

Conversations About Indigenous Rights

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The UN Declaration on the Rights of
Indigenous Peoples in Aotearoa New Zealand

Edited by Selwyn Katene and Rawiri Taonui



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FOREWORD

Ka tukuna atu ngā mihi mahana ki a koutou katoa ngā kanohi o rātou mā. Ka mihi hoki ki te tini o rātou kua mene atu ki te pō. Nā koutou i tangi atu, nā koutou i tuku atu ki te kōpu o te whenua, arā, nā tātou katoa. Nō reira, e ngā mate, takoto mai rā, haere, hoki atu ki ki Hawaiki nui, ki Hawaiki roa, ki Hawaiki pāmamao, Te Hono-i-Wairua. E kore koutou e warewaretia. Hoki mai ki a tātou te hunga ora, tēnā koutou, tēnā koutou, tēnā tātou katoa.

The United Nations Declaration on the Rights of Indigenous Peoples is a blueprint for implementing Te Tiriti o Waitangi, New Zealand's founding constitutional document. Not long after rangatira signed this treaty, they realised that British immigrants were not abiding by it. Instead they were claiming a right to take over this country in the mistaken belief that whites are somehow inherently privileged and superior and Māori are somehow less than human. This belief derived from the fatally flawed Doctrine of Discovery developed in the fifteenth and sixteenth centuries in Europe to

justify invading and taking over the lands and lives of other peoples. It has been used mercilessly in New Zealand since 1840 to deprive Māori of our homes, lands, territories, rights, freedom and lives, leaving us in a state of poverty, deprivation and marginalisation that exists to this day.

For well over a century now, Māori have been seeking international support to overcome the destructive oppression that British colonisation brought to our country. It was not until the establishment of the United Nations in answer to the atrocities committed during the world wars that we started to make some progress. With the adoption of the Universal Declaration of Human Rights in 1948 and then the legally binding International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights in 1966, the Doctrine of Discovery became internationally outlawed. And yet it persisted here in New Zealand, and in Australia, Canada and the United States, the so-called CANZUS states.

In the 1980s, drafting of the United Nations Declaration on the Rights of Indigenous Peoples commenced with several Māori experts participating, including Dr Moana Jackson, who chaired the group that initially drafted the Declaration, the late Dame Ngāneko Minhinnick and Irihāpeti Murchie, and Aroha Mead. Twenty-two years later it was finally adopted by the United Nations General Assembly with the support of 144 states. It was the dogged resistance and opposition of the CANZUS states, often led by New Zealand, that dragged out the drafting for so long. They succeeded in weakening the Declaration significantly and were the only states to oppose its adoption.

A conference marking the tenth Anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples was held at Te Papa in Wellington on 5–6 September 2017. It was an opportunity not only to reminisce on the long, hard battle fought to have the Declaration adopted but also to consider its impact and relevance to date and its potential to deliver future benefits. It was also an opportunity to consider whether it has helped the CANZUS states to move on from their reliance on their rule of law adherence to the Doctrine of Discovery once each of

them also eventually adopted the Declaration, and to repair the damage wrought by their colonisation of Indigenous lands and territories. This volume captures a number of the presentations delivered at the conference on these areas.

For Māori in New Zealand, it has not been apparent that the government has moved on from its reliance on the Doctrine of Discovery. Despite assertions made in United Nations forums that they are adhering to the Declaration, the situation at home has remained dire. Fundamental human rights, including the over-arching right to self-determination, continue to be denied to Māori. We continue to battle for recognition of our rights as Indigenous people, the tangata whenua of this country responsible for preserving the life-giving and life-sustaining powers of our Mother Earth, Papatūānuku. Increasingly we are looking to the Declaration to articulate our rights and to the United Nations to hold New Zealand governments to account for their refusal to implement the Declaration.

