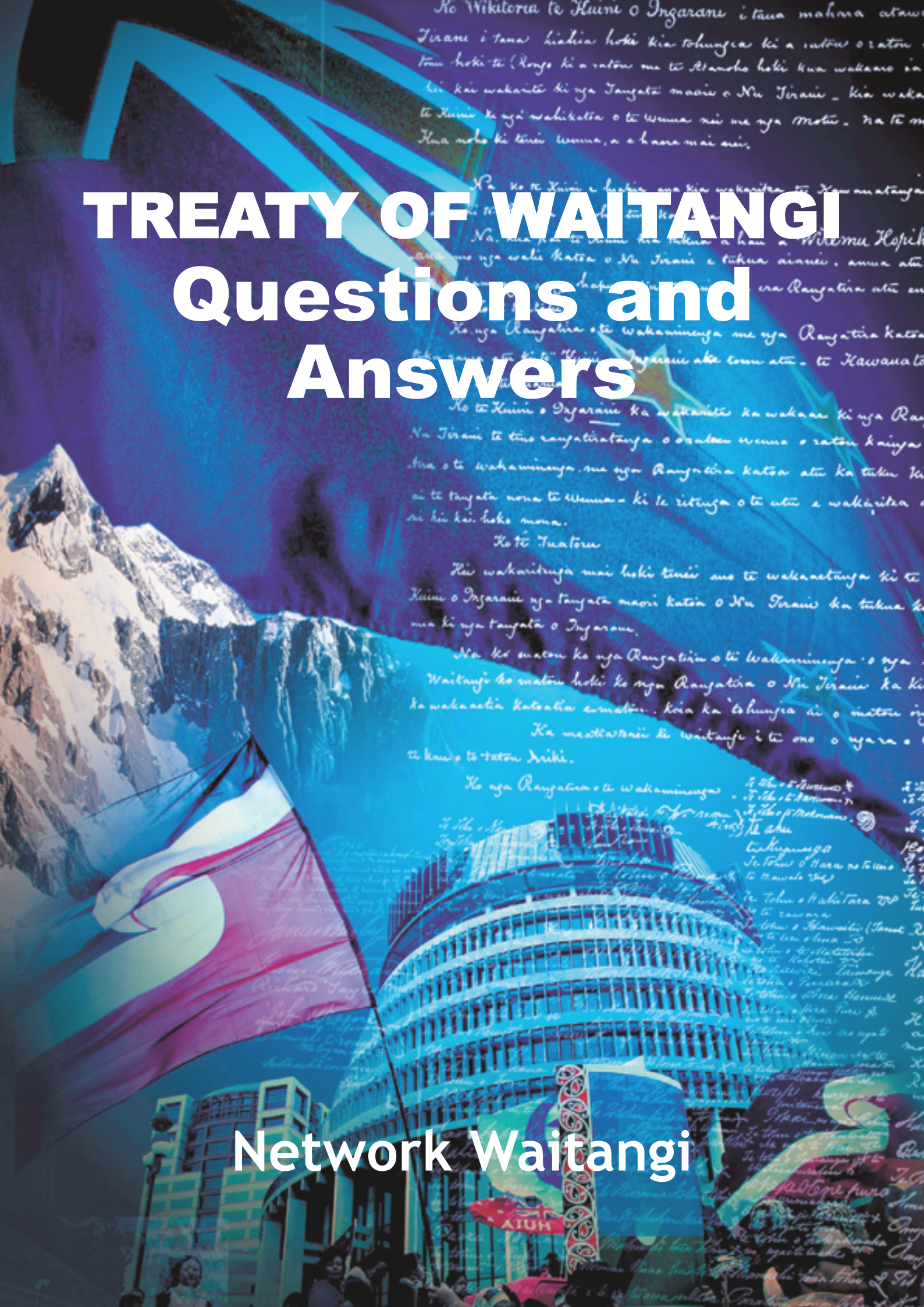


TREATY OF WAITANGI Questions and Answers

Network Waitangi



acknowledgements

Network Waitangi wishes to acknowledge the following groups that have produced valuable resources on the Treaty of Waitangi and related issues, with apologies for those we have missed.

Aotearoa Educators, Kia Mōhio Kia Mārama Trust, Koha television programme, Te Whakakotahitanga o ngā Iwi o Aotearoa/ The Māori Congress, Māori Women's Welfare League, New Zealand Council, Ngā Kaiwhakamārama i Ngā Ture, Ngā Tamatoa, Te Ahi Kaa, Te Kawariki, Waitangi Action Committee, Action For an Independent Aotearoa, arc (Aotearoa Reality Check/Anti-Racism Crew), Auckland Committee on Racism and Discrimination, Citizens Association for Racial Equality, Conference of Churches of New Zealand Programme on Racism, Double Take, Halt All Racist Tours, Justice and Peace Office and Bicultural Desk of the Auckland Catholic Diocese, Kāwanatanga Network, Methodist Bicultural Desk, New Perspectives on Race, Pākehā Treaty Action, Pax Christi Aotearoa, Peace Movement Aotearoa, Playcentre Treaty Education Team, Project and Network Waitangi national and regional groups, Tamaki Treaty Workers, Te Tari Mātauranga Māori (Manukau Institute of Technology), The Rowan Partnership, Theology and Racism Collective, Treaty Resource Centre, Waikato Anti-Racism Coalition, Waitangi Associates, Waitangi Consultancy Group, and the YWCA.

The 2015 edition incorporates information from evidence presented by Ngāpuhi Nui Tōnu at the hearing of their initial claim to the Waitangi Tribunal (Wai 1040). The evidence provides completely new insight into He Wakaputanga o te Rangatiratanga o Nu Tīreni (the Declaration of Independence) and Te Tiriti o Waitangi, and is encapsulated in the independent report, *Ngāpuhi Speaks* (2012) and *He Whakaputanga me te Tiriti - The Declaration and the Treaty*, the Waitangi Tribunal Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, WAI 1040 (2014).

Design by Jenny Rankine,
Words & Pictures, Auckland, with funding
support from Corso Inc.

First published 1989
Second revised edition 1993
Third revised edition 2008
Fourth revised edition 2012
Fifth revised edition 2015

Published by Network Waitangi:
Network Waitangi Otautahi, Christchurch
Community House, 301 Tuam Street,
Christchurch 8011; organisers@nwo.org.nz
Network Waitangi Whangarei, phone
09 436 1679, email reotahi@igrin.co.nz

Copyright ©
Permission is given for this publication
to be copied, distributed or transmitted,
providing it is properly attributed, not
altered in any way, and is not sold for
profit.

Contributors

1989 edition: National Committee, Project
Waitangi

1993 edition: Network Waitangi, Jane
Cooper and Karena Way

2008 edition: Moea Armstrong, Edwina
Hughes, Ingrid Huygens, Joan Macdonald,
Katherine Peet and Averil Williams, with
special thanks to Moana Jackson and David
Williams.

Thanks to Heather McPherson for
proof-reading.

2012 edition: Amendments to pages 2, 3, 6
and 45.

2015 edition: Additions and editing from
Ngāpuhi Speaks authors Susan Healy and
Ingrid Huygens, and from Joan Macdonald,
Carl Chenery, Edwina Hughes, Rachael
Harris, Moea Armstrong, Katherine Peet
and Averil Williams, who also proof-read.

Cover image: *New Zealand Listener*, used
with permission.

Back cover image: Design by Lisa Williams,
Fineline Studios, lisawilliams@zfree.co.nz

TREATY OF WAITANGI

Questions and

Answers

Network Waitangi
2015

ISBN 978-0-473-31472-9

contents

Introduction	6	22 What is aboriginal (native) title?	22
Questions and answers	8	23 What about lands that were not perceived as physically occupied by Māori tribes?	23
1 What contact was there between Māori and Pākehā before 1840?	8	24 How did Māori understand “land sales”?	23
2 What were early relationships like between Māori and Pākehā?	9	25 How can a document signed in 1840 have relevance for today?	24
3 What other countries were interested in New Zealand?	9	26 Is Māori concern about the failure to honour the Treaty something new?	25
4 How did authority and laws operate for Māori and Pākehā in these early years?	9	27 Why is there so much trouble about the Treaty?	26
5 What was Te Wakaminenga/the Confederation of Chiefs?	10	28 Why can't we throw it out and start again?	26
6 What was British policy before 1840?	10	29 Why can't we just get on with living as one people?	27
7 What is the Declaration of Independence?	11	30 What about separate or parallel development? Isn't that apartheid?	28
8 Who controlled the country around 1840?	12	31 Why are there separate parliamentary seats for Māori?	28
9 What led to the Treaty?	13	32 What is the “Māori Option”?	29
10 What is the Treaty of Waitangi?	14	33 What does the Treaty have to do with Pākehā and other Tauīwi?	29
11 Who wrote Te Tiriti o Waitangi?	14	34 Did the Treaty allow for immigration from other countries apart from Britain?	30
12 Are Te Tiriti o Waitangi and the Crown's English-language version the same?	15	35 What is the place of other peoples apart from Māori and Pākehā in relation to the Treaty of Waitangi?	30
13 What are the similarities and differences between Te Tiriti o Waitangi and the Crown's English-language version?	15	36 But haven't other ethnic groups apart from Māori also suffered from racism?	30
14 Which Treaty is the right one?	16	37 Why can't Māori look after their language and culture in the same way that other ethnic groups do?	31
15 Why are there differences between Te Tiriti o Waitangi and the Crown's English-language version?	17	38 Does honouring the Treaty of Waitangi mean giving Māori all their land back?	32
16 What did Māori intend in entering into the Treaty agreement?	17	39 Māori are only about 15 percent of the population – why continue with the Treaty?	33
17 Why was the British intention to gain sovereignty not explained at Treaty signings?	19	40 What does the Waitangi Tribunal do?	33
18 Where was Te Tiriti o Waitangi signed?	20	41 Haven't Māori gained from having European technology and other material benefits?	34
19 What was the status of the Treaty in the early years?	20		
20 How did the Crown gain control of Aotearoa?	21		
21 The Treaty is sometimes called a covenant. What does that mean?	22		

42 What are the difficulties Maori face in regard to Maori land?	35
43 What is being done to recognise and apply the Treaty?	35
44 Why should we do anything now?	36
45 Doesn't the Treaty make everything complicated and take up too much time?	37
46 Most Māori are happy with the status quo. Isn't it just a few radicals stirring up trouble?	37
47 What does cultural safety mean?	38
48 What are "the principles" of the Treaty of Waitangi?	38
49 What was the foreshore and seabed legislation about?	38
50 Isn't it best to have the foreshore and seabed in public ownership?	40
51 What have United Nations human rights bodies said about the foreshore and seabed legislation?	41
52 What else did the UN Special Rapporteur on Indigenous Peoples' Rights say?	43
53 Why are UN human rights bodies interested in the Treaty?	43
54 What is the UN Declaration on the Rights of Indigenous Peoples?	45
55 What does Treaty-based constitutional change mean?	46
56 Are there any examples of Treaty-based co-governance?	47
57 What have 'Tauīwi done to change the situation?	48

What can I do?	50
Appendices	52
1 He Wakaputanga o te Rangatiratanga o Nu Tireni/The Declaration of Independence of New Zealand, 28 October 1835	52
2 Te Tiriti o Waitangi/ The Treaty of Waitangi	53
2A Te Tiriti translated into English	54
2B Te Tiriti meaning in plain English	55
3 An English version written in March 1840	55
4 Historical events and laws which breach te Tiriti o Waitangi	56
5 Further reading and websites	64



Waitangi, February 2006. Photo: Gil Hanly.

introduction

Network Waitangi

Network Waitangi is a non-governmental organisation (NGO) which evolved from Project Waitangi. Project Waitangi was launched in 1986 to raise awareness of the Treaty among non-Māori. Then Governor General Sir Paul Reeves was its patron.

The Network now links regional groups of independent, mainly non-Māori educators. Through educational workshops, study groups, resource material, public seminars, and submissions we assist Pākehā and other Tauwiwi as tangata Tiriti (people of the Treaty) to honour our Treaty responsibilities. Our workshops also study the effects of colonisation, institutional and personal racism, and aim to support tangata Tiriti to implement creative and equitable Treaty-based relationships with tangata whenua. We are committed to structural and institutional change based on the Māori language text of the Treaty of Waitangi. We acknowledge Māori as tangata whenua. We recognise the Treaty as the basis of our nationhood – it was and is an invitation to enter into a relationship with Māori to govern the country together.

The Treaty underpins Pākehā culture; it is one of the things that makes that culture unique and different from British or European peoples in other lands. Though Pākehā recognise those people as ancestors, the Treaty adds a crucial dimension which accepts and welcomes Pākehā as citizens in a Pacific nation.

Contacts for Treaty educators

Whangarei

Network Waitangi Whangarei, phone 09 436 5187, email reotahi@clear.net.nz

Auckland

Tamaki Treaty Workers, PO Box 47-189, Ponsonby, Auckland; phone 09 360 8001, email tamakitreatyworkers@gmail.com

Treaty Resource Centre, PO Box 78-338, Grey Lynn, Tamaki Makaurau 1245; phone/fax 09 274 4270, email coordinator@trc.org.nz

Bay of Plenty

Ruth Gerzon, PO Box 3017, Ōhope, Whakatāne; phone 07 312 4932 or 0274 308 149, email ruthgerzon@gmail.com

Whanganui

Rowan Partnership, 260 Wicksteed St, Whanganui 4500; phone 06 345 6732, email djames@rowan.co.nz

Wellington

Wellington Treaty Educators Network, PO Box 6176, Wellington 6141; phone 04 382 8129 or 0274 343 199, email tmpc@xtra.co.nz

Nelson

Nelson/Whakatu Treaty Network, PO Box 815, Nelson; elena.meredith@xtra.co.nz

Christchurch

Network Waitangi Ōtautahi, Christchurch Community House, 301 Tuam St, Christchurch 8011; phone 03 365 5266, email organisers@nwo.org.nz

Waitangi Associates Ltd, PO Box 35-089, Christchurch; phone 03 383 3182, email robert@waitangi.co.nz

Dunedin

Tauwiwi Solutions, PO Box 3003, Dunedin 9045; phone 03 487 7088, email info@tauwiwisolutions.org.nz

This book has been produced for people who want to gain a basic knowledge about the Treaty of Waitangi and its implications.

Over the past few decades, the Treaty has come into focus in Aotearoa New Zealand. Since it was signed in 1840, the Treaty has been seen by Māori as an essential part of their understanding and ways of operating.

However, this has not been so on the Crown's side of the agreement – breaches were reported only days after its signing. Claims and petitions based on breaches of the Treaty have been made repeatedly by Māori to the British Crown and New Zealand governments for more than 160 years, and more recently to the United Nations.

The introduction of the Treaty of Waitangi into the public arena – particularly since the establishment of the Waitangi Tribunal in 1975 – has led not only to a heightened awareness of this country's history but also to a sense of confusion and sometimes fear about what it all means.

The idea of New Zealand as a country with “the best race relations in the world” has been seriously questioned. As a result some people would like to go back to the days when the Treaty was not generally part of non-Māori consciousness.

To understand our present situation, we must journey back and re-learn our history to understand the effects of the decisions made by those who lived before us. We can then move forward with a shared understanding and a renewed confidence in our abilities to resolve the problems we have inherited.

We invite readers to put aside their anxieties and discover what the promise of the Treaty is really about. Non-Māori have nothing to fear and much to gain from acknowledging the Māori text of the Treaty – that clearly shows Māori would retain their sovereignty while allowing the Crown to exercise a limited form of self-governance.



Flags at Parliament, Waitangi Day 2010.
Photo: Peace Movement Aotearoa

1 What contact was there between Māori and Pākehā before 1840?

By the time the Treaty was signed in 1840, British and Māori were no strangers to each other. The visitors found a highly developed sustainable civilisation in which autonomous tribes (hapū) operated their own systems of health, education, justice, welfare and spirituality. Hapū practised a particular relationship with each other, the land and environment, and all was interwoven by a common language.

After the European explorers like Abel Tasman (1642), James Cook (1769) and Jean de Surville (1769), British and American sealers and whalers became active in this region of the Pacific. By 1800 about 50 whalers and sealers were living here, mainly on off-shore islands. After 1800, contact became more regular, with Māori supplying visiting ships with fresh water, fish and meat, kumara, flax and logs to make ships' masts. Hapū in the north and elsewhere established large commercial trading gardens to supply European ships with potatoes and vegetables. In return, Europeans offered metal tools and nails, new crops and wool blankets.

Māori and Europeans each expanded their commercial activities such as timber, flax, whaling stations, ship-building and general trading in the mid-1820s. By this time some traders were invited to live in Māori settlements under the protection of the rangatira (leaders) and marry Māori women. They became permanent residents in a number of coastal areas. Other Europeans arriving at this time to live among Māori were runaway convicts, with estimates of 100–200 per year arriving in the 1820s and 1830s. All were expected to follow Māori laws and respect the hapū and their rangatira.

Next came the missionaries and their families. A northern rangatira, Ruatara, invited Samuel Marsden to establish the first base of the Church Missionary Society (Anglican) in the Bay of Islands in 1814. The Wesleyans (Methodists) followed in 1822, and the Catholics in 1838. Missionaries set up schools to teach literacy and Christian teachings, as well as cultivation of European crops. While missionaries were heavily involved in trading and gardening activities, the actual rate of conversion to Christian practices and beliefs was slow. Literacy however was quickly adopted and by 1840 more Māori than Pākehā, per capita, were literate in their own language.

Māori economic development expanded rapidly from the 1820s, including commercial gardening and farming, and a ship-building industry. Hapū bought ships and commissioned ship-building to create an inter-coastal and trans-Tasman transport network exporting wheat, potatoes and butter. Agriculture flourished through to the 1850s with Māori exporting to Australia and other countries around the Pacific.

Māori also travelled overseas, on diplomatic missions to European leaders and as sailors on whalers and other ships. It is estimated that by 1840 1,000 Māori had travelled overseas and returned to describe their experiences.

Although most European visitors in this early contact period were transients, there were approximately 2,000 permanent settlers here by 1839, mostly in the far north. Estimates of the Māori population vary between 150,000 and 200,000.

