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Rights and Resurgence in Aotearoa New Zealand:
A Case Study of The United Nations Declaration on the Rights
of Indigenous Peoples' Role in Self-Determination

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Forward

Chikashsha saya - I am Chickasaw. Chickasaw are one of the hundreds of indigenous peoples of North America. Walter and Anderson (2013) and Coburn et al. (2013) urge that it is imperative for indigenous researchers to claim our tribal identities and announce why the importance of the research questions we pose and investigate go beyond just our academic fields and hold importance for us personally and as citizens of our respective peoples. "By naming and claiming our Indigenous identities, then, we affirm our ongoing presence…and we assert Indigenous voices…As Indigenous researchers, we speak from somewhere, notably from relations with the natural world, our ancestors and other Indigenous peoples" (Coburn et al. 2013: 5). This relation to my peoples and other indigenous peoples is particularly important for me in this study. In seeing recent developments in Native American movements, most notably the No Dakota Access Pipeline movement at Standing Rock, North Dakota, and the national and global attention and support the movements have achieved, I am curious what methods are effective for indigenous peoples who wish to scale up their causes, build solidarity, and gain broader support. As we as Native Americans seek ways to build off the momentum of the Standing Rock movement and keep international attention on indigenous issues, I feel it is important to learn what tools are available and what creative and focused strategies indigenous peoples are using to best-utilise them. I approach my indigenous relatives, the Māori, as "authorities about their own ways of knowing, being and doing" (Coburn et al., 2013: 2), in the tradition of sharing stories and respecting relationships in the international indigenous community. My research is thus motivated in-part through this context.

Abstract

The United Nations Declaration on the Rights of Indigenous Peoples (The Declaration) has gained increasing attention as a tool for promoting indigenous rights. This study contributes to the discussion about its effectiveness by analysing the Declaration's role in advancing indigenous peoples' self-determination. A qualitative case study is conducted with Māori activists in New Zealand, using a rights-based and indigenous-based approach to form the analytical framework. Principle findings indicate that the power imbalance in New Zealand and weak responsiveness by government to Māori rights undermine their self-determination. The Declaration can help bridge this imbalance by providing norms and standards to hold government accountable. It is also found that no single approach or advocacy method is used alone, and Māori deftly combine the Declaration with indigenous methods of activism to enhance their self-determination.

Abbreviations

EMRIP – Expert Mechanism on the Rights of Indigenous Peoples
HRC – New Zealand Human Rights Commission
IBAs – Indigenous-based Approaches
ICF – Iwi Chairs Forum
ILO – International Labour Organisation
IMM - Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand
IPs – Indigenous peoples
NZ – New Zealand
RBAs – Rights-based approaches
The Declaration/UNDRIP – The United Nations Declaration on the Rights of Indigenous Peoples
UN – United Nations
UNPF – United Nations Permanent Forum on Indigenous Issues

Glossary of Māori Terminologies (Māori Dictionary, 2018)
Awa - River, canal
Aotearoa - New Zealand
Kaupapa - Topic, matter for discussion, plan, purpose, proposal, agenda, theme, initiative.
Mana - validity, efficacy, prestige, authority, spiritual power
Rangatira - Someone revered, a leader
Tangata Whenua - People of the land, Māori
Te Reo Māori - The Māori language
Te Tiriti o Waitangi - The Treaty of Waitangi
Tikanga - The customary system of values and practices that have developed over time and are deeply embedded in the social context
Tino Rangatiratanga - Self-determination, sovereignty, self-government

Contents

1. Introduction

The world's indigenous population is estimated at around 370 million people, representing over 5,000 unique groups in every region of the world and living in 90 countries (Cultural Survival, 2017). Five thousand of the world's 6,000 languages are indigenous (Survival International, 2008), with 80 percent of world biodiversity found on indigenous lands (Cultural Survival, 2017). Each indigenous group represents worldviews, cultures, languages, knowledge, histories and ways of living. The International Labour Organisation recognises that many world indigenous peoples (IPs) "are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded" (ILO, 1989). This happens even in countries with advanced protections for their indigenous peoples (Anaya, 2010: 2). *Aotearoa* New Zealand, home of the Māori, is no exception (IMM, 2017).

The international community's attention to indigenous rights in the last decades has targeted the many challenges of the world's IPs by introducing new international mechanisms and instruments. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP/ the Declaration) celebrates its eleventh anniversary this year. Introduced with the intention to set international standards for the recognition, protection, and promotion of IPs' individual and collective rights, UNDRIP serves as an overarching and comprehensive elaboration on previously-established international human rights laws and norms, applied to IPs (UN, 2008). It addresses themes of self-determination, non-discrimination, lands and territories, cultural rights, and participation and consultation (IMM, 2015). Since 2007, UNDRIP has been a global normative standard supporting indigenous rights, to varying degrees of success, in the fields of health, economics, culture, education, and more (Tauli-Corpuz 2017).

Rights-based approaches (RBAs), like UNDRIP, have emerged to protect citizens from injustices and promote development, by introducing internationally-accepted standards and principles under which states are obligated to uphold rights and can be held accountable for failure to do so. RBAs are not without critique and lingering questions about successful achievement of their goals (Grugel and Peruzzotti 2007; 2012), or their ability to influence sovereign states (Hewitt, 2017;

Morales, 2017; Lemaitre, 2011; Engle, 2011). Indigenous-based critiques of RBAs also arise, with some scholars arguing that indigenous-based approaches (IBAs) are more appropriate for IPs (Corntassel, 2012). The Declaration is not exempt from RBAs critiques, and it is disputed how effective the Declaration is in helping IPs advance the goal of self-determination.

In its final adaptation, the Declaration conceptualises IPs' right to self-determination as "the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions" (UN, 2008: 4). Some scholars argue that this version of self-determination is a watered-down compromise with states who feared that stronger conceptualisations could imply statehood or the right to secession for IPs (Engle, 2011: 145). When combined with Article 5 of the Declaration[1], other scholars argue that the Declaration approach is still strong in establishing indigenous "self-determination in political, legal, economic, social and cultural matters" (Borrows, 2017: 23). As secession or statehood are not often pursued in contemporary indigenous movements (Engle, 2011), this thesis adopts the concept of self-determination based on elements of the UN definition, including autonomy and self-governance in primarily internal affairs, and also recognises the aspect of pluralistic governance between IPs and state governments, within states, which is often sought (Gunn, 2017: 30). It also appreciates a broader range of issues over which IPs should exercise self-determination, based on the 1993 draft of the Declaration, such as health, education, and resource management[2]. Self-determination is considered in this way, as opposed to being strictly defined, to provide some common elements while allowing for variation among indigenous groups' conceptualisations.

The purpose of this study is thus to add to understanding of the Declaration's practical capacity to affect positive changes in indigenous communities, especially in advancing their self-determination. The UNDRIP is relatively new and its impact on indigenous communities is still developing, yet increasing numbers of indigenous groups are engaging with it through domestic

[1] Article 5 states "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State" (UN, 2008: 5).

[2] The full list from the 1993 draft includes "culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members" (Engle, 2011: 145). These issues are considered in the thesis as a closer approximation to IPs' conceptualisation of self-determination, as they were originally collectively proposed by IPs but later omitted in negotiations (ibid.).

and international forums (Lemaitre, 2011; Barelli, 2009), making this a critical time to study its utility. Scholars, including indigenous, have analysed this issue within a multiplicity of frameworks, including theoretical, legal, historical, constitutional, political, and institutional, often relying on document analysis and secondary source research (Barelli, 2009; Barume, 2017; Hewitt, 2017; Lemaitre, 2011; Luger, 2016; Engle, 2011; Van Cott, 2009). While such considerations are vital in framing many key concerns over the Declaration's domestic effectiveness, they leave a gap in empirical research from the IPs' perspective. IPs can drive advancements in self-determination (Cotterill, 2011; Corntassel, 2012) and they are the drafters of the Declaration, so overlooking their perspectives risks relegating them to receivers of rulings or recommendations from some external body, and anonymising or omitting their rich knowledge and experiences.

Research departs from dominant literature by using a mix of primary and secondary data on the perspectives of IPs themselves. It applies the analytical framework of RBAs and IBAs to investigate the effect of the Declaration on indigenous self-determination in *Aotearoa*. This work fills a gap in empirical research on the utility of the Declaration from an indigenous activist perspective and enhances understanding of RBAs in indigenous contexts. Study findings can be used by the international community to improve their involvement in indigenous rights, by government to enhance the self-determination of IPs within their borders, and, most importantly, by IPs to inform activism and advance self-determination.

In fulfilling the purpose, this study explores the following research question:

Q1: How can we understand the role of the Declaration in advancing indigenous peoples' self-determination?

To address this question, the following sub-questions will guide the thesis:

1a. How are Māori rights challenged domestically?

1b. How sincere is the NZ Government in their endorsement of the Declaration?

1c. How do activists perceive the usefulness of the Declaration?

1d. How is the Declaration used in Aotearoa?

First, background on indigenous rights and the Declaration is given, then existing literature is discussed. The analytical framework is followed by a description of the methodology and methods. A case study overview is provided before empirical findings address the research sub-question. Finally, concluding remarks and suggestions for further research are provided.

2. Background

This section provides context by discussing IPs' rights generally, focusing on mechanisms and drivers of indigenous rights, and then on the Declaration and its role. Māori engagement will be highlighted throughout the section, while a more thorough discussion of Māori rights and the Declaration in NZ is provided in a later section.

2.1 The Rights of Indigenous Peoples

2.1.A. International Support

Recognising the great challenges facing the global indigenous population, the international community has responded with various indigenous rights instruments and forums. For many years, the flagship instrument protecting indigenous rights at the international level was ILO No. 169. It created new global and legally binding standards for IPs in support of their "aspirations… to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live" (ILO, 1989). However, to date, ILO No. 169 has only been ratified by 22 countries, and New Zealand is not one of them. International impact extends beyond the mere number of ratifications, but this figure still places limits on its global efficacy (Barelli, 2009: 158). ILO No. 169 also fails to guarantee the right of self-determination, or recognise IPs as 'peoples' and affirm their collective rights (ibid.)

IPs' rights have also been subsumed under the Committee on the Elimination of Racial Discrimination (CERD). CERD considers complaints and recommendations for redress from parties, then addresses them in concluding observations (CERD, 2017). Māori frequently engage with this committee and others on a range of topics. For example, at CERD's August 2017 convening, Māori spoke on several concerns, from abuse of disproportionately Māori children in state care, to failure to consult on land development of their ancestrally and currently occupied land (CERD, 2017). However, these instruments are not specifically created to consider the historical nature of indigenous rights violations and are therefore limited in addressing the complete spectrum of IPs' concerns (Barelli, 2009: 959).

Eventually, the UN recognised the imperative for indigenous-specific instruments, expertise on issues concerning IPs, and for swift and focused attention to addressing the distressing condition of IPs' rights globally (UN Economic and Social Council, 2004). Three important UN indigenous-specific mechanisms were created: The UN Permanent Forum on Indigenous Issues (UNPF), the Special Rapporteur on the Rights of Indigenous Peoples, and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). Invaluable as a means for gathering information about injustices against IPs, and for making recommendations to states, IPs, and other UN bodies or partners, these mechanisms can be difficult for IPs to access, as the forums are expensive to attend and using them requires extensive paperwork and preparation (Newton, 2017; Whare, 2017).