In 2015 National Iwi Chairs Forum, an informal group of chairs of 73 Māori nations from throughout the country, established the Independent Monitoring Mechanism to report to the United Nations Expert Mechanism on the Rights of Indigenous Peoples on the government's compliance with and implementation of the Declaration. Its membership includes Dr Moana Jackson, Aroha Mead, Tracey Whare and Associate Professor Claire Charters, who have all spent many years fighting for Indigenous rights in the United Nations. Its reports to date have highlighted the lack of both compliance and implementation and have contributed to damning reports from other United Nations treaty bodies on the government's treatment of Māori.

Each treaty body has made specific recommendations on what the government is to do to adhere to its international obligations to Māori. This includes participating in a national conversation on the need for constitutional transformation including the proposals set out in the 2016 report of Matike Mai Aotearoa — the Independent Working Group on Constitutional Transformation. After 178 years of struggle against

our oppressors, it is clear that only constitutional transformation will free us from suffocating colonisation and ensure that the Declaration is implemented in New Zealand.

*Professor Margaret Mutu
Chair, Independent Monitoring Mechanism
Karikari, April 2018*

PREFACE

The rights of Indigenous peoples in New Zealand, but also around the world, are continually being impacted by government and business. New Zealand was slow to get on board the United Nations Declaration on the Rights of Indigenous Peoples express. I acknowledge Sir Pita Sharples' role in getting New Zealand on the train. Now we have the chance to lead.

The Declaration breathes life into the existing human rights obligations of New Zealand towards Indigenous peoples. It provides a human rights lens and interprets at a domestic level the human rights dimensions of Te Tiriti o Waitangi — New Zealand's founding human rights and founding constitutional document. Te Tiriti o Waitangi and the Declaration are both strongly aligned and mutually consistent, and the Declaration assists with the interpretation and application of the articles of the Treaty and the principles of partnership, protection and participation.

So why is the Declaration so important? It is important because it looks

to hold states to account around both the individual and the collective rights of Indigenous peoples around the world.

*David Rutherford
Chief Commissioner
New Zealand Human Rights Commission*

Introduction

Selwyn Katene and Rawiri Taonui
Editors

This book presents perspectives by writers from Aotearoa New Zealand and the international community reflecting on the tenth anniversary of the United Nations General Assembly's adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

On Thursday 13 September 2007, with the support of 144 of the 193 member nations, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (the Declaration). That same year, Bolivia became the first country to formally recognise the Declaration in legislation. The first case in international law to cite the Declaration was in 2008, when the Supreme Court of Belize found in favour of Indigenous Mayan peoples against the government of Belize in a case over 'free, prior and informed consent' regarding logging, hydroelectricity and mining development. In 2008, Ecuador adopted a new constitution that included reference to key rights under the Declaration. In 2009, Bolivia also recognised the Declaration in its new constitution.

Following the Durban Review Conference in 2009, over 180 states endorsed a statement welcoming 'the adoption of the UN Declaration on the Rights of Indigenous Peoples' and urged 'states to take all necessary measures to implement the rights of Indigenous Peoples in accordance

with international human rights instruments without discrimination’.¹ In 2009, the Australian government formally adopted the Declaration, followed by Samoa and Colombia. New Zealand, an abstention in the 2007 vote, declared its support for the Declaration in April 2010. Later that year, Canada and the United States also adopted the Declaration.

In 2014, New Zealand supported the Outcome Document of the World Conference on Indigenous Peoples (WCIP), including commitments to cooperate with Indigenous peoples to develop national strategies, action plans and other measures to implement the Declaration.

In 2015, the Iwi Leaders Group established Matike Mai Aotearoa, an independent monitoring mechanism of the Declaration in New Zealand. The following year, the New Zealand Human Rights Commission launched a series of New Zealand-wide educational forums on the Declaration. In 2016, the Canadian government asserted a commitment to apply the Declaration without qualification.

The wellbeing of Indigenous peoples the Declaration embraces is important. They are descendants of the first or earliest occupiers of lands. They number 350 to 500 million people, embody 90 per cent of the world’s cultural diversity, and occupy 20 per cent of the Earth’s land mass.² Indigenous peoples have rich and ancient cultures, and view their social, economic, environmental and spiritual systems as interdependent, and have beliefs that are crucial to the sustainable development of the Earth. Indigenous peoples are among the world’s most vulnerable, marginalised and disadvantaged groups.

