

RACE-BASED HATE CRIME IN AOTEAROA

Situation Report

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Abstract

Recent years have been extraordinary for race issues in Aotearoa. The Christchurch mosque shootings in March 2019 shattered long-held illusions of New Zealand exceptionalism; Islamophobia increased following the attacks; an increase in racialised abuse of Asian people followed the outbreak of COVID-19; the Black Lives Matter movement in the United States provided a platform for discussing anti-Black racism and white supremacy in Aotearoa; and in last year's general election, many political parties campaigned on border security or restricting immigration. This status report explores race-based offending in Aotearoa in light of these critical social contexts and ongoing settler colonial structural racism against Māori, and offers recommendations to address racial discrimination. We suggest that despite the clear need to protect communities of colour from discrimination, current legislative approaches for addressing hate crime and hate speech are inadequate. Discrimination must be understood by the justice sector as a driver of crime, and community organisations must be resourced to provide education, advocacy, monitoring and support for racialised communities.

Keywords

hate crime, hate speech, racism, COVID-19, Aotearoa

Introduction

Last year, under the Matariki new moon, on Ōwairaka maunga in Tāmaki Makaurau, Aotearoa New Zealand, wāhine Māori from across the country gathered for a potent political act. This act drew from the sacred strength of the women of this land to decry the scourges of racism, violence and aggression in Aotearoa. This was an act of solidarity with Ngāhina Hohaia of Parihaka,

who had reported being racially abused and assaulted by another woman on Ōwairaka. The report included the use of racialised obscenities and targeted her moko kauwae. The subsequent gathering on Ōwairaka called upon their ancestry to stand in solidarity with Ngāhina: to normalise the presence, dignity and esteem of Māori women and to declare the rights of safety for all peoples in this land.

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Ko te reo karanga, te reo kōkiri o tēnei whenua.
The ceremonial voice of wāhine Māori is the
primary voice of this land.

In a decolonised Aotearoa, there is no greater voice to declare the status of any issue than that of the reo karanga—the ceremonial voice of wāhine Māori. In addition, there is no more appropriate role to speak to the rights of protection for all on this land than that of the grandmothers and mothers of this land. As this report was being drafted, the New Zealand Police issued their decision that they would not be laying charges in this case. An official media statement endorsed and supported by many Māori leaders expressed the extreme disappointment in this decision, describing it as racist, an abrogation of police duties and representative of the inability of New Zealand Police to provide adequate protection for Māori and marginalised communities in Aotearoa. Professor Leonie Pihama (Te Ātiawa, Waikato, Ngā Māhanga a Tairi) stated, “The attack on Ngāhina by a Pākehā woman and the demeaning of moko kauae in such a way is indicative of the continued colonial racism that exists in this country that reinforces white privilege and dominance on Māori land” (as quoted in Tyson, 2020). Throughout 2021, Māori women have been further targeted by white supremacists with growing threats of violence and harassment (Middleton, 2021).

Hate crime

The New Zealand Police website describes hate crime as “offences based on a person’s race, religion, nationality, gender, sexuality, disability, or other enduring characteristics of their identity” (New Zealand Police, n.d.). Prior to the Christchurch terror attacks they did not, however, collect racially and religiously motivated crime data (Human Rights Commission, 2017), despite repeated recommendations from various offices of the United Nations to do so. This has made the prevalence of race-based hate crime in Aotearoa challenging to determine and monitor over time. As a multicultural nation operating within a bicultural (tangata Tiriti/tangata whenua) context, the importance of addressing racism and hate crime cannot be overstated.

In December 2020, the report of the Royal Commission of Inquiry into the Terrorist Attacks on Christchurch Mosques was finally released. The report outlined multiple failings of the government to protect Muslim communities, including focusing their counterterrorism efforts on Islamist extremists and overlooking the threat posed by

right-wing extremism. The report put forward a range of recommendations, including changes to legislation, “providing for hate crime offences, creating a workable approach to hate speech and encouraging the better recording of reports of hate crime” (Royal Commission of Inquiry into the Terrorist Attacks on Christchurch Mosques on 15 March 2019, 2021).

This status report is being drafted against a social backdrop of the aftermath of the 2019 Christchurch mosque attacks, the world crisis of COVID-19 and the international anti-racism movement of Black Lives Matter, which has held global consequences for addressing white supremacy and racial injustice. It will explore race-based offending in Aotearoa in light of these critical social contexts, as well as the historical context of race-based offending in Aotearoa, and make recommendations based upon filling the gaps to move towards a better understanding and responsiveness to race-based hate crimes in Aotearoa.