2.1.B. Local Support

Complementary to these international mechanisms, authors credit various institutions, policies, organisations and individual actors driving indigenous rights at the regional and state level. Judicial systems may play an important role in interpreting indigenous rights, issuing binding rulings, and setting precedent for indigenous rights in the law (Barelli, 2009; Hewitt, 2017). Further support comes from various human rights policies, acts, monitoring mechanisms, commissions, and specially-created institutions like tribunals. In *Aotearoa*, IPs' rights are bolstered by the Human Rights Commission (Mead, 2017) and the Waitangi Tribunal (Jones, 2016), and accountability of the government to operationalise the Declaration is enhanced by the Independent Monitoring Mechanism (IMM) (Barelli, 2009: 978). Finally, activists constitute primary drivers of indigenous rights (Ornelas, 2014), operating in a broad range of fields. Māori

activists[3] drive rights in *Aotearoa*, forming the IMM, consulting to the UN, knowledge-sharing among Māori and other indigenous activists, organising panels and protests, and consulting and reporting on models for Māori-led constitutional transformation (IMM, 2015; Mutu and Jackson, 2016).

2.1.C. The Declaration

Passed in 2007 in the UN General Assembly, the Declaration addresses the need for indigenous-specific rights and mechanisms and is the most extensive international tool for IPs' global rights (Tauli-Corpuz, 2017). Drafted over almost three decades, largely by IPs from all over the world, including Māori, the rights in the Declaration address issues of culture and identity, lands, territories and natural resources, equality and non-discrimination, fundamental freedoms, sovereignty, consultation, and more, constituting minimum international standards for the "survival, dignity and well-being" (UN, 2014: 3) of IPs globally.

Note that the Declaration in and of itself is not legally binding for the states that endorse it. However, the rights in the Declaration not only contextualise human rights norms in respect to indigenous peoples' distinct needs and priorities, they also draw on rights and standards previously codified in international law and binding treaties (Joffe, 2015). This presents an ambiguous obligation for Declaration-endorsing states. Several endorsing states, including NZ, interpret it as merely *aspirational* (ibid.). However, there are diverse arguments within the literature and international rights law as to whether non-binding declarations have the same legal implications as binding treaties or conventions (Barelli, 2009).

Questions of legal implications are not the sole controversy surrounding the Declaration**.** In negotiating the draft Declaration, IPs faced objections from various states concerned over their potential to challenge state sovereignty, make secession claims, or otherwise compel states to cede their ultimate power (Office of the High Commissioner for Human Rights et al., 2014). These concerns were assuaged in two main ways: first, by inclusion of Article 46(a), stating that the Declaration can under no circumstances be used to disrupt the territorial or political sovereignty

[3] The term 'Māori activist' in this study refers to activists who are both Māori and work on Māori issues, distinct from non-Māori allies who advocate for Māori issues.

of states (UN, 2008). Second, the wording of the draft was changed in the final hour from guaranteeing IPs the right *of* self-determination to guaranteeing them the right *to* self-determination, a change which Māori activist, scholar, and Declaration drafter Moana Jackson argues implies that the right of self-determination is not inherent in indigenous peoples as it is in others, but is something IPs may someday be granted or achieve (Jackson, 2017).

Concessions on self-determination have led some indigenous scholars to take a sceptical view of the Declaration (Favel and Coates, 2016). Some states felt the broadness and somewhat vague nature of the Declaration, even after negotiations, was untenable within their domestic legal and political systems (Favel and Coates, 2016: 16), or, as New Zealand did, they claimed their national laws and standards for protection of indigenous rights already exceeded standards set out by UNDRIP (ibid.). When the Declaration came up for a vote in 2007, 144 states voted in favour, and only 4 states – New Zealand, Australia, Canada, and the United States – refused to support the Declaration, citing such concerns. However, by 2010, these four states reversed their decisions and now endorse the Declaration.

Since the Declaration was adopted by the General Assembly, it has seen progress and challenges in implementation and enforcement. The Declaration has been increasingly used in support of indigenous rights and elements of it have been incorporated into domestic laws, programs, and even state constitutions (Tauli-Corpuz, 2017). In countries from Belize to Kenya, it is used in cases and claims as diverse as natural resource protection from extractive industries, tribal education development, indigenous intellectual property protections, the right to occupy ancestral lands, and the right to judicial personality and recognition of collective rights (Price, 2012; Llewellyn, 2012). As only a minimum set of standards, the Declaration rights are also conceivably left to further future development and expansion as they integrate with domestic legal and political systems.

Challenges remain. Many states regard the document as aspirational - not imperative - and qualify their support for it within the confines of state law (Joffe, 2015; Favel and Coates, 2016). Progress can also vary wildly depending on political leanings of the government in power, or perceptions of compatibility with domestic legal systems (Favel and Coates, 2016). The Declaration's progress may further be impeded when IPs' rights are seen as in conflict with other state priorities or interest

groups (Tauli-Corpuz, 2017), and the Declaration faces formidable challenges in its ability to combat extractive industries, which are currently the greatest threat to lands, culture, and well-being of most indigenous peoples (Cultural Survival, 2017; Tauli-Corpuz, 2017). With these mixed results, some scholars have set out to research and discuss the impact of the Declaration, and the multiple factors that influence its effectiveness. Their findings and arguments help inform the design and analysis of this study and are discussed in the following section.

3. Existing Literature

This section introduces primary themes and arguments from previous research on key aspects of the Declaration's utility. Findings and arguments are drawn from one theoretical study on the Declaration as soft law (Barelli, 2009), and on empirical studies, including several by indigenous scholars, of indigenous peoples and movements primarily from the American continent and New Zealand. Research is grouped by theme into sub-sections covering legitimacy in the Declaration's foundation, its role as soft law and state compliance, the role of third parties, drivers and methods for advancing IPs' rights, and prescriptions for enhancing the Declaration's impact.

3.1. Legitimacy in Formation, Content, and Passing

Authors disagree on several points about the Declaration's background and how that affects its utility. Some scholars argue that most IPs view the Declaration's drafting as an open, inclusive, and collaborative process, imbuing it with substantial legitimacy (Barelli, 2009: 969; Johnstone, 2011). Conversely, others believe the concessions on self-determination and the inclusion of Article 46(a) cripples the Declaration (Engle, 2011: 147). Rather than view the Declaration as "radical" (Barelli, 2009: 983) in recognising self-determination, Engle (2011) argues that while appearing to support indigenous rights and self-determination with a novel strength, the Declaration is a conservative compromise for IPs, and thus less effective in contributing to self-determination (Engle, 2011: 147).

Scholars also debate the relevance of RBAs to IPs. While some believe that a transition from indigenous *claims* to indigenous *rights* has ultimately enabled IPs to more-effectively challenge

injustices by the state (Barelli, 2009: 153), others insist that rights are not a natural means of redress for IPs. They argue some of the very principles IPs struggle against, such as neoliberalism and preference to the individual, are ensconced in the human rights framework (Engle, 2011: 150). It is important to remember when considering these arguments that Māori consistently engage in rights discourse and played a dominant role in the drafting of the Declaration, implying that some value rights despite the noted shortcomings.

3.2. Soft law and State Compliance

The primary debate on the Declaration's utility, warranting longer discussion, is whether its non-binding, soft law status is detrimental or advantageous, and whether endorsing states are genuinely committed to implementing it. Engle (2011: 143) argues that the Declaration is not progressive in asserting legal implications, and that key indigenous rights are rigorously qualified and ultimately superseded by UNDRIP's allegiance to state sovereignty. Others offer that soft law can still be influential in numerous ways. First, the flexible nature of UNDRIP affords it a prominent role in setting international norms as it is interpreted and elaborated upon in various mechanisms (Lemaitre, 2011: 153; Barume, 2017: 1). As a collection of previously-committed-to binding rights from other instruments, scholars argue it has strong legal authority (Bellier and Préaud, 2011: 476; Xanthaki, 2009). Finally, it is thought that soft law has an advantage over binding treaties because it encourages broader endorsement and allows IPs to engage with states around implementation (Barelli, 2009: 957, 968). However, state engagement is not always easily accomplished for IPs, and while the flexibility theoretically allows for creative implementation strategies, as discussed, it has also been used by numerous states to justify a lack of progress in implementation (Favel and Coates, 2016).

Soft law and enforceability lead to a larger issue within UNDRIP research: implementation often depends on state will. Though some celebrate that mechanisms like the UNPF enable IPs to "sit on an equal footing" (Barelli, 2009: 156) with representatives from sovereign states, others are far more sceptical about the balance of power, lamenting that the victories indigenous groups gain through international law and norms are still easily superseded when sovereign states decide to disregard them (Lemaitre, 2011: 156). Ornelas (2014) similarly reasons that governments continue

to breach UNDRIP, despite IP's activism, because they are simply reluctant to cede any portion of their power (Ornelas, 2014: 12).

Some states may profess strong commitment to IPs, but fail to act accordingly (Bellier and Préaud, 2011: 481; Hanna and Vanclay, 2013: 154). For example, drawing on her research on IPs' movements in Latin America, Van Cott (2009) finds that even in countries with the most politically and legally progressive indigenous rights, rights to land and resources are customarily breached (Van Cott, 2009: 89). Morales (2017: 67) argues that even Canada, which regards itself as an ally to its numerous IPs, continues to promote extractive industries and development, frustrating IPs' attempts to oppose them. Hewitt (2017) also acknowledges that Canada has a history of comfortably disregarding recommendations and admonishment by the international rights community, concluding that one of the main challenges to UNDRIP is that compliance depends on the context of the country and their susceptibility to international pressure (Hewitt, 2017: 56-57). New Zealand receives regular recommendations from the UN, which it sometimes ignores (HRC, 2018), raising questions about NZ's susceptibility.

Another challenge to the Declaration comes from states interpreting it through domestic law, as NZ does (New Zealand Parliament, 2010). Hewitt (2017) predicts that nations holding a long record of denying IPs' rights will not behave honourably in interpreting UNDRIP, especially as the responsibility to interpret it often lies with the same institutions that ensured denial of justice in the first instance (Hewitt, 2017: 58-59).

In NZ, Erueti (2017) finds that government progress on indigenous rights is uneven. He argues that successive governments in NZ have intentionally demarcated Māori rights within the arena of culture and property to avoid commitment to more substantive historical rights of Māori *tino rangatiratanga* (Erueti, 2017: 717). As with the previous authors, this alludes to issues of power and state will, indicating that it is ultimately the state that dictates the confines of the Declaration's domestic utility. It also premises that some rights might be considered by governments as 'safer' or 'easier' than others.

3.3. Actors and Methods

As discussed, various actors play important roles in indigenous rights generally and in *Aotearoa*. Barume (2017) identifies regional institutions as key drivers of the Declaration's integration in Africa. He discusses two cases where IPs gained ruling in their favour from the African Commission and African Court, respectively, which directly cited UNDRIP in their decisions (ibid.). Given his focus on regional and state-level drivers, Barume's (2017) analysis unfortunately skirts the role of IPs as persistent activists and initiators in these cases.

Other scholars take IPs' activism as their point of departure, crediting indigenous groups who are now claiming their rights in various domestic and international forums (Lemaitre, 2011: 155-156; Xanthaki, 2009: 1). In his study of the Ainu peoples' 'success' in Japan, Cotterill (2011) acknowledges the considerable contribution international norms have made in pressuring Japan to become more hospitable to indigenous rights, yet he is adamant in giving what he feels is appropriate recognition to the Ainu in championing their cause and bringing Japan to attention (Cotterill, 2011:3). Several authors criticise the narrative of IPs as "passive within their own histories" (Cotterill, 2011:3) or "objects" (Coburn et al., 2013: 2) of research, rather than being recognised as authorities on their own cases.