2 What were early relationships like between Māori and Pākehā?

Often good and mutually beneficial. Just as Europeans were keen to trade with Māori, Māori were very interested in new technologies and crops. Hapū would make arrangements for a European to live with them to facilitate relationships. Hapū were used to making alliances with each other for mutually beneficial purposes such as care of the environment, fishing expeditions, higher education, large gardens and defence. They saw the European newcomers as a “hapū hou”, that is a new hapū, with whom to enhance advantageous relationships. Making treaties to formalise and protect such alliances was also common, with important treaties considered to be “tatau pounamu” or sacred covenants binding on generations to come. Māori leaders (rangatira) worked for the benefit of their hapū by building relationships with European leaders such as governors of the British colony in Sydney, the royal family in Britain and ambassadors and church leaders from other countries. From 1805, rangatira regularly took the initiative to visit the governors in Sydney and, from time to time, the British royalty in London.

3 What other countries were interested in New Zealand?

British interests in the area were certainly the strongest, but American and French activity was increasing. The Americans appointed a consul to New Zealand in 1839. They had many trade interests and had been making treaties in the Pacific since 1826.

Baron de Thierry, of a French family, was making claims on the Hokianga early in the piece and French plans for a colony in the South Island resulted in a settlement

being established in Ākaroa in 1840. Bishop Pompallier set up a French Catholic mission in the Hokianga in 1838, and there were regular French naval visits to support their missionaries and traders.

Māori leaders were interested in the many nations overseas, and were aware of the differing political and military situations of America, Britain and France. As much as the British chose to enter into a contract with Māori people, so Māori chose the British as the people with whom they particularly wished to strengthen their international links.

The words *Māori* and *Pākehā* came to be the names each group used for each other.

4 How did authority and laws operate for Māori and Pākehā in these early years?

Māori followed principles of manaakitanga (hospitality) with the newcomers, and expected that the newcomers would respect their authority and law (tikanga). Many early settlers owed their survival to the care shown them by local hapū and their rangatira. Early settlers, like the first missionaries, generally lived with respect for the authority of the hapū and rangatira, aware that their protection and survival depended on this. Although hapū leaders followed tikanga (law, fairness) in dealing with the newcomers, some Europeans did not abide by these laws. For instance, Marion du Fresne and 26 crew members were killed for knowingly fishing in a tapu (restricted) area. Europeans retaliated by killing 250 Māori, thereby ignoring Māori jurisdiction as well as the laws of their own countries. European vessels often kidnapped Māori men to serve as crew members. So while many interactions with the newcomers were positive, Māori had reason to be concerned about lawless Europeans.

Māori hapū saw the European newcomers as a “hapū hou”, a new hapū, with whom to enhance advantageous relationships

Māori therefore began to discuss among themselves ways of dealing with the newcomers that were consistent with tikanga and the obligation to manaaki or care for visitors. Most hapū and iwi have histories of such discussions. Māori had noted the European notions of justice from the reported experiences of people who had travelled overseas, and were dismayed at the harshness and rigidity of some of these practices. In 1805, northern leader Te Pahi visited the Governor in Sydney to discuss his concerns about the failure of Europeans to respect Māori law and custom. He asked Governor King to “deal with your sea captains coming to my country” (N. Aldridge, *Ngāpuhi Speaks*, p. 60).

5 What was Te Wakaminenga/the Confederation of Chiefs?

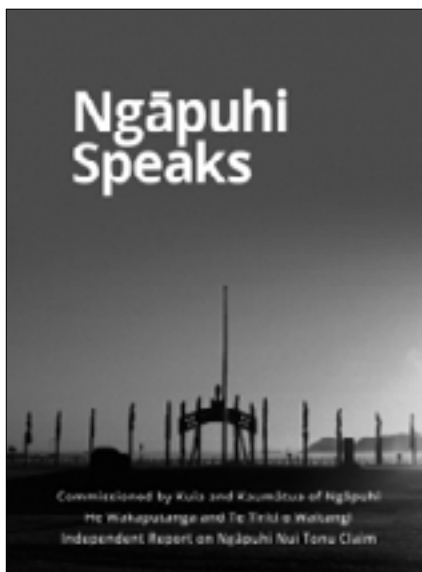
Stimulated by the rangatira Te Pahi, northern leaders began meeting from about 1808 in formal assembly to agree on law and policy concerning the newcomers. This assembly was called Te Wakaminenga o Ngā Hapū o Nu Tīreni (the General Assembly of the Tribal Nations). The Assembly had a general secretary, Waikato. He and the renowned Ngāpuhi leader Hongi Hika went to meet King George IV of Britain in 1820, under the auspices of Te Wakaminenga.

In the years leading up to the Declaration and the Treaty, the meetings of Te Wakaminenga were attended and supported by many key leaders from around Te Ika a Māui (North Island), and gatherings continued well after the Treaty was signed. The flag chosen by the northern leaders in 1834 was known as the Te Wakaminenga flag. Te Wakaminenga, known to the British as the Confederation of Chiefs, was the author of the Declaration of Independence and is prominently named in the Treaty.

6 What was British policy before 1840?

This independent report of the Waitangi Tribunal hearings of the Ngāpuhi claim was published in 2012.

Until the 1830s the British policy towards New Zealand was one of reluctance to intervene formally. Britain was having problems in some of its colonies, and wasn't really interested in one as far away as this.



In 1831, 13 of the Northern rangatira (leaders) sent a letter to King William IV requesting that the King become a “friend and guardian of these islands”. The rangatira letter expressed concern about a possible takeover by the French and suggested that unless the King acted to control the misconduct of British citizens living in or visiting New Zealand, the rangatira would be forced to enforce their own laws.

Pākehā lawlessness was seen in incidents around the country, including murders, kidnappings,

enslavements and other criminal acts. Reports on these incidents from rangatira and missionaries were a cause of concern for the British authorities. For the British, matters were brought to a head by an incident in 1830. The Englishman, Captain Stewart, in return for one cargo of flax, secretly conveyed Te Rauparaha and war party from Kapiti to Ākaroa. The sacking of that village and capture of ariki Te Maiharanui horrified the British in Sydney. The failure to bring Stewart to justice in Sydney made the British realise that something had to be done about the lawless state of Europeans in New Zealand.

As a direct result of this incident and the letter from the rangatira, and to protect British trade interests, the British government appointed James Busby to act as British Resident in New Zealand. James and Agnes Busby arrived in May 1833 with a reply to the rangatira from King William, and set up the Residence at Waitangi.

The Declaration made it clear that “no separate legislative authority” (kāwanatanga) would be allowed in the country, unless appointed by rangatira “in congress assembled”

The Northern rangatira began conferring regularly with Busby, seeking advice for the development of their international relationships and trade. One of Busby's first tasks was to assist rangatira in 1834 in the selection of a national flag, so that their ships would be registered and have official access to Australian and other international ports. Importantly, King William IV formally recognised the flag, thus granting Māori ships the protection of the British Navy when in international waters.

7 What is the Declaration of Independence?

The Declaration of Independence – more correctly, He Wakaputanga o te Rangatiratanga o Nu Tīreni – is a Māori proclamation to the international world that this country was an independent state, and that full sovereign power and authority (mana, tino rangatiratanga) resided in rangatira and the hapū they represented. It was signed at Waitangi on 28 October 1835. The signatories were

Network Waitangi Whangarei banner at a demonstration against the Marsden Point Port, 1996.



members of Te Wakaminenga, also known as “the Confederation of Chiefs”. Thirty-four rangatira from the North signed the declaration at Waitangi. By 1840 there were 52 signatories; these included Te Wherowhero, leading Tainui rangatira from the Waikato, and Te Hapuku of Ngāti Kahungunu in the Hawkes Bay. There is also evidence that the Declaration was signed by Te Heuheu, influential Tūwharetoa ariki (major leader) from the central North Island, and as late as 1890 by 40 rangatira at Hauraki.

In reaching an agreement about the Declaration, the rangatira took advice from James Busby and the merchant James Clendon, who was later to become the United States consul. Busby was troubled by reports that the Frenchman Baron Charles de Thierry was claiming he had bought a large amount of land in the Hokianga and planned to come to New Zealand to set himself up as a sovereign. The rangatira concerns were broader than this, however. They wished to establish their authority in the eyes of the international world and further their expanding trading interests.

The rangatira also wanted to advance their ties of friendship with the British monarchs with whom a mutually advantageous relationship was growing. The Crown was invited to ensure that others did not infringe the independence of the hapū, especially as the rangatira and their hapū were showing friendship and care to the Pākehā living on their lands. Importantly, the Declaration made it clear that “no separate legislative authority” (kawanatanga) would be allowed in the country except as appointed and directed by Te Wakaminenga, that is, the Confederation.

Busby forwarded the Declaration to Britain, which formally recognised New Zealand's sovereign independence in 1836. This sovereign independence was also recognised by France and the United States of America.

He Wakaputanga o te Rangatiratanga o Nu Tīreni – The Declaration of Independence – has never been rescinded by the hapū and rangatira who signed it. It is fundamental to understanding the intentions of the rangatira who assented to the Treaty at Waitangi in 1840. For them Te Tiriti o Waitangi is an endorsement of the provisions set out in the Declaration.

The British and New Zealand governments paid little regard to the Declaration after the signing of the Treaty, claiming that the Treaty overrode the Declaration. However, prior to 1840, the British Crown was clear that New Zealand’s sovereignty had been internationally recognised and that it could have no authority in New Zealand unless Māori leaders gave their assent.

It is important to note that He Wakaputanga, the Declaration, endorses a confederated form of government, as in Te Wakaminenga, the General Assembly of Hapū. Ngāpuhi scholar, Nuki Aldridge, likened Te Wakaminenga’s operation to that of the United Nations (*Ngāpuhi Speaks*, p. 106). Each hapū retained its mana and independence, while their leaders came together in Assembly to advance matters of common interest. The Declaration of Independence is critically important to New Zealand’s constitutional history and it is a matter for concern that its history is so little known.

Māori travelled throughout the world, and traded nationally and internationally, successfully adopting new technology and commerce

Hiko Takutaimoana II - the second foreshore and seabed hiko, in Parliament grounds in March 2011. Banner and photo: Peace Movement Aotearoa

See Appendix 1 for a copy of He Wakaputanga (Declaration of Independence).

8 Who controlled the country around 1840?

Throughout this time New Zealand was firmly under Māori control.

“the cultural framework of New Zealand in 1840 was still essentially Polynesian, all European residents absorbed Māori values to some extent; some Europeans were incorporated, however loosely, into a tribal structure; and the basic social divisions were tribal, not the European divisions of race, class or sect” (JMR Owens, *The Oxford history of New Zealand*, p. 29).

Māori travelled throughout the world, and traded both nationally and internationally, adopting new technology and commerce successfully. The first person to import a herd of dairy cows to the country was a northern rangatira, Taiwhānga. “In 1857 the Bay of Plenty, Taupo and Rotorua natives – being about 8,000 people – had upwards of 3,000 acres of land in wheat; 300 acres in potatoes, nearly 2,000 acres in maize, and upwards of 1,000 acres of kumara. They owned nearly 100 horses, 200 head of cattle, 5,000 pigs, 4 water-powered mills, 96 ploughs, as well as 43 coastal vessels averaging nearly 20 tons each” (R Firth, *Economics of the New Zealand Māori*, p. 449). Māori continued to gain literacy. The written word not only provided a new way of inter-hapū and inter-tribal communication, but opened up more trading opportunities.



9 What led to the Treaty?

Māori had long been concerned about the lawlessness of numbers of Pākehā. Their hope was that James Busby would exercise control over British subjects, but Busby proved to be largely ineffective in dealing with criminal offending. His requests to Britain for assistance, in the form of troops and a warship, were turned down. Some Māori groups became open to the idea of having a British governor for the Pākehā people.

In the Māori political order, rangatira were responsible to and for their own hapū. They expected, with the growing number of British subjects, that the Queen would want to bring her people to order. And, in fact, this was one reason for British interest in a treaty with Māori. Treaty-making, the process of making agreements between polities, has a long history in Māori politics. Ngāti Kahungunu knew such agreements as mahi tūhono, or “work to draw the people together”. The idea of treating with the Crown was therefore an affirmation of rangatiratanga and recognition that each polity should be responsible for its own people. Also important to the hapū was their growing international trade. The strengthening of ties with Britain was seen as favouring this growth.

Another factor was increasing tension over land, particularly in the North. Hapū allocated plots of land (tuku whenua) to the new settlers, but these were grants of land use, more like leases than sales. These grants were designed to establish relationships of reciprocity between the hapū and the newcomers. Hapū and their rangatira were dismayed when some settlers acted as if they had an absolute right to the land and showed disregard for the hapū who gave the grant in the first place. When Hobson arrived in New Zealand in 1840 rangatira asked that, as part of the treaty agreement, the Crown would see to the

Because Britain had recognised Māori rights in the Declaration of Independence, no claim could be made on New Zealand without Māori agreement.

return of lands wrongly taken.

The British Crown, too, had concerns about land deals. By the late 1830s, it had been made aware that speculative land purchases of dubious legality were taking place around the country. In 1838, the more law-abiding settlers, traders and missionaries petitioned the British Crown asking for a more effective presence than Busby could provide.

The situation in New Zealand at the time was monitored by humanitarian groups based in London such as the Aborigines Protection Society, which was concerned about the impact of colonisation on indigenous peoples. They had an ally in the Secretary of State for Colonies, Lord Glenelg, who was opposed to the plans of the New Zealand Company to establish a colony based on the principles of Edward Gibbon Wakefield.

However, the departure of settler-laden New Zealand Company ships for Port Nicholson in 1839, without official parliamentary sanction, prompted the Colonial Office to rethink its position. Accepting colonisation as an “inevitable measure” and to protect British trade and economic interests, the new secretary, Lord Normanby, sent Captain William Hobson to New Zealand. He was instructed to acquire sovereignty over the whole or any parts of the country that Māori wished to cede (give up), by negotiating a treaty. Because Britain had recognised Māori rights in the Declaration of Independence, and because this was “binding on the faith of the Crown”, no British authority could be established in New Zealand without Māori agreement.

Treaty-making was a long-established instrument of British colonial policy, so although Hobson did not land with a treaty already fully drafted, many of the guarantees which would be included had been expressed in earlier treaties with other nations.

Hobson arrived in New Zealand on 29 January 1840.



Banner at the Waitangi Tribunal hearings of the Ngāpuhi claim.

It is clear from reports of the Treaty signings and subsequent inter-tribal hui, that it was impossible for Māori to relinquish their sovereignty. Rangatiratanga was handed down from ancestors and exercised by rangatira in concert with the people

10 What is the Treaty of Waitangi?

A treaty is a legally binding international instrument agreed to and signed by two or more sovereign nations. All parties to a treaty are required to abide by its provisions unless they abrogate (formally withdraw from it). The Treaty of Waitangi is thus an agreement which forms a contract or covenant between the Crown and Māori hapū through their rangatira. It was signed on February 6, 1840, by 40 rangatira on behalf of their hapū and Captain Hobson, representing Queen Victoria. Copies of the Treaty were taken round the country and eventually more than 500 Māori leaders signed.

The treaty text signed at Waitangi was in Māori and called Te Tiriti o Waitangi. It recognised the authority and rights of Māori, as set out in the Declaration of Independence. It allowed for the peaceful acquisition of land that Māori wished to make available, and was directed towards ensuring peace and good order as more immigrants came to settle. Through Te Tiriti, Māori agreed to the appointment of a governor in order to control British settlers' behaviour and regulate their settlement.

Thus, in Te Tiriti, the Queen agreed to arrange governorship over Pākehā, who were living here outside British law. Māori

were not looking to the Crown to exercise governorship over themselves as they had their own long-established systems of government and law.

The Crown guaranteed it would uphold Māori authority and sovereignty (tino rangatiratanga) over their lands, villages, and everything else they treasured, and accorded Māori the same rights as British people. It also protected religious freedoms.

See Appendix 2 for copies of Te Tiriti o Waitangi, its translation into English, and a plain English translation. Appendix 3 provides a copy of the Crown's English version of the treaty; this was not signed at Waitangi and yet it came to be promulgated as "the Treaty".

11 Who wrote Te Tiriti o Waitangi?

Captain William Hobson brought written instructions from the Colonial Secretary, Lord Normanby. James Busby, the British Resident, and Hobson's secretary, Freeman, did the actual drafting from those instructions. The English language draft was then translated into Māori by the Reverend Henry Williams, a missionary who had been here for over 20 years, and his son Edward. It was the Māori text, Te Tiriti o Waitangi that was signed by the rangatira and Hobson at Waitangi.

There are eight known English-language texts or draft texts dated 5 or 6 February 1840 with minor differences between them. This English-language version is now referred to as the Crown's English-language version because it came to be promulgated by the Crown as the Treaty. However, it differs significantly from Te Tiriti o Waitangi and is not the treaty agreed to by the rangatira. The majority of the rangatira round the country signed Te Tiriti o Waitangi. Thirty-two rangatira who were at a Church Mission meeting at the Waikato Heads signed an English-language version, and seven more rangatira in the Manukau

area where a copy of the Māori text was not available. In effect, these rangatira would have been assenting to Te Tiriti as the discussion of the Treaty's content was in Māori and that which was orally agreed was of the essence in the Māori world. It would have been impossible for rangatira to cede (give away) their hapū's sovereignty as stated in the Crown's English language version. Rangatiratanga was handed down from ancestors and exercised by rangatira in concert with the people.

12 Are Te Tiriti o Waitangi and the Crown's English-language version the same?

No Te Tiriti o Waitangi confirms Māori authority and sovereignty, while the Crown's English language version states that Māori gave their sovereignty to the Queen – this is a direct contradiction. The different texts also reflect different world views, and therefore different economic, cultural and political understandings and priorities.

13 What are the similarities and differences between Te Tiriti o Waitangi and the Crown's English-language version?

The Treaty consists of a Preamble and four Articles; the fourth Article was added at Waitangi on 6 February 1840. The significant differences between Te Tiriti and the Crown's English-language version are evident in Articles 1 and 2.

Preamble

The Preamble is an introductory statement, expressing the Queen's good will to the Rangatira and Hapū of New Zealand, asking them to allow a place for the Queen's governor, and committing to a peaceful future.

Article I

Te Tiriti o Waitangi says that the rangatira and hapū agree to the Queen's governor exercising kawanatanga (a transliteration of the word governorship). In fact, the oral discussion at Waitangi was about allowing the presence of a governor, and this was what was in the mind of the rangatira who signed Te Tiriti o Waitangi. This did not mean that the governor was to have authority over Māori but over the British subjects "living here outside the law".