Hate speech

Hate speech is not currently defined in New Zealand legislation. However, section 131 of the Human Rights Act 1993 outlines that speech is unlawful if it is “threatening, abusive, or insulting” and “likely to excite hostility against or bring into contempt” groups based on “colour, race, or ethnic or national origins”. This approach to curbing hate speech has been criticised for setting the legal bar too high (Jackson, 2020), given the necessity to prove the speech would provoke hatred in others. In 2017 the United Nations recommended that New Zealand define hate speech in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, which requires the criminalisation of “all dissemination of ideas based on racial or ethnic superiority or hatred” (United Nations, 2017). The scope for protected characteristics in the Human Rights Act is also too narrow.

Additional legislation exists that provides remedies against harmful digital communications (Harmful Digital Communications Act 2015); objectionable films, videos and publications (Films, Videos, and Publications Classification Act 1993); discriminatory broadcasting (Broadcasting Act 1989); and offensive behaviour and language (Summary Offences Act 1981). However, public education, advocacy and support are required to ensure these complex legal avenues can be successfully navigated. For the relatively new policy and legislation, implementation issues remain between Netsafe and New Zealand Police.

In response to the Royal Commission of Inquiry's report, the government announced plans to make changes to hate speech legislation, in June 2021. The proposed changes involve creating a new criminal offence for hate speech in the Crimes Act 1961, criminalising all—including electronic—speech that “stirs up”, “maintains or normalises” hatred towards groups based on an extended list of protected characteristics (sex, marital status, religion, disability, age, political opinion, employment status, family status, sexual orientation, gender identity and sex characteristics). The proposed changes also include increasing the maximum penalty for hate speech to three years' imprisonment or a fine of up to \$50,000.

Historical context

It should first be acknowledged that in Aotearoa, as a settler colonial state, the arrival of Europeans, the ill-treatment of Māori and the violation of Māori land rights was based upon racist notions that non-white and non-Christian rights of occupancy and security were lesser than those of Christian Europeans. In this light, Māori have been the longest standing victims of race-based offending in Aotearoa, in addition to the process of colonisation being erased as a race-based offence. The presumption of entitlement to take lives in the process of imperial expansion was deeply rooted in notions of European supremacy, and the first recorded race-based violent crime in Aotearoa was the killing of Te Maro by *Endeavour* crewman Monkhouse on 9 October 1769.

In the context of a “white New Zealand” immigration system that was prejudicial towards racialised “aliens” (see the Chinese Immigrants Act 1881 and the Immigration Restriction Act 1899), an event often characterised as the first hate crime in New Zealand occurred, when Lionel Terry murdered an elderly Chinese man named Joe Kum Yung in September 1905. In subsequent years, fear and antagonism towards non-white communities grew throughout the nation. In 1915 and 1916 the premier of the American white supremacist films *The N****** (also known as *The New Governor*) and *Birth of a Nation* promulgated the growth of the Ku Klux Klan across New Zealand (Southon, 2020). In 1920 the country's largest voluntary organisation, the Returned Services Association, passed a resolution declaring that New Zealand was threatened by an “influx of Hindus and Chinese”, and demanded that action be taken by the New Zealand Government (Hamilton, 2020). In June 1920, in Carterton, a mob of 70 whites surrounded a group of seven Indian workers in

a small cottage, shouting abuse and threats until they agreed to leave town (Hamilton, 2020). By the early 1920s the Auckland branch of the Ku Klux Klan reportedly had 1,000 members (Southon, 2020).

In 1923 a man walked into a shop in Mt Eden, Auckland, declaring “Take warning, I am connected with the Ku Klux Klan, these four shops are going to be burned down” (“Auckland Fire”, 1923). Weeks later, the block of three shops was destroyed in a fire. Over the following decades white supremacy, often under the guise of New Zealand nationalism, continued to grow and become more organised. Various groups such as the League of Empire Loyalists, numerous skinhead gangs and the New Zealand National Front, which is still in operation today, have maintained the position that non-white immigration poses a threat to New Zealand. In 2004 skinheads and National Front members were associated with continued attacks upon African immigrants and Māori, and they were noted as an increasing source of Islamophobic antagonism towards Muslim communities, which was raised with New Zealand Government agencies in the years leading up to the Christchurch mosque attacks that killed 51 New Zealanders (Human Rights Commission, 2019).

