined the Nelson Tenths case, which will be addressed below.

The Government responded in October 2024, defending its settlement processes and constitutional structure. It emphasized the role of the Waitangi Tribunal, the principles guiding settlements, and the need for and end in historical claims. The Government acknowledged the complexity of overlapping claims and the importance of durable settlements, maintaining that Parliament retains ultimate authority.

Dissatisfied with the Government's response and the extinguishment of the claim, WMI sought a declaration from the High Court that the Settlement Act was inconsistent with the New Zealand Bill of Rights Act 1990. Although the High Court dismissed the case, WMI appealed, and the Court of Appeal heard the case in October 2024, with a decision expected in 2025.

Te Here-ā-Nuku Nelson Tenths Litigation

The Nelson Tenths case has its origins in the mid-19th century, when the Crown undertook to reserve one-tenth of land purchased for European settlement in the Nelson region for the benefit of Māori customary owners. This promise was never fully honoured. In 1986, Māori representatives filed the Wai 56 claim before the Waitangi Tribunal, seeking redress for the Crown's failure to uphold its fiduciary duties. The Tribunal began hearings in 2006 and issued its report in 2008.

When the Government refused to negotiate with the legal entity established in 1977 to receive the remnants of the Nelson Tenths and papakāinga lands, the Wakatu Incorporation, the plaintiffs filed a fiduciary duty claim in the High Court in May 2010. After a trial in 2011, and subsequent appeals, the Supreme Court ruled in 2017 that the State owed fiduciary duties to the customary Māori owners. This was a landmark victory for the plaintiffs, who gathered in the Supreme Court to hear the decision, expecting the Government to begin returning land and compensating for losses.

However, the Government did not act on the Supreme Court's findings. Instead, it initiated a lengthy research process into the status of the Tenths and related lands, which took over five years. In view of the delays, the plaintiffs pushed for a trial date, which was eventually set for March 2023, but postponed to August 2023 due to the Government's continued claims of unpreparedness. The trial lasted ten weeks and included extensive site visits across Nelson, Tasman, and Golden Bay.

On 30 October 2024, the Justice of the High Court issued her judgment in the Nelson Tenths Case,[3] awarding a major victory to the plaintiffs. The Court found that the Crown had breached its fiduciary duties, that the customary owners had suffered loss, and that the plaintiff was entitled to relief in the form of land return and compensation. The Court ordered the return of at least 10,000 acres of trust property still held by the Crown and compensation, with the final amount yet to be determined.

[3] Stafford v Attorney-General.

Despite this, the Government filed a broad appeal on 27 November 2024, challenging nearly every aspect of the High Court's decision, including issues already settled by the Supreme Court. The plaintiffs, deeply disappointed, applied for a direct ("leapfrog") appeal to the Supreme Court, to avoid further delays, citing *inter alia* the heavy toll the litigation had taken over 15 years. However, the Supreme Court declined the leapfrog request in April 2025, stating that the issues were too complex and required full consideration by the Court of Appeal.

The plaintiffs remain affected by the Government's continued resistance. They argue that the appeal is not only legally excessive but also dishonourable, reflecting a refusal to accept the Supreme Court's 2017 decision. The Government's insistence on remaining trustee of the Nelson Tenths estate, despite its historical mismanagement, is particularly offensive to the beneficiaries. The plaintiffs assert that these actions violated their rights under the United Nations Declaration on the Rights of Indigenous Peoples, including the rights to land, redress, cultural participation, and self-determination.

As of April 2025, eight years after the Supreme Court's ruling, no land has been returned and no compensation paid. The plaintiffs continue to seek justice and resolution, urging the Government to honour the State's obligations and restore its mana by fulfilling its fiduciary duties.

While I do not wish to prejudge the accuracy of these allegations, I would like to express concern at the information received regarding the Government's coalition agreement that includes a clause rejecting the binding nature of the UN Declaration on the Rights of Indigenous Peoples, undermining the international human rights standards that are reflected in this instrument.

