



Human Rights
Commission

Te Kāhui Tika Tangata

Expert Mechanism on the Rights of Indigenous People: Study on the Promotion and Protection of the Rights of Indigenous People with Respect to their Cultural Heritage

Briefing Paper

New Zealand Human Rights Commission | Te Kāhui Tika Tangata

The New Zealand Human Rights Commission | Te Kāhui Tika Tangata is an independent national human rights institution with 'A' status accreditation. It derives its statutory mandate from the Human Rights Act 1993.

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1. Introduction

1. The New Zealand Human Rights Commission (“Commission”) welcomes the opportunity to contribute to the Expert Mechanism’s study on cultural heritage.
2. This submission sets out how Aotearoa New Zealand promotes and protects the rights of indigenous people through law, the political system, the justice system and other policy measures. It also highlights areas where implementing and strengthening existing mechanisms could better promote and protect indigenous human rights.
3. The indigenous people of Aotearoa New Zealand are the Māori.

2. International Human Rights Framework

4. New Zealand's international legal obligations include its obligations under the human rights covenants and treaties to which it is a party.
5. Article 27 of the International Covenant on Civil and Political Rights ("ICCPR"), to which New Zealand is a party, provides:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.¹

6. When considering what "culture" encompasses the UN Special Rapporteur Francesco Capotorti suggests that it must be interpreted broadly to include customs, morals, traditions, rituals, types of housing, eating habits, as well as the arts, music, cultural organisations, literature and education.² The United Nations Human Rights Committee has similarly endorsed a wide concept of culture including, for example, a particular way of life associated with the use of land resources.³
7. However, cultural heritage means far more than precious objects and landmarks. Cultural heritage and its expression is the primary source of identity, the source of self definition and sense of group belonging for Māori.
8. The right to culture has a direct impact on the realisation of other rights. For example, the right to participate in customary activities,⁴ the right to access lands, territories and resources,⁵ the right to family,⁶ and the right to participate in decision-making that affect their cultural rights.⁷
9. The United Nations Human Rights Committee's General Comment No. 23 states that Article 27 imposes positive obligations on States parties:⁸

...a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative judicial or administrative authorities, but also against the acts of other persons within the State party.

10. The United Nations Declaration on the Rights of Indigenous Peoples ("Declaration") provides a useful framework for assessing the extent to which States are fulfilling their

¹ The United Nations Human Rights Committee has repeatedly affirmed that article 27 must be understood to encompass a dimension that protects indigenous peoples' collective culture.

² UN Doc.E/CN.4/Sub.2/384/Rev.1 at 99 -100.

³ Supra note 1 at para7.

⁴ *Lansman v Finland*, Communication No. 511/1992, views adopted 26 October 1994.

⁵ *Bernard Ominayak, Chief of the Lubicon Lake Band v Canada*, Communication No. 167/1984, views adopted 26 March 1990.

⁶ *Hopu v Bessert v France*, Communication No. 549/1993, views adopted 29 July 1997.

⁷ *Mahuika v New Zealand*, Communication No. 547/1993, views adopted 15 November 2000.

⁸ General Comment No. 23: <http://www.refworld.org/docid/453883fc0.html> at 6.1

international human rights obligations.⁹ Articles 11, 12 and 31 of the Declaration address the rights to culture, ceremonial objects and human remains.

11. Business has a responsibility to protect the right to culture. If operations have a negative impact on the realisation of that right Business has a responsibility to remedy that impact.¹⁰