The Crown's English version says that the Rangatira would cede their sovereignty to the Queen, meaning the Crown would have complete power and authority over everything and everybody throughout the land.

Article II

Te Tiriti o Waitangi says that the Crown recognises and upholds the paramount authority (tino rangatiratanga) of the hapū over their lands, villages and all that is precious to them (taonga). This directly contradicts the cession of sovereignty referred to in Article 1 of the Crown's English version.

The Crown's English version guarantees to Māori only "the full, exclusive and undisturbed possession of their lands and estates, forest, fisheries, and other properties" as long as they wish. Many of the cases brought to the Waitangi Tribunal have succeeded because it has been shown that, following the Treaty, the Crown took actions that forced land and other properties out of Māori hands. The word taonga in te Tiriti is not limited to property and possessions, as stated in the Crown's English-language version. Understood within their cultural context, taonga as part of the natural world are recognised as living with inherent value, and also include all things held precious: for example, language, culture and health.

While the Treaty gave the Crown the right to form a government here for British settlers, it did not give it rights over and above other migrant groups, nor over tangata whenua.

Article II also talks about transactions with regard to land, giving the Crown priority over others in land dealings with hapū.

Article III

Article III accords to Māori the rights of British people, additional to the rights they already enjoyed in their own society.

Article IV

At the first Treaty signing, William Colenso (Anglican) recorded a discussion on religious freedom between Bishop Pompallier (Catholic) and Captain Hobson. In answer to a direct question from Pompallier, Hobson and the rangatira agreed to the following statement which was read in te reo to the meeting before anyone signed:

The Governor says the several faiths (beliefs) of England, of the Wesleyans, of Rome, and also Māori custom and religion shall alike be protected by him.

In looking at te Tiriti, the word ritenga is used. Ritenga, within a Māori worldview, refers to beliefs and practices of the spiritual relationship between humans and the rest of the natural world.

In summary, the Treaty confirms Māori authority and sovereignty, guaranteeing to Māori the full control and authority over their lands, settlements and all that is of value to them – including their social, political and economic relationships and institutions. It allows a place for a governor to exercise control over the Queen's people. The Treaty provides a framework of understanding between Māori and the Crown, to ensure peace and good order into the future.

14 Which Treaty is the right one?

When the intent or meaning of a legally binding contract is not clear, the decision goes against the party that drafted the ambiguous provisions; in this case, the Crown

The Tiriti o Waitangi is the only authentic text of the Treaty. It is the Treaty signed at Waitangi by Hobson and the rangatira. Hobson himself always saw the Waitangi signing as the most significant. The majority of the 534 rangatira who signed the Treaty around the country signed the Te Tiriti o Waitangi text.

As noted above in Q 9, a small number of rangatira signed an English-language text but their agreement would have been to what was discussed in Māori. All the discussions at the signings were in the Māori language and in Māori law the words spoken are crucial. Indeed the late Sir James Henare said that the key to the Treaty's meaning and mana lay in the Māori text – “ko te mana te kupu, ko te kupu te mana”.



Banner from the Pākehā campaign of the same name, linking the foreshore and seabed legislation to earlier raupatu (confiscations), launched on 28 October 2003.

Photo: Peace Movement Aotearoa.

Furthermore, in both domestic and international contract law, when the intent or meaning of a legally binding contract is not clear the principle of *contra proferentem* applies. This means the interpretation of any ambiguous provision will be against the interests of the party that put forward (proffered) the wording - in this case, the British (which later became the New Zealand) Crown - and in favour of the other party or parties to the contract.

In addition, international law upholds the text with “significant signature”, i.e., the one with more signatures, and also gives weight to the oral context, i.e., what was said or promised at the time.

Moreover, in 1840, the population was something like 200,000 Māori and about 2,000 Pākehā. It is absurd to suggest that those rangatira who signed Te Tiriti would have voluntarily given up their power to a foreign entity, especially after having declared their national sovereignty and independence just five years previously. In fact, it was legally and culturally impossible for rangatira to give away the mana (sovereignty) of their hapū (B Korewha, M Jackson, *Ngāpuhi Speaks*, pp. 175–176).

The evidence given at the hearing of the Ngāpuhi Nui Tonu initial claim to the Waitangi Tribunal (2010–2011) made it clear that Te Tiriti o Waitangi is the authentic Treaty (*Ngāpuhi Speaks*, pp. 221–222, and the Tribunal’s report). It is an unfortunate legacy that legislation drawn up in 1975, without the benefit of Maori evidence and scholarship, required the Waitangi Tribunal to give equal weight to both texts – Te Tiriti o Waitangi and the English-language version promulgated by the Crown.

15 Why are there differences between Te Tiriti o Waitangi and the Crown’s English-language version?

The differences occurred in the “translation” of the original draft into Māori.

The translator, Henry Williams, would have known that if he had used the words rangatiratanga or mana in Article I (which are closest to the meaning of sovereignty) to signal what was being allowed to the Crown, the rangatira would never have agreed to the Treaty. They could not have given up their rangatiratanga or mana. In

Missionary interests generally depended on working with rangatira of the people among whom they lived - hence Busby and Williams wanted rangatiratanga to be given recognition by the Crown

fact, the reason many agreed to sign was that their rangatiratanga was specifically confirmed in Article II.

Williams certainly wanted the Treaty to be signed and there have been many opinions about why he used kawanatanga instead. The 1846 and 1852 Constitutions provided for Native Districts, and in 1840 it might well have been assumed (and desired) by Williams that the vast majority of the country would continue to be governed by Māori while English law applied only to the few Pākehā settlements at Kororāreka, Port Nicholson (Wellington) and Auckland. This fits with the frequently reiterated views of rangatira in later years and at the Tribunal hearings, that the Treaty allowed for English law for settlers while endorsing Māori tikanga (jurisprudence, law).

Also, many missionaries, including Williams, had a vested interest in land. After the Treaty Williams had confirmed legal title to 9,000 acres of valuable land. Missionary interests generally depended on working with rangatira of the people among whom they lived. Hence Busby and Williams would have seen the importance of rangatiratanga being given recognition by the Crown.

16 What did Māori intend in entering into the Treaty agreement?

What Māori intended in agreeing to Te Tiriti o Waitangi is set out in *Ngāpuhi Speaks*, the independent report on the Ngāpuhi Nui Tonu initial hearing (pp. 240–241). While some points are specific to Ngāpuhi Nui Tonu, the broad intentions are pertinent to all Māori signatories. In summary these intentions are:

→ Queen Victoria’s governor would work with the rangatira to maintain peace and good order, based on upholding the established authority and ordered way of life (āta noho) of the hapū.

→ The governor was being granted the authority he needed to exercise control over Pākehā.

→ Te Tiriti o Waitangi was an endorsement of He Wakaputanga, with its declarations of Māori mana and independence and their particular relationship with the British Crown.

→ The international trade of the hapū was to be advanced through a closer alliance with the British.

→ They were allowing for more of the Queen's people to settle on their lands on the understanding that the Queen would uphold their authority (tino rangatiratanga) and her other guarantees in Te Tiriti.

→ They would support the Queen by ensuring the safety of her people and by working co-operatively with her governor.

→ The governor would investigate and rectify any unjust dealings over land.

→ The governor would sit as one of the rangatira (or “would be allowed to represent Pākehā on Te Wakaminenga”) so that together they could decide on matters of common concern and especially on those things that would advance their trading interests and bring prosperity for all.

Furthermore, *He Whakaputanga me te Tiriti - The Declaration and the Treaty*, the Waitangi Tribunal Report on Stage 1 of the Te Paparahi o Te Raki Inquiry (WAI 1040), which was released in October 2014 states clearly that the rangatira who signed Te Tiriti o Waitangi in February 1840 did not cede sovereignty to the British Crown, and outlines the intentions of the rangatira who signed the Treaty as well as those of the Crown.

Britain's representative Hobson and his agents explained the Treaty as granting Britain the power to control British subjects and thereby to protect Māori, while rangatira were told that they would retain their tino rangatiratanga, their independence and full chiefly authority.

The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede authority to make and enforce law over their people or their territories; they did, however, agree to share power and authority with Britain. They agreed to the governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests. The rangatira consented to the Treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would

Throughout our history, ordinary Taiwi have supported Māori rights. Participants at the 2006 Taiwi Treaty workers' gathering in Hamilton.



work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis.

The Tribunal said that, “having considered all of the evidence available to it, the conclusion that Māori did not cede sovereignty in February 1840 was inescapable”.

The Māori vision in signing the Treaty agreement was for an inclusive future, based on co-operation, mutual support and reciprocity between themselves and the Crown. The model of government would continue to be one of confederation, where the hapū and the Queen’s tribe would retain their distinct authorities, the leaders in their different areas coming together alongside the governor to resolve and advance issues of shared interest. Māori fully expected to retain their authority in the land, while expecting the governor and the Queen’s people to work in co-operation with them.

Māori continue to hold this inclusive vision for their present and future relationships with the Crown, which effectively today is the New Zealand Government – operating at national, regional and local levels. Unfortunately, National and Labour governments have held to unilateral decision making, or ‘indivisible sovereignty’, and have been unwilling to work as equals with Māori leadership. Small but significant changes to this ethos are however becoming apparent (see Q56 Are there any examples of Treaty-based co-governance?).

17 Why was the British intention to gain sovereignty not explained at Treaty signings?

The missionaries and Hobson concentrated on the protection and guarantees being offered. When discussing the setting up of British authority, they spoke of it in relation to the Pākehā lawlessness in the country - the governor

The retention of land and the continuation of Māori authority and status were of utmost concern to rangatira as a number had already had difficulties with Pākehā over land

would be empowered to govern Pākehā and insist on their obeying British law while on their own properties and Maori law while on Māori land.

The impact of British colonial intentions was softened by putting the Treaty into the context of the Queen wishing to establish a personal relationship with the Māori people. Some bilingual Pākehā settlers tried to point out the differences in understandings and intentions. Some rangatira refused to sign as a result of this, and their knowledge of the effects of European colonisation on other indigenous peoples. Others, like Te Whero Whero of Tainui and Te Heuheu of Tuwharetoa, did not sign Te Tiriti because they judged the 1835 Declaration to be sufficient. The missionaries had a sense of urgency by late on 5 February, as Hobson had failed to supply enough food for the people gathered at Waitangi and they knew many Māori were about to leave. As a result Hobson was called to shore early on the 6 February to complete the process a day earlier than planned. On the day leading up to the signing, much discussion had taken place about the retention of land and the continuation of Māori authority and status. These issues were of utmost concern to rangatira as a number of them had already had difficulties with Pākehā over land.

Te Tiriti o Waitangi clearly spelt out that Māori authority was not only confirmed but would be further enhanced by the Crown. However Hobson, who did not understand the Māori language, wrongly chose to presume sovereignty had been ceded and made a unilateral proclamation of sovereignty over the North Island (Te Ika a Māui) on 21 May 1840, on the grounds of the cession of sovereignty as stated in Article I of the Crown’s English-language version. He claimed sovereignty over the South Island (Te Wai Pounamu) by reason of “discovery”. Major Thomas Bunbury, who had been appointed to gather Treaty signatures in the south, also made two proclamations of sovereignty: one on 5

The three principles of the Kīngitanga: no further land sales; no sale of alcohol; and children would be taught in te reo Māori

June 1840 at Stewart Island (Rakiura) which was claimed on the grounds of Cook's "discovery", the second on 17 June 1840 over the South Island, after the signing of the Treaty by some South Island rangatira.

It is interesting to note a 1999 United Nations study which pointed out that, in general, indigenous peoples signing treaties with European countries viewed them above all as treaties of peace and friendship, designed to organise peaceful coexistence in their territories.

18 Where was Te Tiriti o Waitangi signed?

On 6 February 1840, Te Tiriti o Waitangi was signed at Waitangi by about 43 rangatira. Copies were then taken around the country and just over 500 signatures were gathered at different places around the country. An English-language text was signed by 39 rangatira in Waikato and the Manukau, but on the basis of explanations in Māori (see Q11).

Some chose not to sign the Treaty and some were not approached about signing. Some, like Te Heuheu of Ngāti Tūwharetoa, had already signed the Declaration of Independence and saw no need for a further treaty arrangement with the British.

19 What was the status of the Treaty in the early years?

Apart from Hobson's proclamations of sovereignty, the terms of the Treaty were initially kept, mainly because of the overwhelming economic, social and political power of the Māori majority.

New settlers required the assistance of tribes, particularly for food. For example, the tribes around Tamaki Makaurau (Auckland) supplied the town with nearly all its requirements of fruit, pumpkin, maize, potatoes, kumara, pigs and fish.

Māori trade and economic interests grew in the 1840s and by the 1850s the greater part of the tax revenue came from Māori.

The Colonial Office continued to insist that the terms of the Treaty should be observed, as is testified to in letters written to Governors Hobson, FitzRoy and Grey.

Concern grew about the exclusive pre-emption clause of the English version, which required that Māori who wished to sell their land could sell only to the Crown. But the Crown was buying land and selling it at much higher prices. The Crown was also refusing to buy some land off willing Māori vendors and would set fixed prices which went against Article II of both Te Tiriti and the Crown's English version – "subject to the arranging of payment which will be agreed to by them" (Te Tiriti o Waitangi), and even "at such prices as may be agreed upon" in the English version.

Māori understanding of the Treaty was that they were required to give first offer to the Crown, but they could sell to other willing purchasers if the Crown refused to buy. Settlers were putting pressure on the Governor because they had to pay greatly inflated prices to the Crown. In 1844, Governor FitzRoy waived the Crown's right to be offered first right of refusal to purchase land on the condition that a commission of 10 shillings per acre was paid to the government. Each sale had to be checked by Protectors, and certain sacred sites were not to be sold. Fitzroy later changed the fee to one penny per acre. Whereas 600 acres had changed hands with the 10 shilling per acre fee, 100,000 acres went with the one penny fee. The Colonial Officers were unhappy with these waivers, because profits made through the buying and selling of land had almost stopped. They also feared a decrease in the power of the Crown if Māori tribes competed with the Crown over land sales. Grey was therefore directed to restore the Crown's first right of refusal to purchase (the English version) when he took office

in 1845, by passing the Native Land Purchase Ordinance of 1846, which further undermined rangatiratanga.

From 1845 to 1854 Grey claimed to have purchased 32 million acres of land for £50,000, mainly in the South Island. Some of it was sold at inflated prices. This and other land dealings put the colony on a sound financial footing, but failure to uphold the conditions under which some land was sold (e.g. the protection of reserved lands and resources) created misery for dispossessed tribes.

There was increasing pressure from settlers for land through the 1840s and 50s. By then many tribes were refusing to sell, and the Māori King Movement (the Kingitanga) had been set up with its base in the Waikato. The three principles of this movement were that within its boundaries no further land would be sold, no alcohol would be sold, and the teaching of children was to be in the Māori language. However, the settlers' desire to acquire land by any means possible led to the government declaring the Kingitanga in rebellion against the Crown, and using that as an excuse to seize Waikato land by force.

At the same time, agricultural prices, particularly for wheat, dropped and markets collapsed. Pastoral farming showed more advantages, but required much greater acreage, intensifying the demand for land.

20 How did the Crown gain control of Aotearoa?

In 1858 the numbers of Māori and non-Māori were equal, at about 67,000 each. In less than 20 years, the effect of contagious European diseases, conflict, land sales and alienation of land involving relocation, had resulted in a marked decline in the Māori population. At the same time, immigrant numbers had spiralled from only 2,000 in 1840. The huge influx of new settlers did not learn the Māori language,



and arrived with a firm sense of their entitlement to land, fairly-bought or not.

As people of the British Empire period many had racist attitudes towards Māori, believing in the inherent superiority of the British, particularly the English, way of life. This was well expressed throughout the creation of the British Empire:

the native race is physically, organically, intellectually and morally, far inferior to the European. No cultivation, no education will create in the mind of the present native race that refinement of feeling, that delicate sensibility and sympathy, which characterize the educated European ... the Māori [is] an inferior branch of the human family. (A Bellara, *Proud to Be White*, citing *Southern Cross*, 1844, p. 18).

Once the numbers of Māori and Pākehā were similar, violence was used to take land. During the land wars, the number of British troops deployed was the equivalent of one soldier to every three Māori men, women and children.

In the South Island (Te Wai Pounamu) the Crown used “Sale Deeds” to claim ownership of huge areas of land, which included much more than was agreed to. Rangatira were actually only allowing the use of the agreed tracts for agricultural purposes but not the complete alienation of their land and especially not the alienation of important food sources. What is more the Crown promised the retention by the hapū of a tenth of any land it “bought” but this

Members of the voluntary independent panel at the Waitangi Tribunal hearings of the Ngāpuhi claim, and authors of *Ngāpuhi Speaks*, 2012: Takawai Murphy, Ngāti Manawa, left; Susan Healy, Pākehā; Ingrid Hughens, Pākehā; and panel Kaitiaki Hori Moanaroa Parata, Tauranga Moana.

During the land wars, the number of British troops deployed was the equivalent of one soldier to every three Māori men, women and children

was not honoured. The Crown's actions with South Island Māori included blatant fraud, application of duress and repeated denial of access to justice. These patterns were repeated across generations.

What has happened since 1840, up to and including the present day, has been a process of colonisation by successive Pākehā-controlled governments through military force and the use of laws to -

- Take Māori land and resources, destroying the economic base of hapū and iwi
- Impose systems based solely on English law, and
- Undermine Māori law, spirituality, health, education, language, and cultural, economic and political systems and institutions.

See Appendix 4, Historical events and some laws that breach the Treaty of Waitangi.

21 The Treaty is sometimes called a covenant. What does that mean?

The Treaty is sometimes referred to as a covenant to describe a binding spiritual relationship. For example, in the Hebrew scriptures (Old Testament), a covenant is made between God and the people of Israel. In the Christian scriptures (New Testament), a covenant is made between God and all God's people. For some Māori and Pākehā Christians the Treaty was and is seen in the same way, being referred to as a sacred covenant. For many hapū, both He Wakaputanga (the Declaration of Independence) and Te Tiriti o Waitangi are regarded as sacred covenants.

The Treaty of Waitangi is seen as a living document with a much wider context. There is concern about it being taken into the narrow legal framework where the aspect of the spiritual and morally-binding relationship is being ignored. However even in Western law contracts remain in force

unless there is an expiry date included, or until both parties agree to changes.

