NGĀ TOKI WHAKARURURANGA

TE TIRITI O WAITANGI ASSESSMENT OF THE INDO-PACIFIC ECONOMIC FRAMEWORK NEGOTIATIONS AND AGREEMENTS ON SUPPLY CHAINS, CLEAN ECONOMY, FAIR ECONOMY AND OVERVIEW

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CONTENTS

INTRODUCTION

1. This Tiriti o Waitangi Assessment of the Indo-Pacific Economic Framework (IPEF) agreements has been prepared by Ngā Toki Whakarururanga as mandated in the Mediation Agreement with the Crown in the Wai 2522 Inquiry into the Trans-Pacific Partnership Agreement (TPPA).[1]

2. Ngā Toki Whakarururanga also signed a Toka Tūmoana with the Ministry of Foreign Affairs and Trade (MFAT) to provide expert and strategic direction on Māori rights, duties, interests and responsibilities in relation to negotiations of the IPEF and to co-design relevant New Zealand text proposals.[2]

3. The IPEF involves the United States and 13 other states, including Aotearoa New Zealand.[3] The US created IPEF as an alternative to traditional free trade agreement like the Trans-Pacific Partnership Agreement (TPPA) that had become politically unpopular. The negotiations were launched in May 2022 and four agreements had been concluded by May 2024: Pillar II - Supply Chains, Pillar III - Clean Economy (climate change), Pillar IV - Fair Economy (corruption and tax) and an overarching agreement (institutional arrangements).[4] However, the most significant agreement, Pillar 1 - Trade, has not been concluded and, for domestic political reasons in the US, may never be, especially if Donald Trump is elected president.[5]

4. Ngā Toki Whakarururanga has provided confidential analysis and input to these negotiations, in particular on the trade and climate change pillars. At the start of negotiations, we submitted an eight-point memorandum seeking to inform the Cabinet's mandate on IPEF.[6] That addressed: secrecy; the Treaty of Waitangi Exception; an economy of mana; Te Waka Kai Ora; Rongoā Māori; Māori data sovereignty and digital governance; Te Taiao and the climate energency; and Regulatory disciplines (see Part 4 below).

5. In addition, Ngā Toki Whakarururanga prepared 5 position papers on: a Tiriti-based approach to IPEF; Pure Food and Genetic Modification; Te Taiao and the Climate Crisis; Digital Sovereignty and Governance; and Indigenous Peoples' Rights and Protections.[7] We could not present them in person at the various negotiating rounds because of cost of attending and there was no on-line option. The Crown distributed them to the other IPEF delegations.

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[1] The Mediation Agreement is Annexed to the Waitangi Tribunal Report on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, 2021. https://ngatoki.nz/wp-content/uploads/2024/06/2b-final-mediation-agreement-signed.pdf

[2] https://ngatoki.nz/document-library/

[3] Australia, Brunei, Fiji, India, Indonesia, Japan, Malaysia, New Zealand, Philippines, Singapore, South Korea, Thailand, United States, Viet Nam.

[4] https://www.parliament.nz/en/pb/sc/make-a-submission/document/54SCFADT_SCF_FCA4F95D-1EC8-4310-772A-08DC90353729/international-treaty-examination-of-the-agreement-on-the

[5] https://eastasiaforum.org/2024/03/25/east-asia-cant-rely-on-the-indo-pacific-economic-framework/

[6] https://ngatoki.nz/treaty_assessments/memorandum-to-cabinet-on-ipef/

[7] https://ngatoki.nz/tiriti-analysis/#brxe-cdcjhf

6. Ngā Toki Whakarururanga's interactions with officials throughout the negotiations have generally been constructive, but proved largely ineffective because the Crown holds all the cards, including decisions on what to consult about, when and what decisions to make.

7. This assessment sets out to balance the Crown's National Interest Analysis of the IPEF agreements[8] by reviewing them against the Crown's obligations under the four articles of Te Tiriti o Waitangi and aims to hold the Crown accountable before a decision is made on whether the agreements should be ratified. The assessment is informed by Ngā Toki Whakarururanga's Kaupapa:

> *Recognising He Whenua Rangatira ("We are an Independent and Sovereign Nation"), our duty and responsibility is to protect and advance Māori rights according to Te Tiriti o Waitangi me He Whakaputanga o te Rangatiratanga o Nu Tireni, and to hold the Crown to account to meet its responsibilities under Te Tiriti and He Whakaputanga in the arena of trade policy, negotiations and agreements.*

8. The main focus of this Tiriti assessment is the Agreement on Clean Economy. Assessment and findings on the Pillar 1 trade agreement are constrained because the draft texts remain secret and cannot be discussed at this time.

9. The Tiriti assessment is organised into seven parts:

    1) Te Tiriti o Waitangi
    2) About IPEF
    3) Māori, Te Tiriti and Indigenous Peoples under IPEF
    4) Impacts on Te Tiriti
    5) Te Taiao and the Climate Emergency
    6) Protections and Exceptions
    7) Tiriti Assessment and the Way Forward

10. Regrettably, the assessment finds no evidence of any meaningful influence on the outcomes of these agreements, as expected from the Toka Tūmoana. In particular, the Clean Economy Agreement is not Tiriti-compliant in the way it was negotiated, in its substance, in its institutional arrangements, or in the Crown's approach to protections for Māori duties, responsibilities, rights and interests under Te Tiriti o Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples. The most critical decision on the lack of effective protections for Māori was made without prior notification.

[8] https://bills.parliament.nz/v/4/b5dcdb15-df2e-4ec0-4a51-08dc9016ed75

PART 1. TE TIRITI O WAITANGI

11. Ngā Rangatira and the British Crown together established He Whakaputanga o Te Rangatiratanga o Nu Tireni in 1835 and signed Te Tiriti o Waitangi in 1840. Both guaranteed that Māori would continue to exercise tino rangatiratanga, or complete control over their people, resources and lives, while the Crown assumed responsibility for its own.

12. The four articles of Te Tiriti underpin this assessment:

    Kawanatanga – Article 1: Government exercises authority over its own and any authority positively delegated by Māori, subject to the obligation to recognise rangatiratanga and ensure the protection of Māori rights, interests, duties and responsibilities.

    Tino Rangatiratanga - Article 2: Rangatira have unfettered ongoing power and responsibility to ensure the exercise of Māori authority collectively over their own affairs and resources in a manner consistent with tikanga Māori.

    Oritetanga - Article 3: Māori and the Crown's people have parity and equity in rights and outcomes, meaning equal rights to define and pursue aspirations in accordance with their fundamental principles, laws and beliefs.