3. Defining cultural heritage in the context of Aotearoa New Zealand

12. Aotearoa New Zealand adopts a broad definition of cultural heritage in line with international jurisprudence and best practice.
13. Although there is no statutory definition of cultural heritage, Aotearoa New Zealand's founding document, the Treaty of Waitangi ("Treaty") sets out how indigenous human rights are realised and cultural heritage protected. The Treaty gave the Crown authority to govern based on the obligation of partnership, affirmed self-determination of Māori based on the obligation of Crown protection and guaranteed equality for Māori based on the obligation of full participation.¹¹ It provides a framework from which to inform law, policy, and practice in Aotearoa New Zealand.
14. Under Article two of the Treaty, the Crown promised to protect taonga, and the authority of rangatira in regards to taonga was affirmed. Taonga is the Māori term used in the Treaty that specifically means "treasured things."
15. The Waitangi Tribunal ("Tribunal") - a permanent commission of inquiry that considers claims relating to Government actions or omission which may breach the promises made in the Treaty - has defined taonga as;¹²

An umbrella term, inclusive of a wide range of things upon which Māori in general... place great value and regard as treasures. Among them are intangibles like spiritual values as well as tangible objects. They include the land, sea fronts, forests, lakes and rivers; also [places and things associated with life and death. Although the degree of tapu¹³ varies, all these taonga touch the "heart", the Manawa pā¹⁴ and the ngakau pā.¹⁵

16. In Waitangi Tribunal Case *Wai 262* the Tribunal confirmed that taonga and the corresponding obligations and rights under the Treaty was founded on the concept of

⁹ As set out in the binding UN human rights conventions and covenants.

¹⁰ UN Guiding Principles on Business and Human Rights : http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹¹ The Commission has developed this summary of the three articles of the Treaty, through its Te Mana i Waitangi project. See: <http://www.hrc.co.nz/human-rights-and-the-treaty-of-waitangi/human-rights-and-the-treaty/> (accessed 20 February 2015).

¹² Waitangi Tribunal 1992 *Te Roroa Report*. Brooker and Friend p 210.

¹³ Something holy or sacred.

¹⁴ Desires.

¹⁵ Ends of the people.

mātauranga Māori. Mātauranga Māori is “the unique Māori way of viewing the world, encompassing both traditional knowledge and culture.”¹⁶

17. The Tribunal found the term mātauranga Māori encompassed language, science and technology, laws, history, systems of property and value exchange and rituals and ceremonies.¹⁷ It includes forms of expression and art such as weaving, carving, tā moko¹⁸, haka¹⁹ and whaikōrerero²⁰. More fundamentally, the term Mātauranga Māori was found to inherently encompass the Māori values of whanaungatanga²¹ and kaitiakitanga²² - indigenous legal principles by which cultural heritage should be administered through iwi²³ and hapū²⁴ who are obliged to nurture and care for taonga²⁵

²⁶

4. New Zealand law

18. Successive governments have passed a number of laws aimed at the preservation of taonga including language, cultural objects, sacred places and places of cultural significance. The key pieces of legislation are set out below:

Statute	Protections	Taonga protected
The Māori Development Act 1962	<ul style="list-style-type: none"> Established the New Zealand Māori Council, District Māori Councils and the role of Māori Wardens Recognises general rights to self-government 	Participation and self determination
The Māori Arts and Crafts institution Act 1963	<ul style="list-style-type: none"> Established the New Zealand Māori Arts and Crafts Institute to promote and protect Māori arts 	Mātauranga Māori through visual language

¹⁶ Waitangi Tribunal 2011, *Ko Aotearoa Tenei* at xxiii

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68356054/KoAotearoaTeneiTT1W.pdf

¹⁷ Waitangi Tribunal, *Ko Aotearoa Tenei*- Factsheet 1, key themes <http://www.justice.govt.nz/tribunals/waitangi-tribunal/documents/generic-inquiries/flora-and-fauna/wai-262-key-themes> at p1 (accessed 20 February 2015).

¹⁸ Permanent body and face marking (tattoo) for Māori).

¹⁹ Traditional ancestral war cry.

²⁰ Formal speeches generally made by men during pōwhiri (formal welcome ceremonies).

²¹ Kinship.

²² Guardianship.

²³ A Maori tribe/community of people.

²⁴ Extended family or groups.

²⁵ Meaning “treasured things”

²⁶ Waitangi Tribunal, *Ko Aotearoa Tenei*- Factsheet 1, key themes at p1.