Moreover, I am particularly concerned about the potential violation of Indigenous Peoples rights by the Regulatory Standards Bill, given the information that it excludes Māori legal traditions (tikanga) and fails to uphold the principles of partnership, active protection, and self-determination guaranteed under the Treaty of Waitangi. I am preoccupied that the Bill threatens Māori-specific laws that address structural inequalities in matters relating to, for example, land, language and environmental stewardship, and because it seems to impose a monocultural legal standard, marginalizing Māori as legal subjects without respecting to their own governance frameworks. It is equally concerning that the Government did not consult Māori or conduct a Treaty Impact Assessment before proposing the Bill to the New Zealand Parliament.

In addition, I am further concerned about the passing of the Ngāti Kahungunu Settlement Act without free, prior, and informed consent from the Indigenous Peoples affected by it, in particular the Wairarapa Moana group, as well as by its overriding of a Supreme Court ruling in favor of Māori and for the extinguishing of their land claim. I am also concerned about the Government's appeal against the High Court ruling in favor of Māori land return and compensation in the context of the Nelson Tenths case.

Finally, I am concerned that the Regulatory Standards Bill restricts judicial discretion and narrows legal interpretation in favour of Māori rights. In this context, I

am also worried that the Government's legislative actions overriding court decisions and appeals against established rulings undermine judicial independence and access to justice for Indigenous Peoples in New Zealand.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide details on the policies developed and implemented by Your Excellency's Government concerning the rights and situation of Indigenous Peoples. Kindly include information on the policy development process and explain how these policies align with the State's international human rights obligations, including those under the Treaty of Waitangi.

3. Please provide information on the measures undertaken during the legislative process of the Regulatory Standards Bill. Please include the factual and legal justifications for the draft legislation, as well as an assessment of its potential impact on New Zealand's international human rights obligations.

4. Please provide information on the consultation process conducted to obtain the free, prior, and informed consent of Indigenous Peoples prior to the introduction of the Regulatory Standards Bill in Parliament.

5. Please provide information on the steps taken by Your Excellency's Government to address historical land claims in a manner that is fair, independent, and impartial, and that upholds the rights of Indigenous Peoples.

6. Please provide information on the measures in place to safeguard the rights of Indigenous Peoples in situations where these rights may conflict with the political will of the parliamentary majority. I am particularly interested in understanding how New Zealand's democratic system protects the rights of vulnerable groups when their interests are adversely affected by the preferences of the majority.

7. Please provide information on how Your Excellency's Government intends to resolve the Wai 85 land claim in a manner consistent with international human rights standards concerning the rights of Indigenous Peoples.

8. Please provide the rationale behind Your Excellency's Government's decision to appeal the High Court judgment in the Nelson Tenths case. Additionally, please explain the Government's approach to resolving this claim in a way that respects international human rights law regarding the rights of Indigenous Peoples.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I remain available to technically assist your Excellency's Government on matters related to the promotion and protection of the rights of Indigenous Peoples'.

Please accept, Excellency, the assurances of my highest consideration.

Albert K. Barume
Special Rapporteur on the rights of Indigenous Peoples

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of Your Excellency's Government the following international human rights norms and standards.

I would like to refer your Excellency's Government to relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007 and endorsed by New Zealand in 2010. As affirmed in article 3, Indigenous Peoples have the right to self-determination, which includes the right to freely determine their political status and freely pursue their economic, social, and cultural development. Moreover, under article 5, Indigenous Peoples have the right to maintain and strengthen distinct political, legal, economic, social, and cultural institutions.

Article 8 subsection 2(a), (b), and (c) of the Declaration affirms that States shall provide effective mechanisms for the prevention of, and redress for, any action which has the aim or effect of depriving Indigenous Peoples of their integrity as distinct peoples, or of their cultural values or ethnic identities. Any action that has the aim or effect of dispossessing them of their lands, territories, or resources, and finally, any form of forced population transfer that has the aim or effect of violating or undermining any of their rights.

In addition, article 18 establishes that "Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures as well as to maintain and develop their own indigenous decision-making institutions." Article 19 stipulates that states shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting or implementing legislative or administrative measures that may affect them.