    He Whakapono - 4th Article: guarantees the active protection of philosophies, beliefs, faiths and laws.

13. The authority of Rangatiratanga includes the power of Rangatira to make international treaties that affect Māori duties, responsibilities, rights and interests. Māori have never conceded nor delegated that authority to the Crown. The constitutional relationship of Rangatiratanga to Kāwanatanga must underpin any international treaty that is entered into by Aotearoa New Zealand, with Māori at the negotiating table as an independent party equal to the Crown.

14. In breach of the Tiriti relationship of Rangatiratanga and Kāwanatanga, the Crown considers it has the exclusive authority to negotiate international treaties on behalf of the state of Aotearoa New Zealand. Despite repeated insistence from Ngā Toki Whakarururanga and other Māori entities that Māori need an independent voice in any trade negotiations, the Crown alone conducts those negotiations. This denial of Rangatiratanga is a constitutional issue that is being pursued in the Constitutional Kaupapa (Wai 3300) inquiry before the Waitangi Tribunal.

15. Consistent with this approach, the Crown exercised exclusive control over the IPEF negotiations by deciding the mandate, what priorities would be given to Māori inputs, what views they considered valid and what positions were tabled, what trade-offs were made, and what final outcomes were acceptable. Once the IPEF comes into force there is no seat at the table for Māori in the governance arrangements of the agreements or the overview bodies, aside from the possible substitution of a Māori from outside government for a New Zealand Government official on the IPEF Clean Economy Committee of officials, whom presumably the Crown would decide and appoint.[9]

[9] Agreement on Clean Economy, Article 24, footnote 8

16. The IPEF negotiations were conducted in secret with minimal public information. This severely restricted inputs from those potentially affected by the agreements or with relevant expertise. In contrast to the US-led Trans-Pacific Partnership Agreement (TPPA) there were almost no leaks of texts.

17. Ngā Toki Whakarururanga's technical pūkenga had to provide their input under strict confidentiality. This information could not be shared. This impediment means that without such information, Māori who are affected by and have an interest in these negotiations could not effectively promote and protect their responsibility and interests and, where necessary and appropriate, hold Māori who *were* involved in dialogue with the Crown to account.

18. This Tiriti assessment sets out, as far as possible, Ngā Toki Whakarururanga's input into IPEF. We stress the limitations on our ability to employ our expertise because of the secrecy that applies to the all-important Pillar 1 trade agreement that is still under negotiation.

19. Discussions are underway with the Crown to enable some broader dialogue with Māori during the course of negotiations. However, even some loosening of restrictions would still be inconsistent with our fundamental obligations of participatory decision-making and accountability to Māori who are affected by these agreements.

PART 2: ABOUT IPEF

20. IPEF is not like other free trade agreements (FTAs). As happened in Aotearoa, a lot of people in the US rebelled against the TPPA as a secretly negotiated treaty designed for big business. These kind of agreements became toxic. The US government under President Biden promised them something different. The result is IPEF.

21. The US called the shots all the way, from the initial idea to the final agreements, and will run the IPEF secretariat if they come into force. These agreements are different from FTAs in four main ways. First, they don't provide other countries with access into the US market. Second, although the corporate lobbyists were still very powerful, they don't have many binding rules and rely mainly on cooperation and consultation. Third, unlike the earlier FTAs, IPEF is also designed to satisfy US labour unions who see jobs bleeding offshore and want other countries to have to meet the same labour standards. And last, but not least, many of the provisions are designed to contain China which the US sees as threatening its status as the region's superpower.

22. Those four factors drove the IPEF agenda and provide the sub-text for all the Agreements. There were four "pillars", which reflect US priorities, and an umbrella agreement:

    Pillar 1: Trade
    Pillar 2: Supply Chains
    Pillar 3: Clean Economy (climate change)
    Pillar 4: Fair Economy (tax and corruption)
    Overarching Agreement

23. However, it turns out not everyone in the US was on the same page with IPEF, especially Big Tech companies and those who want to rein them in. Some other countries in IPEF were not on board with the strict labour and environment chapters either. So the Trade Pillar of IPEF fell apart and is on hold until at least after the US elections. Donald Trump has said he would withdraw the US from all of IPEF if elected, as he did with the TPPA.

24. As mentioned above, aside from the incomplete trade pillar, IPEF does not have many enforceable obligations. Most of those relate to labour and treatment of workers, or reporting and institutional arrangements. There is a lot of language about intending or endeavouring to do things. Those are still legal obligations and governments can be required to justify their actions or inactions.

25. These obligations have another important consequence: by endorsing certain concepts and kinds of action that are incompatible with Te Tiriti and Indigenous values and practices they legitimise those approaches and their adoption, especially in relation to the climate crisis.

26. Equally, weak or absent protections for Indigenous rights create bad precedents at a time when the Crown has agreed to discuss how to strengthen them.

PART 3: MĀORI, TE TIRITI AND INDIGENOUS PEOPLES UNDER IPEF

27. Crown negotiators for Aotearoa New Zealand did try to secure references to Māori, Te Tiriti and Indigenous Peoples in the IPEF texts. They met strong resistance from some countries and little support overall. As a result, references that were included are nothing like the Tiriti-consistent proposals Ngā Toki Whakarururanga made, and were not always provided to us for prior comment. The provisions the Crown has agreed to have no substance and are not Tiriti-compliant. Of particular concern is the Clean Economy Agreement, which creates a dangerous new precedent.

28. The only references to Māori and Te Tiriti in the Supply Chain and Fair Economy agreements are the inclusion of the inadequate and outdated Treaty of Waitangi Exception that the Crown continues to use. This is despite long-standing promises of dialogue to develop alternatives. Similar language is used in an article on "inclusivity" in the Clean Economy Agreement, but is downgraded even further by saying it does not operate as an exception. Ngā Toki Whakarururanga was not consulted about this before the Crown agreed to it. These provisions are discussed further in Part 6.

29. Our concerns are not just for Māori. There are Indigenous Peoples in the territories of almost all IPEF countries that are also affected by these agreements. With the exception of the first rounds in Brisbane, other Indigenous Peoples were invisible in the IPEF negotiations, aside from those working for governments.

30. Almost all the participating states are also signatories to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration recognises Indigenous Peoples' intrinsic right to

self-determination[10] and to participate in decisions that impact on their rights through representatives of their own choice.[11] IPEF involves such decisions. There is a single reference to the UNDRIP in these agreements. The Preamble of the Clean Economy Agreement "recalls" the Declaration and "recognizes its importance in the context of this Agreement". But nothing in the actual agreement remotely reflects Indigenous Peoples' rights under the Declaration.