<p>The Protected Objects Act 1975</p>	<ul style="list-style-type: none"> • Regulates export of protected objects • Prohibits the import of unlawfully exported protected foreign objects • Provides for the return of unlawfully exported foreign objects • Provides compensation for the return of unlawfully exported protected foreign objects • Establishes and records the ownership of nga taonga tuturu²⁷ • Controls the sale of nga taonga tuturu within New Zealand 	<p>Cultural Property</p>
<p>The Treaty of Waitangi Act 1975</p>	<ul style="list-style-type: none"> • Establishment of the Waitangi Tribunal to make recommendations on claims relating to the application of the principles of the Treaty 	<p>All Taonga</p>
<p>The State Owned Enterprises Act 1986</p>	<ul style="list-style-type: none"> • Return of land to Māori ownership in particular circumstances • Protection of Wahi tapu – being land of special spiritual, cultural or historical significance 	<p>Land</p>

²⁷ taonga tūturu means an object that—

- (a) relates to Māori culture, history, or society; and
- (b) was, or appears to have been,—
 - (i) manufactured or modified in New Zealand by Māori; or
 - (ii) brought into New Zealand by Māori; or
 - (iii) used by Māori; and
- (c) is more than 50 years old.

The Māori Language Act 1987	<ul style="list-style-type: none"> • Makes Te Reo Māori an official language • Affirms the right to speak Te Reo Māori in legal proceedings • Establishes the Māori Language Commission to promote Te Reo Māori 	Te Reo Māori Language
The Conservation Act 1987	<ul style="list-style-type: none"> • Oversight of the social, ecological and environmental impacts of the effects of the Manapouri-Te Anau hydroelectric power scheme on the townships of Manapouri and Te Anau, Lakes Manapouri and Te Anau and their shoreline. 	Lakes, rivers, forests and community
Resource Management Act 1991	<ul style="list-style-type: none"> • Protection of any place of special significance to tangata whenua for spiritual, cultural or historical reasons 	Land
The Electoral Act 1993	<ul style="list-style-type: none"> • Establishes Māori seats in Parliament²⁸ 	Participation and self determination
Te Ture Whenua Māori Act 1993	<ul style="list-style-type: none"> • Establishes mechanism to: <ul style="list-style-type: none"> ○ Retain ownership of 	Land

²⁸ The Act initially established four Māori seats in 1867. The number was increased in 1993, with the introduction of proportional representation, and is now determined by a formula linked to the number of voters enrolled on the Māori electoral roll. The number of Māori seats is currently seven.

	<p>land</p> <ul style="list-style-type: none"> ○ Protect wahi tapu ○ Facilitate occupation, development and utilisation of land for iwi, whanau and hapu 	
Local Electoral Act 2001	<ul style="list-style-type: none"> • Enables local councils to establish Māori seats²⁹ 	Participation and self determination
Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003	<ul style="list-style-type: none"> • Provides for a television service that “informs, educates, and entertains viewers, and enriches New Zealand's society, culture, and heritage.”³⁰ 	Te Reo Māori Language
Marine and Coastal Area (Takutai Moana) Act 2011	<ul style="list-style-type: none"> • Establishes a framework for recognising the legal rights and interests of iwi, hapu and whanau in the coastal marine environment 	Land, seas, taonga tuturu and traditional cultural practices
Heritage New Zealand Pouhere Taonga Act 2014	<ul style="list-style-type: none"> • Provides for the identification, protection, preservation and conservation of wahi tapu and wahi tupuna³¹ 	The whole or part of a historic place, historic area, wāhi tūpuna, wāhi tapu, or wāhi tapu area and the land surrounding those areas

19. Negotiated settlements between the Crown and tribal groups under the Treaty of Waitangi Act have strengthened the protection and promotion of cultural heritage in Aotearoa New Zealand. Some settlements have included cultural redress, such as.³²

²⁹ Two councils have so far established such seats. Another is embarking on the required referendum process.

³⁰ Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003 s8(1).

