PRAKRITI BHATT

IHUMĀTAO FROM THE UNDRIP PERSPECTIVE:

The Declaration's Role in the Resolution of Indigenous Land Issues in Postcolonial Common Law Jurisdictions

LLM RESEARCH PAPER

LAWS 545: LAND ISSUES IN NEW ZEALAND

FACULTY OF LAW

VICTORIA UNIVERSITY OF WELLINGTON
TE HERENGA WAKA

2020

Contents

Abstract

This paper seeks to examine the complex Ihumātao land issue from the lens of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It concurs with the New Zealand Human Rights Commission's appraisal that "the Declaration provides a compelling and constructive framework to address the current dispute and work towards a solution that respects and upholds the rights of all parties". The paper seeks to substantiate this claim with a comparative study of three indigenous land issues from the postcolonial jurisdictions of Belize, India, and Suriname characterised by common law systems analogous to New Zealand. These disputes were resolved by explicit reliance as well as tacit reference to the rights enshrined in the articles of the UNDRIP—thereby giving international human rights commitments in soft law the treatment, force, and effect of domestic hard law—to recognise indigenous peoples' collective land rights and accommodate customary land tenure. Lastly, the paper assesses the employment of such an approach for the resolution of the current standoff at Ihumātao.

Word length

The text of this paper (excluding abstract, table of contents, footnotes, and bibliography) comprises approximately 7,500 words.

Subjects and Topics

Customary Land Tenure
Indigenous Land Rights
Land Issues in New Zealand
Land Laws
Public International Law
Postcolonial Land Issues
United Nations Declaration on the Rights of Indigenous Peoples

I Introduction

The challenge of recognising indigenous peoples' land rights in their ancestral land is typical to postcolonial common law jurisdictions,[1] manifesting itself in land disputes ranging from irreconcilability between the private ownership of non-indigenous persons and the collective customary rights of the indigenous peoples in the land, to tensions between the exercise of these customary rights and concerns of environment protection.[2]

The roots of this issue can be traced to the modes of territorial conquest at the time of colonisation in contempt of the profound relationship indigenous peoples shared with their land.[3] Instances of territorial dispossession were informed by the common law doctrines of "discovery" or "terra nullius", "just war", and "treaty-making" to justify the retention of colonial foothold on the land and extinguish native title.[4] In postcolonial times, common law has made a remedial attempt at settling historical land claims, by evolving the concept of customary land tenure to interpret the pre-existing native title as sui generis,[5] justified by the legal doctrines of "continuity" and "recognition".[6]

The endeavour to accommodate this native title has emphasised conceptual clashes in the indigenous and the common law systems, as succinctly explained by Viscount Haldane in *Amodu Tijani v The Secretary, Southern Provinces*:[7]

> As a rule, in various systems of native jurisprudence throughout the [British] Empire, there is no such full division between property and possession as the English lawyers are familiar with. A very usual form of native title is that of a usufructuary right, which is a mere qualification of or burden on the radical or final title of the Sovereign where that exists. In such cases the title of the Sovereign is a pure legal estate, to which beneficial rights may or may not be attached. But this estate is qualified by a right of beneficial user which may

[1] See generally Jérémie Gilbert "Historical Indigenous Peoples' Land Claims: A Comparative and International Approach to the Common Law Doctrine on Indigenous Title" (2007) 56 ICLQ 583.
[2] Jérémie Gilbert quoted as expert witness in *Kaliña and Lokono Peoples v Suriname* Merits, Reparations and Costs, Inter-Am Ct HR (ser C) No 309 (25 November 2015) [*Kaliña and Lokono Peoples case*] at [20].
[3] Jérémie Gilbert *Indigenous Peoples' Land Rights Under International Law: From Victims to Actors* (Transnational Publishers, New York, 2006) at 3 and R Y Jennings *The Acquisition of Territory in International Law* (Manchester University Press, Manchester, 1963) at 6–7.
[4] UN Special Rapporteur *Indigenous Peoples and their relationship to Land: Final Working Paper* UN Doc E/CN.4/SUB.2/2001/21 (11 June 2001) at 11–12. See also Kaius Tuori "The Theory and Practice of Indigenous Dispossession in the Late Nineteenth Century: The Saami in the Far North of Europe and the Legal History of Colonialism" (2015) 3:1 Comparative Legal History 152 at 153.
[5] See generally *Delgamuukw v British Columbia* [1997] 3 SCR 1010.
[6] Gilbert above n 1 at 590.
[7] *Amodu Tijani v The Secretary, Southern Provinces* (1921) 2 AC 399 [*Amodu Tijani case*] at 402–404.

> not assume definite forms analogous to estates, or may, where it has assumed these, have derived them from the intrusion of mere analogy of English jurisprudence … The title, such as it is, may not be that of the individual as in this country it nearly always is in some form, but may be that of a community. Such a community may have the possessory title to the common enjoyment of a usufruct, with customs under which its individual members are admitted to enjoyment, and even to a right of transmitting the individual enjoyment as members by assignment inter vivos or by succession.

This statement of law has been judicially recognised as "the definitive position at common law" for interpreting native title.[8] Despite this progress in jurisprudence, customary land tenure derived from traditional land use and long-term occupation continues to be denied by governments of the day.[9] It appears that over time the modes of dispossession have changed to designation and compulsory acquisition of the land backed by the newfound justification of undertaking public works or development projects.[10]

The unfolding of events at Ihumātao has followed a similar storyline. The complex issue remains unresolved for want of a remedy that enables settlement in a manner not detrimental to either parties. It has garnered significant global attention because of its broader implications on New Zealand's human rights commitments to the Māori in international law,[11] specifically the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[12] In August 2019, the New Zealand Human Rights Commission (NZHRC) made an unprecedented observation that the UNDRIP "can provide, alongside Te Tiriti o Waitangi, a compelling and constructive framework within which the [Ihumātao] dispute can be discussed, addressed and eventually resolved."[13]

This paper seeks to substantiate this claim by the NZHRC. To do so, the paper undertakes an inquiry into the UNDRIP articles and scans three indigenous land rights cases from the