Given the arguments that indigenous rights are supported from a variety of sources, it is interesting to explore how such actors in *Aotearoa* interact with the Declaration and with each other. Johnstone (2011) recognises Māori as rights drivers and identifies the Declaration as an obvious tool for future use. She also credits the Waitangi Tribunal, the legal community, and those who make submissions to the Waitangi Tribunal and courts with giving the Declaration early prominence as a lever for Māori rights (Johnstone, 2011: 1). While examining the contribution of other actors, this study also takes indigenous activists as its point of departure, to acknowledge their role in their own histories and futures and avoid the pitfalls discussed.

Literature suggests that third parties undermine indigenous rights, in two main ways: either a zero-sum struggle, where politically and/or economically influential parties'[4] interests or rights are pitted against those of IPs, or IPs' rights are blithely ignored when governments perceive a more compelling 'national interest' in allowing extractive industry projects (Ornelas, 2014: 3). In *Aotearoa*, advancements in Māori rights are frequently stymied by politicians and third parties who believe that distinct advancement in Māori rights is discriminatory, exclusionary, and even racist against non-Māori groups (Erueti, 2017: 725). In this way, democracy and third parties justify failure to progress in areas that would restore *tino rangatiratanga* or other historical rights critical to Māori identity, culture, *mana* (authority, power, spirit).

As scholars note the diversity of important actors, they also find diversity in the methods those actors employ. Johnstone (2011: 1) discusses the Treaty settlement process (TSP), a state-controlled process for redressing government violations of Māori rights, as one of many mechanisms that Māori actively seek and utilise to secure rights. However, she does not address in detail what these other methods are, how they may complement each other, or if there is a guiding principle behind method selection. Barume (2017: 2) finds that IPs in Kenya used regional rights bodies after the "exhaustion of domestic remedies" (Barume, 2017: 2). This indicates a rational of using domestic tools first, then if those aren't fruitful, turning to regional bodies which are above the state. However, Barume (2017) does not explore this rational further nor does he discuss what other methods the groups used beyond appealing to the regional bodies. Ornelas's (2014) findings indicate that IPs in North America address issues through multi-faceted approaches. These include blockades, occupying land, protests, hunger strikes, inviting independent observers, legal actions, storytelling and knowledge sharing, drafting frameworks for government engagement, and making rights appeals. As with other scholars mentioned, her research stops short of studying the strategy behind these method selections. This study thus explores the rationale for Māori approaches when considering how they advocate.

[4] Beyond extractive industries such as oil or mining companies, third parties include special interest groups like recreational groups, hunters, and fishers, or other non-indigenous organisations. Competition can also exist between indigenous groups, but that is outside the scope of this study.

3.4. Transformational Change

After discussing Declaration progress and challenges, several authors offer prescriptions for its improved utility. Johnstone (2011: 2-3) believes that UNDRIP legitimacy and influence will increase as more peoples engage with it, obliging governments to acknowledge it as well. Taking a more big-picture approach, Hewitt (2017) suggests a shift in the legislative system, not merely an absorption of the Declaration into the existing one. He insists that interpreting UNDRIP through restrictive domestic laws is not inevitable, and that nations may instead adopt UNDRIP in its entirety through new legislation and with the establishment of new institutions, not tied to the qualifications and constraints of the past.

As demonstrated, there is a lively and nuanced debate about the practicality of UNDRIP for advancing indigenous rights. Scholars disagree on the progressiveness of the Declaration, its foundation in a neoliberal worldview, whether it has strong or weak legal implications as a non-binding instrument, and the degree to which it helps rebalance the power between governments and IPs. While many scholars analyse the Declaration in relation to IPs, there remains a gap in empirical analyses of IPs' own perspectives on the Declaration. Filling this research gap thus constitutes a major motivation for this study, which considers such perspectives crucial to addressing the research question.

4. Analytical Framework

The analytical framework combines arguments and assumptions from two approaches, RBAs, and IBAs, to best understand the Declaration's role for IPs. RBAs challenge injustices and hold governments accountable to their citizens through norms and standards. IBAs are those derived from the distinct values, practices, worldviews etc. of IPs, and capture a range of actions and motivations. These approaches strengthen each other and provide a more thorough understanding of the research. Combining these approaches with existing literature, an analytical model reflects expected findings and illustrate how these approaches are operationalised together.

4.1. The Rights-Based Approach

The Declaration's roots as a rights instrument must be explored, specifically, how rights reimagine the responsibilities of states, the benefits rights provide to activists and how activists engage with them. RBAs to development adopt internationally-accepted principles and standards with an emphasis on rights, obligations, and accountability. These standards take aim at underlying power imbalances (Nelson and Dorsey, 2008), shifting development practices from state-led to methods that focus more on the individual and the state's obligations to the individual (Grugel and Piper, 2009: 80).

The international community sets standards and hold states accountable for their rights obligations (Keck and Sikkink, 1998). Nelson and Dorsey (2008: 94) advise that RBAs imply a substantive change in development. Proponents argue this shift drove development from the realm of "generosity and of power by wealthy donors to a set of clear expectations and obligations for all governments and all actors in development to respect internationally recognised rights" (Nelson and Dorsey, 2008: 90). With this reasoning, IPs' self-determination no longer becomes a 'nice to have' privilege from a benevolent state, but a minimum standard that states are compelled to guarantee.

Attention to human rights is partially rooted in appreciation of the need to impose basic restrictions on state power (Grugel and Piper, 2009: 81). In RBAs, this check and rebalancing is supported by strong, independent standards and norms which are set above the state level, which the state must answer to. This dynamic has been discussed as the "Broken Triangle Model" (Cotterill, 2011), the "Boomerang Effect" (Keck and Sikkink, 1998) and "Naming and Shaming" (Roth, 2004). Essentially, these models position the international community and human rights standards as tools for activists to assert influence on otherwise-unresponsive states or corporations, that might be too powerful to take on within domestic confines. A common example would be garment worker advocates soliciting international media and consumers to press for reform from a brand that habitually violates workers' rights. The mechanism also applies to cases where IPs struggle to advance their self-determination because of an unsupportive state (Cotterill, 2011). A diagram of the broad principles of this dynamic and the directions of influence between actors is shown below.

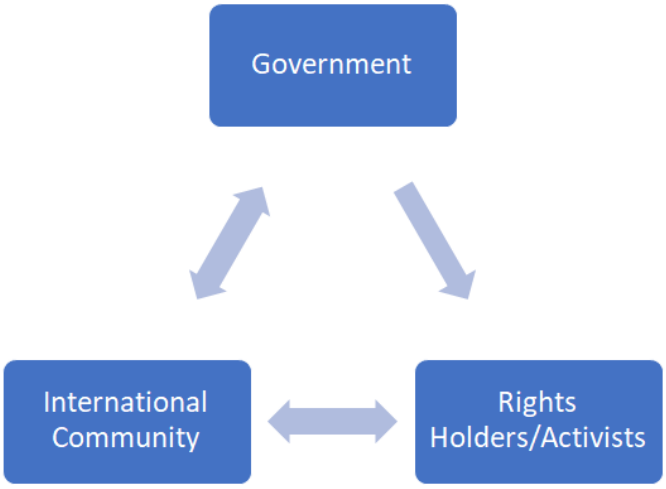

Diagram 1: The Broken Triangle

Modified from Cotterill (2011: 4), Diagram 1 presents abstract principles of the triangle. The arrows represent directions of influence. Crucially, there is very little or no effective influence from the rights holders/advocates over the government, so the argument is, rights holders will pressure their government by proxy of the international community, providing an otherwise unlikely check (Nelson and Dorsey, 2008). For soft law declarations, a check emanates from UN body recommendations, political solidarity/support, or through expertise and network sharing, such as EMRIP provides. Applying the model, many states are often reluctant or insufficient in upholding their rights commitments to IPs, and violations from third parties abound (Van Cott, 2009; Lemaitre, 2011; ILO, 1989). IPs who have trouble influencing government through domestic avenues can use the international community for support to build capacity, or to gain attention for their issues and bring international pressure for government to address them.

RBAs also normalise global rights standards, which influence national reform. Goodman and Jinks (2008) argue that these global norms permeate national human rights through several mechanisms they call acculturation, resulting in varying degrees of legitimate human rights internalisation by the state, that eventually improves national human rights conditions. The authors posit that even minimal or superficial state commitment may represent small gains that breath energy into activist movements, and, rather than appeasing activists, regularly galvanise and encourage them to demand more substantive change.

4.2. Reflections on the RBA

The broken triangle model assumes RBAs influence government, but, as pointed out by several authors, international influence over states is often imperfect and highly variable (Hewitt, 2017; Lemaitre, 2011; Barume, 2017; Barelli, 2009; Cotterill, 2011). States respond differently to pressure placed on them by the international community, and may make superficial changes (Goodman and Jinks, 2008) or subjugate international norms/standards under the qualifications of domestic law (Hewitt, 2017). Goodman and Jinks (2008) argue that even seemingly superficial or bad-faith reforms are significant, as the progressive nature of global standards and normative pressures, aided by constant activism, oblige actors to implement "increasingly progressive human rights norms" (Goodman and Jinks, 2008: 727).

In the context of this study, it is crucial to consider how RBAs relate to IPs specifically. Contrary to core values and the worldview of many IPs, international development has historically been linked to neoliberal economic norms (Nelson and Dorsey, 2008). For much of development history, neoliberal doctrine such as free-markets and accelerated privatisation were largely seen as the essential means to address poverty and induce development (ibid.) Even though human rights largely appealed to the development field as a fresh solution to unsatisfactory outcomes from neoliberal strategies (Nelson and Dorsey, 2008: 99), some IPs still perceive human rights and their focus on liberal rights of the individual and entrenched state sovereignty, as neoliberal, *non-indigenous* ways of viewing the world (Engle, 2011). For those who believe indigenous issues require IBAs (Corntassel, 2012), this history and focus of rights can be a deterrent. However, it is important to remember the Declaration's unique drafting by IPs, which distances it from some negative associations, and that human rights have significantly helped citizens worldwide, including IPs, which many IPs appreciate (Tauli-Corpuz, 2017).

Rights' emphasis on state sovereignty is also a concern. The rights system legitimises the state as the guarantor of rights, obligated to uphold them for its people. However, this is a problematic dynamic given the often-complicated history of states and IPs, wherein states frequently appear as primary perpetrators of injustices against IPs' (Cultural Survival, 2017; Europe-Third World Centre and International Association of Democratic Lawyers, 2014; Constitutional Court of

Columbia, 2015; Tauli-Corpuz, 2017). Due to this special status, IPs are not on equal footing with the states in rights forums. States may absorb the time allotted for UN committee members to hear testimonies, or otherwise exercise their position of power negatively over indigenous groups (Jackson, 2017), which create a contradictory situation within RBAs, as they are intended to help check state power while also reaffirming it.