31. The proposed trade agreement has a chapter on "inclusivity" that applies to Indigenous Peoples - alongside women, persons with disabilities, rural and remote populations, minorities, and local communities, as well as MSMEs. No text is publicly available, because the agreement is still under negotiation. However, it was one of the few chapters the US did not insist on chairing, leaving Aotearoa New Zealand and Australia to co-chair on on Indigenous Peoples and Gender, respectively. It need to be noted that, if concluded, the chapter would not be enforceable.

32. The Fair Economy Agreement and Supply Chain agreements contain token references to Indigenous Peoples. The Preamble to the Fair Economy Agreement talks of removing obstacles to robust participation in the benefits of economic growth, free trade and investment by removing obstacles to robust participation by individuals and groups outside the public sector, such as enterprises, especially MSMEs, workers, women, Indigenous Peoples, persons with disabilities, rural and remote populations, minorities, and local communities, and building their capacity, and later in a provision on engagement in anti-corruption efforts. There is nothing of substance relating to Indigenous Peoples in provisions of the Agreement.

33. The Pillar 2 Supply Chain Agreement has two similar references to lists of groups, one in the Preamble and one to make efforts to promote their inclusivity in supply chains.[12]

34. The "Clean Economy" Agreement, which deals with the climate crisis, has several more references, and is more problematic for multiple reasons explained in Part 5. In summary:
    - The Preamble has similar paragraphs that include Indigenous Peoples among a long list of other groups.
    - The Preamble "recalls" the UNDRIP and "recognizes its importance in the context of this Agreement", but the provisions of the Agreement do not relate to the Declaration.
    - Many of the concepts, strategies and technologies advanced in the Agreement to address climate change are not compatible with the fundamentals of the Declaration, Indigenous values and practices, or Te Tiriti o Waitangi.
    - The provision on "Inclusive Transitions to Clean Economies" talks of partnering with Indigenous Peoples in implementing the Agreement, including enabling their participation and drawing on traditional and indigenous knowledge "as appropriate", but that involves implementing concepts, strategies and technologies that are not based on Indigenous values and practices.[13]

[10] UNDRIP Article 4
[11] UNDRIP Article 18
[12] Supply Chain Agreement Article 5.2
[13] Clean Economy Agreement Article 3

- National and coordinated efforts towards sustainable management of forests may draw on traditional and indigenous knowledge "as appropriate".[14]
- Parties "recognize the importance" of partnerships involving the same long list of groups, including Indigenous Peoples, but there is nothing concrete.[15]

PART 4. IPEF IMPACTS ON TE TIRITI

35. Because IPEF is novel it will have different impacts on the responsibilities, duties, rights and interests of Māori under Te Tiriti from other FTAs. At the start of the negotiations no one, including the other governments involved, had any idea what IPEF would look like. Ngā Toki Whakarururanga prepared an eight-point memorandum on a Tiriti-based approach to IPEF to inform Cabinet's decision on its negotiating mandate.[16] This focused on the trade agreement and identified what we speculated might be covered in IPEF, given the recent US agreement with Canada and Mexico. The key points in this memorandum were:

1. Secrecy

- *Ministers should instruct officials to read restrictions on access to IPEF documents in a way that enables the sharing of sufficient information to ensure that affected Māori communities can have a genuine influence on these negotiations.*

2. Treaty of Waitangi Exception

- *The Cabinet must require a new approach to the Treaty of Waitangi Exception in IPEF. It should be modelled on the proposal for an Indigenous Peoples exception that New Zealand recently tabled at the WTO, which largely addresses the deficiencies identified in the Wai 2522 inquiry. Cabinet should note that the Indigenous Peoples exception the US has already adopted in the USMCA is broader than the 2001 Treaty of Waitangi exception.*

3. An economy of mana

- *Cabinet's mandate needs to initiate a step change in the economic model of past FTAs, which are recognised to have failed. A new 21st century approach throughout IPEF should build an economy of mana in which decisions regarding investment, production, consumption and wealth distribution are influenced by the interplay of mana-enhancing interactions between people and the environment. That would approach would support Māori aspirations and wellbeing, while addressing barriers that confront Māori in business, workers and their communities as they seek to achieve that vision.*

[14] Clean Economy Agreement Article 12.5
[15] Clean Economy Agreement Article 11.3
[16] https://ngatoki.nz/treaty_assessments/memorandum-to-cabinet-on-ipef/

4. Te Waka Kai Ora

- *In addition to a comprehensive Tiriti o Waitangi carveout from IPEF, Cabinet's IPEF mandate must ensure that it does not open the door to new rules on biotech and GM. Cabinet must also ensure that IPEF protects the policy space to address the failures in the current Organics Bill to provide protections for Hua Parakore.*

5. Rongoā Māori

- *We urge Cabinet to ensure that there is no closure of policy space to guarantee effective protection of their rights, interests, duties and responsibilities, and compliance with the Crown's Tiriti obligations, in relation to rongoā Māori, and direct MFAT to engage with rongoā practitioners to assess the implications of IPEF for them.*

6. Māori data sovereignty and digital governance

- *Cabinet must recognise that it has failed to redress the breach of its Tiriti obligations on data and the digital domain in the CPTPP. To do so again in IPEF would show utmost bad faith as a Tiriti partner. In addition to a comprehensive Treaty Exception, the Cabinet needs to mandate a kaupapa Māori-based process to develop a Tiriti-compliant approach to data and the digital domain in all its FTAs as a matter of urgency.*

7. Te Taiao and the climate emergency

- *Cabinet must reject the cynical attempt by the US to promote its domestic corporate, social and political interests in the name of a "clean economy" when Aotearoa and the rest of the world face a catastrophic climate crisis that impacts most severely on the most vulnerable, especially Indigenous Peoples. If the Crown engages with these discussions in IPEF, it needs to advocate a holistic response to the climate crisis that builds on Indigenous values, strategies and leadership to implement real solutions.*

8. Regulatory disciplines

- *Cabinet's mandate needs to recognise that the current regulatory management regime fails to provide effective recognition and protection for Māori rights and interests under Te Tiriti and the UNDRIP, and reject moves to lock in that regime through IPEF. Cabinet also needs to reject moves to guarantee foreign corporations (and states) the right to intervene and proactively seek reviews of policy and laws, which would have a chilling effect on Tiriti-compliance policies, especially when Māori do not have equivalent rights in their own country.*

36. During the course of the negotiations, Ngā Toki Whakarururanga prepared a further five briefing papers that identify a number of Tiriti-based concerns about IPEF and recommendations, as well as memoranda to the Crown relating to the trade text that can't be disclosed. Extracts of the briefing papers follow; the full papers can be accessed on Ngā Toki Whakarururanga's website.[17]

[17] https://ngatoki.nz/tiriti-analysis/#brxe-cdcjhf

Statement from Ngā Toki Whakarururanga to the IPEF negotiating meeting (Brisbane, December 2022)

The kaupapa to which we are accountable, and which is reiterated in the Mediation Agreement, derives from Te Tiriti o Waitangi that was signed by our tupuna (forebears) in 1840 and which is, in turn, based on He Whakaputanga o te Rangatiratanga o Nu Tireni (the Declaration of Independence) which they proclaimed in 1835.