³¹ Wahi tupuna means a place important to Maori for its ancestral significance and associated cultural and traditional values

³² Information on various settlements is available on the website of the Office of Treaty Settlements, at: <http://www.ots.govt.nz/>. (accessed 20 February 2015).

- Statutory acknowledgement of cultural relationships with places;
 - Place name changes to give official recognition of indigenous names;
 - Return of cultural objects, and development of access and co-management arrangements with the national museum, Te Papa,³³ and
 - Co-management of natural resources such as rivers.³⁴
20. One recent settlement included a requirement to recognise the indigenous composer of a haka (tribal war dance) when used in public or commercial situations (Ka Mate Haka Attribution Act 2014).³⁵
21. Other settlements have included provisions to recognise particular natural resources (rivers, forests) as entities with their own mana (dignity) and mauri (life force), and to establish partnership arrangements for their management.³⁶ For example the Whanganui River settlement includes recognition of the river as a living entity called Te Awa Tupua, and explicit reference to tribal values and concepts.
22. In 2014 the Government recognised Te Urewera, formerly a State-owned national park, as a 'legal entity' with "all the rights, powers, duties, and liabilities of a legal person."³⁷ A management Board was established - comprised of members appointed by the Crown and Tūhoe. The functions of the Board include giving effect to Tūhoe cultural values and concepts as well as to the Crown's responsibilities under the Treaty of Waitangi.³⁸
23. These developments assist in promoting and protecting cultural heritage in Aotearoa New Zealand.

5. The political system

24. A range of institutions promote Māori participation in political and public life and in turn, protect mātauranga Māori in Aotearoa New Zealand.

5.1 Iwi Chairs Forum

25. A national Iwi Chairs Forum of tribal leaders provides a forum for iwi to share knowledge and information, and to work together on issues of common concern.³⁹ The Forum has taken collective action on issues such as the management of fresh water and constitutional reform. It also provides a central point for engagement with the State on those issues.

³³ A summary of Te Papa's role in Treaty settlements is available in: Te Papa (2014), *Briefing to the Incoming Minister*, available online at:

<http://www.tepapa.govt.nz/SiteCollectionDocuments/AboutTePapa/LegislationAccountability/Briefing-to-the-Incoming-Minister-2014.pdf>. (accessed 20 February 2015).

³⁴ See for example [Ngā Wai o Maniapoto \(Waipa River\) Act 2012](#)

³⁵ Ka Mate Haka Attribution Act 2014, ss 8-11.

³⁶ Te Urewera Act 2014; Ruruku Whakatupua – Te Mana o te Awa Tupua (Whanganui River Iwi Deed of Settlement), 5 August 2015, accessible at: <http://www.ots.govt.nz/>. (accessed 21 February 2015).

³⁷ Te Urewera Act 2014. s 11(1).

³⁸ Ibid s18 and 20.

³⁹ See Iwi Chairs Forum (<http://www.iwichairs.maori.nz/>) (accessed 22 February 2015).

5.2 The New Zealand Māori Council

26. The New Zealand Māori Council (“Council”) has achieved a number of gains for Māori including the adoption of the principles of the Treaty in legislation and reform of Māori land legislation.
27. A 2014 inquiry carried out by the Waitangi Tribunal into proposed changes to the Māori Development Act 1962 - which established the Council - stressed that any changes to the regime should not detract from this right to self-government, and should be led by Māori.⁴⁰ The Tribunal’s report is significant as being the first to explicitly examine the relationship between the Declaration and the Treaty.

5.3 Māori Arts and Crafts Institute

28. The functions of the Māori Arts and Crafts Institute (“MACI”) include fostering and promoting (including through exhibitions and tours), providing training in, and assisting in the preservation of Māori culture, arts and crafts. MACI plays an important role in promoting and revitalising Māori cultural heritage both domestically and internationally.
29. MACI artists have carved whareniui (meeting houses) throughout Aotearoa New Zealand and produced gifts for overseas dignitaries.