---

[8] *Kerajaan Negeri Selangor and Others v Sagong Bin Tasi and Others* (2005) MLJ 289.
[9] See generally Gilbert above n 3.
[10] See generally Tsuyoshi Kotaka and David L Callies (eds) *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries* (University of Hawai'i Press, United States of America, 2002) and Andreana Reale "Assisted Theft: Compulsory Land Acquisition for Private Benefit in Australia and the US" (2009) 34:3 AltLJ 147.
[11] See UN Special Rapporteurs *Mandates of the Special Rapporteur on Adequate Housing As a Component of the Right to an Adequate Standard of Living and on the Right to Non-Discrimination in this Context and the Special Rapporteur on the Rights of Indigenous Peoples* AL NZL 1/2019 (22 March 2019).
[12] *United Nations Declaration on the Rights of Indigenous Persons* GA Res 61/295 (2007) [UNDRIP].
[13] New Zealand Human Rights Commission *International Human Rights Perspectives on Ihumātao* (23 August 2019) ["NZHRC Report"] at 7.

common law jurisdictions of Belize,[14] India,[15] and Suriname[16] that saw resolution through explicit reliance as well as tacit reference to the Declaration's articles. What these judiciaries have effectively done, is given indigenous rights commitments in soft law the treatment, force, and effect of domestic hard law. It is this unconventional approach to resolving deadlocked indigenous land issues and its resultant persuasiveness for the Ihumātao land issue that the paper seeks to assess.

To this effect, Part II of the paper dissects key legal considerations in the Ihumātao land issue based on the events that have transpired to date. Part III briefly specifies the articles of the UNDRIP relevant to indigenous land issues and examines the role these articles played in the three landmark cases from Belize, India, and Suriname. Based on the reasoning found in these judgments, Part IV then discusses whether the UNDRIP indeed provides a compelling and constructive framework for a potential resolution of the Ihumātao land issue given its complicated background. Part V concludes.

II Deconstructing the Ihumātao Land Issue

The factual background of the issue is intricate, and the situation remains fluid. Much has been written about the dispute and continues to be documented. To give a brief overview, a plot of land at the end of Ihumātao Peninsula, south Auckland was designated in 2014 as "Special Housing Area 62" (SHA 62) under the Housing Accords and Special Housing Areas Act 2013 (HASHA Act).[17] The present-day dispute relates to this designation and the proposed construction of 480 houses by Fletcher Building on SHA 62.[18] This plot is of spiritual, cultural, and archaeological significance[19] to the local Māori community and also the country, with burial sites and evidence of a 1000-year history of human occupation.[20]

---

[14] *Aurelio Cal v The Attorney General of Belize and Manuel Coy v the Attorney General of Belize* 1 (2007) 71 WIR 110 ["*Maya Land Rights case*"].
[15] *Orissa Mining Corporation Limited v Ministry of Environment and Forests and Others* (2013) 6 SCC 476 ["*Niyamgiri case*"].
[16] *Kaliña and Lokono Peoples case* above n 2.
[17] NZHRC Report above n 13 at 8.
[18] At 8.
[19] Waitangi Tribunal *Manukau Report* (Wai 8, 1985) at 18.
[20] At 18 and Māori Affairs Committee *Petition of Pania Newton for Save Our Unique Landscape: Protect Ihumātao – Report of the Māori Affairs Committee* (July 2019) ["Māori Affairs Committee Report"] at 12–13. See also Ilmars Gravis, Károly Németh and Jonathan N Procter "The Role of Cultural and Indigenous Values in Geosite Evaluations on a Quaternary Monogenetic Volcanic Landscape at Ihumātao, Auckland Volcanic Field, New Zealand" (2017) 9 Geoheritage 373.

It is profitable to recount here that the law laid down in *Amodu Tijani*[21] has been adopted in New Zealand by the Court of Appeal[22] and the Waitangi Tribunal.[23] Echoing Viscount Haldane's observations on subtleties of native title[24] in the New Zealand context, Dame Evelyn Stokes has noted:[25]

> Traditional forms of tenure of land and resources … can be described as occupation rights, obtained by ancestry (take tupuna) or conquest (take raupatu), and maintained over succeeding generations (ahi kā). Sometimes these rights are better described as usufructuary, especially in respect of resources of land and water bodies … There is no dispute that Māori customary tenure of land and resources comprised a complex system of overlapping and interlocking usufructuary rights within a value system and territory. These rights were defined by ancestry and inheritance, a sense of belonging to the land, rather than owning it, and an obligation to maintain these values as kaitiaki, or guardians, for the benefit of future generations.

While it is not feasible to provide here an exhaustive account of all that has transpired,[26] this Part alludes to key events in the timeline insofar as they aid a legal analysis of the issue and impediments in its resolution.

A Private Title with Customary Traditional Land Use and Long-Term Occupation

SHA 62 shares its borders with the Ōtuataua Stonefields Historic Reserve (OSHR) where early Māori settlers farmed from circa 1200 AD.[27] Pre-colonialism, SHA 62 was occupied by the local Māori iwi and hapū: specifically, the Waikato-Tainui, Ngāti Whatua, and Waiohua groups affiliated to Waikato-Tainui (Te Ahiwaru, Te Ākitai Waiohua, Ngāti Tai Tāmaki, Ngāti Te Ata, Ngāti Tamaoho, and Te Kawerau ā Maki).[28]

---

[21] *Amodu Tijani case* above n 7 at 402–404.
[22] *Te Runanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641.
[23] Waitangi Tribunal *Whanganui River Report* (Wai 167, 1999) at 26.
[24] *Amodu Tijani case* above n 7 at 402–404.
[25] Evelyn Stokes *A Review of the Evidence in the Muriwhenua Lands Claims Volume II* (Waitangi Tribunal Review Series 1997 No 1, GP Publications, Wellington 1997) at 627–628.
[26] For official information on the background of the Ihumātao land issue, see Pania Newton *Shadow Report to the Committee on the Elimination of All Forms of Racial Discrimination on Special Housing Area 62 in Ihumātao, Mangere, Aotearoa* (Presented on behalf of Save Our Unique Landscape (SOUL), 6 July 2017); UN Special Rapporteurs above n 11; Te Arawhiti *Advice for the Māori Affairs Committee regarding the Petition of Pania Newton for Save Our Unique Landscape: Protect Ihumātao* (24 June 2019) ["Te Arawhiti Advice"]; and Māori Affairs Committee Report above n 20.
[27] Māori Affairs Committee Report above n 20 at 13.
[28] Te Arawhiti Advice above n 26 at 1.