These sacred instruments guarantee Māori will continue to exercise self-determination and self-governance (rangatiratanga) over our people, resources and way of life, while the English settler government exercises delegated authority over its own.

Self-determination includes the international domain of trade policy and negotiations. Our people have always been traders, based on enduring relationships and values not transactions for commodities. We also carry an enduring obligation as kaitiaki or custodians of the world we have inherited, and of which we are an inseparable part, to protect its wellbeing for future generations. In doing so we seek relationships with other indigenous peoples and non-indigenous who respect our values.

These are the principles we bring to our interaction with the Crown and with other participating states in IPEF. ...

We want to make it clear that we will not accept being siloed into some chapter on "inclusion" that treats Indigenous Peoples as just another stakeholder alongside women, labour, small businesses, rural dwellers, disabled people and others. As the United Nations Declaration on the Rights of Indigenous Peoples recognises we have a constitutional authority that includes the right to self-determination.

Nor will we accept a meaning of inclusion that applies only after the fact, having excluded us from a seat at the negotiating table or even the right to access the texts that purport to determine our rights, even if we have signed a confidentiality agreement. Inclusion means having a voice to promote and protect our interests and to challenge proposals that do not in the place the decisions are made.

The New Zealand Government with whom you are negotiating on behalf of Aotearoa New Zealand are fully aware that they may be called to account in the Waitangi Tribunal once again if the processes or the rules they agree to in IPEF breach Te Tiriti o Waitangi. We expect them to ensure that does not occur and we ask you to respect our rights and their obligations from this point onwards in the IPEF process.

Pure Food and Genetic Modification (Bali, March 2023)

Indigenous approaches to trade embody deeply interconnected relationships between people and with the natural world. We are connected to that world through whakapapa/genealogical relationships and have responsibilities to it as kaitiaki/custodians.

Those responsibilities include avoiding risks to the natural and spiritual wellbeing of the ecosystems that keep our lives in balance and have sustained our communities for many generations, and the wellbeing of people themselves.

International trade policy and agreements, including rules on agriculture, food and seeds, have direct and indirect impacts on these relationships and the rights and duties associated with them.

We acknowledge the plurality of views across Te Ao Māori and for Indigenous Peoples globally [on genetic modification].

At the same time, important commonalities are recognised and protected in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These include reliance of Indigenous Peoples on our traditional food sources and practices to maintain the cultural and spiritual vitality of our communities and the surrounding environments that sustain them.

Genetic modification (GM) and the introduction of GMOs threaten Indigenous traditions and ways of life. Globally, many Indigenous Peoples oppose GM because it distorts the essence of being and because it poses risks to local ecosystems, including Indigenous and native plant species.

These concerns are not just about contamination of food systems by GMOs and impacts on human health. Unknown long-term effects of GM on the environment and its biodiversity could interfere with the integrity of a native plant variety that may hold cultural significance which undermines their cultural identity; and lead to the destruction of key food sources that are relied on by Indigenous Peoples and threaten traditional agricultural practices, cultural heritage and Indigenous livelihoods. …

Governments must: ensure that IPEF does not open the door to new rules on biotech and GM or empower biotech corporations to lobby for such changes and against existing laws; enable food to be produced for domestic use and export in ways that accord with Indigenous values, so as to support healthy and secure food for all; support increased resilience of Indigenous food systems and reduce dependence on imports in the agrifood sector, including fertilizers and chemical inputs; and go beyond a precautionary principle to recognise knowledge, standards and risk assessments based on Indigenous Peoples' worldviews.

Indigenous Digital Sovereignty and Governance (Singapore, May 2023)

Knowledge/information/data – mātauranga – is fundamental to Māori being. It is a "taonga" over which Māori exercise rangatiratanga or supreme authority under Te Tiriti o Waitangi. Māori have rights, interests, duties and responsibilities to preserve, protect and continue to develop our mātauranga (knowledge – in all its forms) and ensure it is used for the collective good.

In 2020 The Waitangi Tribunal found that the rules in the electronic commerce chapter of the Trans-Pacific Partnership Agreement/Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPPA/CPTPP) breached the Crown's obligations to protect mātauranga Māori and the future ability to establish a system of Indigenous data sovereignty and governance.

Based on past experience, existing US agreements, and tech lobbyists demands, we foresee [in IPEF]: closure of policy space and policy options to meet state obligations under Te Tiriti o Waitangi and UNDRIP; rules on data that entrench the control of Big Tech over the digital ecosystem, including a near-monopoly on the raw material of data and the ability to set the terms for participation by Indigenous Peoples and businesses in the digital domain; secrecy of source codes and algorithms that perpetuate racism, profiling and other bias and protect violators from scrutiny and accountability; …

Effective protections in IPEF must:

> *Ensure that Parties retain their domestic policy space, including through a comprehensive carve-out to protect the rights, interests, responsibilities and duties of Indigenous Peoples; …*
>
> *Provide positive incentives for Indigenous Peoples, and Indigenous small businesses to develop digital systems and digital products based on Indigenous values, including through public procurement and local preferences, and reject any rules that constrain those developments;*
>
> *Reject proposals in IPEF that empower Big Tech corporations, or foreign states, to seek changes to existing laws or to lobby against new laws and policies that provide effective protections for Indigenous peoples.*

Te Taiao and the Climate Crisis (Busan, July 2023)

Indigenous approaches to trade embody deeply interconnected relationships between people and with the natural world, sourced in the creation story that is broadly shared by Māori and other Indigenous Peoples in the territories of IPEF parties.

We are connected to that world through whakapapa/genealogical relationships and have responsibilities to it as kaitiaki/custodians.