Indigenous-specific considerations indicate that RBAs alone may be insufficient to understand research findings within an indigenous context. Rights' neoliberal background, their state-centric focus, and access issues for IPs represent limitations in RBAs' effectiveness in explaining indigenous movements. In addition to RBAs, many IPs possess substantial prowess, cleverness, and networks of support in forwarding their agendas (Bellier & Préaud, 2011: 485). Another critical issue of indigenous movements, which is difficult to capture with more general analytical tools, is the historical nature of many IPs' claims, and their roots in a colonial past. In NZ, Māori were systematically deprived of rights such as land, culture, economic means, identity, and self-determination following the arrival of settlers (Erueti, 2017). RBAs aren't designed to explicitly appreciate this vital historical aspect of IPs' issues, and consequently risk grouping IPs with other minority or disadvantaged groups. RBAs are effective in explaining the opportunities of rights for advancing self-determination, but lack depth in explaining IPs challenges and what other methods they use. RBA limitations ultimately frame a need for IBAs - approaches wrapped in the context of IPs and highly cognisant of their history and ways of knowing and doing - that can better-explain the non-rights approaches IPs take to self-determination, and why.

4.3. Indigenous-Based Approaches

Perhaps the most passionate and concise explanation of the importance of indigenous-based approaches in indigenous contexts comes from Cherokee scholar Jeff Corntassel (2012). He argues that RBAs divert attention and energy away from indigenous approaches, values, and worldviews, assimilating IPs into the system of colonial entities. He asserts RBAs cannot effectively serve self-determination of IPs, as the state-centric rights system and emphasis on state *recognition* of rights actually "reproduces" the structure of power that IPs often seek to challenge (Corntassel, 2012: 92). Cautioning against these systems, Corntassel (2012: 91-92) and Bellier & Préaud (2011: 475)

argue that RBAs can address indigenous needs in limited ways, but that indigenous movements should primarily focus on indigenous values of responsibilities, resurgence, and relationships. Though IPs across the world may understand these values differently, their fundamental importance is generally appreciated (Ornelas, 2014; Henderson, 2017; Glavish, 2017; Christie, 2017; UN, 2008). These three values thus underpin indigenous-based approaches in this study, and are interrelatedly conceptualised as follows:

Diagram 2: Indigenous-Based Approaches

Created by the author, drawn from Corntassel's (2012) arguments, Diagram 2 shows a holistic network of relationships at the foundation of indigenous identity (Corntassel, 2012: 93; Bellier & Préaud, 2011: 478; Coburn et al., 2013; Henderson, 2017). IPs have inherent responsibilities to the natural world, their ancestors, their future generations, and everything in the relationship network. Resurgence involves actions that fulfil and honour these responsibilities, though they need not be dramatic (Corntassel, 2012). They include revitalising your indigenous language, gardening and eating traditional foods, or performing traditional ceremonies (Corntassel, 2012). In other words,

indigenous communities' flourishing is dependent on revitalisation of indigenous values, practices and methodologies, which operationalise IPs' responsibilities as guardians over the many sacred relationships that exist in the indigenous world (Corntassel, 2012: 93). Bellier & Préaud (2011: 478) and Coburn et al. (2013) similarly assert that indigenous life and ontology is premised on the maintenance of their relations between place, relatives, and spirits, and for any method to be fully effective with IPs, these elements must be at the forefront of design and practice.

While explaining non-RBAs that IPs may use, Corntassel (2012) positions the two approaches as exclusionary. This overlooks the opportunities RBAs provide IPs for advancing self-determination, such as international support and capacity building. Also, while focusing on IPs' engagement domestically, IBAs lack consideration of their extensive engagement with the international community. As established in existing literature, IPs advocate in multiple ways, often combining the two approaches, even being "emboldened" to exercise resurgence because of rights protections (Ornelas, 2014: 12). Exaggerating the dichotomy between RBAs and IBAs is an oversimplification and diminishes the significant advancements IPs have made through combining them.

4.4. Operationalisation of Analytical Framework and an Updated Model

Both approaches discussed bring important strengths and weaknesses. IBAs incorporate context-specific elements like indigenous worldviews, values, and alternative approaches, while RBAs offer an explanation of the motivations and mechanisms for using rights instruments. Thus, the two approaches complement each other in explaining the role of the Declaration and other methods for IPs' self-determination.

Given these reflections on the combined contribution of IBAs and RBAs, and conclusions from existing literature, a model for operationalisation is presented:

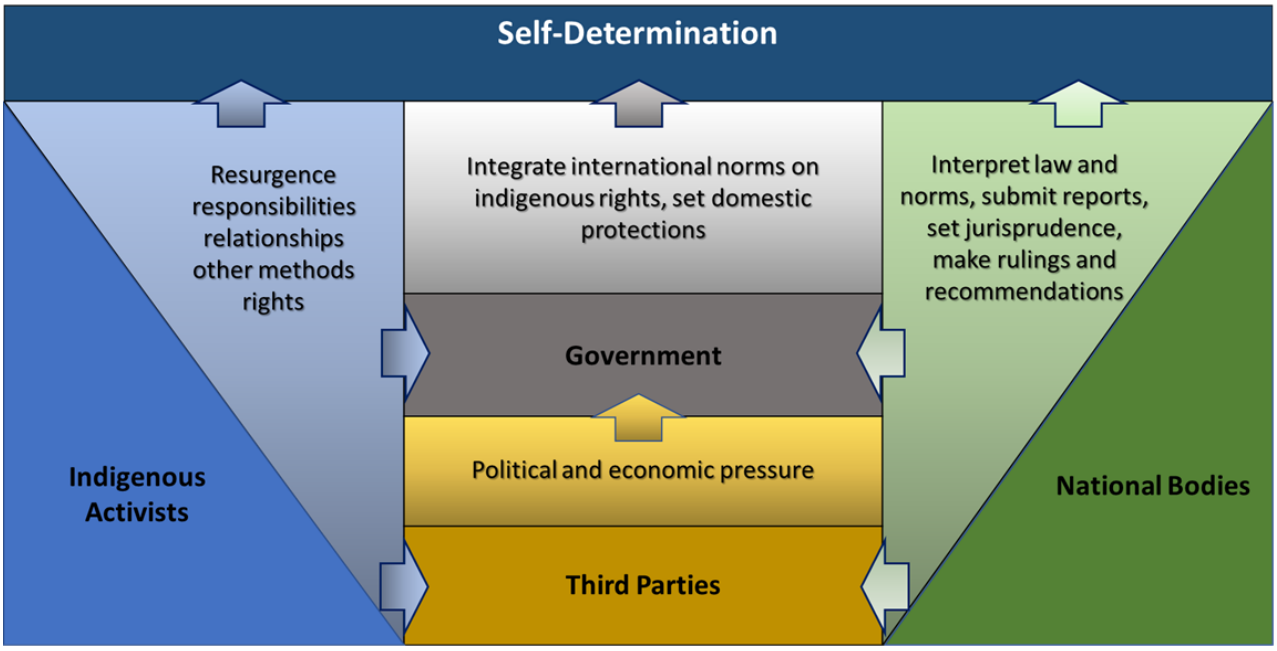

Diagram 3: An Inclusive Framework Model

This new model incorporates elements from both analytical approaches and existing literature, where self-determination is the ultimate goal. Dark, solid shapes are actors. Lighter, gradient shapes of the same colour with arrows are activities. As previous studies indicate, indigenous activists engage multiple methods to advance self-determination, often combining RBAs, IBAs, and traditional advocacy methods like protests or lawsuits (Ornelas, 2014: 12). As opposed to previously-discussed models that present approaches separately, this model incorporates how indigenous activists use two complementary approaches to advance self-determination. These methods may affect self-determination directly, as with norming or resurgence, or by influencing government or third-parties, as with UN pressure or protests. As separate actors, national bodies like courts and commissions can also drive rights through a number of activities (Johnstone, 2011), such as providing forums for activists, submitting reports to international forums, or setting jurisprudence (Barume, 2017). They also interact with government and third parties through law and recommendations (ibid.). Third parties such as extractive industries can hinder self-determination through their influence on government (Morales, 2017), and the government itself can either violate or promote indigenous rights.

Essentially, this model represents a combining of the various methods and approaches IPs use to affect self-determination, the relationships between relevant actors, and how these actors also impact self-determination. Text articulates the various challenges and opportunities within these activities and relationships, such as issues of access or degree of influence. The analysis discusses these different activities and relationships, and their related challenges and opportunities. Reflecting the complexity of the interactions, multiple points of the model are often discussed within individual sub-questions. Overall, analysis entails *using* the framework model, and reflecting on the *usefulness* of the model in explaining the interaction between the Declaration and the rest of the Māori self-determination space.

5. Methodological Discussion

5.1. Research Design, Case Selection, and Boundaries

This research constitutes a qualitative single instrumental case study (Creswell, 2007: 74) of UNDRIP's impact in *Aotearoa*, to explore the more general concern of how UNDRIP can affect indigenous self-determination. Quantitative study indicates some broad trends, but debate surrounding the utility of UNDRIP lacks substantial empirical studies of the issue from IPs' viewpoint. Therefore, a qualitative study drawing on primary data collected from activists is chosen, to elicit rich, in-depth details from an indigenous perspective (Creswell, 2007). Secondary data and a variety of qualitative data collection methods triangulate interviews for the purpose of enrichment of information, to investigate different angles of the issue, expand breadth, and overall enhance understanding of findings (Bryman, 2007: 20; Tracy, 2010: 842).

This study is from a particular vantage point and does not refine a well-established field or theory on this particular topic (Grugel and Peruzzotti, 2012: 178), but contributes to understanding in the field. It draws on existing research and the analytical framework to inform its approach, overall operationalising elements of both inductive and deductive approaches to theory. It adopts a soft constructivist approach wherein knowledge is understood as subjective/intersubjective and social, cultural, historical, and other frames become important in the construction thereof (Bryman, 2012). This study therefore does not seek to establish a conclusive truth, but by interviewing IPs, aims to

position their underrepresented perspectives in relation to the research problem and deepen understanding in the field.

Activists are chosen as the population for engagement as increasingly vital actors in pressing for reform and/or integrating human rights and development practices (Nelson and Dorsey, 2008; Grugel and Peruzzotti 2007: 201). This selection created a bias that participants are highly educated and therefore may articulate the situation in a particular way, but these activists are selected because they are highly aware of the issue under research. Indeed, Māori activists have a long history of engagement with their rights, resulting in substantive and institutional knowledge of the Declaration and the UN. Their historical confidence in holding government accountable indicates they are likely to be forthright in their assessment of indigenous rights and the Declaration in *Aotearoa*.

Aotearoa New Zealand is chosen as a democracy with a significant and active indigenous population, which is interesting for several reasons. RBAs are considerably less-studied in democracies relative to authoritarian governments (Grugel and Peruzzotti 2007: 181, 201), and democracies are generally understood to value and codify at least minimum rights standards (ibid). Some argue that though the NZ Government boasts a high respect for indigenous rights, the actions of the government do not always match their rhetoric (Charters, 2007). Studying this case can help shed light on the Declarations' impact in countries with relatively advanced indigenous rights agendas, and also on how activists may use the Declaration even when the government claims its domestic rights exceed it (New Zealand Parliament, 2010).

The study focuses on conditions in 2018 when data collection occurred. However, findings also relate to 2007, when the Declaration was adopted in the UN General Assembly, 2010 when NZ supported it, and the drafting period leading up to the Declaration, as these are important in addressing the research questions. Activists were also asked to give their assessment of notable events in indigenous rights since 2007.

5.2. Data Collection Methods

Within the parameters of the case, the principle of "requisite variety" is applied, wherein a variety of methods are chosen in effort to approach the sophistication and complexity of the research subject (Tracy, 2010: 841), and are necessary to yield rich and detailed data appropriate to the intent of a case study despite a limited sample size (Creswell, 2007: 73). Accordingly, this study relies on primary and secondary data, and qualitative methods including interviews, a focus group, and a narrative walk.