In 1863, this land was confiscated by the Crown as punishment for "a rebellion that never took place" pursuant to the New Zealand Settlements Act 1863,[29] thereby extinguishing native title in the eyes of English jurisprudence. The confiscation was in breach of the Treaty of Waitangi of 1840.[30] In 1869, SHA 62 was sold by the Crown into private ownership[31] and remained with the private landowners until they sold the plot to Fletcher Building in 2016.[32] SHA 62 has therefore remained in private ownership for over a century. This has proved to be the primary hurdle for an absolute restoration of native title in the land.

Notably, the local Māori continued to maintain a presence over this period at the nearby Makaurau Marae and Ihumātao village, providing their labour for farming on this land.[33] Thus, the pre-existing customary activities subsisted on SHA 62 even after it was confiscated and subsequently sold. The radical title was then arguably burdened by the native title derived from this continuing traditional land use and long-term occupation. The survival of the status of ancestral rights to the land (mana whenua) through this use and occupation is the foremost contention of the Māori vehemently opposing the development of SHA 62; whereas Fletcher Building contends that since the land was in private ownership for the last 150 years, it was previously unavailable to the iwi,[34] thereby extinguishing any collective usufructuary rights in the land.

B The Immediate Trigger: Environment Court's Ruling in 2012

What sparked the contemporary land dispute was the Environment Court's decision in *Gavin Wallace Ltd v Auckland Council*[35] in 2012 that effectively reversed the Auckland Council's 2007 designation of the plot as an open space to preserve it from development.[36] The Court held that the land could accommodate urban development alongside cultural significance to the Māori and developed provided there was no damage to valuable features.[37]

---

[29] Waitangi Tribunal *Manukau Report* above n 19 at 18.
[30] At 18.
[31] Te Arawhiti Advice above n 26 at 1.
[32] NZHRC Report above n 13 at 9.
[33] At 8 and Christine Elers and Mohan J Dutta "Ihumātao Protest, Colonization, and Cultural Voice" (August 2019) 4 CARE White Paper Series 3 at 4.
[34] Māori Affairs Committee Report above n 20 at 15.
[35] *Gavin Wallace Ltd v Auckland Council* [2012] NZEnvC 120.
[36] Manukau City Council Notice of Requirement (18 October 2007) referenced at [9].
[37] At [209].

Pursuant to the Court's direction,[38] the Auckland Council rezoned and designated this plot as SHA 62 in 2013 to enable intensified residential development.[39] This designation was made under the HASHA Act, a special legislation to fast-track special housing developments and bypass procedures mandated under the Resource Management Act 1991.[40] Importantly, the HASHA Act also does not provide for a legal process to challenge a decision made under it. The private landowners eventually sold SHA 62 to Fletcher Building in 2016 after the plan variation was approved.[41]

C Questionable Māori Representation, Participation, and Consultation

The leading opposition to the SHA development plan comes from six mana whenua of Te Waiohua, Waikato-Tainui, Ngāti Mahuta, Te Ahiwaru, Ngāti Tahinga, and Te Ākitai whakapapa, who identify themselves as Save Our Unique Landscape (SOUL).[42] Since 2016, SOUL has been advocating for the return of SHA 62 to the local Māori in peaceful protest by occupying SHA 62.[43] The secondary contention between all parties is whether adequate and appropriate representations and consultations took place for the SHA 62 development plan.

As regards the administrative bodies, the Māori Affairs Committee makes note that while considering the application for plan variation, the planning commissioners had heard submissions from SOUL, residents of the Ihumātao village, Te Kawerau Iwi Tribal Authority, and the Makaurau Marae Māori Trust.[44] Further, they note that the Auckland City Councillors had also met with SOUL and sympathised with its cause.[45]

On the other hand, Fletcher Building maintains that they have been working in partnership with Te Kawerau ā Maki, who they recognise and consult as the mana whenua of Ihumātao.[46] The corporation has also conceded that Te Kawerau ā Maki has publicly acknowledged that other iwi and hapū also share customary interests in SHA 62.[47] Pursuant to consultations with Te Kawerau ā Maki, Fletcher relinquished 25% of SHA 62 closest to the OSHR to Te Kawerau ā

[38] At [121]–[122].
[39] Te Arawhiti Advice above n 26 at 1.
[40] NZHRC Report above n 13 at 8.
[41] Māori Affairs Committee Report above n 20 at 12.
[42] At 12.
[43] At 13.
[44] At 12.
[45] At 14.
[46] At 15.
[47] At 15.

Maki and agreed to not build on any archeologically significant site.[48] Further, the corporation also made provisions in their development plan for 40 affordable homes for Te Kawerau ā Maki to purchase via a pathway-to-ownership programme.[49]

D Disharmony in Māori Claims and Contentions

SOUL contends that in taking these steps with Te Kawerau ā Maki, Fletcher has ignored the interests of other iwi and hapū with a legitimate mana whenua status derived from long-term occupation over Ihumātao since centuries.[50] In particular, SOUL argues that Te Waiohua, Waikato-Tainui, Te Ahiwaru, Ngāti Mahuta, and Ngāti Tahinga have not been properly consulted or included in the decision-making process for the SHA 62 development by either the Auckland Council or Fletcher.[51]

In a petition presented to the House of Representatives in March 2019, SOUL requested for the Government to intervene to either buy SHA 62 from Fletcher or mandate a process that "enables all affected parties to come up with an outcome that everyone can live with".[52] Opposing the change in traditional land use of SHA 62, SOUL maintains that the plot needs to be protected as part of its neighbouring OSHR for its sacred, ancestral value and preserved for posterity as a public open space.[53]

SOUL advocates that the landscape be used for "eco-conscious, environment-enhancing social enterprises" that support "tourism, māra (gardens), and native planting, as well as science, research, and education opportunities".[54] But Te Kawerau ā Maki who have received 25% of SHA 62 and the option of partaking in 40 homes by Fletcher, do not recognise SOUL as speaking on behalf of mana whenua[55] and support the development.[56] In September 2019, the Māori king ruled that the land should be returned, to Māori ownership, and that the process

---

[48] At 15 and NZHRC Report above n 13 at 25.
[49] Māori Affairs Committee Report above n 20 at 15.
[50] At 15.
[51] At 15.
[52] At 12.
[53] At 12.
[54] At 13.
[55] At 15.
[56] Lucy Mackintosh "Why Ihumātao Truly is a Piece of New Zealand's Soul" *The Guardian* (international online ed, New Zealand, 24 September 2019).