Those responsibilities include avoiding risks to the natural and spiritual wellbeing of the ecosystems that keep our lives in balance and have sustained our communities for many generations, and the wellbeing of people themselves. …

It is vital that the Māori voice and voices of Indigenous Peoples generally are heard directly during these negotiations and not filtered through state run processes. This will ensure that our unique worldviews are conveyed and understood in their proper cultural context. IPEF negotiations are no exception.

IPEF promises a new approach to the relationship of trade to the environment, ecosystems, biodiversity, and the climate crisis. However, we remain sceptical that this will deliver a genuinely new model that places priority on the protection of the environment and instead will continue to be driven by economic imperatives. A new and transformative approach is required to mitigate the current climate crisis facing the planet.

We urge IPEF parties to endorse and adopt the model of ethical trade that underlie Indigenous Peoples' relationships to both trade and environment and empower us to lead that model.

Both [Pillar 3 Clean Economy and the Environment chapter in Pillar 1 Trade] need to go beyond just "recognising" our role to empowering Indigenous Peoples to give effect to our rights and responsibilities in relation to food, forestry and fisheries, biodiversity, climate and trade, Multilateral Environment Agreements, environmental goods and services.

Indigenous Peoples Rights and Protections (Bangkok, September 2023)

Indigenous Peoples' have enduring responsibilities as kaitiaki or custodians of the world we have inherited, and of which we are an inseparable part, and the duty to protect its wellbeing for future generations.

In Aotearoa New Zealand, Te Tiriti o Waitangi guarantees Māori will continue to exercise self-determination and self-governance (rangatiratanga) over our people, resources, and way of life, while the English settler government exercises delegated authority over its own.

Despite our requests, Māori and other Indigenous Peoples have not been accorded direct independent representation in the IPEF negotiations to ensure that our perspectives are received and considered as accurately an authentically as they are given.

Nor do we have any guarantee that our rights, responsibilities, duties, and interests will be effectively protected in IPEF to enable us to exercise our rangatiratanga (self-determination).

Without a direct avenue to influence negotiations, it is imperative that the negotiating IPEF parties agree to effective protections across all four pillars that guarantee they can deliver on their obligations to Indigenous Peoples under the legal, constitutional, treaty or other constructive arrangements to which they are a party.

Recommendation: Adopt a carveout from scope across each IPEF pillar to ensure that state parties retain the policy space to meet their domestic and international obligations to Indigenous Peoples in their territories.

PART 5: TE TAIAO AND THE CLIMATE EMERGENCY

37. Ngā Toki Whakarururanga's IPEF briefing paper on Te Taiao and the Climate Crisis warned the negotiators:

> *The climate crisis is of existential importance to Māori, to Aotearoa and the world and this fact needs to be acknowledged within IPEF*.
>
> *The title of Pillar 3 "Clean Economy" suggests an economic focus that ignores the holistic inter-relationship of our shared planet's economic, social, cultural, ecological and spiritual dimensions.*
>
> *We remain deeply sceptical at the over-reliance on "solutions" to the climate crisis that rely on economic incentives, carbon markets, and technological innovations as a means of solving the climate crisis, while ignoring the potential solutions that Indigenous innovation can provide.*

38. That is what IPEF has delivered. The Agreement treats carbon capture, utilisation and storage (CCUS), ocean-based solutions, carbon markets, and other technologies and financial instruments as potential solutions to the climate emergency. A major thrust of the agreement is to promote investment in and demand for those technologies and instruments, to benefit the corporations that produce them, who are principally from the US.

39. This is not surprising. The US has a very poor record on climate action, whether it is mitigation or adaptation. In the TPPA it would not allow the words "Trade and Climate Change" to be used in the Environment chapter[18] and insisted instead on the heading "Transition to a Low Emissions and Resilient Economy".[19] IPEF is much the same.

40. This Agreement is entitled "Clean Economy". There is no urgency, no ambition, not even a commitment to the Paris goals, which it merely "recalls" in the Preamble. IPEF does not seek to eliminate fossil fuels or even fossil fuel subsidies. The Preamble merely "*recalls* commitments to rationalise and phase out *inefficient* fossil fuel subsidies". Article 5.5 says parties intend to reduce dependence on "*unabated* fossil fuels" by sharing knowledge and planning and forecasting techniques, balancing that with the need for reliable, affordable and available energy.

41. The aim is to advance "net zero emissions". That allows countries to continue greenwashing practices and inaction,[20] claiming to balance their ongoing or even increased emissions against some other industry or countries' emissions savings, or storing carbon under the sea, in the ground or in the forests. Those are not Indigenous solutions.[21]

42. States who negotiate agreements like IPEF never genuinely recognise that Indigenous Peoples have solutions to at least mitigate the climate emergency that they have not caused, but which impacts

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[18] https://itsourfuture.org.nz/us-takes-hard-position-on-climate-change-in-tppa/

[19] Article 20.15 of TPPA listed a number of "areas for cooperation", that included:

> *energy efficiency; development of cost-effective, low emissions technologies and alternative, clean and renewable energy sources; sustainable transport and sustainable urban infrastructure development; addressing deforestation and forest degradation; emissions monitoring; market and non- market mechanisms; low emissions, resilient development and sharing of information and experiences in addressing this issue.*

[20] https://www.forbes.com/sites/amynguyen/2023/06/16/carbon-neutral-claims-under-investigation-in-greenwashing-probe/

[21] Aarti Lile Ram and Eric Shahzar, "Land, loss and liberation: Indigenous struggles amid the climate crisis", World Economic Forum, 9 February 2024, https://www.weforum.org/agenda/2024/02/indigenous-challenges-displacement-climate-change/

disproportionately on them. The Clean Economy chapter has several references to Indigenous Peoples, but they follow a pattern of previous agreements (eg. Chapter 22 Environment in the NZ UK FTA) where Indigenous concepts and references Indigenous Peoples' participation apply in a context that is contradictory to and/or incompatible with them.

43. Article 3, which was obviously promoted by New Zealand, says:

    1. *The Parties acknowledge each Party's diverse social and cultural contexts and geography. The Parties recognize that Indigenous Peoples, and local communities, as understood in each Party's domestic framework, have an important role in the transitions to clean economies.*
    2. ***In implementing this Agreement**, in accordance with domestic law and policies, each Party intends to partner with its Indigenous Peoples, and local communities, including through enabling participation and, as appropriate, drawing on their traditional knowledge and practices to enhance efforts to transition to clean economies, including the sustainable management and governance of ecosystems, forests, oceans, and waterways and the move towards sustainable agricultural practices.*
    3. ***With respect to any matter covered by this Agreement**, a Party may: (a) in fulfillment of its obligations to its Indigenous Peoples under its law or a treaty, promote and protect the rights, interests, duties, and responsibilities of its Indigenous Peoples.*

44. However, as Part 6 explains, a footnote explicitly says this does not operate as an exception to the obligations in the Agreement. Further, it gives Indigenous Peoples a role in implementing an Agreement that they have not been involved in negotiating.