Christchurch mosque attacks

The Islamic Woman's Council submitted to the Royal Commission of Inquiry into the Terrorist Attacks on Christchurch Mosques that for the five years leading up to the massacre, Muslim community representatives had been formally reporting the rise of vitriolic threats from the alt-right in Aotearoa and proactively appealing to the police and central government for increased protection, particularly for Muslim women, who were consistently targeted for wearing hijab (Islamic Women's Council of New Zealand, 2019). Along with the Human Rights Commission, the Council repeatedly called for the establishment of a hate crimes register. The submission stated that threats and abuse have continued since the Christchurch massacre. This aligns with media reports immediately following the attacks that highlighted an increase in race-based abuse towards Muslim New Zealanders (Wiggins et al., 2019), and a New Zealand Secret Service report that the New Zealand Security Intelligence Service received 455 pieces of lead information about people who expressed racist, Nazi or white supremacist views in the months following the attacks (New Zealand Security Intelligence Service, 2019). In his March 2020 reflection upon the year following the

Christchurch attacks, Multicultural New Zealand President Pancha Narayanan noted,

As is often the case, as the crisis passes, so fades the momentum. We return to normal life, the open smiles of passersby on the street slowly retract. If we really want to show the minority communities that this show of welcoming is not just tokenistic, we must continue to keep the doors of our minds and hearts open. (Narayanan, 2020)

Significant media and public support surrounded the surviving victims of the attacks during the sentencing of the killer. Throughout this period, the New Zealand Muslim and immigrant communities continued to point out that even after the sentencing, New Zealand's significant levels of racism remained (Bashir, 2020).

Media and social media

Social media has often been cited as an incubator and medium of hate in relation to the Christchurch mosque attacks (Brislen, 2019; Forbes, 2019). Both overseas and in Aotearoa, online hate towards Muslim communities increased subsequent to the attacks (Kenny, 2020). As Narayanan (2020) also noted, "The current digital strategy of the country is not in line with our need to keep the country safe. This cannot continue."

The Christchurch Call is an international initiative co-championed by Prime Minister Jacinda Ardern and French President Emmanuelle Macron that brings governments and tech companies together with the aim of eliminating terrorist and violent extremist content online. At the one-year anniversary of the Christchurch attacks, the Christchurch Call was announced as being backed by 48 countries, three international organisations and eight online service providers (Ardern, 2020). However, as Joe Burton (2020) of the New Zealand Institute for Security and Crime Science, University of Waikato, recently suggested, for this measure to be effective it needs to reach into the "dark web", which is where 77.4% of all shares occur, according to the 2019 Reuters digital media report (Newman et al., 2019). A 2018 academic article found that, like broader international journalism, New Zealand media tends to use negative stereotypes about Islam (Rahman & Emadi, 2018). Racial bias in New Zealand media against Māori has been noted for many years (for example, see Moewaka Barnes et al., 2012; O'Callaghan, 2020; Smith et al., 2021).

Racism as an enduring driver of crime in Aotearoa

In July 2019 the Human Rights Commission released the *It Happened Here* report on racial and religious-motivated crime in Aotearoa between 2004 and 2012 (Human Rights Commission, 2019). As mentioned by Chief Commissioner Paul Hunt (2019),

The absence of systematically collected data and information on racially and religiously motivated crime in New Zealand makes it very difficult to have an informed discussion about their prevalence and design effective measures to counter them. (p. 1)

The Commissioner further reflected upon the report's release that these figures would likely be the "tip of the iceberg" (Hunt, 2019, 1). The report detailed over 100 reports of race- or religious-based offences that ranged from vandalism and online abuse through to verbal assaults, spitting, physical assaults and murder.

In the Ministry of Justice's 2018 report on highly victimised people, Māori featured as being overrepresented in the top 4% of the most victimised people in Aotearoa (Ministry of Justice, 2018b). This was drawn from the broader crime and victims survey of over 8,038 New Zealanders (Ministry of Justice, 2018a), which also found that 20% of all offending was linked to discrimination, 75% of sexually violent offending was linked to discrimination, and a further 77% of general offending goes unreported, which increases to 94% in relation to sexual assaults.

Arising out of a 2009 forum, the New Zealand Government "drivers of crime" strategy highlighted four priority areas to address in a cross-agency effort in order to reduce crime. Overlooking the role of discrimination in driving crime, the areas identified were maternity and early parenting support, addressing conduct and behavioural problems in childhood, reducing alcohol abuse, and improving the management of low-level offending (Te Puni Kōkiri, 2011).

In a 2013 statement, Police Commissioner Mike Bush also overlooked the role of discrimination as a driver of crime when he stated,

Alcohol, families, organised crime and drugs, road policing and youth make up the five drivers of crime. These drivers intersect, overlap and impact on one another. If we are to achieve our Prevention First goals, we have to focus our attention on these drivers. (quoted in New Zealand Police, 2013)

Despite the significant links between discrimination and offending, the drivers of crime strategy has yet to include discrimination as either a social or a systemic driver of crime. The United Nations Human Rights Council periodic review of New Zealand's human rights performance in May 2019 also recommended that police collect data on hate crimes. The government accepted the recommendation, but said it was not a priority.