5.4 Whanau-driven initiatives

30. While national institutions play a critical role, the fundamental cultural construct of Māori society is whānau (extended family). Established in 2011 Whānau Ora is a new approach to government provision of health, education, social and economic services.⁴¹ It focuses on enabling whānau to lead and develop their own solutions and build capability in their communities.
31. Other indigenous, community-driven initiatives include:
 - tribal gatherings, festivals and events, for example, Ngā Puhī Festival, Hui Ahurei (Tūhoe)
 - Regional and national performing arts festivals – Te Matatini and school competitions
 - Research into, and revival of Whare Tapere – traditional houses of story-telling
 - Revival of traditional waka building, voyages and navigation methods – eg, Te Aurere
 - Sports competitions and events, including traditional Māori sports and games (such as ki-o-rahi) as well as modern events (Iron Māori)
 - Increased recognition and celebration of traditional events, for example, Matariki and Puanga New Year celebrations.

⁴⁰ Waitangi Tribunal, *Whāia te Mana Motuhake – Report on the Māori Development Act Claim*, Wai 2417 (2014). Accessible online at: <http://www.justice.govt.nz/tribunals/waitangi-tribunal/news/report-released-on-crown2019s-review-of-maori-community-development-act-and-role-of-maori-wardens>. (accessed 20 February 2015).

⁴¹ Te Puni Kōkiri <http://www.tpk.govt.nz/en/whakamahia/whanau-ora/> (accessed 23 February 2015).

6. The Justice system

32. Specialist courts for Māori have been established, guided by the principle that Māori respond most effectively to indigenous restorative justice initiatives.⁴²

- Rangatahi Courts⁴³ –Currently 14 marae-based Rangatahi courts, which incorporate whānau/family and the young person’s participation in youth court hearings;
- Mātāriki Court – first used in Kaikohe, which allows the whānau, hapū and iwi of the offender to address the court at sentencing;
- Māori Focus Units within four prisons that provide cultural programmes for prisoners, and two Whare Oranga Ake reintegration units that provide a Māori environment for prisoners to reconnect with their culture, identity and community.
- In Treaty of Waitangi legal proceedings, hearings can take place on the marae, in Māori language and they incorporate Māori protocol into all aspects of the legal process and in turn, promote and protect indigenous cultural heritage.⁴⁴

7. Promoting Māori Language and Culture

33. Aotearoa New Zealand currently has 21 iwi radio stations and a successful Māori television channel where predominantly te reo Māori is spoken.⁴⁵ This is administered through Te Māngai Pāho, the Māori Broadcasting Funding Agency.

34. There have also been efforts to ensure the Māori names of key places in Aotearoa New Zealand are implemented. For example, in 2014 the NZ Geographic Board formally recognised the Māori names of the North and South Islands.⁴⁶

35. Aotearoa New Zealand has introduced schooling that is taught in te reo as a way of promoting and protecting Māori language and cultural values. Kura kaupapa and kōhanga reo provide Māori-medium schooling and early childhood education. Wānanga provide tertiary education within a Māori cultural context. In mainstream education, a Māori Education Strategy has been implemented for the purpose of “Māori enjoying education success as Māori”.⁴⁷

⁴² Juan Marcellus Tauri, *An Indigenous Perspective on the Standardisation of Restorative Justice in New Zealand and Canada*, Indigenous Policy Journal Vol 20. No 3 (2009).

⁴³ Ministry of Justice, Rangatahi Court: Evaluation of the early outcomes of Te Kooti Rangatahi (undated), accessible at <http://www.justice.govt.nz/publications/global-publications/r/rangatahi-court-evaluation-of-the-early-outcomes-of-te-kooti-rangatahi> (accessed 22 February 2015).

⁴⁴ Waitangi Tribunal, *Going to Hearing*, (undated) accessible: <http://www.justice.govt.nz/tribunals/waitangi-tribunal/the-claims-process/going-to-hearing> (accessed 22 February 2015).

⁴⁵ Māori language.