Māori rights to land, forests, fisheries and other resources would exist under New Zealand common law even if the Treaty had not been signed

22 What is aboriginal (native) title?

The legal doctrine of aboriginal (native) title comes from European international law and British imperial policy in the 18th and 19th centuries. It is called a common law doctrine, and judges have stated that it is an important feature of New Zealand common law. Common law rights would exist even if the Treaty had not been signed.

The doctrine binds the Crown to recognise Māori customary rights in respect of lands, forests, fisheries and other resources. These rights remain until they are legally extinguished either by Crown purchase, or legislative action. Unlike many other countries with two tiers of government, the New Zealand parliament assumes the power to pass the laws it wants, claiming parliamentary sovereignty. Under this system, legislative action to extinguish native title can be imposed without the consent of, or compensation to, the customary rights-holders. Apart from Acts of Parliament, extinguishment of these rights must have the consent of the owners, who must be paid compensation, or native title continues.

Courts have generally not dealt with any principles deriving from the Treaty unless it is specifically mentioned in an Act. But they can act on the principles of common law, which the Court of Appeal did in 2003 when it ruled that the iwi of Marlborough Sounds could bring customary right claims to the Māori Land Court. The Foreshore and Seabed Act of 2004, which overruled that decision, is an example of legislative action which extinguished common law native title without the consent of hapū or iwi, and without payment of compensation (see Q49).

Many other laws like the Wastelands Acts, Public Works Acts and Māori Land Court provisions, have been aimed at removing Māori property rights guaranteed even in the Crown's English-language version of the Treaty, and by aboriginal title. Much more land was taken from Māori through such laws than was seized by warfare.

Aboriginal (native) title is important in that it is binding on the Crown. Its weakness is that it is defined in a context where European imperial definitions hold sway. Indigenous (aboriginal) people everywhere had and have systems of their own for establishing title to land, and it was and is incumbent on foreigners coming into their lands to respect those systems.

23 What about lands that were not perceived as physically occupied by Māori tribes?

The instructions given to Hobson by the Colonial Secretary, Lord Normanby, recognised that Māori tribes held title to all land in New Zealand. "Māori title to the soil and to the Sovereignty of New Zealand is indisputable, and has been solemnly recognised by the British government", he wrote in 1839. Hobson was requested to purchase those lands "not occupied by Māori", with an important proviso: that he did not purchase "any Territory the retention of which by them would be essential or highly conducive, to their own comfort, safety or subsistence".

The first two Governors continued to acknowledge that the Treaty recognised Māori title to the whole of Aotearoa/ New Zealand, and it wasn't until the late 1840s with increasing pressure from settlers that "unoccupied" land was classified "wasteland". This classification was one that entirely suited the colonisers and had nothing to do with Māori understandings.



Members of the Waitangi Tribunal at Orakei Marae in 1985. Left: Chief Judge Edward Durie, Justice Paul Temm and Sir Graham Latimer.
Photo: Gil Hanly.

For Māori these areas, apart from their extensive gardens, provided the main sources of food.

Governor Grey undertook large scale "purchases" of immense areas of "waste land" in the South Island, especially, and some of the North Island in order "to extinguish native title". The extinguishment of native title was actively pursued as Crown policy, following from the Native Land Purchase Ordinance 1846 and the Symonds case (1847).

24 How did Māori understand "land sales"?

Although Māori were great traders, they did not trade in land. Land was a precious heritage from the tūpuna (ancestors) and was not to be alienated. Māori, however, did have law and custom for accommodating outside groups on a hapū's land. As noted in Q9, hapū allocated plots of land (tuku whenua) to new settlers, but these were grants of land use, more like leases than sales. These grants were designed to establish relationships of reciprocity between the hapū and the newcomers.

As tangata whenua (people of the land), hapū carried these expectations into their arrangements with Pākehā settlers. In the South Island, for instance, some hapū granted Pākehā settlers large areas to use for farming but the hapū did not intend a complete alienation of their land and especially not of the places they used as food sources. The newcomers had come into lands that were not their own and it was incumbent on them to respect the law and custom of those whose land it was. The Crown's policy to take to itself all title to land (see Q23) and then facilitate its commodification was a violation of the Treaty agreement.

25 How can a document signed in 1840 have relevance for today?

Just because something is old, doesn't mean it isn't relevant – some of our New Zealand laws are based on the Magna Carta first signed in 1215. The Treaty has been described as a living document whose basic principles can be applied to any age.

In the 1987 Māori Council court case against the Crown, the five (Pākehā) Court of Appeal judges talked for the first time about positive approaches to the Treaty for today's world. The parties to the Treaty, the Crown and Māori tribes, entered into a solemn commitment based on justice and the recognition of Māori as the prior inhabitants of this country. History shows that this commitment has not been honoured by the Crown.

In 1975 the Waitangi Tribunal was established. Although it seems to have been established principally to allay rising Māori protest of the time, it has had a key role in applying the Treaty to what is happening in the country today. In the Muriwhenua Fishing Report of June 1988, the Tribunal spoke of the practical application of the Treaty for the modern world: "Any impracticality today results not from the Treaty, but from our failure to heed its terms.



A still from *Te Whare/The House*, a Treaty education DVD, which depicts the history of the Treaty relationship as a contemporary flattening story. © 2008 Ugly Films; Director/Writer Richard Green.

The important point is that there was, and still is, room for an agreement to be made".

Had the Treaty been honoured from the time it was signed, this country would be a very different place today.

Until recently non-Māori have not had to face the implications of the Treaty. Most did not know about the Treaty of Waitangi until television brought the accusations of the young Māori activists of Ngā Tamatoa and others directly to us in the 1970s. It is said of the Treaty that while Māori never forgot, non-Māori never knew. In the past 30 years or so we have been challenged also to view our colonial history from a Māori perspective, and re-examine the idea that New Zealand ever had "the best race relations in the world". Some non-Māori are fearful of this change in perception, wrongly believing that they may incur losses personally. Others are working to honour the Treaty in positive ways, believing that it is the putting right of injustices that will bring a unified future.

Many NGOs that have made a commitment to foster practical Treaty relationships, have found both Māori and non-Māori have gained from the process.

26 Is Māori concern about the failure to honour the Treaty something new?

Māori have tried every possible avenue since 1840 to have injustice acknowledged and addressed. For example:

- Directly petitioning Queen Victoria, successive monarchs, Governors General and parliaments. For example, in 1932 a Māori MP presented a petition with more than 30,000 signatures asking that the Treaty be made statutory. Pākehā MPs walked out of the House to prevent it from being tabled, and no action was taken.
- Working through the courts, even taking Treaty rights cases through the appeal processes to the Privy Council in Britain (before it was replaced by the New Zealand Supreme Court).
- Introducing a Bill of Rights in 1894 that was ignored by parliament.
- Initiating peaceful protest and non-violent passive resistance, for example at Parihaka in Taranaki, decades before Gandhi in India.
- Fighting back when land was being taken by force.
- Taking complaints about injustice to the United Nations, supporting the development of the UN Declaration on the Rights of Indigenous Peoples, and making presentations to the UN Special Rapporteur on the Rights of Indigenous Peoples.
- Forming Māori political parties to influence governments through parliament. The Young Māori Party included MPs Maui Pōmare, Sir Peter Buck, and Sir Apirana Ngata. The Mana Motuhake Party was formed by MP Matiu Rata, while the Foreshore and Seabed Hīkoi of 2004 gave birth to the Māori Party, which won four seats in the 2005 general election. The Mana Movement was formed in 2011 and had one MP in Te Tai Tokerau until 2014.

The rights that Pākehā were promised under the Treaty have been honoured, but the rights that Māori were guaranteed have been largely ignored

- Direct action including occupations, land marches (hīkoi) and protests. Peaceful protests began as early as May 1840 when Hone Heke signalled his anger at the breaking of Treaty promises by felling the flagpole flying the Union Jack at Kororāreka. Other actions include occupations of Bastion Point and Raglan, the land march of 1975, and various hīkoi from the 1980s onwards.
- Handing down the stories of injustice to successive generations to resolve.
- Initiating political and spiritual movements like Kotahitanga, Kingitanga, Ringatū and Rātana.
- Starting Māori-centred social welfare and health projects and organisations.
- Initiating language immersion schools (kōhanga reo and kura kaupapa) and tertiary education institutions (wānanga).
- Researching and presenting claims to the Waitangi Tribunal, despite inadequate funding. The long history of attempts to be heard are detailed in many of the Waitangi Tribunal claims. The Ōrakei Report sets out the efforts Ngāti Whātua made through the courts, through parliament, through Royal Commissions and through direct action. The Muriwhenua Report lists the efforts made through court actions, the 93 petitions to parliament, and many major hui since the 1860s.
- Gaining a public holiday for Waitangi Day, broadcasting rights, and official language status for te reo Māori.
- Exercising environmental guardianship (kaitiakitanga) over ancestral land and resources in the face of local government antipathy and hostility.

The assertion and practice of Treaty rights benefits non-Māori. Māori exercising collective rights in the courts have prevented the loss of “public” assets to private or foreign ownership

27 Why is there so much trouble about the Treaty?

One of the common myths still held by some people is that divisions are only being created now because of the recent focus on the Treaty. But when we study our history, it is clear that divisions have existed since soon after the Treaty was signed. Māori have been at the bottom of the socio-economic ladder since the 1860s.

But there was little real contact between Māori and urban Tauwiwi (non-Māori) until land law changes forced many Māori to move to the cities in the 1950s.

It is the dishonouring of the Treaty, through the Crown’s undermining of Māori power and the theft of Māori land and other resources, that has created the divisions in our society.

Since the Waitangi Tribunal was formed in 1975 to provide a process to examine historical and ongoing Treaty breaches, non-Māori have become aware of the injustices, and the divisions are finally beginning to be acknowledged, although not yet significantly reduced. Governments have tried unsuccessfully, various policies to reduce socio-economic differences after it became apparent that assimilation policies do not do this. An example was Closing the Gaps (a phrase first coined in the 1960 Hunn Report on education), a policy of the Labour government of 1999, later re-named Reducing Disparities. The policy was dropped after National Party leader Dr Don Brash described it as “race-based discrimination” in a speech at Ōrewa in 2004. The Living Standards 2004 Report showed the gaps were still there. Forty percent of Māori and 58 per cent of the Pacific population were in some degree of hardship, compared to only 19 per cent of Europeans. According to the Ministry of Social Development’s recent report ‘Household Incomes in New Zealand: trends in indicators of inequality and

hardship 1982 to 2013’, on average from 2011 to 2013, around 16% of European / Pākehā children lived in poor households, 28% of Pacific children, and 34% of Māori children (double the rate for European / Pākehā children).

Many Pākehā have come to realise that our relatively privileged way of life as a group is either based on assets and resources illegally taken from hapū in breaches of the Treaty, or can arise from our competence in the customs of the dominant culture. Both advantages amount to “race-based” privilege.

Governments have been unwilling to address the causes of inequality through meaningful compensation for losses or changes in decision-making processes. For example, the Government gave \$2 billion to bail out South Canterbury Finance in one year, twice the total quantum earmarked in 1992 for compensation for all Treaty claims. Until these issues are faced it is likely that “trouble” will remain, and the call to honour the Treaty will continue to be voiced.

28 Why can’t we throw it out and start again?

There is nothing in the Treaty which suggests it was a temporary commitment. It was entered into in good faith in 1840. If this contract were to be rescinded it would take the agreement of both parties. If any government were to bow to the wishes of people who want the Treaty thrown out, this would be no solution. Distress and anger caused by historical Treaty breaches and present-day injustices and inequalities would not disappear. It is argued that abolishing the Treaty, if it were possible to do so, would also abolish the right of parliament to exist and make laws. The Declaration of Independence would remain the prior constitutional document. To quote Judge Durie: “we must not forget that the Treaty



Kaumātua at the launch of Māori Television in March, 2004.
Photo: Gil Hanly.

is not just a bill of rights for Māori ... we must remember that if we are the tangata whenua, the original people, then the Pākehā are tangata Tiriti, those who belong to the land by right of that Treaty.” The Treaty is also a bill of rights for non-Māori.

29 Why can't we just get on with living as one people?

We began as two peoples, agreeing to share one country for our mutual benefit. Since then the Treaty has been dishonoured by one party, the group which subsequently became more numerous and more powerful. The many calls for us to be one people need to be challenged, as often this really means “let’s all speak English so I can understand what you’re saying”.

What is a New Zealander now? Is he or she a person who speaks only English, who operates along only Pākehā cultural lines, who does not value or acknowledge Māori – or other – cultural values and skills? Many of those who talk about one New Zealand come from this position. On the other hand, many Māori and Tuiwi are able to operate in two worlds, speaking both their own language and English.

As diversity in immigration creates an increasingly multi-ethnic nation, some people may find it more helpful to describe themselves as being from a particular culture, for example, as a Chinese, Korean, Dutch, Pākehā, Dalmatian, Samoan or Tongan New Zealander. These groups will have their own particular history and stories to tell of what it is to be shaped by their culture, or combination of cultures, both outside and within our South Pacific nation.

When we can truly celebrate cultural diversity, we may be better able to achieve unity as a nation. For this to be achieved, the particular indigenous status of tangata whenua must be recognised, and the status and responsibilities of tangata Tiriti understood. A Treaty-based approach requires more than provision of equal opportunity in the “mainstream” system. A Treaty-based multi-ethnic future is one where the particular role of Māori culture is valued, Māori political, social and economic institutions are flourishing, and the needs of Māori are prioritised, while others’ rights to cultural expression are also preserved.

30 What about separate or parallel development? Isn't that apartheid?

No Apartheid was a political system where one group held all the power and strictly enforced and imposed total separation of different groups in order to maintain that power, as was demonstrated in South Africa.

The basic differences between apartheid and separate development are:

→ Under apartheid it is the *powerful* group that enforces separation

→ With separate development, where it occurs here, it is the *powerless* group that has chosen to separate temporarily.

Independent, culturally appropriate, enterprises in Aotearoa/New Zealand are being implemented as a Māori response to Pākehā monoculturalism. Pākehā institutional practice can be culturally inappropriate or uncomfortable for Māori (and other groups), making it difficult for them to succeed or receive the assistance they need. Separate, parallel, or independent development in a Māori way is a positive step to self-determination.

31 Why are there separate parliamentary seats for Māori?

British voting restrictions were included in the 1852 Constitution Act, i.e. only adult male property owners with individual land titles could vote. Effectively, Māori contributed most of the revenue, through land sales and business, but had no representation.

After the Māori Land Court was established in 1864, settler politicians feared that Māori men might soon acquire the right to vote because they would in time possess an

The culture which has evolved among the descendants of British immigrants is now unique in the world and is defined by the word Pākehā

Aotearoa Action Coalition members march against the government's fiscal envelope in Whanganui in 1995.

Photo: Leigh Mitchell-Anyon.

individualized right to property, and that this might cause a political “imbalance” in some North Island electorates. It was thought the creation of three or four Māori seats would eliminate that threat by confining Māori voters to those seats.

In 1867 two more factors combined to create Māori seats. The government wanted to capture Māori support for its pacification programme, and the West Coast gold rush tipped the number of seats in favour of the South Island, with the possibility of the capital moving south. As a result, in 1867 northern MPs introduced a Bill which provided for Māori representatives – who might be European – elected by Māori men. The Bill proposed four seats, three in the North Island and one in the South, and it was accepted mainly because it preserved the distribution of seats between the North and South Islands. An amendment made it mandatory that the Māori representatives be Māori – largely because the South Islanders were unhappy at the prospect of three more northern Pākehā MPs.

If the number of seats had been proportional to population numbers – at the time there were 56,000 Māori and 171,000 Tāuiwi – in a house of 70 members, 20 would have been Māori. The number of Māori seats remained the same until Mixed Member Proportional Representation (MMP) was introduced in 1993. The number of Māori electorates is now determined from the Māori roll on the



same population basis as the General roll, although population distribution means that Māori electorates are mostly much larger geographically than General, leading to further inequalities.

32 What is the “Māori Option”?

The Māori Option was introduced in 1975 to permit Māori to choose – for a few months after every five-yearly census – whether to be on the Māori electoral roll or the general roll.

This option increased the number of Māori seats to seven, by 2005. Although Māori, especially new voters, continue to opt for the Māori roll, significant numbers of Māori also choose the general roll, for various reasons. This, combined with increased immigration and the principle of proportionality, has prevented a further increase in the number of Māori seats, as the total number of seats is limited to 120. The 1986 Royal Commission on the Electoral System said the Māori seats had gone some way towards providing for political representation of Māori interests, but they did not ensure that Māori electors had an effective voice. It recommended MMP as the best system for those purposes, with or without the Māori seats.

When MMP was introduced in 1993, parliament decided that the Māori seats should be retained, along with the Māori Option. However, unlike other important provisions of the Electoral Act which need a 75 per cent majority to be changed, the Māori seats can be abolished by just 51 per cent of parliament.

It should be remembered that Māori representation within Kawanatanga (a right provided to Māori in Article III of the Treaty) is a fundamentally different concept from the relationship between the Crown and hapū leaders envisaged in Articles I and II of the Treaty.

Māori using sections of the Resource Management Act have been able to stop some destructive developments by asserting the “rights of nature”

33 What does the Treaty have to do with Pākehā and other Tauwiwi?

Everything. It is the Treaty which gives Pākehā the right to settle here. The culture which has evolved through the descendants of British immigrants is now unique in the world and is defined by the word Pākehā. The word itself has no negative connotations or meanings, being used in the Treaty to describe those who were not Māori.

All Pākehā rights here are derived from the Treaty. The rights that Pākehā were promised under the Treaty have been honoured, but the rights that Māori were guaranteed have not.

Tauwiwi who do not identify as Pākehā have a more complex situation. Their rights to settle here also come from the Treaty. However, since 1852, settlers have been assigned their rights by the Pākehā-dominated government, rather than by an agreement between Māori and Pākehā authorities as indicated in the treaty agreement.

The Crown’s failure to provide effective redress for historical breaches of the Treaty and to improve its relationship with contemporary Māori perpetuates the social and economic disadvantages Māori suffer. These conditions delay genuine Treaty relationships between Māori and non-Māori.