would sit outside the Treaty process to find an "innovative and modern solution that does not financially disadvantage iwi [tribes]".[57]

E Legal Logjams for Straightforward Resolution

There is no consensus among the parties on the best way forward. SOUL has unsuccessfully tried several legal avenues and consulted different authorities to challenge the legitimacy of the development that is repugnant to their customary land rights in SHA 62. In 2015, they filed an application for urgency on behalf of Makaurau Marae and Ngāti Te Ahiwaru in the Waitangi Tribunal challenging the implementation of the HASHA Act and claiming that the Treaty had been breached when the Auckland Council failed to consult with the Māori before designating SHA 62.[58] This application was declined in 2017 on the grounds that development then was not imminent and Fletcher was taking steps to avoid damage.[59] In 2018, the Environment Court in *King v Heritage New Zealand*[60] found that the management plan developed by Fletcher, as approved by Heritage New Zealand, provided for a greater level of protection than required.[61] The Court further ruled that the housing development on SHA 62 could co-exist with its neighbouring OSHR.[62]

SOUL's attempts to reclaim the native title derived from centuries-old traditional land use and long-term occupation have failed for two main reasons. First, SHA 62 was assigned under an Act that does not make available a legal process to challenge the designation.[63] Second, since SHA 62 has remained in private ownership, it is unavailable for use in Treaty settlement purposes.[64]

Regardless, Te Arawhiti noted in its June 2019 Advice to the Māori Affairs Committee[65] that Ihumātao has been acknowledged in several Treaty settlements, the beneficiaries of which have been Waikato-Tainui, Te Ākitai Waiohua, Ngāti Tai Tāmaki, Ngāti Te Ata;[66] Ngāti

[57] Eleanor Ainge Roy "New Zealand: Māori King Says Disputed Ihumātao Land Should Be Returned" *The Guardian* (international online ed, Dunedin, 18 September 2019).
[58] Māori Affairs Committee Report above n 20 at 15.
[59] Waitangi Tribunal *The Special Housing Areas Act (Ihumātao) Claim* (Wai 2547, 2017) at [2.5.5].
[60] *King v Heritage New Zealand* [2018] NZEnvC 214.
[61] At [93].
[62] At [89].
[63] NZHRC Report above n 13 at 19.
[64] Te Arawhiti Advice above n 26 at 4.
[65] At 4.
[66] Waikato Raupatu Claims Settlement Act 1995.

Tamaoho;[67] and Te Kawerau ā Maki.[68] The Māori Affairs Committee corroborates this, stating that in the Waikato-Tainui Raupatu settlement,[69] the Crown acknowledged that the land at Ihumātao was confiscated under the New Zealand Settlements Act, and apologised to Waikato-Tainui as part of its Treaty settlement.[70] The Committee further states that Te Ākitai Waiohua has been offered a statutory acknowledgement over OSHR in the Agreement in Principle between them and the Crown, and the signing of a deed of settlement was due in late 2019.[71] What remains for the settlement of historical Treaty claims are only the non-raupatu claims of the Waikato-Tainui and Ngāti Te Ata.[72] Thus, with the Treaty settlement process largely completed, once these two groups are settled "all historical claims in the Ihumātao area will have been settled".[73]

With these avenues pursued, reliefs granted, and settlements made, the domestic legal system stands exhausted. Although the customary land tenure has been sufficiently acknowledged in official records and Treaty settlements, the domestic legal framework does not envision a recourse that reverses the designation of SHA 62 coupled with an absolute restoration of native title in the land. What the deadlocked situation requires is an ingenious solution that mandates a process to ensure a settlement without infringing on the rights of the stakeholders or placing any of them at a disadvantage. It was against this backdrop that the NZHRC made the observation that the UNDRIP could provide a compelling and constructive framework within which the Ihumātao land issue can be discussed, addressed, and eventually resolved.[74] To explore whether this conclusion holds water given the complicated facts of the land dispute, it will be fruitful to incise the articles of the Declaration and the role it played in resolving deadlocked indigenous land disputes in other postcolonial jurisdictions with common law systems.

III An Informative Glance at Indigenous Land Issues through the UNDRIP Lens

The UNDRIP was adopted on 13 September 2007 with an overwhelming support of 144 of the 193 member nations. Its drafting had commenced in the 1980s with the participation of several

---

[67] Ngāti Tamaoho Claims Settlement Act 2017.
[68] Te Kawerau ā Maki Claims Settlement Act 2015.
[69] Māori Affairs Committee Report above n 20 at 17: "Note Te Ākitai Waiohua, Ngāti waiohua, Ngāi Tai Ki Tāmaki, Ngāti Te Ata, and Ngāti Tamaoho are also beneficiaries of the Waikato-Tainui Raupatu settlement."
[70] Waikato Raupatu Claims Settlement Act above n 66.
[71] Māori Affairs Committee Report above n 20 at 17.
[72] Te Arawhiti Advice above n 26 at 4.
[73] At 4.
[74] NZHRC Report above n 13 at 7.

Māori experts including Dr Moana Jackson, chairing the initial group, the late Dame Ngāneko Minhinnick and Irihāpeti Murchie, and Aroha Mead.[75]

Interestingly, New Zealand in conjunction with Australia, Canada, and the United States of America (CANZUS Alliance) were the only countries to vote against the Declaration "saying it went too far in giving indigenous peoples ownership of their traditional lands and veto rights over national legislation and local management of resources".[76] Eventually, the CANZUS Alliance changed their stance, and New Zealand endorsed the Declaration in April 2010.[77] As of August 2019, the NZHRC reported that the Government had commenced work on a "plan to progress the Declaration in Aotearoa New Zealand".[78]

A Relevant Articles for Indigenous Peoples' Land Issues

At the very outset, the UNDRIP recognises that indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and freedoms in international human rights law.[79] The exercise of these rights is subject only to non-discriminatory limitations determined by law, consistent with international human rights obligations.[80] In jurisdictions where treaties, agreements and other constructive arrangements exist between the indigenous peoples and the States or their successors, the UNDRIP echoes the honour of the Crown doctrine that the indigenous peoples have the right to recognition, observance, and enforcement of such arrangements, which the State is in turn obligated to honour and respect.[81]