Article 25 confirms the right of Indigenous Peoples to maintain and strengthen their spiritual relationships with their lands. As affirmed in article 26 of the Declaration: "Indigenous Peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired." Article 26 further provides that Indigenous Peoples have the right "to own, use, develop and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired." Furthermore, this article establishes a positive duty on States to "give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples concerned."

In addition, article 27, provides for access to a fair, independent, impartial, open, and transparent process for recognizing and adjudicating their rights in relation to the land. Article 28 stipulates the right of Indigenous Peoples to redress through the return of land or fair, equitable compensation, and the free, prior and informed consent. The

Declaration further sets out in article 29 that Indigenous Peoples have the right to the conservation and protection of the environment and affirms in article 32 that Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories. Article 34 of the Declaration specifies that "Indigenous Peoples have the right to promote, develop and maintain their institutional structures," including their "juridical systems or customs, in accordance with international human rights standards."

I would like to refer to the International Covenant on Civil and Political Rights (ICCPR). Article 2(3)(a) provides that state parties will undertake measures to ensure those whose rights are violated have an effective remedy. Article 14(1) provides that all persons shall be equal before the courts and tribunals and that everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. Article 26 of the provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Finally, in its article 27, the ICCPR guarantees the rights of specific groups, such as Indigenous Peoples, to enjoy their own culture, profess and practice their own religion, and use their own language.

Moreover, I would like to recall the Convention on the Elimination of All Forms of Racial Discrimination (CERD. In particular, I would like to draw attention to general recommendation 23 of the UN Committee on Elimination of Racial Discrimination, which in its paragraph 5, calls on States "to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free, prior and informed consent to take steps to return those lands and territories."[4]

I would like to refer Your Excellency's Government to article 15 paragraph 1(a) of International Covenant on Economic, Social and Cultural Rights (ICESCR), recognizing the right of everyone to take part in cultural life. In its general comment 21, the Committee on Economic, Social and Cultural Rights explained that this right entails the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights (para. 15.c).

As the Committee on Economic, Social and Cultural Rights makes clear, States must adopt appropriate measures or programmes to support minorities or other groups in their efforts to preserve their culture (para. 52.f), and must obtain their free, prior and informed consent when the preservation of their cultural resources is at risk (para. 55). In the case of Indigenous Peoples, cultural life has a strong communal dimension that is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. The Committee has stressed that "Indigenous Peoples' cultural values and rights associated with their ancestral lands and their relationship with nature must be respected and protected, in order to avoid the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity".

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[4] Doc A/52/18, annex V 1997

General comment 21 (2009) of the Committee also recalls that States have the obligation to respect and protect cultural heritage in all its forms. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations. In this connection, I would like to draw your Excellency's Government's attention to the reports of successive Special Rapporteurs in the field of cultural rights relating to the right of access to and enjoyment of cultural heritage[5] and to the protection of cultural heritage.[6] They stressed the significance of accessing and enjoying cultural heritage by individuals and communities as part of their collective identity and development processes. They underscored that the right to participate in cultural life implies that individuals and communities have access to and enjoy cultural heritages that are meaningful to them, and that their freedom to continuously (re)create cultural heritage and transmit it to future generations should be protected.

In addition, I would like to recall that international standards on the independence of the judiciary are closely linked to the rule of law and the separation of powers. In a 2009 report to the United Nations Human Rights Council,[7] the mandate on independence of judges and lawyers recalled that "[t]he principle of the separation of powers, together with the rule of law, are key to the administration of justice with a guarantee of independence, impartiality and transparency". Furthermore, in a 2017 report to the Human Rights Council,[8] the Special Rapporteur on that mandate highlighted that "respecting the rule of law and fostering the separation of powers and the independence of justice are prerequisites for the protection of human rights and democracy".

Finally, I would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary , which establish that all governmental and other institutions must respect and conform to the independence of the judiciary and that judges will decide cases impartially, on the basis of the facts and in accordance with the law, "without any restriction and without undue influence, incitement, pressure, threat or interference, direct or indirect, from any sector or for any reason".

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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5 A/HRC/17/38
6 A/HRC/31/59 and A/71/317
7 A/HRC/11/41
8 A/HRC/35/31