Collectively Cabinet now carries the Treaty responsibilities of the Crown, through Ministers of the Crown. As the majority of voters, Tauwiwi have most influence in electing governments. Can we as voters fulfil our responsibility to protect Māori rights? What might an honourable form of Kawanatanga look like? How could a more equitable decision-making arrangement with Māori be made?

The assertion and practice of Treaty rights benefit us as non-Māori. For example, Māori exercising collective rights in the courts have prevented the loss of “public” resources to private or foreign ownership. Kaitiaki using sections of the Resource Management Act have been able to stop destructive development in some areas by asserting the “rights of nature”. Māori television and radio are enjoyed by all. Māori culture is internationally acclaimed as unique and valuable, and contributes substantially to national identity and the economy.

34 Did the Treaty allow for immigration from other countries apart from Britain?

The Treaty made arrangements for British people and others to come to this country. But when the settler-controlled government was formed in 1852, the authority to formulate immigration policies unilaterally was assumed, along with other powers, in direct breach of the Treaty.

So it has been the government, rather than joint agreement between Māori and the Crown, which has made decisions about who can come here, from what countries, and under what conditions they will gain citizenship.

35 What is the place of other peoples apart from Māori and Pākehā in relation to the Treaty of Waitangi?

It is useful for non-Pākehā Tāuiwi to come to understand their role in relation to the Treaty of Waitangi. Because the Treaty has been dishonoured, other migrant groups have had no option but to relate only to the government, in legal terms. Informal

Since Pākehā settler culture is responsible for the present expressions of racism in New Zealand, it is also the responsibility of Pākehā-dominated institutions, organisations and communities to dismantle racism and prejudice

relationships are now being forged with Māori by different groups, independently of government, as other cultures realise the effects of breaches of the Treaty on Māori as the indigenous people of Aotearoa. If the Treaty promises had been honoured, these relationships would have been formalised with hapū from the outset.

36 But haven't other ethnic groups apart from Māori also suffered from racism?

Our society has been organised on one culture's belief system, sometimes unconsciously, and other ethnic groups have been, and are, the victims of racism and prejudice.

Pākehā culture was first brought here from British and North European cultures in the age of empire. These peoples believed in their own intellectual, moral and cultural superiority. Most institutions in Aotearoa New Zealand still express belief in the superiority of their ways of being and doing.

Institutional racism means basing all decisions on the norms and beliefs of the dominant culture – thus discriminating against other worldviews. All other cultures and language groups, including Māori, suffer the effects of such racism – both institutional and personal. The most recent immigrants are usually scapegoated for economic problems; this happened to Chinese people in the 1800s, Dalmatian, Greek and Italian people in the early 1900s, Pacific peoples in the 1960s and 70s, and more recently to immigrants from Asia.

However, racism and prejudice are signs of a deep-seated fear of difference that resides long after monetary prompts disappear.

“Pacific peoples were brought here largely because industry in the 1960s needed cheap labour. Today they are blamed for many of the ills of unemployment and homelessness. We forget that as Pākehā, we are descended from migrants. How long do Pacific Islanders have to be here before they lose the stigma of migrant? We forget, too, the relationships which have existed between the white New Zealand government and the peoples of the Pacific” (R Coventry & C Waldegrave, *Poor New Zealand*, p. 67).



Waitangi Day protest, Wellington, 1987.
Photo: Gil Hanly.

Since it has been Pākehā settler culture which is responsible for the present expressions of racism in New Zealand, it is also the responsibility of Pākehā-dominated institutions, organisations and communities, to dismantle racism and prejudice.

37 Why can't Māori look after their language and culture in the same way that other ethnic groups do?

The short answer is that Māori always have and continue to do so – despite extremely difficult and frequently hostile circumstances.

However, Māori culture should be enhanced, nurtured and protected every day without their having to ask for it. That's what the Treaty promises.

Aotearoa New Zealand is the only place where Māori culture can survive. Māori people not only have to live within a system that promised to enhance and protect their culture and did not, but they also have to fight for the very survival of their culture in the world.

All cultures need an economic base to thrive, and that has been largely removed from Māori through the processes of colonisation.

Other ethnic groups come to New Zealand expecting that the culture here will be different from their own. Apart from refugees, most of them make a free choice to come. They are prepared to adapt to some of the cultural ways here just as we do when travelling overseas. They are able to adapt readily because they can be confident that their cultures and ways of life are protected in their country of origin. For example, there is a whole nation protecting Greek culture; if Greek people living in other countries lose some of their own culture, it will not lead to the loss of that culture on a world scale.

Other cultures have not suffered the same colonial process in this country as Māori. An enormous amount of Māori energy and resources has been diverted into the survival and revival of their culture. This continues to the present day, against the powerful monocultural attitudes, institutions and policies that prevail in New Zealand.



Foreshore and seabed campaign cartoon by Carol Peters for Network Waitangi Whangarei.

38 Does honouring the Treaty of Waitangi mean giving Māori all their land back?

Honouring the Treaty means that Māori will, as they did before 1840, be able to exercise their sovereignty, that is, their control and authority over all things that are rightly theirs.

In most cases, the Tribunal has the authority only to make recommendations to Parliament; it has no power to enforce settlements or decide on the amounts of settlements

Honouring the Treaty fully would mean returning land and resources that were taken illegally. This includes land sold under duress, for example to pay debts incurred for food and accommodation while waiting for a case to come before the Māori Land Court, or to pay rates on communally owned land.

Land that was confiscated by the government (raupatu lands) because of Māori resistance to colonisation, also comes under this category.

A very large part of every Waitangi Tribunal historical claims inquiry concerns lands the Crown says were “sold voluntarily and for an agreed price” but were actually taken in a number of ways that were in flagrant breach of the Treaty.

It used to be possible to return to Māori the Crown interest in freehold land, or for the Crown to buy or to

pay compensation for land that is now owned privately. However, a law change in 1993, prompted by lobbying from now discredited Dargaville farmer Allan Tiftord, prohibited the Waitangi Tribunal making recommendations concerning any land in private ownership.

Unfortunately, there has been continual erosion of land available for Treaty settlements through the sale of state assets and “surplus” Crown land. These sales have included land under claim. Many such sales in the 1990s were approved by the Cabinet Committee on Treaty of Waitangi Issues, with no appeal process for Māori claimants who had signalled an interest in the property. More recently, attempts to sell Crown land which should have been set aside for the settlement of Treaty claims, was highlighted by the repossession or occupation by hapū of land at Whenuakite (Coromandel) and Rangiputa (Northland) following a decision by Landcorp to sell them. These repossessions led to a review of the sale of Crown land in 2007. It is not clear whether this has resulted in any improvement in the situation. Land under claim however is still being sold or developed by local councils.

Claims settled to date have featured different land being substituted for some of the land taken, cash, apologies, specific agreements on protection of sacred places, and rights to participate in land management decisions as a directly affected party. From 1999 to 2004, only 0.1 per cent of all government spending was for Treaty settlements. This amounted to less than 2 per cent of the real value of Māori losses.

39 Māori are only about 15 percent of the population - why continue with the Treaty?

When the Treaty was originally signed, Māori outnumbered settlers by at least 100 to one, but today Māori are the numerical minority. With future demographic changes it may be that Pākehā will again become the minority – but our Treaty rights and responsibilities would remain the same.

The Treaty is based on reciprocal rights and responsibilities. It establishes that two decision-making systems can co-exist, that this agreement over-rides the tenet of majority rule, and it ensures that “the tyranny of the majority” is overcome by guaranteeing each party’s rights regardless of numerical distribution.

Today, honouring that relationship between the parties has implications for all levels of society – government departments, parliamentary systems, voluntary and community organisations, families, businesses and individuals. Many non-government organisations, including many churches, have changed their decision-making processes to reflect a Treaty-based arrangement.

There is a growing understanding that real equity means successful outcomes for different groups in society, with success being defined by the group concerned, rather than equity meaning just equal opportunities for individuals to participate in the “mainstream”.

40 What does the Waitangi Tribunal do?

The Tribunal was set up in 1975 to investigate claims of breaches of the Treaty from 1975 onwards. In 1985 the Act was amended so that claims back to 1840 could be examined. The government appoints members of the Tribunal.

In most cases, the Tribunal has the authority only to make recommendations to parliament; it has no power to enforce settlements or decide on the amounts of settlements. In some limited instances, the Tribunal has the power to make “binding recommendations” for the return of certain lands to Māori ownership, but it has only done this once - in 1998 in relation to the Tūrangi township claim. Claimants can bypass the Tribunal and negotiate directly with the government’s Office of Treaty Settlements. Parliament has the final approval when passing legislation to enact a settlement.

The Tribunal must take into account both the English and Māori language texts of the Treaty in its deliberations, and must not “create a further grievance in its attempts to right others”. It can also hear urgent current claims - for example, the Tribunal made recommendations on the foreshore and seabed proposals before the legislation was introduced, and on Māori rights to offshore minerals. The government ignored the Tribunal’s recommendations in both instances.

The controversial “fiscal envelope” policy of 1994 meant that an arbitrary limit of \$1 billion was put on the total of all settlements - even before the evidence was heard. Consequently, most settlements amount to less than 2 per cent of the value of the assets taken. At the same time, claimants must agree to the terms as a full and final settlement. Settlements described as “full and final” in earlier times, most notably during the 1930s and 1940s, have been renegotiated in more recent years because they were unfair and could not be considered as achieving any finality. It is unlikely that future generations will feel realistic redress and reconciliation have been achieved by the current settlement process, or feel bound not to relitigate.

Since 1999, government policy has been to negotiate settlements only with iwi, which excludes specific hapū and whānau claims;

Policies based on government definitions of who it will negotiate with, rather than seeking Māori input into the most appropriate social structures for resolving historical Treaty breaches, have been criticised and challenged

this policy has subsequently developed into a preference for negotiating only with “large natural groupings”, defined by the government over the wishes of Māori. Policies based on government



Pākehā banner on the second Hiko Takutaimoana protesting government actions on the foreshore and seabed, Auckland, October 2004.
Photo: Charles Rolo.

definitions of who it will negotiate with, rather than seeking Māori input into the most appropriate social structures for resolving historical Treaty breaches, have been criticised and challenged by Māori, the Tribunal and others.

The government is also facing criticism for adopting a blanket approach through the Office of Treaty Settlements, which prefers to work regionally, as opposed to addressing hapū-specific claims. The Crown chooses with whom it will negotiate, which has interfered with traditional relationships between and among hapū and has created new problems. Claimant groups are required to restructure their organisations along legislated lines before the government will finalise any Treaty settlement.

In 2006, parliament unilaterally ruled that all “historical” claims – which it arbitrarily defined as those relating to Treaty breaches arising before 1 September 1992 – had to be lodged with the Tribunal by September 2008. Claims arising from breaches of the Treaty after 1993 are still able to be lodged with the Tribunal.

Figures from the Office of Treaty Settlements show that, as at end of 2013, 67 Deeds of Settlement had been signed; 33 settlement bills had been enacted into legislation; and there has been a total cash payout of \$1.4 billion.

41 Haven't Māori gained from having European technology and other material benefits?

Yes, there have been gains from European (and other) technology. However, the colonisation process has resulted in the destruction of economic prosperity for whānau, hapū and iwi.

Before 1840 Māori had long-established systems of social, economic and cultural wellbeing, which they rapidly adapted to the new environment. They had extensive communication with the outside world well before 1840, and were successfully developing and adopting new technology, as they did with the different economic system that came with European contact. Metal implements and introduced flora and fauna, were used during the 70 years of contact that preceded the signing; the Treaty was not required to gain this access.

This process of adaptation was set back by colonisation, as Māori institutions were systematically and deliberately broken down. This has resulted in huge disparities between modern Māori and non-Māori in health, housing, employment, educational achievement, income levels, prison incarceration, wealth, land holdings and so on.

42 What are the difficulties Maori face in regard to Maori land?

Māori and non-Māori have different attitudes to land use, to economic activity, and to the relationship between human beings and nature. Māori reasons for wanting their land back include not only economic need but also spiritual and ancestral connections. Māori used their land for commercial agricultural production purposes for years before 1840. They were forced off the bulk of their productive land through confiscations, illegal land deals and discriminatory legislation such as the 1953 Town and Country Planning Act, which made it illegal to build new housing on Māori land.

It should also be noted that the legal principle concerning land taken under various Public Works Acts that it be offered back to the original owners when no longer required was not applied to Māori land; nor were Māori owners given compensation for land taken in this way. Until recently, Māori who retained land were unable to receive the developmental and rural grants available to non-Māori farmers. Even now it is difficult to obtain finance for development on collectively owned land, and most banks will not lend mortgages for housing on Māori land. One of the official criteria for private finance is to hold individual title. Much of the land that hapū and iwi retained is marginally farmable, the most agriculturally productive land having

been taken by settlers, or by the Crown through legislation. The task of first tracing, and then gaining the approval of many different shareholders (often numbering in the hundreds) for a project, also makes new development extremely difficult. “It is interesting to speculate on what the social and economic status of rural New Zealand would be today if all land owners had been cursed with the system imposed upon Māori land. New Zealanders of European descent might have been poorly reflected in statistics if they found themselves in the same position” (D Kidd, Minister of Māori Affairs, *New Zealand Herald*, April 20, 1993). It is indisputable that Tāiwi have reaped the profits from the use of Māori land. From a total of 66 million acres, only about 4 million acres remain in Māori collective ownership.

43 What is being done to recognise and apply the Treaty?

Hapū, iwi, and Māori organisations have consistently upheld the Treaty in their work. The High Court, the Court of Appeal and the Privy Council have been required to consider the validity of government actions in the light of the Treaty. For example, the government funded Māori television and radio stations only after having been instructed to do so by a Privy Council ruling, in a case taken by the Māori Language Commission. With

A foreshore and seabed action by arc, Waitangi, 2004. Photo: Time magazine.



the replacement of the Privy Council by the New Zealand Supreme Court, it is likely that court will in future make rulings related to the Treaty. The Waitangi Tribunal continues its work researching historical and contemporary claims, and recommending redress and ways of resolving Treaty breaches.

Many NGOs are recognising the Treaty in their structures, constitutions and decision making processes. The Anglican Church was among the first to change its constitution in an attempt to enable Treaty-based decisions (with the addition of a Pasifika caucus).

Groups have made changes more easily than hierarchical government departments, but most departments have now included some reference to the Treaty at least in their mission statements and in some policies. But recently even these developments have been under threat from ministerial directives to remove all references to the Treaty from policy documents, action plans and contracts, for example, in the health and disability sector.

Sometimes token changes are made and business continues as normal, but other changes result in progress toward better outcomes for Māori. “By Māori for Māori” initiatives have been successful in many areas of society, especially in health, education and news media. But some changes have prompted a news media backlash, and governments have become wary of openly supporting Māori initiatives. The presence of Māori Party MPs in parliament since 2005 and the Mana Party since 2011 has meant a Māori insight on each Bill, Budget and national event is available to the mainstream news media – including an examination of the effects of each on Treaty rights.

The quality of Treaty education in schools is inconsistent, but improvements are being made. Tauiwi are now more exposed to Māori realities, and able to experience aspects of Māori culture through Māori television and radio, and through wānanga (Māori universities). Through such exposure, it is hoped that the “fear of the unknown other”, the basis of personal racism, can be reduced.

44 Why should we do anything now?

Breaches of the Treaty have almost always ensured that non-Māori benefit and that Māori have been denied access to resources of all kinds. Almost no institutions in Aotearoa New Zealand operate on Māori tikanga, cultural values, language or worldviews. Access to services for Māori usually requires them to relate to monocultural processes. This benefits people who belong to the dominant culture, and penalises those who do not. The problems won't disappear. If we don't deal with them, the next generation will have to, or the next. Mahatma Gandhi once said: “The best test of a civilised society is the way in which it treats its most vulnerable and weakest members”.

The Copthorne Hotel in Hokianga commonly flies the first flag of New Zealand with the current one.
Photo: Peace Movement Aotearoa



Non-Māori must take responsibility for challenging breaches of the Treaty, and in certain circumstances support Māori in their work towards independent political, social and economic institutions, primarily by tackling non-Māori obstacles such as inappropriate legislation, racist funding frameworks, or policies. Some Tauwiwi are also questioning the efficacy of our monocultural institutions, for example the prison system. They wonder if Māori restorative justice practices may produce better outcomes, not only for Māori but for everyone. Māori-instigated Family Group Conferences, for example, work well for tangata Tiriti too. Concern for sustainability in environmental management has led to tangata Tiriti understanding that decisions that include Māori and therefore indigenous values based on the rights of nature are more likely to result in ecosystem protection.

When tangata whenua authority is recognised alongside local, regional and national governorship representing tangata Tiriti, New Zealanders will have fulfilled the promise of the Treaty. Otherwise we accept monocultural dominance, injustice and inequality as the norm.

45 Doesn't the Treaty make everything complicated and take up too much time?

Change can be difficult and the processes take time to work through. But the benefits of having a fair, just, inclusive and more equal society include harmonious relationships and cost-effective and equitable distribution of resources. Unequal societies have higher negative social statistics for both the privileged and the poor in those societies, and in New Zealand this largely race-based gap has been growing for the past 30 years. Māori disadvantage is an ongoing opportunity cost to the nation as a whole.

Even when the 2004 Foreshore and Seabed Hikoi to parliament showed the unity of more than 30,000 people, Maori and Tauwiwi, the government still chose to ignore it

In fact, long term solutions ultimately create a much more efficient use of time, money and energy. Organisations that have addressed the Treaty in their structures and policies clearly show positive results.

Where Māori have been resourced to be able to put their own systems in place, Tauwiwi benefit from being part of an organisation that respects and reflects our country's dual cultural heritage. The process also makes it easier for ethnic groups other than Pākehā to make further changes to institutions that will benefit their own members.

46 Most Māori are happy with the status quo. Isn't it just a few radicals stirring up trouble?

Radical is a label which tends to be pinned on anybody who challenges the status quo. Māori rights activists have useful insights into what happened in the past, what is happening now, and how our society can operate so that it acknowledges the Treaty. We tend to expect all Māori to be saying the same things, and criticise them when they express different views, forgetting that Tauwiwi society is itself divided into a wide range of groups, views and beliefs depending partly on the information that is available to them, and partly on their political views. Divisions among Māori are sometimes created by the policies of monocultural institutions, for example the way the Treaty settlements are being run. This gives some Tauwiwi an excuse not to try to understand the complexities of different Māori viewpoints, and sometimes is used by the government as a reason not to settle claims. But even when the 2004 Foreshore and Seabed Hikoi to parliament showed the unity of more than 30,000 people, Māori and Tauwiwi, the government still chose to ignore it.