1 Indigenous Peoples' Rights

The Declaration recognises indigenous peoples' over-arching right to self-determination[82] which extends to autonomy or self-government in matters of their internal and local affairs.[83] They are also entitled to participate in decision-making of matters affecting their rights, through

---

[75] Margaret Mutu "Foreword" in Selwyn Katene and Rawiri Taonui (eds) *Conversations About Indigenous Rights: The UN Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand* (Massey University Press, 2018) at 8.
[76] Quoted in Roxanne T Ornelas "Implementing the Policy of the UN Declaration on the Rights of Indigenous Peoples" (2014) 5:1 The International Indigenous Policy Journal 1 at 1.
[77] Selwyn Katene and Rawiri Taonui "Introduction" in Katene and Taonui above n 75 at 14.
[78] NZHRC Report above n 13 at 3.
[79] UNDRIP above n 12 art 1.
[80] Article 46(2).
[81] Article 37.
[82] Article 3.
[83] Article 4.

representatives chosen by themselves.[84] A significant right in the Declaration is that of free, prior, and informed consent (FPIC) of the indigenous peoples. Forcible removal of indigenous peoples from their lands or territories, or relocation is prohibited without their FPIC and an agreement on just and fair compensation with the option of return.[85]

Most crucially, the Declaration recognises the distinctive nuances of native title as explained in *Amodu Tijani*,[86] consistent with Māori land tenure in New Zealand.[87] In particular, Article 26 of the Declaration recognises that indigenous peoples have the right to lands, territories and resources "which they have traditionally owned, occupied, or otherwise used or acquired".[88] It clarifies that this extends to owning, using, developing and controlling such lands, territories and resources.[89] As regards the right to development, indigenous peoples have the right to determine and be actively involved in the preparation of priorities and strategies for development of their lands, territories and resources.[90]

Incidental to their native title, indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their lands, territories, and resources and to "uphold their responsibilities to future generations".[91] They are entitled to conserve and protect the environment and the productive capacity of such customary lands, territories and resources.[92] The Declaration also recognises the right to practise and revitalise their cultural traditions and customs by maintaining, protecting and developing archaeological and historical sites.[93] They also have the right to access their cultural sites in privacy.[94]

In instances where the such customary, ancestral land has been confiscated, taken, occupied, used, or damaged without their FPIC, indigenous peoples are entitled to a redressal through restitution or just, fair and equitable compensation.[95] The Declaration conceives this

[84] Article 18.
[85] Article 10.
[86] *Amodu Tijani case* above n 7 at 402–404.
[87] Evelyn Stokes above n 25 at 627–628.
[88] UNDRIP above n 12 art 26(1).
[89] Article 26(2).
[90] Article 32.
[91] Article 25.
[92] Article 29(1).
[93] Article 11.
[94] Article 12.
[95] Article 28(1).

compensation to be in the form of lands, territories and resources equal in quality, size and legal status, or monetary, or other form mutually and freely agreed upon.[96]

In resolving disputes with the State or other parties, indigenous peoples can access and are entitled to a prompt decision, which includes the right to effective remedies for all infringements of their individual and collective rights.[97] This prompt decision is to take into consideration native customs, traditions, rules and legal systems in addition to international human rights.[98] Where it is the native title that is being adjudicated upon, indigenous peoples are entitled to participate in the process.[99]

2 State's Obligations

To ensure that the rights are upheld, the Declaration burdens the State with corresponding obligations that are remedial, restorative, and preventive.

As regards native title, the State has the duty to legally recognise and protect such lands, territories and resources of indigenous peoples, and such legal recognition is to be "conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned".[100] Further, the State is obligated to prevent and remedy any action aimed at or effecting dispossession of indigenous peoples' customary lands, territories, or resources.[101] Where their property has been taken without their FPIC or in violation of their laws, traditions, and customs, the State must provide redressal, which could include a restitution of the property, through mechanisms developed in partnership with indigenous peoples.[102] The State must also enable their right of access to their cultural sites through similar fair, transparent and effective mechanisms.[103] While adjudicating on the native title, the State has the duty of establishing and implementing in partnership with the indigenous peoples, "a fair, independent, impartial, open and transparent process" that gives due consideration to their laws, traditions, customs, and land tenure systems.[104]

---

[96] Article 28(2).
[97] Article 40.
[98] Article 40.
[99] Article 27.
[100] Article 26(3).
[101] Article 8(2)(b).
[102] Article 11(2).
[103] Article 12(2).
[104] Article 27.

The Declaration also envisions consultation and cooperation in good faith on part of the State with the indigenous peoples through their representative institutions to obtain their FPIC before adopting and implementing any legislative or administrative measures that may affect them.[105] This requirement also extends to the approval of any project that affects their lands, territories and other resources, particularly in the development, utilisation or exploitation of the resources.[106] If such activities are carried out, the State is required to provide effective mechanisms for just and fair redress and undertake appropriate measures to mitigate the adverse environmental, economic, social, cultural and spiritual impact of such activities.[107]

In upholding principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith,[108] the UNDRIP comprehensively articulates indigenous rights and their corresponding obligations on the State.

B The UNDRIP's Treatment in Analogous Jurisdictions

Although the Declaration is aspirational and not a legally binding document, several postcolonial common law jurisdictions have looked to it to recognise indigenous peoples' rights for resolving complicated land disputes where their own domestic legal framework proved insufficient. Three of such decisions are briefly revisited below. Like the Ihumātao land issue, these disputes were also characterised by an absence of a recourse in domestic law, but that did not encumber the courts in holding the State to account for preserving the customary land tenure.

1 Belize: The Maya Land Rights Dispute

It was in 2007 that the UNDRIP was first cited and relied upon by a domestic court to resolve an indigenous land dispute. In its judgment in the *Maya Land Rights case*,[109] the Supreme Court of Belize set precedent when affirming the native title and the existence of Maya customary land tenure system in the disputed land.