In addition to triangulating these sources, multiple steps were taken to enhance the soundness of findings. Field notes, audio, transcription, and confirming/summarising answers were used to promote accurate collection of data. Number of activists was determined by saturation of information, and time spent in the field interning at the Human Rights Commission and collecting primary data lent valuable context (Creswell, 2007). Sincerity in the research was pursued through the disclosure of the researcher's background and research goals prior to each interview, and through researcher self-reflection throughout the research process (Tracy, 2010: 842).

A fine line was walked between building sufficient trust to access vital information and perspectives (Hammett et al., 2015: 77), and not taking advantage of activists' trust on the basis of shared indigeneity. Using a familiar gatekeeper, approaching activists as a Chickasaw[5] researcher, and presenting the research were all seemingly helpful in reducing asymmetry and building rapport and trust while maintaining that balance.

5.2.A. Interviews

The primary data for this study was collected from 18 Māori activists from throughout *Aotearoa*, between January and February 2018 (See **Appendix 1: Activist Attributes**). Activists were purposively sampled for their ability to make substantive contributions to the research (Bryman, 2010), because the focus isn't necessarily on finding the average interviewee, but those with the richest knowledge (Flyvbjerg, 2006). Activists were first identified through a Māori gatekeeper

[5] Chickasaw are an indigenous people of North America. See Forward section for more information on the author's affiliation.

from the Indigenous Rights Team at the HRC, who works extensively in the national Māori community. There were initial concerns that it would be difficult to remove the connection to the HRC, which would be problematic if activists felt obliged to give positive responses about rights. However, activists did not seem to struggle to make the discernment. This is likely because the gatekeeper also holds an identity separate from the HRC, and due to the close community in *Aotearoa*, it is not uncommon for the activists themselves to have collaborated at one point or another with the HRC while still retaining their independence.

To mitigate the risk of getting only like-minded activists through this method, it was emphasised that activists with a broad range of opinions on indigenous rights in *Aotearoa* and the Declaration were sought, and each suggested activist's previous work was investigated to further ensure a range of opinions. Keeping with the constructivist approach (Morrow and Smith, 1995: 26), self-identification of Māori as activists, coupled with their endorsement by the gatekeeper and research of their background, constituted the qualifying factors for involvement in this study. Activists came from a range of fields i.e. Māori health, education, children's rights, indigenous rights law, Treaty law, and the criminal justice system to provide further understanding of the research focus by exploring it through diverse vantages.

Interviews were semi-structured and followed an interview guide based on the analytical framework, empirical studies, context learned in the field, and secondary data (See **Appendix 2: Interview Guide**). Questions were designed to elicit a variety in answer type, including narratives, to enrich the data (Creswell, 2007: 129). The guide was closely followed initially, but when activists addressed research concerns before even being asked, variable follow-up questions were sufficient. As research progressed, questions were added or removed, so not all activists were asked the same questions (Mikkelsen, 2005). However, the same themes were still discussed, relevance and focus were enhanced, and it allowed for a more natural flow to the interview.

Interviews ranged from 50 minutes to 1 hour and 45 minutes. In addition to diversity in activism focus, a range in activist years of experience and age, and balanced representation in gender was also sought. This mix and the number of activists were deemed necessary to achieve a sufficient point of information saturation (Bryman, 2012). In all but two cases, interviews were conducted

at sites chosen by activists, to promote activist comfort and relative power by keeping them in their familiar space where they are the experts (Flyvbjerg, 2006; Creswell, 2007). These were most often personal homes, work offices, or cafes, ranging geographically throughout the North Island. When possible, cultural or topic-related ceremonies or events were attended in the interview regions, to add insight and understanding to the more formal research. In all cases, interviews were audio recorded at the verbal permission of activists, and fully transcribed for accuracy purposes. Field notes were taken during the interviews, capturing the essence of responses and noting where activists put emphasis. Effort was made to limit the time between an interview and development of reflections (Tracy, 2010: 841).

5.2.B. Focus Groups

One focus group was held with three of the activists. The same methods were applied in this case as for individual interviews and data treatment is the same. Activists were from the international human rights field and were accustomed to speaking together, which promoted synergy as ideas were shared and built (Creswell, 2007: 133).

5.2.C. Narrative Walk

One narrative walk, in which the researcher walks with the activist in an area of significance to the study (Evans and Jones, 2011: 849), was used for data collection on-site of activist-occupied land. It is argued that narrative walks can be advantageous in helping activists feel more comfortable, reducing asymmetry between researcher and activist, and producing rich data as the socio-natural aspects of the landscape and the activist's connection to them can provide inspiration and stimuli for activists (Jerneck and Olsson, 2013). Narrative Walks have been used in studies such as community attachment to place (Evans and Jones, 2011: 849), and was implemented here to test whether it could better-illuminate an activist's relationship with the government in an indigenous rights context, on activist-occupied land.

In practice, the walking constituted a small proportion of the overall interview, with the majority being conducted the same as other individual interviews. Furthermore, the narrative produced was substantively comparable to the narratives elicited through regular interviews, so the data from this exercise has been processed as a regular interview.

5.3. Data Use and Presentation

Primary data was coded with Nvivo software, following in vivo and topic coding methods, wherein activist language was coded and later organised into broader topics (Richards, 2015). Secondary data, including organisational reports, government documents, various Māori essays, and Māori speeches from a national Declaration conference attended by the researcher, provides context and insight and is analysed along with qualitative data to answer the research question.

To increase transparency (Tracy, 2010: 842), prior and following interviews it was explained how research would be used, the steps in processing findings, and the motivations behind the research. There is also considerable scrutiny in the research community against taking knowledge from a community and giving nothing back (Mfutso-Bengo, Ndebele, and Masiye, 2008), so all activists were invited to receive the main findings and share their reflections on them after thesis publication, to enhance researcher and activist understanding of the topic.

6. Case Study

Discussion commences with the development of the Māori-Crown relationship, then addresses the research question, where sub-questions are answered section by section. Concluding remarks and suggestions for further research are then offered.

6.1. Development of the Māori-Crown Relationship

Māori, the *tangata whenua* (indigenous peoples) of *Aotearoa,* comprise 15% of the national population (New Zealand Government, 2016). They affiliate through social structures of *hapū* (groupings of extended families) and *iwi* (tribal nations) and have formed an Iwi Chairs Forum (ICF), where *iwi* chairpersons gather to collectively address Māori concerns and "aspirations in the spheres of cultural, social, economic, environmental and political development" (ICF, 2018), and engage with government (IMM, 2015). From this forum, the Independent Monitoring Mechanism (IMM) was created, establishing independent Māori experts for the monitoring and

reporting of the government's progress in implementing the Declaration, including regular engagement with EMRIP.

Preceding the Declaration, the primary protection for Māori rights in *Aotearoa*, which underpins many of the other developments affecting Māori, is *Te Tiriti o Waitangi* (*Te Tiriti*/the Treaty). It was signed in 1840 between the British Crown and many, though not all, Māori *rangatira* (leaders). Though brief, it framed the relationship between the Crown and Māori as one of partnership, where Māori retain *tino rangatiratanga* (sovereignty, self-determination, self-government), equality, and the right to participation (Johansen, 2016), and allowed the Crown to establish a governorship in the country. It has been described as "a promise of two peoples to take the best possible care of each other" (HRC, 2011).

However, the promises in *Te Tiriti* have not been kept (Johansen, 2016). Today, Māori face a number of challenges to their rights, including in the areas of non-discrimination, health, justice, lands, culture, and self-determination. These challenges often manifest in Māori being highly over-represented in negative statistics, and under-represented in decision-making in these areas. Three illuminating issues of particular concern, which have been repeatedly scrutinised by Māori and the international community, are the discrimination at every level of the criminal justice system, the abuse of primarily Māori children in state care, and lack of a comprehensive strategy to engage Māori in *Te Tiriti* partnership or even participation (Johansen, 2016).

With current circumstances so detached from the obligations of *Te Tiriti*, many activists express that their main goal is to see these promises actualised, specifically, restoring *tino rangatiratanga*. Their conceptualisation of self-determination is thus Treaty-based, involving greater political authority, agency, and self-government, similar to the internal and pluralistic elements of self-determination discussed. Findings demonstrate elements of IBAs, as some responses highlight resurgence, responsibilities, and relationships as important aspects of self-determination, and they affirm numerous scholars on the importance of self-determination to IPs (Erueti, 2017; Knockwood, 2017; Henderson, 2017; Engle, 2011; Nichols, 2017).

There are several recent developments in *Aotearoa* which could have major implications for Māori *tino rangatiratanga*. The first relates to *Te Tiriti*'s content. It is passionately disputed whether Māori ceded their *tino rangatiratanga* in the signing of *Te Tiriti*, and this has had deep and lasting effects on Māori-state relations and Māori outcomes. At the foundation of this dispute is that the document exists in two versions, one in *te reo* Māori, and another translated in English. Māori maintain that they never relinquished their sovereignty, and any claim that they did is based on mistranslation. Yet, since *Te Tiriti* was signed, the NZ government has operated on the assertion that Māori sovereignty was ceded and the state holds supreme sovereignty.

In 2014, Māori protests to government assertion of sovereignty, which they view as illegal, were finally validated. The Waitangi Tribunal, the special commission established to make inquiries and recommendations around Māori claims of *Te Tiriti* violations by the Crown (Waitangi Tribunal, 2017), and credited with lending significant support to Māori rights (Jones, 2016), finalised its inquiry on the issue of sovereignty and the Treaty, concluding that Māori did not cede their sovereignty. Instead, they agreed to power sharing between equals, where the Crown would exercise rule over *Pākehā* (non-Māori New Zealanders), and Māori would continue their sovereignty over their people and lands (Waitangi Tribunal, 2014: xxii). The Crown has yet to formally acknowledge or act upon this finding, continuing to exercise supreme authority over *Pākehā* and Māori alike.

Two other pending development also await government action. The first is activists' calls for constitutional transformation, which stems from two main sources: *Te Tiriti* is largely a political document and has yet to be structured into the legal foundations of NZ, and NZ has no written constitution. This means that there are no formal legal protections for Māori, the Treaty partnership is not formalised or even legally obligatory, and Māori rights are consequently in a flux of vulnerability, often captive to the whims of changing governments (Johansen, 2016). Activists' desire for constitutional change reflects existing literature (Erueti, 2017; Knockwood, 2017; Henderson, 2017; Engle, 2011; Nichols, 2017) and further illuminates that they envision self-determination as Treaty-based self-governance in a pluralistic system, not secessionist: "that's not something I'm necessarily focused on, bringing down the government structure. I want to change

it, I want transformative change within the government structure, but for me, that doesn't mean burning it down" (Activist_K[6]).

The second development is that in 2014, the NZ Government agreed to recommendation made by the UN Universal Periodic Review, to take "concrete measures to ensure the implementation and promotion of the Declaration" (HRC, 2018). The logical operationalisation of this agreement was to form a national plan of action (NPA) to implement the Declaration in full, not in the ad-hoc or superficial way it had thus far (Johansen, 2016). Despite Māori attempts to collaborate on both the NPA and constitutional transformation, the government has yet to engage (Mutu and Jackson, 2016; IMM, 2016).