⁴⁶ Minister for Land Information, ‘Names of NZ’s two main islands formalised’, 10 October 2013. Accessible at: <http://www.beehive.govt.nz/release/names-nz%E2%80%99s-two-main-islands-formalised> (accessed 20 February 2015).

⁴⁷ Education Review Office, “ERO’s approach to evaluating outcomes for Maori learners” (undated), <http://www.ero.govt.nz/Review-Process/Maori-Success-ERO-s-approach-to-evaluating-outcomes-for-Maori-learners> (accessed 22 February 2015).

8. Towards a true partnership

36. In 2011 the Tribunal released its report in *Wai 262*.⁴⁸ This case canvassed issues relating to: health, education, science, intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture.

8.1 Legal Framework

37. The Tribunal examined the existing legal provisions that promote and protect cultural heritage in New Zealand. It remarked that the very fact that the numerous agencies reviewed by the Tribunal were doing something for mātauranga Māori was positive, and a considerable advance on the situation 20 years ago.⁴⁹

38. However, the decision concluded that legislation and policy were inconsistent, as was the form and level of Māori representation and involvement.⁵⁰ The national museum, Te Papa was cited as a best practice example, due to, among other things, its willingness to return wrongfully-acquired taonga to indigenous owners, and for its robust policies for indigenous involvement in decision making and management of taonga.⁵¹

39. The Tribunal's core recommendation related to the creation of partnerships to support mātauranga Māori. These partnerships would provide for shared decision-making, ensure appropriate priority is accorded to mātauranga Māori and a coordinated government approach.⁵²

40. The Tribunal's most significant conclusion is that a fundamental shift in approach is needed regarding the value Māori culture and identity so that real and equitable partnership can take place:

*Unless it is accepted that New Zealand has two founding cultures, not one; unless Māori culture and identity are valued in everything government says and does; and unless they are welcomed into the very centre of the way we do things in this country, nothing will change. Māori will continue to be perceived, and know they are perceived, as an alien and resented minority, a problem to be managed with a seemingly endless stream of taxpayer-funding programmes, but never solved.*⁵³

8.2 Māori Language

41. The Waitangi Tribunal's *Wai 262* report emphasised that te reo Māori (Māori language) is a taonga Māori, as well as being an important part of the cultural heritage and identity of Aotearoa New Zealand as a whole. The Tribunal noted the shared responsibility for the revival of the language, which has reached a state of "renewed decline", and that

⁴⁸ Supra note 22.

⁴⁹ Waitangi Tribunal, (2011), *Ko Aotearoa Tēnei* (vol. 2), *Wai 262*, p 582. Accessible online at:

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68356606/KoAotearoaTeneiTT2Vol2W.pdf.

⁵⁰ Ibid., pp 509-513. Waitangi Tribunal, (2011), *Ko Aotearoa Tēnei – fact sheet 7: when the Crown controls mātauranga Māori*, p 2. <http://www.justice.govt.nz/tribunals/waitangi-tribunal/documents/generic-inquiries/flora-and-fauna/wai-262-when-the-crown-controls-matauranga-maori>. (accessed 21 February 2015).

⁵¹ Ibid., at 509.

⁵² Ibid.

⁵³ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p 2.

“there is no area of Crown–Māori relations that requires partnership more than the future of the Māori language”.⁵⁴

42. The Tribunal's recommendations included: strengthening the government agency responsible for promoting Māori language, and enhancing its authority to direct and monitor education curricula, strategies and teacher training.⁵⁵

8.3 Education

43. The need for partnership, and the nature of the relationship between the Crown and Māori institutions involved in education and/or protection of taonga, was reiterated by the Tribunal in its 2012 report on Kōhanga Reo.
44. The Tribunal found that the Crown had not accorded Kōhanga Reo sufficient priority or support. Kōhanga reo were described as “an essential vehicle for the transmission of the taonga itself (which is te reo), and for the exercise of rangatiratanga over it”.⁵⁶
45. Building on the Wai 262 recommendations, the Tribunal again emphasised the shared responsibilities of both Māori and the Crown to protect and strengthen this vehicle for the survival and revitalisation of a core aspect of Aotearoa New Zealand's cultural heritage. Furthermore, the Crown's overall responsibilities for Early Childhood Education in Aotearoa New Zealand could not undermine the ‘tino rangatiratanga’ (self-determination) of Māori and their institutions.⁵⁷