45. The Agreement's approach to the climate crisis promotes a conceptual framework and strategies, such as ocean-based and nature-based solutions, carbon sinks, and carbon markets, that involve exploitation of Te Taiao in ways that are incompatible with rangatiratanga, tikanga and kaitiakitanga, and deprive those with mana whenua of their authority and responsibilities in relation to those resources. They are not sourced in, and are often anathema to, Indigenous knowledge or practices. The proposal to partner with Indigenous Peoples to implement that is disingenuous.

46. There are several other impracticalities and contradictions. One part of the Preamble seeks to "advance efforts and cooperation that use best available science, sound data, and evidence-based analysis, including *'taking into account'* local and traditional knowledge, to make informed decisions, measures, activities, and reviews of progress". Yet the status of "traditional knowledge" (not Indigenous knowledge) here is subordinated, and recent debates in Aotearoa show that mātauranga Māori may be heavily contested as not "science".

47. Article 13 asserts that "ocean-based solutions are nature-based solutions and ecosystem-based approaches" that the Parties aim to accelerate "with appropriate [but unspecified] social and environmental safeguards". Those approaches include recognising "the important role of ocean-based clean energy, including tidal energy, wave energy, and offshore wind", considering "policies and opportunities to drive increased development of offshore wind energy" and cooperating on supply chains with a view to attracting investment.

48. It goes on to "recognize the importance of blue carbon ecosystems for climate change mitigation and adaptation, and the importance of robust methodologies for measuring, reporting on, verifying, and managing blue carbon stocks."

49. The Parties "intend to explore opportunities to cooperate to mobilize finance for blue carbon protection and restoration activities in the region as appropriate, including by collaborating on pilot projects and, potentially, through carbon markets."

50. "Nature-based" solutions,[22] such as "blue carbon" ecosystems of mangroves and seagrasses, are treated as "carbon sinks" without recognising the authority and kaitiaki responsibilities of mana whenua to care for and determine appropriate uses of their taonga and environments, their connected waterways, ecosystems and the mātauranga and tikanga surrounding all of them.[23] What if, as the situation has happened in many countries including Aotearoa, Indigenous Peoples exercise their rangatiratanga/self-determination and say no to wind and wave farming,[24] or other sequestration, often located on their whenua without consent.[25]

51. Similar questions can be asked about Article 11 on Sustainable Agriculture Practices. The Parties intend to improve environmental outcomes through, increase investment in, and accelerate efforts on the development and deployment of "climate-smart" and "climate-resilient" agricultural practices, policies and technologies. That potentially includes GMOs, a "solution" advocated by the global biotech industry[26], led by the US, and by Biotech NZ.[27] Ngā Toki Whakarururanga's briefing papers challenged the potential inclusion of GMOs in the Trade pillar agreement, but they are also being legitimised in the Clean Energy Agreement.

52. Article 12 on Sustainable Management of Forests and Other Natural Ecosystems focuses on cooperation to identify and address drivers of deforestation and forest degradation, promote legally harvested timber, and the carbon benefits of the utilisation of harvested wood products, enhance reforestation and forest restoration. It is unclear how that intention connects to paragraph 5, to advance a country's national and coordinated efforts towards the sustainable management of forests, "including consideration of nature-based solutions and ecosystem-based approaches for climate change mitigation and adaptation, and by drawing on traditional and indigenous knowledge as appropriate". Nature-based solutions are defined here with

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[22] Indigenous Environmental Network, "Nature-based solutions. Indigenous Environmental Network Climate Justice Program Series", November 2022; Mercia Abbot et al, "Indigenous thinking about nature-based solutions and climate justice", British Academy, 2022, https://www.thebritishacademy.ac.uk/publications/indigenous-thinking-about-nature-based-solutions-and-climate-justice/

[23] Meg Parsons and Lara Taylor, "Why Indigenous Knowledge Should be an essential part of how we govern the world's oceans", *Conversation,* June 2021, https://anzsog.edu.au/news/why-indigenous-knowledge-should-be-an-essential-part-of-how-we-govern-the-worlds-oceans/; M. Bargh, and Van Wagner, E. "Participation as Exclusion: Māori Engagement with the Crown Minerals Act 1991 Block Offer Process" *Journal of Human Rights and the Environment*, Vol. 10:1, 2019. DOI: https://doi.org/10.4337/jhre.2019.01.06 Scott, Dayna Nadine, Impact Assessment in the Ring of Fire: Contested Authorities, Competing Visions and a Clash of Legal Orders (2023). Osgoode Legal Studies Research Paper No. 4441505, Available at SSRN: https://ssrn.com/abstract=4441505

[24] Business and Human Rights Resource Centre, *Renewable Energy and Human Rights Benchmarks. Key findings from the wind and solar sector 2021*, https://media.business-humanrights.org/media/documents/2021_Renewable_Energy_Benchmark_v5.pdf,

[25] "Why solar and wind developers ignore indigenous land claims at their peril", 7 April 2023, https://www.reuters.com/default/why-solar-wind-developers-ignore-indigenous-land-claims-their-peril-2023-04-06/; "Wind turbines in Brazil stir conflicts with Indigenous Rights", https://www.context.news/net-zero/wind-turbines-in-brazil-stir-conflict-with-indigenous-rights

[26] https://www.brunel.ac.uk/news-and-events/news/articles/Genetically-modified-crops-aren%27t-a-solution-to-climate-change-despite-what-the-biotech-industry-says

[27] https://biotechnz.org.nz/2022/04/26/nz-needs-genetic-modification-in-the-world-of-climate-change/

reference to the United Nations Environment Assembly of the United Nations Environment Programme.[28]

53. Although vague, this might open the door to some role for Indigenous knowledge. But it begs the question of how that "solution" addresses the unsustainable forestry practices that have caused serious harm to climate-ravaged Māori communities, such as Cyclone Gabrielle? These impacts stem largely from legally permitted commercial forest farming and practices, which are exacerbated by forms of commodity trade based on lowest price and by investors with no sense of responsibility.