The claim was brought by the Maya community alleging constitutional infringement of the proprietary nature of their customary land rights derived from their traditional land use and

[105] Article 19.
[106] Article 32(2).
[107] Article 32(3).
[108] Article 46(3).
[109] *Maya Land Rights case* above n 14.

long-term occupation of the land.[110] The Government, as the defendants, resolutely denied this native title on the grounds that the claimants were unable to corroborate the common law requirements for proof of native title, namely the legal doctrines of "continuity" and "recognition".[111]

In the absence of an effective domestic legal framework that enabled such adjudication, Conteh CJ explicitly cited Article 26 of the Declaration that recognises the nuances of native title.[112] He held that in voting for the UNDRIP, the Government was bound not only in its constitutional provisions, but also under international law that arose from Belize's obligations to respect the rights and interests of the indigenous Maya community to their lands and resources.[113] He further relied on Article 42 of the Declaration to hold the Government accountable for promoting full application of the Declaration and to follow up its effectiveness.[114]

Accordingly, the Court declared that the villages and their members held collective title as well as the derivative individual rights in the lands and resources they had used and occupied within the boundaries established through Maya customary practices, and that these rights constituted "property" within the meaning of the Belize Constitution.[115] It further ordered the Government to abstain from issuing any leases or grants to lands or resources under any legislation, or registering any such interest in the land, or issuing any regulations or concessions as regards the land or resources use.[116] The Court thus unconventionally utilised an international Declaration to read in the provisions of the Constitution and enhance the domestic legal framework to legitimise the Maya customary tenure in the land.

2 India: The Niyamgiri Dispute

India's position as regards the UNDRIP is paradoxical. While it voted in favour of the Declaration, the international commitments therein are not considered applicable since after independence, all Indians are regarded indigenous. Instead, ethnic groups are constitutionally recognised as "Scheduled Tribes" (STs) and other "Traditional Forest Dwellers" (TFDs). Unlike Belize where there was a complete absence of a domestic framework for recognising,

[110] At [2].
[111] At [24].
[112] At [131].
[113] At [132]–[134].
[114] At [132]–[134].
[115] At [136].
[116] At [136].

recording and vesting indigenous rights, the customary rights of STs and TFDs are provided for in The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Forest Rights Act).

The *Niyamgiri case*[117] of 2013 concerns the community rights of worship of the Dongria Kondh community in the sacred Niyamgiri mountain. The proprietary title was vested in the State when it sold the land to a corporation under the Mines and Minerals (Development and Regulation Act) 1957 (MMDR Act) for a bauxite mining project.[118] While the Forest Rights Act sufficiently recognised the customary land tenure, the transfer of land from State into private ownership under the MMDR Act was equally legitimate in the eyes of the domestic legal framework.[119] The question that lay before the Supreme Court of India was whether this transfer into private ownership under the MMDR Act overrode the repugnant customary land tenure under the Forest Rights Act.

In its judgment, Court invoked the UNDRIP and reasoned:[120]

> STs and other TFDs residing in the Scheduled Areas have a right to maintain their distinctive spiritual relationship with their *traditionally owned or otherwise occupied and used lands* … The State has got a duty to recognise and duly support their identity, culture and interest so that they can effectively participate in achieving sustainable development.

Tacitly referring to the over-arching right to self-determination in the UNDRIP,[121] the Court took judicial notice that the Forest Rights Act was a remedial legislation that conferred powers of autonomy and administration on the *gram sabha* (translation: village councils) to protect the community sources, individual rights, cultural and religious rights.[122] Therefore, the Court ordered that decision on the mining project development be left to the self-government[123] of these *gram sabhas* after they obtain the FPIC[124] of the indigenous peoples. Further, the Court clarified that while the title in the mountain had vested in the State under the MMDR Act and

---

[117] *Niyamgiri case* above n 15.
[118] At [29]–[35].
[119] At [29]–[35]
[120] At [46]–[47] (emphasis added).
[121] UNDRIP above n 12 art 3.
[122] *Niyamgiri case* above n 15 at [48].
[123] UNDRIP above n 12 art 4.
[124] Articles 10, 11(2), 19 and 28(1).

the Forest Rights Act did not expressly or impliedly take away this proprietary title, the State was obligated to hold natural resources as a trustee for the STs and other TFDs.[125]

The outcome of this landmark judgment was an unprecedented series of indigenous community referenda for seeking FPIC, resulting in all 12 *gram sabhas* unanimously rejecting the project[126] setting an example of the overreaching influence of the Declaration's exhaustive framework for indigenous rights even in those jurisdictions that do not consider it applicable.

3 Suriname: The Kaliña and Lokono Peoples Dispute

The *Niyamgiri case*[127] dealt with the proprietorship of the State inhering in the disputed land making it reasonably easy for the Court to impose trusteeship of customary land tenure on the State. Contrastingly, the status of collective usufructuary rights in the face of absolute private ownership is best seen in the *Kaliña and Lokono Peoples case*[128] adjudicated by the Inter-American Court of Human Rights in 2015. By then, the UNDRIP had been adopted by Suriname and was treated at par with the American Convention on Human Rights.[129]

This case involved the indigenous peoples claiming that the domestic legal framework did not recognise their collective customary rights to their traditional lands and resources.[130] Further, in detriment to their customary land tenure, the State had issued private titles to non-indigenous persons, granted mining concessions and licenses, and established three nature reserves, all without the peoples' FPIC.[131] Similar to the HASHA Act, the procedures for granting concessions and licenses in Suriname too did not envision consultation or remedies,[132] thereby impairing the indigenous peoples' right of effective participation in decision-making. Thus, the peoples did not legally possess a territory that was delimited, demarcated, alienated, and titled by virtue of their customary land tenure.

In its adjudication, the Court considered the impact of the State's actions on indigenous land rights, as well as the legitimacy of private title encroaching on the customary land tenure unrecognised in the domestic legal framework. The Court attributed the prejudice caused to the

---

[125] *Niyamgiri case* above n 15 at [58]–[71].
[126] Mahesh Menon "India's First Environmental Referendum: How Tribal People Protected the Environment" (2015) 45:7 ELR.
[127] *Niyamgiri case* above n 15.
[128] *Kaliña and Lokono Peoples case* above n 2.
[129] Organization of American States *American Convention on Human Rights* Treaty Series No 36 (1969).
[130] *Kaliña and Lokono Peoples case* above n 2 at [1].
[131] At [1].
[132] At [1].

indigenous peoples due to the lacuna in domestic law to the State's act of designating their lands as reserves justified under environmental protection, mining concessions, and private land title.[133] Citing the UNDRIP, the Court declared the State responsible for the violation of the rights to recognition of the indigenous peoples' juridical personality, to their collective customary property,[134] to consultations and cooperation in good faith,[135] to political rights, participative rights, and cultural identity,[136] and the corresponding duties of the State[137] to adopt mechanisms in the domestic legal framework to ensure these rights.[138] Ruling that private titling is not a sufficient reason to deny indigenous claims, the ultimate decision of whether the collective usufructuary rights should take precedence over private titles was left to the domestic courts which the Court held should be done with due recognition of the customary land tenure even though it is unrecognised in the domestic legal framework.[139]

