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Justice Committee,
Parliament Buildings, Wellington.

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Principles of the Treaty of Waitangi Bill

Thank you for the opportunity to make a submission on the Principles of the Treaty of Waitangi Bill (the Bill)¹. This Bill is of the utmost concern for Peace Movement Aotearoa² and our members and supporters because it deliberately distorts the meaning and promise of te Tiriti o Waitangi (Treaty of Waitangi, hereafter, te Tiriti) and of human rights law as outlined in our submission below.

Peace Movement Aotearoa's constitution states that te Tiriti o Waitangi (Treaty of Waitangi, hereafter, te Tiriti) is the blueprint for peaceful relations in Aotearoa New Zealand, and supporting te Tiriti has been a key focus of our work since our establishment in the early 1980s. Te Tiriti is the basis for a positive peaceful vision for a future where all New Zealanders can flourish.

Our comments below are grouped into four main sections:

- A.** The context and impact of this Bill
- B.** The content of the Bill
 - i.** Tino rangatiratanga and the right of self-determination
 - ii.** Everyone is equal before the law
- C.** Human rights obligations
- D.** Recommendations

We provided a brief outline of some of our key concerns to our members and supporters last year, along with links to useful resources, so some of the points below may also have been included in other submissions.

We are totally opposed to this Bill and we recommend it does not proceed. We wish to speak with the Committee about our concerns and recommendations.

A. The context and impact of this Bill

We are deeply concerned that this Bill has been introduced in the context of a government that seems intent on removing any trace of progress made in recent years towards honouring Te Tiriti, and towards respecting the individual and collective rights of Māori.

The Bill was introduced as a consequence of the coalition agreement between National and ACT, and after its first reading in November 2024 was referred to the Justice Committee for

a six-month period of consideration: this includes a seven-week period for written submissions, and a month of oral submissions.

The way the National-led government has handled this goes well beyond what was actually agreed in the coalition agreement, which states only that the Bill would be introduced and supported to a Select Committee³, not that this damaging misleading discussion would be allowed to drag on for months.

There is no justification for the lengthy period allocated for public submissions and Committee consideration, especially when compared with other legislation actively harmful to Māori rights and interests that has been allocated little or no time for public submissions: for example, the Pae Ora (Disestablishment of Māori Health Authority) Amendment Bill went through all stages from introduction to enactment in one day with no opportunity whatsoever for public submissions; and the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill 2024 was allocated only four working days for written submissions.

The Bill was introduced with no consultation whatsoever with hapū or iwi; and the mere fact of its introduction to parliament as a Government Bill gives a false veneer of legitimacy to an obvious attempt to extinguish Te Tiriti and the collective rights of Māori, and to put long outdated offensive political ideology around cultural assimilation into legislation.

While National has said it will not support the Bill at second reading, it has already caused harmful division: well before the Bill was introduced to parliament it triggered a flood of misinformation and racist abuse against Māori in mainstream and social media which will no doubt heighten during the Committee's public hearings, which begin on the Monday after the annual celebrations at Rātana Pā and continue over and beyond Waitangi Day - already a time of year when anti-Māori utterances by politicians and racist rhetoric on social media tends to increase.

This shameful charade sends a clear message that the government of the day considers it more important to prioritise a temporary political agreement than to honour the guarantees of Te Tiriti, which politicians regularly refer to as the founding document of New Zealand.

As the Waitangi Tribunal has said:

*[even] “if this Bill is not enacted, it would still be an appalling breach of Treaty principles for the Crown to have developed these principles unilaterally and introduced them to Parliament, telling New Zealanders that these principles represent the meaning of the Treaty / te Tiriti.”*⁴

B. The content of the Bill

As mentioned above, this Bill comprises a deliberate distortion of the meaning and promise of te Tiriti. The proposed “principles” bear no resemblance to what te Tiriti actually says (except in so far that both have three main articles) or to the principles that have been developed over decades as a way for the Crown to try and meet its te Tiriti obligations.

Instead, the “principles” included in the Bill are a fictional construct based on what its instigator, ACT leader David Seymour, has decided the Treaty “*should mean*” [our emphasis] as he publicly stated in November 2024⁵.

We have been unable to find any official advice that clearly supports the content of the Bill⁶, but we have noted with interest that Ministry of Regulation officials helpfully not only provided a list and description of the existing Treaty principles, but also included three more that are relevant for any future ‘Regulatory Standards Bill’ in their Preliminary Treaty Impact Analysis⁷ on that for Mr Seymour - much more useful information for a Bill instead of “principles” invented by an individual.

The Waitangi Tribunal’s position on the content of the Bill has been very clear in the two Reports⁸ released last year: amongst many other things, in addition to the quote above, the Tribunal has pointed out:

“If this Bill were to be enacted, it would be the worst, most comprehensive breach of the Treaty/te Tiriti in modern times. The Crown would be turning the clock back to 1877 and the decision in Wi Parata that the Treaty/te Tiriti is a ‘simple nullity’.”