6.2. Domestic Challenges to Māori Rights

6.2.A. Power Imbalances and Fear

Reflecting previous scholars' findings (Ornelas, 2017; Hewitt, 2017; Engle, 2011), and RBA literature (Nelson and Dorsey, 2008), the primary obstacle to self-determination that activists highlight is the power imbalance among Māori, government, and third parties, and government's fear of losing their power. Some of this is by design. Instead of a written constitution, the NZ Government draws on "established constitutional practices known as conventions" (Governor-General of NZ, 2017). Consequently, it lacks formal, concrete protections for Māori rights or internal checks against parliamentary supremacy. Terms like "unchecked government power", "parliamentary sovereignty", "supreme authority", and "concentrated power" were used frequently by activists to describe this arrangement, and they shared bleak perspectives of how this affects Māori rights, as several responses demonstrate:

> They hold all the cards, we have to play their game... it's pretty frustrating... It's hard to maintain that momentum when you're not feeling like you're getting progress (Activist_O).

[6] To protect activists' anonymity, they are assigned pseudonyms, e.g. Activist_K. The three activists from the focus group are FA followed by a number.

> Our constitutional structure... can be really bad for IPs, and Māori particularly…. Structurally, there are problems with having the legislature protect Māori rights, it's almost a big contradiction (Activist_M).

As noted by other scholars (Ornelas, 2014; Erueti, 2017), it is not just powerful government that stymie Māori rights. Activist_D gave an example of just how powerful some third-party groups can also be, describing how they undermine agreements to address Treaty-based injustices. Activists also describe government and third-party fear of losing power, believing that advancements for Māori mean losses for them, reflecting the zero-sum conceptualisation of power as described by previous scholars (Ornelas, 2014; Erueti, 2017).

6.2.B. Separate Worldviews

Many activists shared stories to underscore their feeling that government commonly ignores indigenous voices or acts in ways that, intentionally and unintentionally, directly undermine their commitments to partnership. Evident throughout the stories was a complete divergence in Māori and government understanding of the world, and a lack of partnership in bridging this mismatch. Whereas activists acknowledge the government's actions make sense for government but not Māori, stories give the impression that government thinks that if it makes sense to government, it makes sense for everyone. In one activist's story, a Māori youth worker expressed to the Ministry of Education that "she was really worried about a particular few girls [in her shelter] not getting enough mental health counseling etc., and a Pākehā woman said to her, 'you know we could prosecute you for harbouring those kids'" (Activist_H). While the Māori was focused on the girls' needs, the *Pākehā* woman was concerned about the legality of them being there instead of school or home. Another discusses the lack of Māori worldview in the education system:

> Even if it's called a kura kaupapa, which is supposed to be [an] indigenous educational space, most are set up with a teacher up front and a square classroom with kids sitting at a square desk, square chairs, and that's not an indigenous learning space. We still fall into the paradigms we've been given and try to label it as ours but it's not (FA2).

These examples represent how government and activists can be viewing the same issue and come to completely different conclusions about it, supporting IBAs scholars that indigenous worldviews generate distinct perceptions of a problem and the appropriate solution (Bellier & Préaud, 2011: 478; Corntassel, 2012; Coburn et al., 2013). One activist points out that Māori men's lifelong negative engagement with the criminal justice system usually starts with them driving without a license: "well, why don't you invest in getting them drivers' licenses?" (Activist_C). After over three decades of awareness that discrimination exists at every level of the criminal justice system (Activist_N), and multiple admonishments from international forums (HRC, 2018), Māori incarceration rates have only gotten worse, with few creative solutions (Jackson, 2017b). Essentially, by carrying on with the existing power structure and ways of doing things, government reproduces patterns of discrimination, even if unintentionally. Without concerted effort to partner and resolve these issues from a point of mutual understanding, they seem likely to continue.

6.2.C. Superficial Government Responsiveness

Government responsiveness to Māori concerns or their efforts to engage is superficial. Some activists acknowledged government efforts as better than many other states, or that they make small advancements - such as establishing the Waitangi Tribunal and legal identity for rivers and mountains, and formalising *te reo* [Māori language] classes - but most also qualified these advancements as piecemeal or nothing transformational:

> The disappointing thing in all the things I've tried to change in the last ten years - we haven't had *meaningful* changes, so that means we've got another generation of people who are experiencing the same issues that existed 10, 20, 30 years ago, but we've entrenched it 10 more years. It's hard for me to think what we've achieved, because there are pockets of things, but we haven't achieved transformative change for our people as a country (Activist_K). (emphasis in original)

During the narrative walk, Activist_J shared a story about the land that captures a lot of activists' overwhelming sense of long-standing government disregard for Māori:

> The ocean just here, they closed it off in the 60's and made the Mangere wastewater treatment plant and they polluted it with all of the sewage waste. So we lost access to our pantry. Then we had to adapt, and we started to use the awa [river, canal], but then they closed the access off to that and it was polluted, and then we lost all of our custom and practices to access food. And it just goes on and on and on. When they did the second runway for the Auckland airport, they unearthed 87 bones, [even] after we'd told them that there was a 600-year-old [Māori] burial site there. They still progressed with it. They returned the bones to us in a sack and said we had to bury them somewhere else (Activist_J).

Another activist listed off examples where she/he and colleagues have tried to engage government and been rebuffed, calling it "relentless" (Activist_F). Activist_G detailed how the Iwi Chairs Forum created a 2016 working group to engage Māori communities across the country to form possible models for a new constitution (Mutu and Jackson, 2016), following numerous international and national recommendations to the government for constitutional protection of Māori rights (HRC, 2018; CERD, 2017). However, government has yet to consult on the issue.

Relating to the analytical model, findings indicate that national bodies and indigenous activists struggle to influence government, especially when third-parties are involved, and even when using multiple actions, including RBAs. Though RBAs are intended to address power imbalances through several mechanisms, the recommendations discussed are only intermittently effective for this purpose because they are frequently ignored, affirming scholars' arguments that sovereign states may disregard them (Ornelas, 2014; Hewitt, 2017; Morales, 2017). It becomes clear that self-determination and power-sharing which activists demand are not on government's agenda, and government may therefore believe it is doing well in indigenous rights, without recognising that self-determination and partnership are foundational to all other Māori rights. Overall, findings indicate a pattern of government verbal commitments to engage, and even some advancements, but a lack of substantive reform, and a perpetuation of the uneven power structure between Māori and government, resulting in processes and outcomes that fail to reflect true partnership or self-determination.

6.3. Government Sincerity in Endorsement

Though the Declaration is intended to enhance partnerships and self-determination (UNDRIP, 2008: 3), findings indicate the NZ Government didn't envision such a use. First, government's initial refusal to endorse "was a HUGE statement to tangata whenua [Māori] about the value that the state placed on us" (FA3). Activists expressed views that endorsement in 2010 was politically motivated and driven by Māori: "they wanted the Māori Party in government. That's the only reason. There's no other reason. It was one of the non-negotiables for the Māori Party to join the coalition" (Activist_H). Activists' descriptions of endorsement match the government's (NZ Parliament, 2010) and reflect several literary arguments (Hewitt, 2017; Engle, 2011), in that government claimed it would not implement the Declaration beyond their pre-existing, supposedly stronger domestic obligations, and emphasised UNDRIP's status as non-binding. Activists also corroborate scholars' accounts that the government disputed rights of self-determination, power-sharing, and more historical rights like land, reflecting that some rights are easier for governments to support than others (Erueti, 2017; Engle, 2011; Ornelas, 2014), and that NZ Government fears losing power.

As expected from existing literature, follow-through on implementation is low, even when national bodies and the international community suggest greater action (Hewitt, 2017; Lemaitre, 2011; Ornelas, 2014; Bellier and Préaud, 2011; Hanna and Vanclay, 2013). For example, the government committed at the UN General Assembly in 2014 to create a national plan of action for comprehensive implementation of the Declaration (HRC, 2018), yet they haven't, and implementation remains piecemeal (Johansen, 2016) despite four years of consistent attempts by Māori to collaborate on the plan through the Iwi Chairs Forum (Activist_L; Activist_H): "We keep saying 'set up a work group'. And it's just a mantra that I keep bleating all the time to them" (Activist_H). FA3 further describes implementation progress:

> They're picking low hanging fruit, i.e. around language. Tangata whenua [Māori] have been the ones who led the reclaiming of our language, and revitalising that... the government is gonna try to say that they had a hand in that. But nothing has been gained

> without protest. Nothing has been gained without activism… They pick off the easy ones and leave the hard ones like land (FA3).

Activists also pointed to outcomes as further evidence that the government is insincere about the Declaration. In health for example, "Compared with non-Māori, Māori today have much higher rates of heart disease, stroke, heart failure, lung cancer, diabetes, asthma" - and the list stretches endlessly on (Waitangi Tribunal, 2011: 642). Six years later, the IMM is still reporting the same or worse disparities in health outcomes, arguing that government has failed to ensure Māori health rights (IMM, 2017), which many activists agree with:

> If the indexes are still crashing and burning, how can we really say the government is taking heed of the Declaration? There are too many metrics to even begin naming. They've gotten worse. Where are they getting better? Where?... they're all screaming the same message, that things are shit (Activist_F).

Applying the analytical model, government insufficiently integrates international rights norms and makes little advancement in domestic rights protections, and it is again indicated that recommendations, whether from the international rights community or national bodies, are inconsistently followed. In the case of revitalising *te reo* Māori, IBAs have been effective though. The logic of the model is thus supported: by combining approaches, even when RBA tools are ineffective, indigenous activists are still able to advance self-determination (speaking their own language) through IBAs and protest, so gaps in effectiveness are filled between the two approaches. Findings also support IPs as drivers of change (Xanthaki, 2009; Lemaitre, 2011; Cotterill, 2011) and that activists must escalate rights, dragging the government along (Goodman and Jinks, 2008). They also enforce Erueti's (2017) claim that the NZ Government conceptualises rights to avoid addressing historical rights like land - again evading reforms that could challenge the power structure. Overall, it seems government was not committing itself when it endorsed the Declaration, perceiving it as inconsequential, and continues to dismiss it. However, a majority of activists made it clear that government's insincerity is immaterial to their activism: "you say it's irrelevant as much as you want, we're not saying that" (Activist_H). Essentially, activists will continue to advocate through all approaches available, regardless of government actions.

6.4. Usefulness of the Declaration

6.4.A. Achieving Tino Rangatiratanga

Despite the government's dismissive attitude, most activists still value the Declaration, particularly for its role in advancing their self-determination. Though one activist feels the Declaration is weak on self-determination and therefore is of limited value in NZ, most activists believe it is highly useful to them:

> I look at the declaration in terms of can this help my people? and hell yeah, it can... it addresses issues that are fundamentally important to my people... it gives the ability for IPs to exercise their self-determination. That's just repeated throughout the Declaration (Activist_G).

Activist_H is so "nutty about the Declaration", she/he carries it everywhere, and read from it during our interview to highlight its usefulness. Such findings illustrate how passionate and excited some supporters of the Declaration are about its role in serving self-determination.

6.4.B. Legal Implications

Enthusiasm for the Declaration comes despite concerns found in the literature, such as the Declaration's soft law status (Hewitt, 2017; Ornelas, 2014; Morales, 2017; Lemaitre, 2011; Van Cott, 2009; Xanthaki, 2009; Barume 2017; Barelli, 2009). Activists explained that they commonly hear IPs and Māori say it has no "teeth" (Activist_B; FA2; Activist_O) and dismiss it, especially because it is not codified in domestic law. Some agreed this is a problem: "Declarations are pretty hard to get compliance about because they're totally voluntary for states" (Activist_H). Consequently, some activists prefer other methods of influence, like domestic channels or resurgence.