There continues to be a lack of agreement on the status of the Treaty among non-Māori political and judicial leaders, which needs to be resolved if relationships between Māori and the Crown are to improve. For example, even the 2003 statement by Chief Justice Dame Sian Elias that “sovereignty obtained by the British Crown was a sovereignty qualified by the Treaty” is disputed by the government.

47 What does cultural safety mean?

One definition of cultural safety is where safe service practitioners recognise, respect and acknowledge the rights and customs of others. It is achieved by learning about the history of colonisation and its effects in Aotearoa, and by learning to recognise the tenets and beliefs that underlie the practices from our own culture.

Practising cultural safety is about relating to someone in a way that makes them feel most comfortable, which means taking into account their cultural values and customs. The concept was developed by nurses trying to improve health outcomes for Māori by encouraging them to use health services more often. It was found that many Māori felt uncomfortable in monocultural Pākehā clinical settings where there was no understanding of Māori ways or their beliefs about health and illness, death and dying, bodily modesty, or gender roles.

Cultural safety in nursing doesn't just mean better health for Māori, it now implies training for better nursing care for all, as the need for greater awareness of other cultures grows. It also tries to raise awareness among caregivers that people may find themselves suffering the effects of poverty through no fault of their own, and encourages carers to suspend unhelpful personal judgements.

It was obvious from the first that what the government was intending to do [about the foreshore and seabed] would involve multiple breaches of the Treaty, the NZ Bill of Rights Act, the Human Rights Act, and international human rights agreements

Other terms used in this context are cultural competence and cultural congruence.

48 What are “the principles” of the Treaty of Waitangi?

Different sets of principles of the Treaty – all originating from Pākehā-based institutions – have been developed. Four examples are set out below. They are an attempt by non-Māori to try to reconcile or ameliorate the contradictions in the English and Māori language texts. However, Māori have consistently said that Te Tiriti o Waitangi speaks for itself, and that there is no need to create principles.

- The Waitangi Tribunal (1975): Partnership; Tribal Rangatiratanga; Active protection; Mutual benefit; Consultation.
- Court of Appeal (1987): Honour; Good faith; Reasonable actions; Partnership.
- Labour government (1988): Kawanatanga; Rangatiratanga; Equality; Co-operation; Redress.
- Royal Commission on Social Policy (1988): Partnership; Participation; Protection.

For further information, see *He Tirohanga o Kawa ki te Tiriti o Waitangi. A guide to the Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal*, Te Puni Kokiri, 2001.

49 What was the foreshore and seabed legislation about?

The origins of the foreshore and seabed legislation date back to the nineteenth century, when the Crown suspended the jurisdiction of the Native Land Court to investigate customary rights to the foreshore and seabed. This resulted in

Māori being prevented from having legal recognition of their interests and rights in those areas.

The immediate impetus was the sequence of events which began with legal action taken during the 1990s by the eight iwi of the Marlborough Sounds. They were responding to the Marlborough District Council's refusal to approve any of their applications for marine farming, even though similar applications by non-Māori applicants had been approved. From 1997, their case wound through the courts. Then in June 2003, the Court of Appeal ruled that the nature and extent of Māori customary rights and title in foreshore and seabed areas could be considered by the Māori Land Court as they had never been legally extinguished. This was the first step towards correcting a longstanding historical injustice. The government responded to the Court of Appeal ruling by announcing they would override the legal process and introduce legislation to vest ownership of the foreshore and seabed in the people of New Zealand. They alleged this was needed to ensure open access to and use of the foreshore and seabed for all New Zealanders. There was widespread opposition to the government's foreshore and seabed proposals from Māori, and from many non-Māori. It was obvious from the first that what the government was intending to do would involve multiple breaches of the Treaty of Waitangi, the NZ Bill of Rights Act, the Human Rights Act, and international human rights instruments.

In January 2004, the Waitangi Tribunal held Urgent Hearings into the Crown's Foreshore and Seabed Policy (WAI 1071), and in March 2004 released their report on the policy framework. The Tribunal stated that the policy breached the Treaty of Waitangi in "fundamental and serious" ways that give rise to "serious prejudice"

to Māori. Their primary and strong recommendation was that the government should "go back to the drawing board and engage in proper negotiations [with Māori] about the way forward."

Ignoring this, as well as the widespread protest against the policy, the government introduced the Foreshore and Seabed Bill and related legislation in April 2004. It had its first reading on 6 May – the day after the foreshore and seabed hikoī of more than 30,000 people arrived at parliament. The Attorney General's analysis of whether the legislation was consistent with the NZ Bill of Rights Act said that the Bill likely breached the Act in relation to the right to be free from discrimination. Regardless, the government pushed on with the legislative process. From August to October, the Fisheries and Other Sea-related Legislation Select Committee considered the legislation – almost 4,000 submissions were received; almost all opposed to it. During the second and third readings of the legislation, done under urgency in just two days, the government introduced 67 pages of amendments – none of which reduced its confiscatory provisions. The Foreshore and Seabed Bill and related legislation was passed on 18 November 2004, and came into effect on 17 January 2005.

'Anniversary Day marks past and present theft from Maori' protest by Takutai Moana Pōneke Collective, Chaffers Marina, Wellington Anniversary Day, January 2005. Photo: Peace Movement Aotearoa.



The UN Committee found the Government had failed to meet its obligations to prevent racial discrimination under the UN Convention

Following the 2008 election, the government announced a Ministerial Review of the Foreshore and Seabed Act. The Review Panel reported back in June 2009 and recommended repeal of the Act, and a longer conversation with Māori to find ways forward that respected the guarantees of the Treaty, as well as domestic human rights legislation and international human rights instruments.

In response, in 2010, the government issued a consultation document, 'Reviewing the Foreshore and Seabed Act 2004' and held public consultation meetings, including a limited number with Māori, on its proposals for replacement legislation. Despite hapū and iwi representatives clearly rejecting the government's proposals, on the grounds that the replacement legislation was not markedly different from the Act, the government nevertheless introduced the legislation, the Marine and Coastal Area (Takutai Moana) Bill, in September 2010.

Of the 72 submissions that came from marae, hapū, iwi and other Māori organisations to the Select Committee considering the Bill, only one supported it. In addition, the Hokotehi Moriori Trust, on behalf of the Moriori people of Rekohu (Chatham Islands), supported the Bill only in so far as it repealed the Foreshore and Seabed Act and removed Te Whaanga lagoon from the common coastal marine area.

Regardless of the fact that hapū and iwi did not generally support the Bill, it was enacted as the Marine and Coastal Area (Takutai Moana) Act 2011 and came into effect in March 2011.

While the replacement legislation replaced "Crown ownership" with a new "common marine and coastal area", this is essentially a legal fiction because the Crown retains the authority to make decisions about foreshore and seabed areas, including the granting of mineral licences and resource consents. The 2011 Act retains most of the discriminatory aspects of the 2004 Act

because it treats Māori property differently from that of others, it limits Māori control and authority over their foreshore and seabed areas, and it also effectively extinguishes customary title. Land in private ownership does not have any public access requirement, only Māori land.

Under the 2011 Act, hapū and iwi can apply for recognition of limited 'customary title' or 'customary rights' by either: i) lodging an application directly with the government (with applications accepted at the discretion of the Office of Treaty Settlements, and "nothing requir[ing] the Crown to enter into the agreement, or to enter into negotiations for the agreement: in both cases this is at the discretion of the Crown"); or ii) application to the High Court (not to the Māori Land Court which has specialist knowledge of Treaty matters). In both cases, any application must be lodged before 3 April 2017.

The test of "exclusive use and occupation" of foreshore areas since 1840 required to establish limited 'customary title' or 'customary rights' is problematic because many foreshore areas belonging to hapū and iwi were unlawfully taken or confiscated from the mid-nineteenth century until the present day - this provision represents a double injustice for those affected by such actions.

50 Isn't it best to have the foreshore and seabed in public ownership?

The Foreshore and Seabed Act did not put the foreshore and seabed in public ownership. The idea that it did was just one of many misrepresentations that government and other politicians made around the issues. In fact, ownership of foreshore and seabed areas, not already held privately, was vested in the Crown. Despite the legislation, a government could sell any foreshore or seabed area by an Act of Parliament if it chose to – that would be

easy for a majority government to do, and provides little guarantee of protection for the future.

Even before the legislation was enacted, it emerged that mining corporations had begun applying for prospecting permits to exploit mineral resources in foreshore and seabed areas. Within weeks of the Act coming into effect, prospecting permits were issued; initially for iron-sand prospecting in a 1270km² area of the west coast of the North Island, and later for gold and other minerals in an area of almost 10,000km² off the west coast of the South Island. In contrast, from the time the government first announced its response to the Court of Appeal ruling, hapū and iwi representatives consistently said that covenants of access and non-saleability, consistent with tikanga, could be negotiated in their areas.

Such alternatives, which would have guaranteed both public access and local ownership of the foreshore and seabed, were never considered by the government. The government's response to the Court of Appeal ruling, and the passage of the legislation, has been described as an abuse of the democratic process. Beyond that, it highlights the wider problems with current constitutional arrangements, and the lack of protection for human rights from Acts of Parliament – not only for Māori, although hapū and iwi are more vulnerable as minority populations, but for everyone.

The government responded to the recommendations by saying they would ignore them and publicly deriding the Special Rapporteur and the UN Commission on Human Rights

One of several postcards developed by the Waikato Anti-Racism Coalition for Treaty education at agricultural field days.

Design: Jamie McCormack.



51 What have United Nations human rights bodies said about the foreshore and seabed legislation?

In July 2004, Te Rūnanga o Ngāi Tahu, the Treaty Tribes Coalition and the Taranaki Māori Trust Board asked the UN Committee on the Elimination of Racial Discrimination (CERD) to use its Early Warning Procedure with respect to the impending foreshore and seabed legislation. The procedure is used when there is danger of imminent, serious breaches of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which New Zealand is a state party. CERD comprises 18 independent experts, appointed for their knowledge of international law and human rights, who are nominated and elected by UN member states.

On 11 March 2005, CERD released its decision on the Foreshore and Seabed Act 2004. The Committee found the government had failed to meet its obligations to prevent racial discrimination under the Convention by passing the legislation, and by failing to provide a guaranteed right of redress to Māori. The Committee urged the government:

... in a spirit of goodwill and in accordance with the ideals of the Treaty of Waitangi, to resume a dialogue with the Māori community with regard to the legislation in order to seek ways of lessening its discriminatory effects, including where necessary through legislative amendment.

Instead, the Prime Minister and other government politicians misrepresented CERD's decision and made dismissive remarks about the Committee as well as those who had asked it to act on their behalf. At the invitation of the government, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, Rodolfo

Stavenhagen, made an official visit here in November 2005. Special Rapporteurs are independent human rights experts, appointed by the highest UN human rights body, with a mandate to investigate human rights violations in their particular field of expertise.

The Special Rapporteur's visit was to investigate, through discussion with the relevant parties - government Ministers, chief executives and senior officials of government agencies, Waitangi Tribunal and Maori Land Court members, academics, and hapū and iwi representatives - the human rights situation of Māori in a range of areas. These included political representation; land rights, claims and settlements; the administration of justice; language, culture and education; reduction of social and economic inequalities; and the human rights implications of the Foreshore and Seabed Act. In April 2006 the Special Rapporteur's report, 'Mission to New Zealand', was released. Among the recommendations was:

"The Foreshore and Seabed Act should be repealed or amended by parliament and the Crown should engage in treaty settlement negotiation with Māori that would recognise the inherent rights of Māori in the foreshore and seabed and establish regulatory mechanisms allowing for the free and full access by the general public to the country's beaches and coastal area without discrimination of any kind."

The government responded to the recommendations in a similar way as they had to the CERD decision on the foreshore and seabed legislation, by publicly deriding the Special Rapporteur and the UN Commission on Human Rights, and stating they would ignore the recommendations.

In 2007, CERD considered the government's Consolidated 15th - 17th Periodic Report under ICERD, in conjunction with parallel NGO reports. In their Concluding Observations, CERD repeated its earlier recommendation:

New Zealand was one country that continually tried to weaken the text of the UN Declaration on the Rights of Indigenous Peoples during negotiations

"that a renewed dialogue between the State party and the Māori community take place with regard to the Foreshore and Seabed Act 2004, in order to seek ways of mitigating its discriminatory effects, including through legislative amendment where necessary".

In 2010, a follow up visit was made by the then Special Rapporteur Professor James Anaya. In the 2011 Report, 'The situation of Maori people in New Zealand', the Special Rapporteur raised concerns about the Marine and Coastal Area Bill (which had not been enacted at the time of the visit), and urged the government to consult widely with Māori to address any concerns they might still have about the legislation; to pay special attention to the Bill's provisions on customary rights, natural resource management, protection of cultural objects and practices, and access to judicial or other remedies for any actions that affect Māori customary rights; and to ensure the legislation is consistent with the Treaty and with international human rights standards.

In 2010, the Human Rights Committee - which monitors state compliance with the International Covenant on Civil and Political Rights (ICCPR) - also expressed concern about the discriminatory aspects of the foreshore and seabed legislation.

In its 2013 Concluding Observations, following consideration of New Zealand's 18th - 20th Consolidated Periodic Report, CERD commended the government for repealing the 2004 Act, but stated it remains concerned that the 2011 Marine and Coastal Areas (Takutai Moana) Act contains provisions that may restrict the full enjoyment by Māori communities of their rights under the Treaty of Waitangi, such as the provisions requiring proof of exclusive use and occupation since 1840. CERD urged the government to review the 2011 Act with a view to facilitating the full enjoyment of the rights by Māori communities regarding the land and

resources they traditionally own or use, and in particular their access to places of cultural and traditional significance.

CERD's 2007 and 2013 Concluding Observations are available at www.converge.org.nz/pma/cerd.htm

52 What else did the UN Special Rapporteur on Indigenous Peoples' Rights say?

In addition to the recommendations on the Foreshore and Seabed Act, the 2006 Report said that more had to be done to ensure Māori political representation. It pointed out that Māori had continually sought decision-making capacity over their social and political organisation, lands and resources, wider way of life, and their relationships with the Crown. The Special Rapporteur recommended that change should be made through constitutional reform to regulate the relationship between the government and Māori people on the basis of the Treaty and the internationally recognised right of self-determination for all peoples.

The Report noted that land returned through the settlements process is only a small percentage of the land taken, and cash payments are usually less than two per cent of the value of that land. It recommended that the Crown should engage in negotiations with Māori to agree on a fairer settlement policy and process, and that the Waitangi Tribunal should have legally binding and enforceable powers to adjudicate Treaty matters.

The Special Rapporteur noted that disparities continue to exist between Māori and non-Māori in employment, income, health, housing, education and the criminal justice system. He suggested that improvements may most rapidly be achieved through “by Māori, for Māori” measures.



UN Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya, speaking in Wellington in July 2010.

The Special Rapporteur commented that he was asked several times whether he agreed that Māori had received special privileges. He said he had not been presented with any evidence to that effect, but, on the contrary, he had received plenty of evidence concerning the historical and institutional discrimination suffered by Māori.

The 2011 Report raised similar issues and included a section on the lack of constitutional security for the Treaty and Māori rights.

The Special Rapporteur's Reports are available at www.converge.org.nz/pma/unsr2010.htm

53 Why are UN human rights bodies interested in the Treaty?

The UN Charter is based on “respect for the principle of equal rights and self-determination of peoples”. This is further elaborated in the shared Article 1 of the two International human rights Covenants, which begins:

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

The right of self-determination in international law can be seen as reinforcing the Treaty. There is an obvious link between the right of self-determination and tino rangatiratanga which was exercised by Māori prior to the arrival of non-Māori, which was proclaimed internationally in the 1835 Declaration of Independence, and which the Treaty guaranteed would continue.

Allied to the right of self-determination is the right of indigenous peoples to own, develop, control and use their lands, territories and resources, as indicated by the shared Article 1 above and articulated in the UN Declaration on the Rights of Indigenous Peoples.

In the years since the establishment of the UN, indigenous peoples' rights have received increasing attention from the international human rights treaty monitoring bodies, elsewhere in the UN system, and in regional human rights bodies such as the Inter-American Court of Human Rights. This has come about in large part because indigenous peoples, historically and in the present day, are particularly vulnerable to prejudice, discrimination, and gross human rights violations including genocide, as well as the taking of their lands and resources by commercial enterprises, colonists and states, which puts their very survival at risk.

Until the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007, the most specific recommendations regarding indigenous peoples' rights were in CERD's General Recommendation 23: Indigenous Peoples. The General Recommendation outlines CERD's expectations of how states are to meet their obligations towards indigenous peoples so as not to breach ICERD.

In its 2007 and 2013 Concluding Observations on New Zealand, the status of the Treaty was a particular cause of concern for CERD, and the Committee noted with regret that the Treaty is not a formal part of domestic law even though the government claims to consider it the founding document of the nation.

CERD has also expressed concern about the government categorising settlements for historical breaches of the Treaty as 'special measures', and has pointed out the distinction between special and temporary measures for the advancement of ethnic groups, and the inalienable and permanent rights of indigenous peoples. Among other things, the Committee has also recommended that the government



A 2012 project encouraged Taiwi organisations to discuss constitutional change.

The UN Declaration requires states to obtain the free, prior and informed consent of indigenous peoples before making any decisions affecting their property, territories, rights or interests

intensify its efforts to address structural discrimination.

In 2013, CERD reiterated the importance of the government obtaining the free, prior and informed consent of Māori regarding activities affecting their rights to land and resources owned or traditionally used, as recognised in the UN Declaration on the Rights of Indigenous People; and urged the government to enhance appropriate mechanisms for effective consultation with Māori around all policies affecting their ways of living and resources.

In addition, CERD specifically urged the government to ensure that any privatisation of energy companies is pursued in a manner that fully respects the rights of Māori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi.