We have not included a list of the multiple te Tiriti breaches identified by the Tribunal in the Bill and what it represents in our submission because we trust Committee members will be conversant with the Tribunal’s Reports.

While there are many comments we could include about the Bill, we focus below on two of the absurdities of the discourse around it, particularly the conflation of collective rights with individual rights which is a distortion of both te Tiriti and human rights law.

i. Tino rangatiratanga and the right of self-determination

This distortion has been particularly evident in statements from Mr Seymour such as “*I believe all New Zealanders deserve tino rangatiratanga - the right to self-determination*”⁹ and “*All New Zealanders have tino rangatiratanga, the right to self-determine, not only Māori.*”¹⁰.

This can only be described as nonsensical because tino rangatiratanga is clearly about Māori sovereignty, autonomy and power; and it is somewhat analogous to the right of self-determination in human rights law - a collective right that also applies to peoples, not to individuals. The link between the two can be seen in the shared Article 1 of the two international human rights Covenants (the International Covenant Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights) which states:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” (Article 1. 1.).

The continuance of tino rangatiratanga was guaranteed in Article 2 of Te Tiriti, and even the English version of the Treaty generally used by the Crown makes it clear who the recipients of this guarantee are:

“... confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession”¹¹ [our emphasis].

It is difficult to see how anyone could mistakenly become confused about who has tino rangatiratanga or the right of self-determination, and who does not. Certainly, all of the official advice and the Waitangi Tribunal are very clear about this and about the multiple negative impacts of the policy that led to the Bill and the proposed legislation itself.

ii. Everyone is equal before the law

Another key distortion in the discourse around this Bill is to do with the “everyone is equal before the law” concept included as its Principle 3.

The public discourse among supporters of this Bill tends to conflate this to “everyone has the same rights”, as a quick glance at any social media outlet where it is being discussed will show. But that is a long outdated view: in the past century, the world has moved on from the concept of everyone having the same rights - if it hadn't, there would be no pension or SuperGold Card for retirees, small children would still be sent up chimneys as human sweeps or into underground coalmines to toil in darkness for long shifts, workers who lost their jobs or were too sick to work would starve along with their families, and so on.

In reality, all New Zealanders already have basic equal rights in law, including via the provisions of the New Zealand Bill of Rights Act 1990 (NZBORA). At the same time, the law recognises that there are different rights for different circumstances or characteristics, whether individually because of age or gender, or collectively as for Māori. This is already in place, for example, in NZBORA Section 19(2) (measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of unlawful discrimination) and in Section 20 in relation to the rights of minorities, as well as in the guarantee of the continuance of tino rangatiratanga in te Tiriti Article 2, and the guarantee of all the rights and privileges of British subjects to Māori in Article 3 (but not the other way around).

The “one law for all” way of thinking which seeks to extinguish the particular rights that Māori hold collectively and as individuals is precisely what has led to the present situation where special measures are so essential to rectify inequities due to the discriminatory historical and ongoing impacts of colonisation - and here we go again: yet another Bill has been introduced which discriminates against Māori, because once more it is only the rights of Māori that are proposed to be diminished and taken away.

C. Human rights obligations

We note that the ‘Consistency with New Zealand’s international obligations’ section of the Departmental Disclosure Statement says that the Bill:

“... may result in actions or outcomes that are seen to be discriminatory or inconsistent with international standards and obligations such as those affirmed by the International Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples.”¹²

In addition to this, as noted in section B.i above, the intention and provisions of this Bill are also contrary to the shared Article One of the two human rights Covenants (International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights - both of which New Zealand is a state party to.

Furthermore, the minimum standard applied by the human rights monitoring bodies (including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Racial Discrimination which monitor state parties' compliance with their obligations under their respective treaties) to states' relationships with Indigenous peoples - that no decisions affecting their rights and interests are to be taken without their free, prior and informed consent - is also breached by the mere introduction of this Bill.

Each of those Committees have raised serious concerns about New Zealand's approach to Indigenous peoples' rights in their Concluding Observations on New Zealand's performance for decades, as have UN Special Rapporteurs. New Zealand's less than satisfactory approach to Indigenous peoples' rights and the lack of constitutional protection for te Tiriti and the collective rights of Māori has also been raised in all four Universal Periodic Reviews of its human rights record undertaken by the UN Human Rights Council and UN Member States in 2009, 2014, 2019 and 2024.

We are so appalled by this Bill that we have provided information on the circumstances of its introduction and its contents to the Human Rights Committee this week as it begins its next round of consideration of New Zealand's performance on the human rights, including Indigenous peoples' rights, elaborated in the International Covenant on Civil and Political Rights.

D. Recommendations

The issues we have raised above should be of concern to members of this Committee, and indeed to all Members of Parliament: this Bill should never have been introduced and it must not be permitted to proceed any further. We trust that you will include statements to that effect in your report to the House.