However, mirroring the literary back-and-forth, most activists believe that the soft law aspect is not prohibitive to the Declaration's utility in influencing change. This group believes that beyond formal, binding language, "there are other ways you can normalise the Declaration and it can have use and be quite powerful" (Activist_M). One of these ways is through national bodies such as courts: "It has authority. Just because the Declaration isn't a treaty, doesn't mean it doesn't

have legal force, cause it does. There are common law courts all over the world that are taking it on into their jurisprudence. BAM! Legal authority!" (Activist_F). Another activist similarly saw the non-binding status as inconsequential: "I acknowledge that everything that human rights are built on - the Universal Declaration of Human Rights - that's still a declaration and it's done so much for humans all over the world. So I don't hold on to giving it a certain mana, it stands on its own" (FA2). Another argued the Declaration being a compilation and elaboration of other legally binding international standards and treaties gives it binding implications - if a right is binding in those treaties, it has legal force in the Declaration.

6.4.C. Rights

Most activists also weren't deterred by the Declaration as an RBA. In keeping with several scholars' discussions (Engle, 2011; Newton, 2017; Corntassel, 2012; Bellier & Préaud, 2011), activists explained that scepticism of rights ultimately relates to a perception of their roots in a non-indigenous, state-centric, neoliberal worldview that makes several problematic assumptions and implications:

> Human rights are individually-focused, they emphasise the central role of the state… and given the problematic history between IPs and states, you can see immediately the tensions there... and human rights are intricately tied up with neoliberalism, and individual rights and property, so it's problematic that way, knowing how that has ravaged indigenous communities. So in a theoretical way, but that has real practical impacts, I think there are issues in using that space (Activist_N).

Activist_D shared this scepticism, preferring resurgence over RBAs. These reservations aren't shared by most activists. As discussed, certain activists see human rights as having enormous benefits for people worldwide, IPs included. Rather than rejecting the Declaration for its rights background, many embrace rights and see them aligning strongly with their worldviews. Activist_J explained that the Declaration reaffirms Māori' inherent rights, and what has always existed in *Aotearoa*. Aware that some aversion to rights does exist in the indigenous community, several activists believe that the story of the drafting process and the Declaration's unique roots in the indigenous community can be used to demonstrate how IPs can use rights to support their

aspirations. Such responses support scholars who emphasise the importance of IPs' role in creating the Declaration (Johnstone, 2011: 2). Findings also indicate an important role for the Human Rights Commission - a national body - in rights education, supporting the analytical model. These interviews indicate that contrary to viewing the Declaration as a foreign instrument, the indigenous background of the document, and even human rights generally, resonate strongly with many activists and fit into their worldview (Fitzgerald and Schwartz, 2017: 4).

Affirming the analytical model, findings indicate that some IPs prefer IBAs over RBAs, yet many activists value the Declaration particularly as a rights instrument, and for reaffirming their indigenous worldviews. IPs' drafting of the Declaration is also important to many activists, and further supports the argument that indigenous and rights-based approaches can reinforce each other. As also expected from the model, national bodies are identified as improving Declaration legitimacy through setting jurisprudence. Overall, some activists remain sceptical about the usefulness of the Declaration, but the majority believe it is an integral tool for advancing self-determination and is influential regardless of its soft law status. The next step then is to establish the mechanisms through which it affects self-determination.

6.5. Declaration Use in Aotearoa

6.5.A. Creating Norms Through Use

Activists use the Declaration in several ways to support self-determination, despite, and in response to, the many domestic challenges to indigenous rights. For instance, they challenge government's dismissive attitude toward the Declaration by increasingly using it. Aligning with Jackson (2017), many activists believe that the more Māori engage with and use the Declaration, learn about their rights, and talk about them, the more the government has to recognise the Declaration: "If it's included in submissions or said in courts, you have to say something about it, you can't pretend you don't hear" (Activist_L). Responses strongly reflected literature and RBAs scholars that even insincere governments cannot resist the permeating nature of human rights norms while activists continue to demand them (Goodman and Jinks, 2008; Lemaitre, 2011; Barume, 2017), as articulated by Activist_M:

> It has a snowballing effect: as it's used in international fora to monitor NZ, as used in parliament and courts, it will gain traction, and become one of the standards against which you assess Crown actions... It's a matter of time (Activist_M).

Overall, many activists and secondary sources (Jackson, 2017; Charters, 2017) concur that "as long as people keep using it and arguing for it, it still has that power...they can't really stop people from using it" (FA1).

In NZ, as with other cases (Barume, 2017), this normalisation is aided by national bodies also integrating the Declaration. In addition to courts, the Waitangi Tribunal and HRC were identified by numerous sources (Charters, 2017; Jackson, 2017; Mead, 2017) as helping "provide precedent for cases to come" (Activist_J) and creating an "osmosis" (Activist_G) effect, allowing the Declaration rights to seep "into local thinking about... Māori rights" (Activist_B). However, activists also acknowledge that not enough Māori or government officials understand the Declaration currently, so they pressed the need for increased education around it.

6.5.B. Showing Standards

The Declaration is also used as a standard for measuring indigenous rights in *Aotearoa* and creating government obligations to meet them as minimum human standards. Several activists describe the Declaration articles similarly as "baselines for what should be universal standards expected by NZ and other states" (Activist_O) and discuss how using these standards support arguments for government reform, by showing where their actions fall short. This reflects the "shift in development", from benevolence to obligation, discussed in RBA literature (Grugel and Piper, 2009; Nelson and Dorsey, 2004) and explained by FA1:

> Some of the benefits are around framing [Māori rights] as human standards and that element of having to do something about it… not special privileges or... something Māori are greedily trying to get their sticky fingers on… or something out of kindness of your heart as a government.

As this response suggests, standards are also used to articulate rights breaches as objective issues. Essentially, framing indigenous rights as human rights broadens them from being seen as just privileges for IPs, and instead "means they're an issue for social justice… the right to property or equality is something that all kiwis [New Zealanders] can identify with and support" (Activist_B). FA2 described the struggle she/he and other Māori have faced in getting non-Māori to understand the issues affecting them, and the relief to have something that helps articulate those issues. The Declaration is thus used to convey activists' concerns and aspirations by showing them as standards that all peoples, including Māori, are entitled to. This implies a relationship between RBAs and indigenous worldviews, supporting the analytical model, and indicates that the Declaration is used to build bridges of common understanding between Māori and non-Māori.

6.5.C. An External Authority

As discussed, a fundamental motivation for the creation of these human rights standards was to check state power (Nelson and Dorsey, 2008: 90; Grugel and Piper, 2009: 80). This is especially important in NZ, where most activists view an external authority as something that can help overcome domestic political challenges:

> It offers an avenue for them to surface their human rights breaches and by-pass the state. Often times the state is the problem. IPs are constantly taking our issues to the state and not being listened to, not being valued... and fobbed off, really. So there is this relief from constantly banging your head up against a brick wall, and that ray of hope that maybe something external might be able to affect change within Aotearoa (FA3).

This speaks to the analytical model and RBA literature (Cotterill, 2011), that when other methods are ineffective at creating change, RBAs are another avenue for influence. The mechanism behind this influence is a combination of recommendations, media, being called out in forums, and overall negative attention that activists feel embarrasses the NZ Government, which they say likes to think it is doing well on indigenous rights. Though several activists mentioned challenges to accessing rights forums, reflecting Newton (2017), most activists have still used the Declaration and rights forums to strengthen pressure. As established, this is not always effective, as government may ignore it, but successes also occur. For example, after several international recommendations

(IMM, 2017) and a multi-faceted domestic campaign - including IBAs - the new Labour Party Government campaigned on the promise to create an independent inquiry into abuse of children in state care, a top issue for Māori in recent years, and is now taking steps to do so. These findings again indicate the complementary roles of RBAs and other methods, as discussed in the analytical model and literature (Johnstone, 2011; Barume, 2017; Ornelas, 2014).

6.5.D. Complementing Other Methods

As demonstrated through previous discussion, there is no perfect method for influencing the NZ Government, and the Declaration is no exception. Even the most enthusiastic Declaration supporters noted its limits: "In terms of saying has it brought about a specific, tangible change you can point to? Naaaaaah, not really" (Activist_N). Others further qualified it as "influential and supportive, never as a decisive factor…[or] a silver bullet" (Activist_M), with one noting, "I've not been involved in a project where UNDRIP is the hero or leader. It's always been a part of something bigger" (Activist_E). As expected from the analytical framework, the Declaration is thus used in combination with other advocacy tools:

> We've always been firm that we want to exhaust every legal and political means available to us… so we've accessed the UN select committee, the parliament, we've written petitions, we've launched online virtual occupations, we're occupying the land peacefully and respectfully. We use social media, we used to do newspapers, and we just go everywhere we can really to raise awareness around this issue (Activist_J)

Indeed, many activists described including the Declaration in submissions to the government and international community, to support court cases and add weight to arguments, or to forge a framework for engagement between their *iwi* and government, indicating that the Declaration contributes to self-determination in an ancillary capacity. Another activist's summary eloquently demonstrates the complementary nature of RBAs and IBAs for advocacy, as expected from the analytical framework:

> UNDRIP is not the be all and end all of international mechanisms that are linked to the UN, [nor] the be all and end all of our indigenous advocacy. We will do [indigenous

> advocacy] regardless, but it certainly adds weight to our work if we do draw on these mechanisms (Activists_A).

In other words, RBAs and IBAs need not be in competition in indigenous contexts. If RBAs alone are not sufficient to be the hero of a movement (Grugel and Piper, 2009: 81), they can still be used to strengthen IBAs, which are not used to the exclusion of RBAs.

6.5.E. Supporting Te Tiriti

The most common tool activists combine the Declaration with is *Te Tiriti*, as they believe it provides guidelines and standards for Treaty partnership and *tino rangatiratanga*. Activists explain whereas the Treaty is high-level and more general with only three written articles, the Declaration is rich in detail and indicates how the promises of the Treaty can be operationalised, and where Treaty obligations are not being met: "With UNDRIP overlaid on Te Tiriti, it's like triangulating data, and just makes Te Tiriti stronger. So you can start with a Treaty-based argument with government, then tease it out and say UNDRIP says this in particular about xyz" (Activist_F). Overall, most activists see the two instruments as partners for indigenous rights. The discussion also reflected arguments about having an external check:

> I think that's one of the major differences that you have on the Declaration, is that you have this external check on indigenous rights in the country, whereas the Treaty is inherently limited by being a domestic instrument that's largely determined by the state (Activist_B).

This and other responses further affirm the analytical model by indicating that the power imbalance in *Aotearoa* undermines *Te Tiriti* effectiveness in advancing self-determination, but that the Declaration is an important tool in helping to overcome that imbalance by bringing indigenous rights outside the confines of domestic politics.

6.5.F. Indigenising Rights

As argued in the analytical model, IPs also use the Declaration alongside IBAs. In Aotearoa, this includes both reconfiguring rights spaces i.e. forums, into indigenous spaces, and fortifying indigenous methods with rights. For instance, activists use the Declaration to connect with the international indigenous community, as expected from RBA literature (Roth, 2004). Even activists

who are generally sceptical of the UN acknowledge the value in building relationships with IPs that gather at rights forums, and several explain how those gatherings fit their worldview:

> I think as Māori, relationships are important on every level. So the deeper we can connect on a personal level, the deeper we can share our learnings that we bring with us. If we enrich our relationships, then we take back stronger stuff to wherever we are (Activist_K).