In 2012, the Committee on Economic, Social and Cultural Rights (CESCR), which monitors state party implementation of the International Covenant on Economic, Social and Cultural Rights, specifically referred to Article 1 - the right of self-determination - when calling on the government: "to ensure that the inalienable rights of Māori to their lands, territories, waters and marine areas and other resources as well as the respect of the free, prior and informed consent of Māori on any decisions affecting their use are firmly incorporated in the state party's legislation and duly implemented". The CESCR also urged the government "to take the necessary measures to guarantee Māori right to redress for violations of these rights, including through the implementation of the recommendations of Waitangi Tribunal's proceedings, and to ensure that Māori receive proper compensation and enjoy tangible benefits from the exploitation of their resources".

54 What is the UN Declaration on the Rights of Indigenous Peoples?

The UN Declaration brings indigenous peoples' rights, both collective and individual, together into one international human rights instrument. It establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples.

The UN Declaration has 24 preambular paragraphs and 46 Articles that cover a range of human rights and fundamental freedoms related to indigenous peoples. These include the right of self-determination, ownership and use of traditional lands and natural resources, the honouring of treaties and agreements between states and indigenous peoples, protection against genocide, protection of cultural and intellectual property, and rights:

- To preserve and develop their cultural characteristics and distinct identities;
- To maintain and strengthen their own institutions, cultures and traditions;
- To participate in the political, economic and social life of the society in which they live; and
- To pursue their own visions of economic, social and cultural development.

The UN Declaration highlights the requirement on states to obtain the free, prior and informed consent of indigenous peoples before making any decisions affecting their property, territories, rights or interests. It explicitly encourages "harmonious and cooperative relations" between states and indigenous peoples, and refers to procedures for resolving disputes between indigenous peoples and governments.

The UN Declaration had a lengthy and arduous journey through the UN system, beginning in 1985 when representatives

There are overseas examples of countries successfully protecting the rights of a particular culture within another majority culture, in Switzerland, the Netherlands and Belgium

of indigenous peoples' organisations and states began drafting the text, and twenty-two years of negotiations where some states - including New Zealand - attempted to weaken its provisions.

It was adopted by an overwhelming majority of the UN General Assembly in 2007, with a recorded vote of 143 states in favour, 11 abstentions, and 4 - Australia, Canada, New Zealand and the United States - against. The four states that voted against the adoption of the UN Declaration subsequently made announcements of support for it - Australia in 2009, then New Zealand, Canada and the United States in 2010.

Although it is a non-binding text (that is, a Declaration rather than a Covenant or a Convention which can be signed and ratified), the UN Declaration is used by the UN human rights treaty monitoring bodies as a standard to judge state compliance with the legally binding human rights instruments they monitor (as, for example, CERD did in 2013 in relation to New Zealand, see Q53 above), and as a normative framework by the Special Rapporteur on the Rights of Indigenous Peoples and other UN human rights mechanisms.

The importance of the UN Declaration was emphasised by the first World Conference on Indigenous Peoples (a high-level plenary meeting of the UN General Assembly), which was held in September 2014 at the UN Headquarters in New York to agree an action-oriented Outcome Document on the UN Declaration.

The Outcome Document begins with a paragraph welcoming indigenous peoples' preparatory processes for the World Conference, including the 2013 Global Indigenous Preparatory Conference held in Alta (Norway) and the Alta Conference Outcome Document; it reaffirms UN member states support for the UN Declaration and their commitment "to consult and cooperate in good faith

with indigenous peoples through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”; it reaffirms the solemn commitment of UN member states “to respect, promote and advance and in no way diminish the rights of indigenous peoples”; and includes commitments on specific actions to implement the UN Declaration.

The UN Declaration text and related documents are available at www.converge.org.nz/pma/decrips.htm

55 What does Treaty-based constitutional change mean?

Many NGOs have changed the way they make decisions so that Māori have their own place within the organisation and a real say in how the organisation is run. They have moved to a power-sharing way or partnership way of operating. Typically, this means that tangata Tiriti and tangata whenua groups, or caucuses, within one organisation may have one vote each, regardless of the numbers in each group. Each caucus looks after its own business and together they both negotiate which issues need to be decided together - the common ground - and seek consensus for any changes. There are now many examples of groups benefiting from changing their constitutions, working in tandem towards common goals. Another term for this is “co-governance” or “co-management”, where one cultural group can’t make decisions on shared resources without the other group’s agreement.

For more than a century, Māori leaders have expressed their desire and willingness to negotiate for such changes to be made in the way the country as a whole is governed. One such example was the national hui of iwi representatives at the

Through the Waikato River Authority, the river is co-governed and co-managed by Waikato-Tainui and the government

Hīrangī Marae in Tūrangi in 1996, which called for constitutional change to reflect the promise of the Treaty. Several models of how this could be achieved have been developed. One idea involves the creation of a Treaty-based or Māori upper house which would audit legislation to ensure there were no further breaches of the Treaty. New Zealand is one of very few countries in the world that does not have two levels of government approval before laws are enacted. Another idea is a Māori assembly in tandem with the current parliament, both working toward consensus decisions on common issues. There are overseas examples of countries successfully protecting the rights of a particular culture within another majority culture, for example in Switzerland, the Netherlands and Belgium.

There are many Tāiwi who support Treaty-based constitutional change at the national and local level, but successive governments have refused to even consider the possibility. In 2005 a parliamentary Select Committee researched some options, but their recommendations appear to have been shelved. The Māori Party, and others, have called for an independent Treaty Commissioner to adjudicate between the Treaty parties and stimulate public debate on constitutional change. In 2012, as a result of an agreement with the Māori Party, the Government established a Constitutional Advisory Panel, which sought public input on New Zealand’s constitution. In its report in December 2013, the Panel recommended that the Government:

- ➔ Continue to affirm the importance of the Treaty as a foundational document
- ➔ Ensure a Treaty education strategy be developed that includes the current role and status of the Treaty and the Treaty settlement process so people be informed about the rights and obligations under the Treaty

→ Support the continued development of the role and status of the Treaty under the current arrangements as has occurred over the past decades

→ Set up a process to develop a range of options for the future role of Treaty, including options within existing constitutional arrangements and arrangements in which the Treaty is the foundation

→ Invite and support the people of Aotearoa New Zealand to continue the conversation about the place of the Treaty in our constitution.

56 Are there any examples of Treaty-based co-governance?

A new era of resource management power sharing schemes between iwi and the Crown has developed over the past few years. All of these arrangements have built on prior policy and legal developments and are allowing iwi to negotiate for a more Treaty-based future.

Emerging from the series of settlements that dealt with the claims of various iwi to the Waikato River over the late 2000s, the Waikato River Authority is a body that is engaged in co-governance and co-management of the Waikato River. The main settlement that established this arrangement was the Waikato-Tainui Raupatu Claims (Waikato River) Act 2010.

The authority is engaged in such activities as establishing vision and strategy for the future of the river, helping re-establish cultural links to the river, and river clean-up. This is facilitated through various management plans, exemptions for customary activities, and regulations and bylaws. It is more standard for a resource management power sharing arrangement, but covers a vast area and allows iwi more authority than past arrangements.

Health Promotion Forum consultation meeting in 2000 on its Treaty Understanding of Hauora in Aotearoa-New Zealand (TUHANZ) document, which applied te Tiriti o Waitangi to health promotion practice.

Photo: Michelle Moir.



Ngāi Tūhoe settled with the Crown in 2013, after many years of negotiations. When the Crown pulled the transfer of ownership of Te Urewera back to the tribe from the negotiation table, the negotiation team developed a unique compromise. Now, Te Urewera is not owned by the Crown, nor is it owned by Tūhoe. Te Urewera is no longer a national park; instead it is a unique legal identity that owns itself.

New Zealand is the first country in the world to give 'legal personality' to a natural area. 'Legal personality' has been previously ascribed to all sorts of non-human entities, including corporations, ships and nation states. In order to provide a 'voice' for Te Urewera, a governance board has been set up that will act as a guardian for the area. The board will begin with 50/50 Crown/Tūhoe membership, and this will eventually change to a Tūhoe majority membership.

This 'legal personality' compromise, in conjunction with unique provisions of the Ngāi Tūhoe settlement that officially return the tribe's 'mana motuhake', will give the mana whenua of Te Urewera significant authority over the area. Tūhoe have celebrated their settlement by establishing medical and dental services for their people, and creating a new \$15 million tribal headquarters, which has won design awards for its 'living building' concept.

A similar arrangement has also been developed for the Whanganui River. Whanganui River Iwi and the Crown have signed a deal which gives legal personality to the river, now called Te Awa Tupua. Unlike the Tūhoe arrangement, there are two layers of governance to this arrangement. The first is as guardian, a role that will be filled by one representative of the Crown and another from the river iwi, who will act as the voice of the river. This is similar to more traditional bi-lateral co-governance arrangements that have existed previously.

The second layer of governance is a multi-lateral co-governance board that is composed of 17 members. Each of these members will represent various interest groups, including Federated Farmers and Genesis Energy. This reflects the nature of the river and the many diverse stakeholders that have cultural and economic interests in the Whanganui. While this is a form of resource management power sharing arrangement that gives slightly less authority to iwi, it is still a very promising arrangement for future development of the river. It also reflects the tikanga principle that the river is alive.

These three arrangements are promising for the future, as they show that this area is continually changing and the government is allowing for more and more progress in advancing a more Treaty-based future. However, while the government retains control of Parliament, which can and does make unilateral decisions without negotiating or even consulting with hapū and iwi, as well as control of revenue and spending, these positive arrangements remain vulnerable to changes in policy. Real power sharing at those levels is needed to ensure the promise and guarantees of the Treaty are fully realised.

57 What have Tauwiwi done to change the situation?

The Government is advancing a more Treaty-based future, but these positive arrangements remain vulnerable to policy changes

Throughout our history, from the earliest Pākehā (known as “Pākehā Māori”) who fought against the British constabulary, ordinary Tauwiwi have supported Māori rights and become whistle-blowers in the face of government breaches of the Treaty.

In modern times Tauwiwi have provided education on the issues, attempted Treaty-based ways of living and working, and peacefully protested injustice.

These actions include participating in marches, creating petitions, submissions on legislation, artworks, supporting occupations, writing letters, books, songs, poems and newsletters, working for change in political parties and NGOs, changing constitutions, fundraising for resources and publications, providing information on Waitangi Day, creating street theatre, banners and posters, educating and challenging ourselves and each other, researching statistics, working for Māori organisations, participating in Treaty workers’ gatherings, educating new migrants and refugees, holding public meetings, debates, historic tours and other local events to commemorate the signing of the Treaty in their area, and supporting Māori initiatives.

Susan da Silva and Kathryn McKenzie of Network Waitangi Whangarei being interviewed at an information stall at Waitangi, 2009.



Some recent examples of Tauīwi initiatives are:

→ A large Tauīwi Treaty conference was organised in Tamaki Makaurau (Auckland) in 2000, and the papers presented were published (see Further Reading).

→ *Time for change: A framework for community discussion on values-based and Treaty-based constitutional arrangements*, a resource providing a framework for Pākehā / Tauīwi organisations to use for discussion within their organisations, as well as for wider community discussions, on moving towards Treaty-based and values-based constitutional arrangements was published by Peace Movement Aotearoa (in association with the Quaker Treaty Relationships Group and the Rowan Partnership) in 2012.

→ The New Zealand Federation of Multicultural Councils, with support from Network Waitangi Otautahi, developed a new resource *A Treaty-based Multicultural Society* which describes its understanding and practice of the Treaty in 2013.

→ A series of talks and essays by Pakeha from 2006 to 2015 called *The State of the Pakeha Nation*, organised by Network Waitangi Whangarei with Te Taumata Kaumatua o Ngapuhi Nui Tonu. A collection of 21 of these commentaries are to be published in 2015.

→ Massey University's Kupu Taea: Media and te Tiriti Project has published several reports on mainstream news media reporting of Maori and te Tiriti (see www.trc.org.nz/research-about-media-and-te-tiriti).

→ Peace Movement Aotearoa (working in parallel with the Aotearoa Indigenous Rights Trust) regularly provides information to UN human rights bodies on current constitutional, legislative and policy breaches of the Treaty by the government of the day.

The educational processes that have evolved over 40 years in Treaty workshops have attracted international interest, with educators in Canada and Australia adopting elements for their own decolonisation work.

Unique provisions of the Ngāi Tūhoe settlement that officially return the tribe's mana motuhake, will give the mana whenua of Te Urewera significant authority over the area

What can I do?

1 Change your organisations

Which culture is the basis of operation in the organisations you are part of?

Who makes the decisions, and for whom?

Who benefits?

Who holds the power?

Who controls the resources?

To change things it helps to analyse and answer these questions. Most New Zealand organisations are monocultural and therefore work to the advantage of Pākehā.

2 Get the facts right

There is a lot of misinformation about our history and a lot of energy is put in by some to keep it that way. Challenge the information that you read and hear. There are many books available now which give a truer perspective on past events. See Appendix 5 for a reading list.

3 Talk with other people, deal with the backlash

Treaty workers find that most people are still uninformed about the Treaty of Waitangi. Negative opinions and assumptions are formed in an environment of ignorance and misinformation.

Talking about the Treaty within a positive framework is part of the steps to change. See the list of contacts on page 6 for people who can provide assistance or resources to get you started.

4 Support Treaty action in schools

Many schools now have the Treaty in their charter. If you are a parent of school age children, become involved in supporting this at their school. Teachers need encouragement and support to make the Treaty and cultural awareness come alive

in their classrooms. It is unfortunately still the case that the Treaty and the history of this country continue to be routinely misrepresented in our schools.

5 Study your local history

Do you know if there are any claims to the Waitangi Tribunal in your area? What are they about? Can you assist in any way? What is the social history of your area, not just in the last 200 years, but the last 2,000?

6 Identify your culture

Until recently many Pākehā could not see that we have a culture because in our monocultural past it had never been under threat or under question. It was seen as “being normal”, and other racial or cultural groups were “different”. Pākehā don’t have to fight to use the English language. Because Pākehā culture is safe and strong, it is easy to take it for granted. Can a fish describe the water it swims in? In fact, Pākehā have a specific culture which has a wide range of ways of expressing itself, such as the way friends are made, how children are raised, what is eaten, how thoughts and beliefs are expressed.

Learning to understand and value one’s own cultural base is an important step towards being able to respect and value other people’s. Find out your family’s genealogy, why and when your ancestors came to New Zealand, what their hopes and fears may have been and what their values were. What values and beliefs have you rejected, and which ones do you want to pass on to the next generation?

7 Challenge activities which are ignoring the Treaty

Challenge parliamentary legislation and local body/city council planning which ignores Treaty rights and guarantees.

Network with others to ensure broad based action and submission writing against Treaty violations.

8 Challenge racism

Decide how strong you feel in yourself and about the situation before you challenge a racist statement – you don't have to respond to every situation. Sometimes all you need to do in a discussion is draw attention to the racist comment. You don't need to make a big deal about it. You can also get up and walk out – you can decide to challenge the person at a later time. Don't avoid using the term racism – but use it about situations or institutions, not people.

9 Make "I" statements

You then retain your hold on the argument. People can't take your feelings away from you.

10 Support steps to justice

Find out if your MP and local body councillor acknowledge the primacy of the Māori language text, and what they will do locally to implement the UN Declaration on the Rights of Indigenous Peoples.

Would they support an independent Treaty Commissioner to act as intermediary between the Treaty parties, and to lead public debate on constitutional change? Convince them!



The Awaroa Support Group was established in 1987 to support Nganeko Minhinnick and Ngati Te Ata over the mining of ironsands at Maoro on the north head of the Waikato.



A collection of t-shirts produced for tauwi Treaty campaigns, photographed at a national gathering of Treaty workers in Hamilton in 2006.



1 He Wakaputanga o te Rangatiratanga o Nu Tireni/ The Declaration of Independence of New Zealand, 28 October 1835

- Is an international declaration of sovereignty
- Was made by He Wakaminenga (Confederation of Chiefs)
- Was signed on 28 October, 1835
- Was recognised by Great Britain and other international states
- Was the forerunner of Te Tiriti o Waitangi
- Has an internationally-recognised flag to indicate tribal rights to trade as independent nations
- Has been ignored by NZ governments and the education system.

1 Ko matou, ko nga Tino Rangatira o nga iwi o Nu Tireni i raro mai o Hauraki kua oti nei te huihui i Waitangi i Tokerau i te ra 28 o Oketopa 1835, ka wakaputa i te Rangatiratanga o to matou wenua, a, ka meatia ka wakaputaia e matou he Wenua Rangatira, kia huaina ko te Wakaminenga o nga Hapu o Nu Tireni.

2 Ko te Kingitanga ko te mana i te wenua o te wakaminenga o Nu Tireni ka meatia nei kei nga Tino Rangatira anake i to matou huihuinga. A, ka mea hoki e kore e tukua e matou te wakarite ture ki te tahi hunga ke atu, me te tahi Kawanatanga hoki kia meatia i te wenua o te wakaminenga o Nu Tireni. Ko nga tangata anake e meatia nei e matou e wakarite ana ki te ritenga o o matou ture e meatia nei e matou i to matou huihuinga.

3 Ko matou ko nga Tino Rangatira ka mea nei kia huihui ki te runanga ki Waitangi a te ngahuru i tenei tau i tenei tau ki te wakarite ture, kia tika ai te wakawakanga, kia mau ki te rongu, kia mutu te he, kia tika te hokohoko. A, ka mea hoki ki nga tauiwi o runga, kia wakaretea te wawai, kia mahara ai ki te wakaranga o to matou wenua, a, kia uru ratou ki te wakaminenga o Nu Tireni.

4 Ka mea matou kia tuhituhia he pukapuka ki te ritenga o tenei o to matou wakaputanga nei ki te Kingi o Ingarani hei kawae atu i to matou aroha nana hoki i wakaae ki te Kara mo matou. A, no te mea ka atawai matou, ka tiaki i nga pakeha e noho nei i uta, e rere mai ana ki te hokohoko, koia ka mea ai matou ki te Kingi kia waiho hei matua ki a matou i to matou Tamarikitanga kei wakakahoretia to matou Rangatiratanga.

Kua wakaetia katoatia e matou i tenei ra, i te 28 Oketopa 1835, ki te aroaro o te Reireneti o te Kingi o Ingarani.

Text supplied by Te Whakakotahitanga o Ngā Iwi o Aotearoa/the Māori Congress in 1994 to the Federation of WEAs in alliance with Network Waitangi Ōtāwhiri.