54. Further, Māori have solutions that the Crown could address now without IPEF, if it had the political will. It does not need IPEF to listen to them. Despite a year since the report on the devastation caused by forestry slash and silt during Cyclone Gabrielle, the government has no coherent sustainable forestry management policy to address the climate crisis[29] - let alone one that considers nature-based solutions and ecosystem-based approaches and draws on traditional and indigenous knowledge.

55. Article 14 promotes collaborative efforts to grow the demand and supply for CCUS as another solution, incentivising investments and projects, identifying the region's geological carbon storage potential, looking to facilitate transboundary carbon sequestration. The parties intend to support pilot programmes and demonstration projects for CCUS value chain projects within the region. They intend to facilitate the development of carbon storage sites and mobilize potential public or private sector investments towards the development of such projects, supported by clear laws, regulations, policies, and enabling frameworks. Yet Indigenous Peoples are fighting the imposition of these projects on their lands, not least in the US itself.[30]

56. How do these pre-determined pathways in IPEF sit with the Preamble that "notes" the importance of the UNDRIP in the context of the Agreement, when its relevant provisions would lead down a different path?

> Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
>
> Article 29.1 "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. …
>
> Article 31.1 Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge

[28] The UN definition is "actions to protect, conserve, restore, sustainably use and manage natural or modified terrestrial, freshwater, coastal and marine ecosystems which address social, economic and environmental challenges effectively and and adaptively, while simultaneously providing human well-being, ecosystem services, resilience and biodiversity benefits"
[29] https://www.phcc.org.nz/briefing/clean-ups-are-not-enough-government-policy-incoherent-climate-change
[30] "7 first nations in Alta. want answers on carbon capture and storage plans", *CBC,* 18 February 2024, https://www.cbc.ca/news/canada/edmonton/7-first-nations-in-alta-want-answers-on-carbon-capture-and-storage-plans-1.7119106; Chloe Alexander et al, "The colonialism of carbon capture and storage in Alberta's Tar Sands", vol 5(4), *Environment and Planning E. Nature and Space,* 2021, https://doi.org/10.1177/251484862110528; https://www.reuters.com/sustainability/climate-energy/comment-carbon-capture-storage-is-dangerous-distraction-its-time-imagine-world-2023-12-11/; https://www.ienearth.org/environmental-justice-organizations-post-comments-on-carbon-capture-and-storage-to-the-white-house-council-on-environmental-quality/

of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. ….

57. The Crown's National Interest Assessment downplays these concerns because the Agreement does not have binding obligations. It just commits governments to "consider" "cooperate", "work towards" or "take steps", often subject to "national priorities", "national circumstances" and "in accordance with domestic laws", and based on "available resources". If that is true, then what is the value of this Agreement? For the purposes of this Tiriti assessment, we have to assume that there is some good faith intention of the parties to act on it.

58. As acknowledged earlier, New Zealand negotiators appear to be largely responsible for securing even these references to Indigenous Peoples. The Crown has also provided a possibility for Māori to have a voice in implementing the Agreement. The Clean Economy Committee of senior officials who are tasked with overseeing the chapter has the option for New Zealand – and only New Zealand – to be represented by a Māori who is not part of the government rather than an official.[31] That shows sensitivity to Māori demands for an independent voice at the table. But appointing someone to that role is discretionary and would presumably be determined by the Crown. They would be only one voice among 12 other countries' government officials. And what they could advocate for would be circumscribed by the chapter.

59. These issues will be examined more fully in the Waitangi Tribunal Priority Kaupapa Inquiry on the Climate Crisis (Wai 3325), which Ngā Toki Whakarururanga has joined as a party.

PART 6. PROTECTIONS AND EXCEPTIONS

60. Agreements like IPEF are always framed by the interests of western capitalism and the more powerful states among the Parties. They are never framed by Indigenous values and perspectives. What Ngā Toki Whakarururanga proposed to Cabinet was a genuine alternative through an economy of mana. It is clear that those states who negotiate them have no intention of addressing and redressing colonisation and empowering Māori and other Indigenous Peoples to determine a different future.

61. Until we can change that reality, the Crown (and other colonial powers) gets to decide what exceptions and flexibilities are necessary and appropriate to protect Māori responsibilities, duties, rights and interests affected by IPEF. In this negotiation, the Crown has unilaterally moved backwards in the way those protections are framed.

62. The Crown has a standard Treaty of Waitangi Exception that it has used since 2001, with limitations highlighted in bold:

> ***Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as disguised restriction on trade in goods, trade in services and investment****, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to* ***accord more favourable treatment*** *to Māori in respect of matters covered by this Agreement, including in fulfilment of its obligations under the Treaty of Waitangi. The Parties agree*

[31] Clean Economy Agreement Article 24

that the interpretation of the Treaty of Waitangi, including the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 20 (Consultations and Dispute Settlement) shall otherwise apply to this Article …

63. The Waitangi Tribunal in the Wai 2522 TPPA Inquiry originally concluded that the Treaty Exception was not perfect and did not accept the Crown's claim that nothing in the agreement would prevent the Crown from meeting its Treaty obligations. Despite that, the Tribunal initially concluded that the Exception "was likely to provide a reasonable degree of protection" to Māori - but it urged the Crown and Māori to enter into dialogue on its wording.[32] However, the Tribunal's report on the TPPA/CPTPP e-commerce chapter found that all the exceptions in the CPTPP taken together, including the Treaty of Waitangi Exception, did not provide effective protection for affected Māori rights and interests under Te Tiriti.[33] The Tribunal assumed the Crown was entering into dialogue on alternatives.

64. The Wai 2522 Mediation Agreement provides for dialogue between claimants and the Crown to identify options for a different exception.

65. The Crown's own Trade for All Advisory Board encouraged dialogue on a stronger protection than the current Treaty Exception, a recommendation which the Cabinet declined to accept.[34]

66. So the Crown continues to use the flawed Treaty of Waitangi Exception. Ngā Toki Whakarururanga's IPEF briefing paper on Indigenous Peoples' Rights and Protections explained the reasons why that exception does not provide effective protection for Māori responsibilities, duties, rights and interests, including under Te Tiriti, and should not be used in IPEF. It pointed out that the US has adopted a broader exception in its recent agreement with Canada and Mexico. And it proposed that IPEF should adopt a variation on the Indigenous Peoples' exception that Aotearoa New Zealand proposed in the Joint Statement Initiative on Electronic Commerce:[35]

> **Article [x] Indigenous Peoples**
>
> 1. This Agreement does not apply to measures that a Party adopts or maintains, in partnership with Indigenous Peoples in its territory, that it deems necessary to protect or promote duties, responsibilities, rights and interests of those Indigenous Peoples, including in fulfilment of its obligations under its domestic or international legal, constitutional, Treaty or other constructive arrangements with those Indigenous Peoples.
>
> 2. The Parties agree that the interpretation of a Party's legal, constitutional, Treaty or other constructive arrangements with Indigenous Peoples in its territory, including as to the nature of rights and obligations under it, shall not be subject to any dispute settlement provisions in this Agreement.