COVID-19

The Human Rights Commission reported that an increase in racialised abuse of Chinese and Asian people due to COVID-19 began as early as January 2020 (Human Rights Commission, 2020a). The spike in race-based bullying led to Asian parents taking their children out of school. During the 2020 lockdown the Commission received 250 complaints relating to COVID-19, of which 82 were race based. Post lockdown, discriminatory attacks continued, and by July reports of racially motivated assaults had spiked by 30%. This was supported by both Netsafe, who noted a significant rise in online hate speech, and Asian Family Services, who have reported that calls for support have more than doubled from May (162) to July 2020 (400). New research commissioned by Kelly Feng at Asian Family Services indicates that 44% of Asians living in New Zealand have experienced some form of mental health distress since the beginning of lockdown (Chen, 2020).

The race-related complaints made to the Human Rights Commission (E. Foon, 2020) between March and May 2020 broken down by the group being targeted were as follows: Chinese/Asian 30%, Muslim 28%, Indian 14%; Māori and Pasifika 5%. Race Relations Commissioner Meng Foon (2020a) also noted that COVID-19 complaints relating to Māori health equity and the iwi and hapū-led checkpoints indicated that “entrenched attitudes towards Māori and Te Tiriti must also be addressed”.

The Human Rights Commission produced a report on human rights and COVID-19 in Aotearoa that recommended the development of a national action plan against racism grounded in Te Tiriti o Waitangi, and noted that “any attempt to address racism in Aotearoa New Zealand must include honest discussions about anti-Māori racism in all its forms” (Human Rights Commission, 2020a, p. 14). The development of a national action plan is now underway.

Contemporary race relations in Aotearoa

Recent years have been extraordinary for race issues in Aotearoa and globally. The Black Lives Matter movement in the United States was responded to around the world. In Aotearoa, multiple marches took place in Auckland, Hamilton, Wellington and Dunedin, with thousands in attendance (“Thousands of NZers”, 2020). Many took this as an opportunity to express solidarity with the Black Lives Matter movement in the United States, and to discuss anti-Black racism and the treatment of communities of colour in Aotearoa. A number of the larger marches were led by Black youth, and provided a platform for raising awareness about the experiences of migrant communities in Aotearoa. Discussions surrounding hypersurveillance, armed policing and hyperincarceration of Māori and Pacific populations featured strongly over this period.

As in most election years, race again featured as a political issue in the 2020 election, in spite of Race Relations Commissioner Meng Foon (2020b) imploring that politicians “play the ball and not the man”, and not target minority groups for political gain. No electoral candidate or party made an explicit campaign commitment to respond to the United Nations recommendations to address discrimination in Aotearoa.

The role of the state in racist violence was highlighted again this year, when the Crown offered a formal apology to Pasefika communities who were targeted for deportation in the violently racist “dawn raids” from the mid-1970s to early 1980s. Some within Pasefika communities saw this as a significant moment in Crown–Pasefika relations and community healing. However, no meaningful redress or legislative change accompanied the apology, described by legal scholar Dylan Asafo (2021) as an empty gesture that was not made by a government “genuinely invested in atoning for its ongoing actions of racist violence”, and that allowed the government to present itself as kind, “while also maintaining the racist immigration and policing structures that oppress Māori, Pacific peoples, and other people of colour every day” (Asafo, 2021).

An increase in racial tensions over the past year may also be linked to a number of initiatives within government that have progressed Treaty issues. These include the establishment of local Māori wards, the proposal of an independent Māori Health Authority, targeted Māori funding, the New Zealand History Curriculum Review, te reo Māori policy advancements and the recently released He Puapua Report on the implementation

of the United Nations Declaration on the Rights of Indigenous Peoples. Reactionary (i.e., anti-liberation) backlash from Aotearoa-based far-right commentators has framed these initiatives as a threat to national safety and a “New Zealand way of life”. This discourse has targeted the government, Māori MPs and the Māori Party.

More recently, following a petition that called for one of these far-right content creators to be held to account by his employers, further online content across a range of social media and information-sharing platforms was distributed, which included violent and specific threats, harassment and abuse (largely levelled against Māori Party MPs Rawiri Waititi and Debbie Ngarewa-Packer, and individuals Anna McAllister and Tina Ngata). At least one video artefact, initially shared on YouTube and, while removed from that platform, still available on sub-platforms, has called for a “race war”, which is specific language from the international white supremacist movement. This artefact asks viewers to participate in the en masse slaughter of Māori in their homes, detailing how this might take place. A number of public comments indicate support for this incitement to violence.