We further urge you to do everything possible to minimise the impact of the misinformation and disinformation surrounding this Bill during the hearings of oral submissions, and bring this toxic travesty of justice to an end as quickly as possible.

The only positive thing that has come from the introduction of this Bill is the powerful vision of unity displayed in the Māori-led hīkoi mō te Tiriti when tens of thousands of New Zealanders - whānau, hapū, iwi, tangata whenua, tangata tiriti, tangata moana, Māori, Pākehā, tauiwi - all came together to say “toitū te Tiriti”.

That is the vision we want guiding government policy and practice. Te Tiriti is the basis for a positive peaceful vision for a future where all New Zealanders can flourish, and the inclusive possibilities of power-sharing Tiriti-based constitutional arrangements, as outlined in the Matike Mai Aotearoa report¹³, are where we want to be heading - not backwards into the dark ages.

We sincerely hope that all members of this Committee have the courage to think about the different paths our country could traverse: a path of narrow minded, divisive and regressive “one law for all” type thinking that this Bill exemplifies, or a path where our different rights are respected and celebrated so we can move forward together to a better future for us all - and that the latter be the path you choose to advance along and actively promote if you are not already doing so.

Thank you for your consideration of our comments, and we welcome the opportunity to speak with you.

References

¹ Principles of the Treaty of Waitangi Bill 2024

² Peace Movement Aotearoa is the national networking peace organisation, established in 1981 and registered as an Incorporated Society in 1982. Our purpose is networking and providing information and resources on peace, humanitarian disarmament, justice and human rights issues. We have extensive national networks which include more than one hundred and fifty contacts for national or local peace, disarmament, human rights, justice, faith-based and community organisations, and more than seven thousand individuals. We regularly provide information to UN human rights treaty monitoring bodies, and to Special Procedures and mechanisms of the Human Rights Council, on a range of issues impacting Aotearoa New Zealand.

³ Coalition Agreement between the National Party and the ACT Party, 24 November 2024, p 9, https://assets.nationbuilder.com/nationalparty/pages/18466/attachments/original/1700778592/National_ACT_Agreement.pdf

⁴ *Additional chapter: Ngā Mātāpono - The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia - The Constitutional Kaupapa Inquiry Panel on The Crown’s Treaty Principles Bill and Treaty Clause Review Policies*, November 2024, <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-chapter-6>

⁵ As stated, for example, during this interview on Q+A, TVNZ, 24 November 2024, <https://www.youtube.com/watch?v=m12UItFaDXQ>

⁶ See, for example, Departmental Disclosure Statement: Principles of the Treaty of Waitangi Bill, Ministry of Justice, 24 October 2024, <https://disclosure.legislation.govt.nz/bill/government/2024/94> and Regulatory Impact Assessment Treaty Principles Bill, Ministry for Regulation and Ministry of Justice, 28 August 2024 (released 10 October 2024), <https://www.beehive.govt.nz/sites/default/files/2024-09/Regulatory%20Impact%20Assessment%20Treaty%20Principles%20Bill.pdf>

⁷ Preliminary Treaty Impact Analysis for the proposed Regulatory Standards Bill, Ministry for Regulation, <https://www.regulation.govt.nz/assets/Publication-Documents/Preliminary-Treaty-Impact-Analysis-for-the-proposed-Regulatory-Standards-Bill.pdf>

⁸ *Ngā Mātāpono - The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia - The Constitutional Kaupapa Inquiry Panel on The Crown’s Treaty Principles Bill and Treaty Clause Review Policies*, August 2024, <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-treaty-principles-bill> and *Additional chapter: Ngā*

Mātāpono - The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia - The Constitutional Kaupapa Inquiry Panel on The Crown's Treaty Principles Bill and Treaty Clause Review Policies, November 2024, <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-chapter-6>

⁹ 'Treaty Principles Bill passes first reading', David Seymour, 14 November 2024, <https://www.beehive.govt.nz/release/treaty-principles-bill-passes-first-reading>

¹⁰ 'Treaty Principles Bill: We all have tino rangatiratanga, the right to self-determine, not only Māori – David Seymour', NZ Herald, 18 November 2024, <https://www.nzherald.co.nz/kahu/treaty-principles-bill-we-all-have-tino-rangatiratanga-the-right-to-self-determine-not-only-maori-david-seymour/SKSNCSI7HZDNRIPPPKI5AFNIA>

¹¹ See, for example, the Māori text and English version at <https://waitangitribunal.govt.nz/en/about/the-treaty/maori-and-english-versions>

¹² Departmental Disclosure Statement: Principles of the Treaty of Waitangi Bill, Ministry of Justice, 24 October 2024, <https://disclosure.legislation.govt.nz/bill/government/2024/94>

¹³ *He Whakaaro Here Whakaumu Mō Aotearoa: The Report of Matike Mai Aotearoa - The Independent Working Group on Constitutional Transformation*, January 2016, <http://www.converge.org.nz/pma/MatikeMaiAotearoaReport.pdf>