> It's not just the Declaration, it's a community of indigenous nations. That's what I felt at the forum. More so than any success of any intervention, the most important part is the people you meet and the shared experiences (Activist_O).

While networking is not unique to IPs, these responses affirm the analytical model in demonstrating that indigenous values like relationships and story-sharing are exercised in rights spaces and can be advanced through the opportunities surrounding the rights *kaupapa* (approach). IPs simply indigenise the space.

Activists also use the Declaration to protect their right to assert self-determination. Tired of waiting for government responsiveness, activists also act on their own indigenous methods to live their rights, and they use the Declaration to support the legitimacy of their actions. Responses indicate a wave of Māori resurgence and honouring of their responsibilities to implement Māori solutions:

> If we as Māori don't advocate for ourselves, no one else is gonna do it. First and foremost, we as Māori are most accountable and most responsible for what's happening with our own people. A reason we're in such a crap position as a people is because of the system, but in terms of the improvement, we need to take it upon ourselves to do something about it (Activist_E).

Activists gave examples of resurgence, addressing the importance of everyday actions similar to those discussed by Corntassel (2011), such as creating a *Taniwha* [guardian/powerful

creatures/spirits] Club and planting native plants[7], teaching your children *te reo*, and insisting people use Māori terms correctly. They also discussed deeper actions, like repossessing their Treaty land and living more traditionally, and incorporating Māori values into the justice system, or, ideally, overhauling the whole thing. Further reflecting IBAs literature (Corntassel, 2012: 93; Bellier & Préaud, 2011: 478; Coburn et al., 2013), many activists passionately and excitedly expressed that reasserting their values is of the utmost importance for their self-determination and their vitality as a people:

> [we need to] reclaim our tikanga [customs, way] that was lost. We need to be making decisions for ourselves. We need our sovereignty back. In order to reverse the poor statistics that Māori face, we need to take back our mana [authority, power, spirit], decolonise ourselves, educate ourselves, and be brave and courageous (Activist_J).

Indeed, there is both a sense of urgency and eagerness for IBAs among activists, and many expressed that the Declaration reaffirms their right to assert themselves in these ways, justifying their resurgence in areas of culture, land, resources and more. While some methods are technically illegal, activists essentially argue that Te Tiriti and the Declaration actually guarantee these rights, and government laws just have not caught up. Thus, while attending rights forums, using the Waitangi Tribunal, and pressuring government to implement their rights, many concurrently just assert them.

Findings reflect the analytical model in showing how rights tools like norms and standards are used by activists to influence self-determination, and also mitigate the power imbalance between them and government. The courts, the Waitangi Tribunal, and the HRC help with this by legitimising the Declaration through education and integration. Findings also reflect IBAs scholarship on the importance of resurgence and relationships, and that asserting themselves is critical for IPs' revitalisation. They further support the analytical model by demonstrating how activists can use IBAs to directly advance self-determination, and that rights can reinforce indigenous approaches. Overall, findings indicate that multiple methods of advocacy are used by

[7] The *Taniwha* Club takes a culturally significant concept – *taniwha* – and principles of relationships and responsibilities – evident in its recruitment methods and activities – and then exercises resurgence by planting indigenous/native plants in public spaces like parks.

activists, either to advance self-determination directly or through building pressure on government. No one method is sufficient to achieve reform, so they are used strategically to complement and reinforce each other in the struggle for self-determination.

6.6. Concluding Remarks

Findings indicate that in *Aotearoa*, several factors influence self-determination. Activists and government hold different understanding of what indigenous rights are, how they should be advanced, and whether they are sufficiently respected by government. By many indicators, Māori rights are not being fully realised (IMM, 2015-2017; CERD, 2017; Johansen, 2016; Charters, 2017; Jackson, 2017). Government implements indigenous rights in piecemeal and superficial ways that fail to affect, and instead reflect, the structural power imbalance that ultimately prevents Māori self-determination and underpins many of the struggles Māori face. The Declaration and RBAs are designed to mitigate exactly such power imbalances between citizens and government, yet the NZ Government is dismissive about the Declaration, despite endorsing it, and has failed to implement the Declaration in a comprehensive way.

Activists are accustomed to weak government responsiveness, and still believe the Declaration can help with their issues and aspirations. The majority are undeterred by its soft law status and use it in numerous ways to advance their self-determination. Rights are used strategically to escalate domestic norms (Goodman and Jinks, 2008: 727) – aided by courts, the Waitangi Tribunal, and the HRC (Charters, 2017; Jackson, 2017) – and to identify where government falls short of independent rights standards. This creates obligations on the government and strengthens pressure, helping activists circumnavigate some of the domestic power disparity and corresponding constraints (Cotterill, 2011: 4), and achieve successes like the pending inquiry on abuse of children in state care.

The sovereign power of government, tied with NZ's constitutional design, insulates government from a large degree of pressure though (Hewitt, 2017; Lemaitre, 2011). So, while the Declaration is helpful in numerous ways to advance self-determination, it does not fully escape the same power constraints it is designed to address. Familiar with these limits, activists use multiple methods of

advocacy to reinforce their efforts. The Declaration is thus used in a complementary fashion alongside tools like *Te Tiriti,* and with IBAs focused on relationships, responsibilities, and resurgence. The Declaration is used to strengthen IBAs by protecting IPs' distinct worldviews and right to assert themselves. Activists are also bringing their indigenous values into rights spaces, ultimately triangulating the two methods to better achieve their goals.

The analytical model enhanced understanding of the various actors, activities, and influence levels identified in the study, affirming its usefulness and contributing to the academic field on the two approaches. Findings consistently illustrate how most activists comfortably work in the two worlds of IBAs and RBAs, deftly combining the Declaration with indigenous-based approaches to challenge familiar injustices in creative ways and advance their self-determination.

Given that existing literature indicates a strong ability for third-parties to undermine indigenous rights, and research findings support this, it would be interesting to further investigate third-parties' role in self-determination. It would also be intriguing to further explore how other indigenous peoples balance use of RBAs and IBAs in advocacy, and how valuable the international solidarity discussed in this research has been to their advocacy. Finally, it is indicated in literature and findings that indigenous peoples generally seek self-determination, yet few studies exist for how this works in practice. Further research should look beyond advocating and asserting self-determination to illuminate the Declaration's role in formal power-sharing models.

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8. Appendix 1: Activist Attributes: All attributes here are randomised and do not correspond to complete profiles of activists. NZ is a small-population country and the community of activists is close, so there is concern over activists deducing the identity of co-activists. Efforts were made to ensure that confidentiality is maintained (Bryman, 2012) by providing pseudonyms and detaching identifying demographics from individual responses.

Gender	Age	Education	Field	Activist Years
M	29	Master's	Environmental issues	25
M	44	PhD	International human rights	10
M	41	PhD	Legal advocacy, Treaty, Māori land, criminal etc, Māori Justice Network	40
M	27	Two Bachelor's	Legal advocacy	Since I was 9
M	64	Master's	International human rights	Since University, so 20 years ago
M	30	PhD	International human rights	30
M	30	Indigenous school of learning	International human rights	20. I am not sure if you suddenly become an activist, or rather you just pick up on issues as they come along
M	40	Bachelor's	International human rights	22
M	52	Bachelor's	Legal advocacy, criminal justice	Since I was very young. That is what has been reflected back to me from my parents and grandparents
M	56	PhD	Te Tiriti, constitution	We were groomed into these positions from very young
F	38	Master's	EMRIP, CERD,	Still striving to be an activist
F	44	PhD	Public Health, UNCROC	With awareness, only about 7 or 8 years. And then there are just some things you practice when you are growing up that you value, that I would not have known as activism, I would have just known it as the right thing to do
F	47	Master's	International human rights	I am an activist, but it is just a normal part of being Māori to be involved in these kind of issues.
F	41		International human rights, Waitangi Tribunal	Probably all my life. But as an active formal one, 45 years. My aunties and nans told me when I was a little kid, and all my life, this is your job
F	46	Bachelor's	Children's rights, public health	All my life. I have always been passionate about justice. I have always known how important it is to stand up for yourself and what you believe in. Everyone is an activist really, if they know how to use their hands and mouths to stand up for what is right
F	69	Some Tertiary	Environmental management	I was just born into a family that has valued social justice and has valued Māori rights and standing up for rights. 15 years
F	55	Master's	TBO, human rights education and treaty rights	25
F	48	Bachelor's	International Human rights, indigenous rights, monitoring	10

9. Appendix 2: Interview Guide

Demographic info:
What is your age?
Gender -
What is your highest level of education?

As an activist:

1. How many years have you considered yourself as an activist for Māori rights?

2. At what level do you advocate? i.e. local, national, international

3. Can you please explain to me your advocacy strategy, both in terms of goals and methods?

4. From your perspective, what have been the most notable negative/positive changes in Māori rights in the last ten years?

5. Who or what is driving the changes in rights in NZ?

6. In your opinion, who should be accountable for improvements in Māori well-being?

Government:

7. In your opinion, how responsive is the NZ Government to Māori needs?

8. In your opinion, what would be the ideal relationship between Māori and the Government?
    a. What, or who, are the main barriers?

UNDRIP:

9. Do you feel like UNDRIP has had, or could have, and impact on realising that ideal relationship?

10. How would you describe the relevance of UNDRIP to your needs and priorities as a Māori?
    a. What are the practical benefits and/or challenges to engaging with it?

11. Would you say your activist background has influenced your opinion of UNDRIP, and if so, how?

12. How have you seen other institutions and organisations (courts, Waitangi Tribunal) responding to/ interacting with UNDRIP?
    a. Has this changed the way you engage with these other institutions?

13. Have you ever tried to incorporate UNDRIP rights into your advocacy strategy? If so, can you please describe that experience to me and what, in your view, were the pros and cons of that strategy? If not, why?
    a. Do you feel like the outcome was aided by UNDRIP?

14. In your opinion, what are the government's obligations, if any, after supporting UNDRIP in 2007? What did they commit to?

15. Do you see your activist role more as holding gov accountable to its obligations, or are you holding yourself accountable to fulfil your mandate through the commitments made by gov?

16. What would you say are the government's main advancements in implementation of UNDRIP and keeping its related commitments, and what are its main areas for improvement?

17. In discussing UNDRIP with Māori colleagues, have you ever encountered negative attitudes toward UNDRIP or UN generally? If so, what were they?

18. Do you agree with these attitudes? Why or why not? What would be your main critique, if any, of UNDRIP?

19. In your opinion, what are the costs and benefits, if any, to framing Māori issues in terms of indigenous peoples' rights internationally?

Final thoughts:

20. In your opinion, what are some of the top issues that Māori continue to face?
    a. are there concerns that you feel UNDRIP, and/or the government, have left unaddressed?

21. In your opinion, what still needs to be done, and by who, to address these challenges?

22. What are the main barriers to doing that?

23. As a Māori, do you feel more optimistic or pessimistic about the future of your rights in NZ?

24. (As a follow up) If gov not responding enough, why still optimistic and value the Declaration?

25. (If brought up by them) where you see resistance from gov, do you believe that's more intentional or are they ignorant of it, or what?

26. (If brought up by them) Lots of protest to Foreshore and Seabed act, but still let down. What were the limits that the movement bumped up against?