There is no doubt that the Declaration is a deeply significant document. In 2007, then UN Secretary-General Ban Ki-moon described its signing as an ‘historic moment when UN Member States and indigenous peoples reconciled with their painful histories and resolved to move forward together on the path of human rights, justice and development for all’.³

James Anaya, of Apache descent, an American lawyer and a former UN Special Rapporteur on the Human Rights situation and fundamental

freedoms of Indigenous People, John Henrikson, the former Chairperson-Rapporteur of the UN Expert Mechanism of the Rights on Indigenous Peoples, and Victoria Tauli Corpuz, the former Chairperson of the UN Permanent Forum on Indigenous Issues and current Special Rapporteur on the Rights of Indigenous Peoples, said: ‘The rights recognized in the Declaration constitute the minimum standards for the survival, dignity and wellbeing of the indigenous peoples of the world.’⁴

Sir Edward Taihakurei Durie, former Chair of the Waitangi Tribunal, said of the Declaration: ‘Notwithstanding the progress made through all the tribunal reports and court cases from the 1980s, and the consequential changes in legislation and official policy, I would still rank the day that New Zealand gave support to the Declaration as the most significant day, in advancing Māori rights, since 6th February 1840.’⁵ So what does the Declaration intend? It asserts:

- the individual and collective rights of Indigenous peoples, as well as their rights to culture, identity, language, employment, health and education
- the rights of Indigenous peoples to self-determination, and the free, prior and informed consent over their heritage and culture, and the development of their territories and natural resources
- the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations
- discrimination against Indigenous peoples is prohibited, and promotes their full and effective participation in all matters that concern them, and their right to remain distinct and to pursue their own visions of economic and social development.

In September 2017, a landmark conference to celebrate the tenth anniversary of the adoption of the Declaration was co-hosted by Massey University’s Global Centre for Indigenous Leadership and the New Zealand Human Rights Commission. The tenth anniversary was an

opportune time to hold a New Zealand conference to reflect on the history of the adoption of the Declaration, and its current progress, relevance and future potential.

The conference provided a national and international focus for a discussion on the Declaration and Indigenous rights, and opportunity to actively promote and breathe life into implementing the Declaration in Aotearoa New Zealand and in other countries. It was also an opportunity for people working in areas impacting on Māori and Indigenous development, for example in Aotearoa New Zealand, Australia and Canada, to learn from each other, and to consider new and better ways of advancing Māori and Indigenous peoples.

In considering and scoping the opportunities and challenges for Māori and Indigenous peoples, the conference brought together leading Indigenous thinkers and experts in their fields to discuss the experiences, understandings and learnings that will inform and assist Māori and Indigenous development.

Indigenous peoples, including Māori in Aotearoa New Zealand, first nations, Metis and Inuit in Canada, and Aboriginal and Torres Strait Islanders in Australia, achieve the greatest results when acting as collectives. To that end, the conference was relevant to Māori and Indigenous leaders and managers, providers of health, education and social services, land trusts, tribal groups, government agencies, international bodies, education institutions, academics and researchers, students and ‘futurologists’.

By bringing together current thinking on the Declaration, participants synthesised perspectives on it to assist and inform the realisation of the Declaration now and into the future. These issues require discussion and debate if Māori and Indigenous peoples are to prosper in the coming years.

The conference also sought to address the balance between the Declaration’s social, cultural, economic and environmental dimensions, and opportunities for realising Indigenous potentialities within the several community contexts of contributing presenters.

One key observation was that the Declaration holds considerable moral

authority and contains principles that are consistent with those in the Treaty of Waitangi. The Treaty and Declaration are strongly aligned and mutually consistent, with the Declaration assisting with interpretation and application of the Treaty principles of partnership, protection and participation.

Participants also agreed that the many Indigenous leaders from multiple countries who worked on the Declaration over more than two score years can be rightly proud of their achievements. The journey to full implementation is now well under way. Indigenous peoples are mobilising across the globe. Stronger commitments, resources, will and action are required from governments.