8.4 The Judiciary

46. Statistics show that of 243 judges in New Zealand's legal system only 31 are Māori.⁵⁸ This was also noted in the Universal Periodic Review where the Government committed to raising this number over the next four years.⁵⁹

9. Conclusion

47. The Tribunal's *WAI 262* report provides a framework for the better realisation of indigenous rights to cultural heritage in Aotearoa New Zealand. Given the comparatively small size of Aotearoa New Zealand, and the extent of the inquiry undertaken by the

⁵⁴ Waitangi Tribunal, (2011), *Ko Aotearoa Tēnei – Fact sheet 6 Te Reo Māori*, at p 2. <http://www.justice.govt.nz/tribunals/waitangi-tribunal/inquiries/generic-inquiries/flora-and-fauna>. (accessed 20 February 2015).

⁵⁵ Ibid.

⁵⁶ Waitangi Tribunal, (2012), *Matua Rautia: Report on the Kōhanga Reo Claim*, Wai 2336, p 94. Accessible at: <http://www.justice.govt.nz/tribunals/waitangi-tribunal/news/wai-2336-matua-rautia-report-on-the-kohanga-reo-claim>. (accessed 20 February 2015).

⁵⁷ Ibid, p 326.

⁵⁸ Radio New Zealand, Morning Report (2 February 2015). Laura Bootham, Radio New Zealand, *Messy data on Maori judges* (17 March 2015) <http://www.radionz.co.nz/news/te-manu-korihi/268885/messy-data-on-maori-judges> (accessed 18 March 2015).

⁵⁹ Ministry of Justice, List of recommendations made during New Zealand's 2014 Universal Periodic Review (undated) <http://www.justice.govt.nz/publications/global-publications/u/united-nations-universal-periodic-review-2014-government-response-to-recommendations/list-of-recommendations-made-during-new-zealands-2014-universal-periodic-review> (accessed 20 February 2015).

Tribunal, arguably this should be achievable. Moreover, as the Tribunal noted, despite some fears about the Treaty and indigenous rights, there is:⁶⁰

An underlying good will and mutual respect between New Zealand's founding cultures. This has made the process of settling historical grievances possible, and is reflected in the increasing acknowledgement that 'Māori identity and culture is now a vital aspect of New Zealand identity and culture.

48. There have been some significant developments since the release of the report in 2011 as set out in this paper. However, a full government response to WAI 262 has not yet been issued.
49. The major challenge for Aotearoa New Zealand is to move from implemented law and policy to practice. True partnership, as envisioned in the Treaty and affirmed in the Declaration needs to take place to ensure that cultural heritage is truly upheld, protected and promoted for indigenous peoples. A necessary first step is for the Government to commit to a timetable for implementing the recommendations of the Tribunal as recommended by two United Nations Treaty bodies.⁶¹

⁶⁰ Waitangi Tribunal, Media Statement: 'Time to move beyond grievance in the Treaty relationship, Tribunal says', 2 July 2011. <http://www.justice.govt.nz/tribunals/waitangi-tribunal/documents/generic-inquiries/flora-and-fauna/wai-262-media-statement> (accessed 20 February 2015).

⁶¹ Committee on the Elimination of Racial Discrimination, (2013), *Concluding Observations: New Zealand*, CERD/C/NZL/CO/18-20, para 14. The government's response to date has been to note the complexity of the issues and decisions involved: *Information received from New Zealand on follow-up to the concluding observations* CERD/C/NZL/CO/18-20/Add.1 (May 2014). http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fNZL%2fCO%2f18-20%2fAdd.1&Lang=en (accessed 23 February 2015).