Thus, the Court effectively enhanced international jurisprudence about indigenous land rights in a welcome direction as regards the technical aspects of titling.[140] Going beyond the ground rules established in *Amodu Tijani*,[141] the Court has laid down that while a spiritual connection is still needed to assert native title, it should not be used to limit the extent of that title in a way that ultimately cripples the ability of indigenous peoples to utilise their land in a manner that pursues their own development.[142]

The foregoing case studies underscore that indigenous peoples need not be prejudiced by land disputes deadlocked due to legal technicalities or insufficiencies in domestic law for recognising and protecting their customary land tenure. It is possible for jurisdictions to look outward to universal indigenous rights commitments in international law to enhance their domestic legal framework and usher in indigenous peoples' rights and corresponding State obligations.

---

[133] At ch VI.
[134] UNDRIP above n 12 arts 26 and 29.
[135] Article 32.
[136] Article 18.
[137] Articles 27 and 33(2).
[138] *Kaliña and Lokono Peoples case* above n 2 at ch VI.
[139] At [156]–[157].
[140] See Lucas Lixinski "International Decisions: Case of the Kaliña and Lokono Peoples v Suriname. Series c, No 309. Merits, Reparations and Costs" (2017) 111:1 AJIL 147.
[141] *Amodu Tijani case* above n 7 at 402–404.
[142] Lucas Lixinski above n 140 at 153.

IV Does the UNDRIP Provide a Compelling and Constructive Framework for the Ihumātao Land Issue?

In light of the previous analysis on the complicated facts of the Ihumātao land issue and the indigenous rights framework envisioned by UNDRIP, it is now beneficial to reflect on whether adopting an unconventional approach of finding resolution within the UNDRIP framework would promote or hinder a settlement in New Zealand domestic law that is not detrimental to either parties. More so, it is important to consider what it could mean for New Zealand in the long run if either an explicit reliance on the UNDRIP articles is made as was done in the *Maya Land Rights case*,[143] or a tacit reference is made to read the articles in the existing domestic legal framework as was done in the *Niyamgiri case*,[144] or recourse was made to the articles to derecognise the supremacy of private titling and confirming the ratio decidendi pronounced in the *Kaliña and Lokono Peoples case*.[145]

A Compatibility with the Domestic Legal Framework

Although the Declaration is pending ratification in New Zealand, it has received positive treatment in the country. The document has been regarded by the Waitangi Tribunal as "the most comprehensive, globally supported and legitimate international legal instrument setting out the rights of indigenous peoples".[146] New Zealand courts and the Tribunal have interpreted the Declaration as being alongside Te Tiriti and have taken into account its articles when assessing State actions.[147] The UNDRIP be utilised as a blueprint for implementing the Treaty as country's founding constitutional document. As illustrated in Part III, the Declaration upholds and assists with the interpretation of the Treaty principles of partnership, protection, and participation making it strongly aligned and mutually consistent.

A possible solution of restoring the mana whenua status in the land and reversing the designation to the continue the customary land use can be conceived by reading in the UNDRIP articles in this domestic legal framework and vesting guardianship on the State of the Māori

---

[143] *Maya Land Rights case* above n 14.
[144] *Niyamgiri case* above n 15.
[145] *Kaliña and Lokono Peoples case* above n 2.
[146] "Brief of Evidence of Dr Claire Winfield Ngamihi Charters" (Doc A10) in Waitangi Tribunal *In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim* (Wai 2417, 2015) at 3.
[147] *Ngāti Whātua Ōrākei Trust v Attorney-General* [2018] NZSC 84, *Wakatu v Attorney-General* [2017] NZSC 17, *New Zealand Māori Council v Attorney-General* [2013] NZSC 6, *Paki v Attorney-General* (No 2) [2014] NZSC 118, *Takamore v Clarke* [2012] NZSC 116, Waitangi Tribunal above n 146.

customary land tenure. It would appear then that imposing government intervention to return the land as demanded by SOUL is not impossible when viewed through the UNDRIP lens. The land could be declared as a Māori reserve land pursuant to Te Ture Whenua Maori Act 1993 and subject to Maori Reserved Land Act 1955. The nature and incidents of such title would however require a careful consideration given the complicated factual background of the dispute as analysed in Part II.

B Repugnancy Caused by the Complicated Factual Background

What hinders a smooth resolution today and would also eventually prove to be substantial points of contention if a resolution was pursued via the UNDRIP, is the repugnancy caused by the complicated factual background of the dispute, specifically the disagreement between the parties as regards the subsistence of and rightful claim to the mana whenua status in the land, whether appropriate consultations took place and FPIC was obtained in the designation and subsequent development of SHA 62, and disunity and lack of consensus between the local Māori as regards the best way forward.

Even after these questions of fact are determined and settled, the legal technicalities posed by the domestic legal framework surrounding private title and the near-complete Treaty settlement processes compensating for the historical injustices suffered by the local Māori would also be significant questions that will have to be answered if a route via the UNDRIP is chosen.

V Conclusion

Even though ascertaining the nature and incidents of Māori title in Ihumātao may not be easy, it would be possible to determine them if the questions of fact outlined above are determined.

The UNDRIP is a deeply significant document for indigenous peoples' rights. The then UN Secretary-General Ban Ki-moon describing its signing as "a historic moment when UN Member States and indigenous peoples have reconciled with their painful histories and are resolved to move forward together on the path of human rights, justice and development for all".[148] The rights recognised in the Declaration constitute the "minimum standards for survival, dignity and well-being" of the indigenous peoples of the world.[149] If it is indeed

[148] "United Nations adopts Declaration on Rights of Indigenous Peoples" *UN News* (13 September 2007) <www.un.org/apps/news/story.asp?NewsID=23794>.
[149] UNDRIP above n 12 art 43.

utilised to pave the way for government intervention, the Ihumātao land dispute could set a precedent for all indigenous disputes across the country.