In the case of Aotearoa New Zealand, government decisions, policy and legislation should take the principles of the Declaration into consideration alongside those of the Treaty. Breathing life into a fully implemented Declaration and affirming Māori Indigenous rights, including rights of self-determination, should be a focus of the government through its principal adviser, Te Puni Kōkiri (the Ministry of Māori Development), in consultation with community groups, including iwi (tribes), to ensure the Declaration's full implementation. And, as our brothers and sisters from other countries who attended the conference clearly outlined, the same situation applies across the world.

By bringing together the collective wisdom, shared at the 2017 conference, this book seeks to provide a touchstone reference for future implementers of the Declaration in Aotearoa New Zealand and abroad.

The book is divided into four parts. In Part 1, 'Adopting the Declaration', Rawiri Taonui, one of the most prolific writers on Indigenous Māori rights in Aotearoa New Zealand over the past 20 years, describes the influences that shaped the rise of the Indigenous rights movement in the latter half of the twentieth century. Taonui also outlines the cultural politics between states and Indigenous peoples on the long path leading to the adoption of the Declaration.

Moana Jackson, an internationally respected Indigenous rights advocate and lawyer, provides a deeply personal and articulate essay centred on the humanity of Indigenous peoples. He reflects on his experiences drafting the Declaration in the context of uplifting Indigenous peoples from the dehumanising experiences of colonisation and state oppression. Jackson recounts the politics of the New Zealand and other governments and the compromises they affected in the Declaration and the possible implications these have for Indigenous human rights.

Pita Sharples, a former political leader of the Māori Party and government minister, shares his understanding about what it means to grow up in the context of Indigenous disadvantage and poverty, and in an environment where the state policy impeded his parents from speaking to their children in their native tongue. He asserts the imperatives of identity, pride in culture and indigeneity and extols the value of working towards reclaiming one's rights. He urges collective Indigenous action to ensure the survival of *te reo Māori* (the Māori language). Sharples also writes with some emotion about what it meant to persuade the National government to adopt the Declaration in 2010 and his experience making the announcement to the UN Permanent Forum on Indigenous Issues.

Part 2, 'National Contexts in Aotearoa New Zealand, Canada and Australia', offers insights into the realities of Indigenous peoples in Aotearoa New Zealand, Canada and Australia and their experience of the adoption and implementation of the Declaration. Naida Glavish, a recognised leader of the Ngāti Whātua people, provides an uplifting and bilingually inspiring exploration of what it means to be Māori and *tangata whenua* of Aotearoa New Zealand, and looks at the commonalities with other Indigenous peoples' beliefs, values and experiences. Glavish suggests that *our* shared respect for time and place, the environment, and the past and the future, could well offer a way forward for all peoples in these ever-changing times full of vast problems.

Sheryl Lightfoot, a respected Indigenous academic and writer from Canada, applies her considerable expertise to assess the level of various

states' compliance in implementing the Declaration, before turning to her own experience to explore how the government in Canada traverses the fine line between rhetorical and meaningful action on Indigenous rights, for example around the Truth and Reconciliation Commission and Residential Schools. Lightfoot also compares the approach in Canada with Aotearoa New Zealand. She concludes that there is a considerable way to go for true decolonisation to take place, but suggests that once completed it promises a meaningful new world order.

Steve Larkin, one of Australia's highest-ranking Indigenous academic leaders, provides a moving and highly capable analysis of the Indigenous situation in Australia, traversing a breadth of issues from stolen generations, deaths in custody and racism. He explores his country's political and social colour-blindness, and other barriers limiting true compliance with the Declaration.

Part 3, 'Case Studies', includes several essays examining the place of the Declaration in human rights debates, Indigenous leadership, entrepreneurship and business. Fleur Te Aho and Anaru Erueti, two emerging Indigenous legal advocates and academics from Aotearoa New Zealand, outline the wealth of Indigenous rights material available to assist Māori and other Indigenous peoples and how to access them when advocating for their rights. Te Aho and Erueti then apply their considerable advice and expertise to real-life scenarios.