A recent report by United Nations Special Rapporteur on the situation of human rights defenders identified negative political rhetoric, smear campaigns, digital harassment and death threats (such as those detailed above) as the pre-conditions for killings (United Nations, 2020). Current reporting mechanisms for digital harassment and threats have been described by users (including the first author of this status report) as ineffective and retraumatising, and leading to under-reporting, and inter-agency dialogue appears fractured, leaving complainants feeling exposed and excluded.

As a signatory to the Declaration on Human Rights Defenders, the New Zealand Government is required to take all necessary measures to ensure the protection against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of the legitimate exercise of Indigenous rights. Given the government’s failings in this area, complainants are appealing to the United Nations Expert Mechanism on the Rights of Indigenous Peoples to provide direction and guidance to the New Zealand Government to develop protective mechanisms for human rights defenders, and to work collaboratively with experts and representatives from targeted communities to co-develop a national action plan based upon responsibilities outlined in the Declaration on Human Rights

Defenders, and the Declaration on the Rights of Indigenous Peoples.

Conclusion

The New Zealand Bill of Rights Act 1990 outlines that “everyone has the right to freedom from discrimination” (s19). However, current legislative mechanisms and state institutional practices fail to protect that freedom for communities of colour. The proposed changes to hate speech legislation signal an attempt to take racial hatred seriously. Importantly, the legislation will cover online hate speech, and extend protected characteristics beyond race, colour, ethnicity and national origin. Moves by the police to collect, analyse and report on hate crime are also welcome. However, a carceral approach to hate crime and hate speech cannot keep communities of colour safe.

As outlined in the historical overview, racism is embedded in New Zealand’s settler colonial structures. White nationalism and far-right extremism have been allowed to thrive here. The threats identified by communities of colour to their safety have been systematically downplayed, the role of discrimination as a driver of crime has been ignored, and communities of colour remain hyper-surveilled and over-incarcerated by the state. These threats played out in perverse yet predictable fashion when in October 2019 the police responded to the Christchurch terror attacks by initiating a trial of Armed Response Teams in communities with a high proportion of Māori and Pasifika residents (Waikato and Counties Manukau, alongside Christchurch, where the attacks had taken place).

Last year, the Human Rights Commission released the second iteration of the Give Nothing to Racism campaign, which profiles how people’s use of language can contribute to racism (Human Rights Commission, 2020b). But as well as asking the public to address everyday racism, a better cross-agency state response to eliminate all forms of discrimination is needed. New Zealand Police, Justice and Corrections in particular must respond to the multiple calls from iwi, from researchers, from justice advocacy groups, from marginalised communities and from international authorities to review their own internal racism, and improve their capacity to respond to racist attacks.

In 2019, the United Nations recommended New Zealand develop and implement a national plan of action against racial discrimination, xenophobia and hate crime (United Nations Human Rights Council, 2019). That work is now underway. In the context of the COVID-19 global pandemic and resulting spike in Sinophobia, increased

Islamophobia following the Christchurch terror attacks, and ongoing colonial racism, New Zealand needs a strong action plan now more than ever. The national action plan provides a useful opportunity to give thought to the role of community-based approaches.

As can be seen in sectors such as sexual violence prevention, grass-roots organisations are better placed than police to develop the high-trust relationships with affected communities that are necessary to support victims and prevent hate crimes. Specifically, community organisations should be well resourced to monitor hate-related incidents and to undertake victimisation surveys to capture under-reporting, design community interventions to prevent hate crimes before they occur, provide advocacy and support to victims of hate crimes, and develop networks with other organisations to evaluate their initiatives and share best practice. In essence, far beyond a law change, what is required is the creation of an anti-racism sector, if government is serious about eliminating racial discrimination. When the state failed to adequately respond to the racist attack reported by Ngāhina Hohaia at Ōwairaka, her community stepped in. Our communities know our needs and how to respond to them better than the state ever could, and our communities should be resourced to do so.

Glossary

Aotearoa	New Zealand
hapū	subtribe
iwi	tribal kin group; nation
Matariki	Pleiades
moko kauwae	ancestral skin inscriptions
Ōwairaka maunga	Mount Albert
Pākehā	New Zealand European, White
reo karanga	ceremonial call
Tāmaki Makaurau	Auckland
tangata Tiriti	the people of the Treaty, non-Māori in Aotearoa
tangata whenua	people of the land, Indigenous
Te Tiriti o Waitangi	Māori language (legitimate) version of the Treaty of Waitangi 1840
wāhine	Māori women

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