BIBLIOGRAPHY

PRIMARY SOURCES

A Cases

1 Australia

Mabo and Others v Queensland (No 2) 145 CFR IFC 92/04

2 England and Wales

Amodu Tijani v The Secretary, Southern Nigeria (1921) 2 AC 399

3 Belize

Aurelio Cal v The Attorney General of Belize and Manuel Coy v the Attorney General of Belize 1 (2007) 71 WIR 110

4 Canada

Delgamuukw v British Columbia [1997] 3 SCR 1010

5 India

Orissa Mining Corporation Limited v Ministry of Environment and Forests and Others (2013) 6 SCC 476

6 Inter-American Court of Human Rights

Kaliña and Lokono Peoples v Suriname Merits, Reparations and Costs, Inter-Am Ct HR (ser C) No 309 (25 November 2015)

7 Malaysia

Kerajaan Negeri Selangor and Others v Sagong Bin Tasi and Others (2005) MLJ 289

8 New Zealand

Gavin Wallace Ltd v Auckland Council [2012] NZEnvC 120

King v Heritage New Zealand [2018] NZEnvC 214

New Zealand Māori Council v Attorney-General [2013] NZSC 6

Ngāti Whātua Ōrākei Trust v Attorney-General [2018] NZSC 84

Paki v Attorney-General (No 2) [2014] NZSC 118

Takamore v Clarke [2012] NZSC 116

Te Runanga o Muriwhenua Inc v Attorney-General [1990] 2 NZLR 641

Wakatu v Attorney-General [2017] NZSC 17

B Statutes

New Zealand

Ngāti Tamaoho Claims Settlement Act 2017

Te Kawerau ā Maki Claims Settlement Act 2015

Waikato Raupatu Claims Settlement Act 1995

C United Nations Materials

United Nations Declaration on the Rights of Indigenous Persons GA Res 61/295 (2007)

D International Treaties

Organization of American States *American Convention on Human Rights* Treaty Series No 36 (1969)

SECONDARY SOURCES

A Books

Jérémie Gilbert *Indigenous Peoples' Land Rights Under International Law: From Victims to Actors* (Transnational Publishers, New York, 2006)

R Y Jennings *The Acquisition of Territory in International Law* (Manchester University Press, Manchester, 1963)

Selwyn Katene and Rawiri Taonui (eds) *Conversations About Indigenous Rights: The UN Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand* (Massey University Press, 2018)

Tsuyoshi Kotaka and David L Callies (eds) *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries* (University of Hawai'i Press, United States of America, 2002)

B Journal Articles

Andreana Reale "Assisted Theft: Compulsory Land Acquisition for Private Benefit in Australia and the US" (2009) 34:3 AltLJ 147

Christine Elers and Mohan J Dutta "Ihumātao Protest, Colonization, and Cultural Voice" (August 2019) 4 CARE White Paper Series 3

Ilmars Gravis, Károly Németh and Jonathan N Procter "The Role of Cultural and Indigenous Values in Geosite Evaluations on a Quaternary Monogenetic Volcanic Landscape at Ihumātao, Auckland Volcanic Field, New Zealand" (2017) 9 Geoheritage 373

Jérémie Gilbert "Historical Indigenous Peoples' Land Claims: A Comparative and International Approach to the Common Law Doctrine on Indigenous Title" (2007) 56 ICLQ 583

Lucas Lixinski "International Decisions: Case of the Kaliña and Lokono Peoples v Suriname. Series c, No 309. Merits, Reparations and Costs" (2017) 111:1 AJIL 147

Kaius Tuori "The Theory and Practice of Indigenous Dispossession in the Late Nineteenth Century: The Saami in the Far North of Europe and the Legal History of Colonialism" (2015) 3:1 Comparative Legal History 152

Mahesh Menon "India's First Environmental Referendum: How Tribal People Protected the Environment" (2015) 45:7 ELR

Roxanne T Ornelas "Implementing the Policy of the UN Declaration on the Rights of Indigenous Peoples" (2014) 5:1 The International Indigenous Policy Journal 1

C Newspaper and Magazine Articles

Eleanor Ainge Roy "New Zealand: Māori King Says Disputed Ihumātao Land Should Be Returned" *The Guardian* (international online ed, Dunedin, 18 September 2019)

Lucy Mackintosh "Why Ihumātao Truly is a Piece of New Zealand's Soul" *The Guardian* (international online ed, New Zealand, 24 September 2019)

"United Nations adopts Declaration on Rights of Indigenous Peoples" *UN News* (13 September 2007) <www.un.org/apps/news/story.asp?NewsID=23794>

D Reports and Documents

Evelyn Stokes *A Review of the Evidence in the Muriwhenua Lands Claims Volume II* (Waitangi Tribunal Review Series 1997 No 1, GP Publications, Wellington 1997)

Manukau City Council Notice of Requirement (18 October 2007) referenced in *Gavin Wallace Ltd v Auckland Council* [2012] NZEnvC 120

Māori Affairs Committee *Petition of Pania Newton for Save Our Unique Landscape: Protect Ihumātao – Report of the Māori Affairs Committee* (July 2019)

New Zealand Human Rights Commission *International Human Rights Perspectives on Ihumātao* (23 August 2019)

Pania Newton *Shadow Report to the Committee on the Elimination of All Forms of Racial Discrimination on Special Housing Area 62 in Ihumātao, Mangere, Aotearoa* (Presented on behalf of Save Our Unique Landscape (SOUL), 6 July 2017)

Te Arawhiti *Advice for the Māori Affairs Committee regarding the Petition of Pania Newton for Save Our Unique Landscape: Protect Ihumātao* (24 June 2019)

UN Special Rapporteur *Indigenous Peoples and their relationship to Land: Final Working Paper* UN Doc E/CN.4/SUB.2/2001/21 (11 June 2001)

UN Special Rapporteurs *Mandates of the Special Rapporteur on Adequate Housing As a Component of the Right to an Adequate Standard of Living and on the Right to Non-Discrimination in this Context and the Special Rapporteur on the Rights of Indigenous Peoples* AL NZL 1/2019 (22 March 2019)

Waitangi Tribunal *In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim* (Wai 2417, 2015)

Waitangi Tribunal *Manukau Report* (Wai 8, 1985)

Waitangi Tribunal *The Special Housing Areas Act (Ihumātao) Claim* (Wai 2547, 2017)

Waitangi Tribunal *Whanganui River Report* (Wai 167, 1999)