Jessica Ngatai, an Indigenous staffer at the New Zealand Human Rights Commission, explains how the Declaration impacts and strengthens the work of the New Zealand Human Rights Commission, and how it offers twenty-first-century moral and practical support to the Treaty of Waitangi.

Selwyn Katene, who has published three books on Indigenous and Māori leadership, explores how the shared experiences of Indigenous peoples, and their need for leadership to carry them forward while retaining the values and beliefs of the past and their cultures, led to a cooperative global initiative to establish a leadership centre and network. While ultimately the venture could not be sustained, the experience validated the need

for such an initiative, and taught valuable lessons for any future such establishment.

Jason Mika, an Indigenous academic specialising in entrepreneurship, presents a comprehensive discussion about how the Declaration can be used both as a shield and an enabler of Indigenous rights, before exploring the connection between the Declaration and the Treaty of Waitangi, and the role of entrepreneurship and enterprise in realising Indigenous self-determination and sustainable economic development.

Pushpa Wood, a financial specialist who played an important role in the funding of the Global Centre of Indigenous Leadership, concludes this part with an exploration of the distinctive features of Indigenous business beliefs and values, and ways of doing business, and particularly Māori business, and then looks at the potential for the Declaration to defend, foster and develop these unique practices.

In Part 4, 'The International Context', Tracey Whare, who has extensive experience in Indigenous advocacy at the UN, explores the significant impact the Declaration has had on the processes of the various specialised agencies of the UN on Indigenous and human rights. Applying her significant experience, she discusses the implications these have for Indigenous advocates wishing to see greater implementation of the Declaration at the state level.

The final chapter in the book is by Rawiri Taonui. It looks at the significance of the Declaration, and discusses progress on the Declaration in strengthening Indigenous movements, developments in the UN, increasing support among states, on violence against indigenous advocates, and in constitutional, legislative, legal and human rights cases and contexts. Taonui considers the future of the Declaration in the context of the limitations of the Paris Agreement on climate change and the Agenda 2030 strategy to eradicate poverty, and scopes compromises within the Declaration, the lack of state recognition of Indigenous peoples in some countries, ongoing issues of language loss, Indigenous suicide, high incarceration, continuing racism and cultural and physical survival. It ends

by exploring the further strengthening of the Indigenous movement, its possible alignment with other peoples escaping oppression and imperatives for indigenous leadership.

Starting a decade ago, the focus of the Declaration is now on strengthening Indigenous community participation and advocacy. People are becoming more aware, motivated, passionate and committed to fully implement the Declaration. Indigenous peoples are change agents. The Declaration has now passed to a new generation of well-qualified, high-calibre and visionary younger leaders to make the Declaration more relevant and impactful. It is the authors' hope that the ideas and experiences they share in *Conversations About Indigenous Rights* will contribute to that voyage.

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- 1 UN Office of the High Commissioner for Human Rights, 'Outcome Document of the Durban Review Conference', para 73 (Adopted by the General Assembly, A/C.3/64/L.55, November 3, 2009.), http://www.un.org/en/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf.
 - 2 University of Minnesota Human Rights Center, *Study Guide: The Rights of Indigenous Peoples* (Minneapolis, MN: University of Minnesota Humans Rights Center, 2003). hrlibrary.umn.edu/edumat/studyguides/indigenous.html.
 - 3 'United Nations adopts Declaration on Rights of Indigenous Peoples', *UN News*, September 13, 2007. www.un.org/apps/news/story.asp?NewsID=23794.
 - 4 'UN Experts Welcome Australia's Endorsement of the United Nations Declaration on the Rights of Indigenous Peoples', http://www.un.org/esa/socdev/unpfii/documents/Australia_endorsement_UNDRIP.pdf.
 - 5 'UNDRIP: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa — Theory and Practice', The University of Waikato Te Whare Wananga o Waikato, last modified March 5, 2014, www.waikato.ac.nz/law/news-events/undrip-symposium.