This exception would confer an equivalent protection for Indigenous Peoples' within State's territories as Parties have adopted for their national security.

[32] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_104833137/Report%20on%20the%20TPPA%20W.pdf
[33] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_178856069/CPTTP%20W.pdf
[34] https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Trade-for-All-report.pdf
[35] However, the Crown has since abandoned that proposal and accepted a version of the 2001 Treaty Exception.

67. Ngā Toki Whakarururanga's briefing paper was circulated to the IPEF participating governments. It is unclear whether the Crown proposed such an exception in any of the IPEF Agreements.

68. Both the Agreements on Supply Chains and Fair Economy contain the 2001 Treaty of Waitangi Exception. Neither agreement appears to have much practical impact on Māori responsibilities, duties, rights and interests, including under Te Tiriti or the UNDRIP. The concern with is more about the precedent of continuing to apply this exception.

69. Article 3 of the "Clean Economy" Agreement is a far greater concern. That Agreement does not contain even the 2001 Treaty Exception. The NIA says that is because it does not contain binding policy obligations, "so IPEF participants agreed no exceptions were required".[36] That ignores the issues set out in Part 5 that are still extremely important, and a genuine carveout or exception could justify inaction or contrary action and provide a Māori representative on the Clean Economy Committee something to argue with.

70. Instead, the Agreement contains a version of the Treaty Exception in Article 3.3 that is significantly downgraded even from its original flawed form.

> **Article 3: Inclusive Transitions to Clean Economies**
>
> 3. With respect to any matter covered by this Agreement, a Party may:[4]
>
> (a) in fulfillment of its obligations to its [sic] Indigenous Peoples under its law or a treaty, promote and protect the rights, interests, duties, and responsibilities of its Indigenous Peoples; …
>
> 4. This paragraph shall be understood in accordance with each Party's domestic legal system. For greater certainty, this paragraph does not operate as a carve out from, or as an exception to, this Agreement.

71. At first glance, Paragraph 3 uses similar language to the updated version of a Treaty Exception that Ngā Toki Whakarururanga has advocated. But it is subject to a footnote that says this does not operate as a carveout from or exception to this Agreement. This interpretation creates a deeply worrying precedent, especially for the Trade Pillar (if those negotiations ever resume) and potentially for other future agreements.

PART 7. TIRITI ASSESSMENT AND THE WAY FORWARD

72. This Tiriti o Waitangi assessment conducted by Nga Toki Whakarururanga has, of necessity, focused on the Clean Economy Agreement, with concerns expressed over the incomplete trade pillar. The analysis shows that, despite receiving intensive analysis and advice on potential Tiriti breaches and means to ensure Tiriti-compliant outcomes in IPEF, the Crown continues to adopt international agreements that fail to meet its Tiriti obligations. As a result, Māori and other Indigenous Peoples in the territories of participating states are deprived of fundamental rights and the ability to exercise their rights of self-determination, and their responsibilities and duties to each other and the planet.

[36] MFAT, National Interest Analysis, page 41

73. ***Kawanatanga – Article 1*:** Government exercises authority over its own and any authority positively delegated by Māori, subject to the obligation to recognise rangatiratanga and ensure the protection of Māori rights, interests, duties and responsibilities.

    Assessment: The Crown has exceeded that authority by asserting a unilateral and exclusive right to negotiate, adopt and implement this Agreement. Ministers and officials have clearly sought better outcomes than they achieved for Māori and to meet their Tiriti obligations. But in the end the Crown alone has decided to accept agreements that are not Tiriti-compliant because they have other overriding objectives.

74. ***Tino Rangatiratanga - Article 2:*** Rangatira have sovereign power and responsibility to ensure the exercise of Māori authority collectively over their own affairs and resources in a manner consistent with tikanga Māori.

    Assessment: The Crown has denied the exercise of Rangatiratanga in the process of IPEF's negotiation and in the rules and institutional arrangements it has adopted. The Crown continues to resist Māori having an independent role in setting the agenda and negotiating international agreements that impact on them, and that they may be invited to help implement even when it is contrary to tikanga. The nature of the "solutions" proposed in Clean Energy Agreement especially deny the exercise of rangatiratanga as mana whenua and of the responsibilities of kaitiakitanga over taonga.

75. ***Oritetanga - Article 3:*** Māori and the Crown's people have parity and equity in rights and outcomes, meaning equal rights to define and pursue aspirations in accordance with to their fundamental principles, laws and beliefs.

    Assessment: Everything in these Agreements reflects the western capitalist worldview and authorises the exploitation of te Taiao and other taonga, which will deepen the dispropriately negative and inequitable impacts that has on Māori and other Indigenous Peoples. Responsibilities and rights under Te Tiriti o Waitangi and the UNDRIP are paid lip service in these agreements. The Crown continues to adopt aTreaty of Waitangi Exception that is incompatible with Te Tiriti o Waitangi and has degraded that further in the Clean Economy Agreement by denying its status as an exception.

76. ***He Whakapono - 4th Article:*** guarantees the active protection of philosophies, beliefs, faiths and laws.

    Assessment: Throughout the IPEF negotiations, Ngā Toki Whakarururanga has sought to inject fundamental values and aspirations of Māori according to tikanga Māori, and assert the responsibilities and authority of mana whenua, especially in relation to trade and to the climate crisis. There is nothing in these agreements that protect, let alone guarantees, the application of tikanga over matters that affect Māori. Instead, there are dangerous precedents that may undermine those responsibilities and protections in the future.

77. We repeat what we have said in the Tiriti assessment of the ASEAN Australia New Zealand FTA: the Crown needs to bring the Tiriti relationship of Rangatiratanga and Kawanatanga into the 21st century through trade agreements that are truly transformative, not a continuation of the status quo. It seems determined not to do so. This will be the central argument that Ngā Toki Whakarururanga brings to the Waitangi Tribunal Constitutional Kaupapa inquiry, firstly in the priority hearing on the climate crisis, and then in the fuller inquiry into constitutional transformation.