1 We the hereditary chiefs and heads of the tribes of the Northern parts of New Zealand, being assembled at Waitangi in the Bay of Islands, on this 28th day of October, 1835, declare the independence of our country which is hereby constituted and declared to be an Independent State under the designation of the United Tribes of New Zealand.

2 All sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity, nor any function of government to be exercised within the said territories, unless by persons appointed by them and acting under the authority of laws regularly enacted by them in Congress assembled.

3 The hereditary chiefs and heads of tribes agree to meet in Congress at Waitangi in the autumn of each year for the purpose of framing laws for the dispensation of justice, the preservation of peace and good order, and the regulation of trade. They also cordially invite the southern tribes to lay aside their private animosities and to consult the safety and welfare of our common country by joining the Confederation of the United Tribes.

4 They also agree to send a copy of this Declaration to His Majesty the King of England to thank him for his acknowledgement of their flag. In return for the friendship and protection that they have shown and are prepared to show to such of his subjects as have settled in their country or resorted to its shores for the purposes of trade, they entreat that he will continue to be the parent of their infant State, to protect it from all attempts upon its independence.

Agreed to in its entirety by us on this 28th day of October, 1835, in the presence of His Britannic Majesty's Resident.

2 Te Tiriti o Waitangi/ The Treaty of Waitangi

He Kupu Whakataki,

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki ngā Rangatira me ngā Hapū o Nu Tīrani i tana hiahia hoki kia tohungia ki a rātou tō rātou rangatiratanga, me ō rātou wenua, a kia mau tonu hoki te Rongo ki a rātou me te ātanoho hoki kua wakaaro ia he mea tika kia tukua mai tētahi Rangatira hei kaiwakarite ki ngā Tangata Māori o Nu Tīrani - kia wakaāetia e ngā Rangatira Māori te Kawanatanga o te Kuini ki ngā wāhi katoa o te wenua nei me ngā Motu - na te mea hoki he tokomaha kē ngā tāngata o tōna Iwi kua noho ki tēnei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Māori ki te Pākehā e noho ture kore ana.

Na, kua pai te Kuini kia tukua ahau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo ngā wāhi katoa o Nu Tīrani e tukua āianei, a mua atu ki te Kuini e mea atu ana ia ki ngā Rangatira o te wakaminenga o ngā hapū o Nu Tīrani me ērā Rangatira atu ēnei ture ka kōrerotia nei.

Ko Te Tuatahi,

Ko ngā Rangatira o te Wakaminenga me ngā Rangatira katoa hoki, kihai i uru ki taua Wakaminenga, ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu - te Kawanatanga katoa o ō rātou wenua.

Ko Te Tuarua,

Ko te Kuini o Ingarani ka wakarite ka wakaāe ki ngā Rangatira, ki ngā hapū, ki ngā tāngata katoa o Nu Tīrani, te tino rangatiratanga o ō rātou wenua ō rātou kāinga me ō rātou taonga katoa. Otīia ko ngā rangatira o te Wakaminenga me ngā Rangatira katoa atu, ka tuku ki te Kuini te hokonga o ērā wāhi wenua e pai ai te tangata nōna te Wenua, ki te ritenga o te utu e wakaritea ai e rātou ko te kaihoko e meatia nei e te Kuini hei kaihoko mōna.

Ko Te Tuatoru,

Na, ko mātou ko ngā Rangatira o te Wakaminenga o ngā hapū o Nu Tīrani ka huihui nei ki Waitangi ko mātou hoki ko ngā Rangatira o Nu Tīrani ka kite nei i te ritenga o ēnei kupu ka tangohia ka wakaāetia katoatia e mātou koia ka tohungia ai ō mātou ingoa ō mātou tohu.

Hei wakaritenga mai hoki tēnei mo te wakaāetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani ngā tāngata Māori katoa o Nu Tīrani ka tukua ki a rātou ngā tikanga katoa rite tahi ki āna mea ki ngā tāngata o Ingarani.

Ka meatia tēnei ki Waitangi i te ono o ngā rā o Pepueri i te tau kotahi mano, e waru rau, e wā tekau o tō tātou Ariki.

E mea ana te Kawana ko ngā whakapono katoa o Ingarai, o ngā Weteriana, o Roma, me te ritenga Māori hoki e tiakina ngātahitia e ia.

2A

Te Tiriti translated into English

Signed at Waitangi, February 1840, and afterwards by over 500 Rangatira.

Preamble

Victoria, the Queen of England, in her gracious thoughtfulness to the Rangatira and Hapū of New Zealand, and in her desire to preserve to them their authority and their land, so that peace and quietness may be kept with them, has thought it right to send a chief (an officer) as one who will negotiate with the people of New Zealand. Let the Rangatira accept the Governorship (Kawanatanga) of the Queen over all parts of this country and the islands. This is because a great number of the people of her tribe have settled in this country, and more will come.

Now, the Queen desires to arrange the Governorship lest evils should come to the people and to the Pākehā who are living here outside the law.

Now, the Queen has been pleased to send me, William Hobson, a Captain in the Royal Navy to be Governor for all places of New Zealand which are now granted or which shall be granted to the Queen. And she says to the Rangatira of the Confederation of the Hapū of New Zealand and the other Rangatira, these are the laws spoken of.

This is the first

The Rangatira of the Confederation, and all those Rangatira who have not joined the Confederation grant to the Queen of England forever all the Governorship (Kawanatanga – the duty to control non-Māori living in their own areas).

This is the second

The Queen of England acknowledges and agrees to the absolute authority (Tino Rangatiratanga) of the Rangatira, Hapū and all the people of New Zealand over their lands, their villages and everything that is held precious. But the Rangatira give to the Queen the right to purchase those pieces of land that the owner is willing to sell, subject to the arranging of payment, which will be agreed to by them and the purchaser who will be appointed by the Queen for the purpose of buying for her.

This is the third

This is the arrangement for the consent to the Governorship of the Queen. The Queen will protect all the people of New Zealand, and give them all the same rights as those of her subjects, the people of England.

There is a fourth

The Governor says that the several faiths of England, of the Wesleyans, of Rome, and also custom and religion shall alike be protected by him.

(This was agreed before any of the Rangatira had signed the Treaty. It came about because the Catholic Bishop Pompallier asked Hobson that there be a guarantee of freedom of religion. The Anglican Missionary William Colenso subsequently worded the article and Hobson and the rangatira agreed to it.)

Now we, the Rangatira of the Confederation of the Hapū of New Zealand, here assembled at Waitangi, and we, the Rangatira of New Zealand, see the meaning of these words and accept them, and we agree to all of them. Here we put our names and our marks.

This was done at Waitangi on the 6th day of February in the year of our Lord 1840.

Text from the Network Waitangi Ōtautahi Treaty poster, October 2011.

2B Te Tiriti meaning in plain English

Introduction

The Queen wants people to keep their lands and independence and she wants all people to live together in peace. This agreement is to make a government for her people who are now in New Zealand and those who will come in the future.

First

The chiefs give to the Queen of England the right to have a governor in New Zealand.

Second

The Queen agrees that Māori keep their independence and keep control over their lands and everything that is important to them. They give to the Queen the right to buy land if they want to sell it.

Third

The Queen gives the Māori people the same rights as British people.

Fourth

The Governor promises to protect Māori customs and all the different religions in New Zealand.

3 An English version written in March 1840

Preamble

Her Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland, regarding with her Royal Favour the Native Chiefs and Tribes of New Zealand, and anxious to protect their just Rights and Property, and to secure to them the enjoyment of Peace and Good Order, has deemed it necessary, in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand, and the rapid Extension of emigration both from Europe and Australia which is still in progress, to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of these islands. Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson, a Captain in Her Majesty's Royal Navy, Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty, to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the first

The chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation, cede to Her Majesty the Queen of England, absolutely and without reservation, all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Text from Tangata Tiriti - Treaty People: An interactive workbook on the Treaty of Waitangi, 2006, Treaty Education for Migrants Group, AWEA, p43.

3 An English version written in 1840 (continued)

Article the second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof, the full exclusive and undisturbed possession of their Lands and Estates, Forest, Fisheries and other properties which they may

collectively or individually possess, so long as it is their wish and desire to maintain the same in their possession; but the Chiefs of the United Tribes and the Individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate, at such prices

as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the third

In consideration thereof, Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Now therefore, We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in congress at Victoria, in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which, we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi, this Sixth day of February in the year of Our Lord, one thousand eight hundred and forty.

[There was no record on the English version of the agreement on the protection of religious freedom and customary law, which is sometimes referred to as the Fourth Article (see Appendix 2A).]

4 Historical events and laws which breach te Tiriti o Waitangi

1840 *About 200,000 Māori collectively owned 66,400,000 acres of land. Some 2,000 permanent British and other settlers lived in New Zealand.*

Land Claims Ordinance 1841

All “unappropriated” or “waste land”, other than that required for the “rightful and necessary occupation of the aboriginal inhabitants” was deemed Crown land.

Native Trust Ordinance 1844

Made provision for Māori education as part of the “civilisation” of Māori “best attained by assimilating as speedily as possible the habits and usages of the Native to those of the European population”.

Proclamation of 1844

Governor FitzRoy abandoned the English version of the Treaty’s exclusive right of pre-emption, i.e. the first right of the Governor to buy land, due to a lack of funds to buy enough land to satisfy settler demand. The protective aspect of pre-emption was thus abandoned. The proclamation included protection of wāhi tapu, and provision for a 10% endowment for Māori from every “sale”, but Grey did not implement these aspects.

1844 *Governor Grey abolished the Protectorate Department, which had the responsibility for protecting Māori rights, and gave the NZ Company the exclusive right of pre-emption in some areas for a short period.*

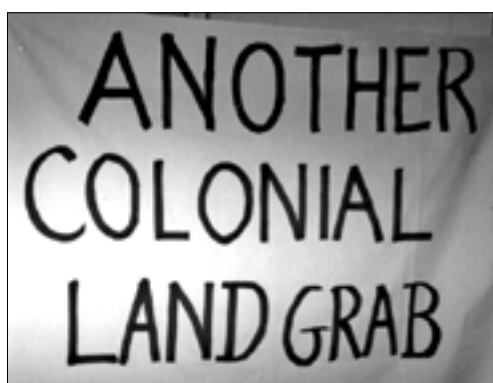
1845 *William Spain completed his work as Commissioner of Land Claims, investigating land purchases made before 1840. However, many of his recommendations were never acted upon. For example, the site of Wellington was proved an invalid purchase, but the area was not returned to Māori, nor compensation paid.*

Native Land Purchase Ordinance 1846

Restored the Crown’s sole right of pre-emption. Penalties were imposed on any other person buying or leasing land. Māori again had to sell land to the Crown instead of opting for long term leases where they retained title.

New Zealand Government Act 1846

Led to Royal Instructions to Governor Grey to chart all lands in the colony. Land not claimed or registered would automatically be vested in the Crown. No Māori claim was to be admitted unless the claimants actually occupied the land, but this was in fact not implemented.



Cloth banner displayed in the public gallery of parliament during the final reading of the foreshore and seabed legislation, while the Attorney General was asked “Why don’t you honour the Treaty?” The banner too was confiscated. Photo: Peace Movement Aotearoa.

Historical events and laws which breach te Tiriti o Waitangi

1852 *Māori land 34 million acres. Of the 66 million acres in the country, Grey “bought” 32 million acres for 50,000 pounds, including most of the South Island, between 1845 and 1852.*

New Zealand Constitution Act 1852

Established a two-tier system of government with a Legislative Council appointed by the Crown and a House of Representatives of 37 members. It divided the country into six provinces, and created settler self-government, disregarding the Treaty. Provincial councils were responsible for schools, hospitals and charitable aid. It gave the right to vote to adult males who owned property in individual title. Multiply-owned land did not qualify as property, thereby denying almost all Māori men the vote.

The first government was largely made up of land grabbers and speculators eager for land profits. Section 71 made provision for Native Districts to be declared where “Māori laws, customs and usages” could be maintained, but it was never used.

1860 *Māori land 21.4 million acres. Rapid decline in Māori population due to disease and social disruption caused by land alienation, and surge in British immigration, equalises population numbers around 70,000.*

Native Lands Act 1862

A Land Court was set up to individualise Māori collective ownership. The act was sponsored by Russell, a land speculator. It also abolished the pre-emptive purchase right of the Crown, again. The government was funding itself by using its monopoly on land purchases to buy land at far below market rates and then selling the land to settlers at its true value.

1863 *Governor Grey orders the invasion of the Waikato region controlled by the Kingianga movement, starting the second land wars of the 1860s.*

Suppression of Rebellion Act 1863

Based on the Irish Act of 1799, which put down the Irish rebellion against British rule. Suspended the right to habeas corpus (trial before sentencing) for those found to be in rebellion against the Crown. Military courts were established, and land confiscation and death were included as penalties for rebellion.

New Zealand Land Settlements Act 1863

This empowered confiscation of Māori land in any district where a “considerable number” of Māori were believed to be in rebellion. The Act confiscated three million acres.

Native Reserves Act 1864

All remaining native reserves were placed under Pākehā control, and could be leased out at minimal

rentals.

Native Land Act 1865

Its objectives were “to encourage the extinction of (native) proprietary customs”. The right was given to any person to apply to the Land Court for determination of title to land. Courts could only decide on the basis of evidence before it. If a Māori owner did not take part in this long and costly process, the claimant would automatically get title. Māori owners who did take part would often incur debt which resulted in forced sales. Survey costs were charged to the Māori owners. Once a title had been issued, the land could be sold or leased to anyone. The maximum number of owners’ names was reduced to 10, for titles of less than 5,000 acres.

1865 - 1875 *Some 10 million acres were alienated through court decisions over this period.*

Oyster Fisheries Act 1866

Prevented Māori from fishing commercially. Māori commercial fishing enterprises went broke and had to sell land to meet debts.

Native Schools Act 1867

Provided for the setting up of schools in Māori villages if the hapū provided the land, half the cost of the buildings and 25 per cent of the teachers’ salary. English was the only language of instruction, and later (1871) this English-only policy was rigorously enforced through a government instruction.

Representation Act 1867

Set up four Māori seats to remove the threat of Māori out numbering Pākehā in some electorates where individualised titles had given Māori the vote.

East Coast Land Titles Investigation Act (and the East Coast Act, 1868)

Authorised the issue of proclamations of confiscation. This was used to force unwilling sellers in the Urewera to accept offers for their land under threat of confiscation.

1869 *The government requested a new Māori version of the English text. “Kawanatanga” in Article 1 was replaced by “Ngā mana Katoa o te Rangatiratanga”.*

1877 *The Treaty is declared “a simple nullity” by Chief Justice Prendergast in the *Wi Parata v Bishop of Wellington* case. He says there is no legal Māori title to land, and that the Treaty of Waitangi could have no bearing on the case because treaties with “barbarians” lack legal validity.*

Fish Protection Act 1877

A rare early example of the Treaty being enforced in legislation. “Nothing in this Act contained shall be deemed to repeal, alter, or affect any of the provisions of the Treaty of Waitangi, or to take away, annul, or abridge any of the rights of the

Historical events and laws which breach te Tiriti o Waitangi

Marine Parade,
Napier, during
Hikoi
Takutaimoana
(foreshore and
seabed hikoi) to
Wellington,
May 2004.



Aboriginal natives to any fisheries secured to them thereunder.”

Native Land Amendment Act 1879

Laws on trusteeship and admissible evidence were changed to allow small farmers easier access to Māori land.

West Coast Peace Preservation Act 1879

One year's hard labour for Māori who refused to leave their land.

Māori Prisoners Trial Acts 1879

A series of acts, aimed at crushing the non-violent resistance movement in Taranaki, postponed and finally dispensed with trials for those accused of hindering surveying of land, and allowed detention without trial.

Non-violent resistance to oppression was central to the vision of Parihaka leaders Te Whiti o Rongomai and Tabu Kakahi, and came 40 years before Gandhi developed his philosophy.

West Coast Settlement Act 1881

Any Māori in Taranaki could be arrested without a warrant and jailed for two years with hard labour if they built anything or in any way hindered the surveying of confiscated land.

The government sent in 2,500 troops to arrest Te Whiti, Tobu and 200 others, who were kept in prison for an indefinite period without trial. Several laws were passed over the next two years to validate the unlawful arrests and unlawful detentions which had forced the people of Parihaka off their land.

Native Reserves Act 1881

The control of Māori reserves was taken over by the Public Trustee.

Crown and Native Lands Rating Act 1882

Māori land within five miles of a highway was made liable to rating. The Crown passed the rates on to the local body, and made the unpaid rates debt a first charge on the land if sold.

Native Land Administration Act 1886

Provided for Māori land to be held by trustees with the right to sell - in contravention of rights of communal

ownership. The government was able to buy land to sell or lease to small farmers at minimal rents.

Te Whiti was re-arrested (under the West Coast Settlement Act of 1881) without warrant, charge or trial, and imprisoned.

Native Land Act 1887

Allowed for further sales, including land formerly designated as reserves. Bastion Point, Auckland, was appropriated for defence purposes.

1891 *Māori land 11,079,486 acres.*

1892 *The Native Department was abolished.*

Native Land Purchase and Acquisition Act 1893

This reintroduced the Crown right of pre-emption. The Crown was given new powers to declare any Māori land “suitable for settlement”. Examples include the Crown paying five shillings an acre for such land, when the market rate was £30.

Advances to Settlers Act 1894

Low interest loans were available only to Pākehā settlers to buy land from the government and develop it. Māori owners were excluded from access to government development finance until the 1930s.

Validation of Land Sales Act 1894

Any Pākehā misdealing concerning Māori land was legitimised.

Māori Land Settlement Act 1894

Māori land was put under the control of Land Councils.

1896 *Lowest ever recorded Māori population, 42,000. Pākehā population 700,000.*

1897-92 *Māori in Taranaki were arrested for ploughing land in protest against Public Trustee control of their lands.*

Historical events and laws which breach te Tiriti o Waitangi

The Old Age Pensions Act 1898

Automatically disqualified those with shares in tribal land; few Māori qualify for pensions.

Land Settlement Act 1904

Land “not required or suitable for occupation by the Māori owners” was to be compulsorily placed under the control of Land Councils.

Suppression of Tōhunga Act 1907

The practices of tōhunga, experts in Māori medicine, education and spirituality, were seen as a threat to assimilation, especially to British medical practices, and outlawed. Thought to be a response to the success of the prophet Rua Kenana in convincing his people to remove their children from the debilitating influence of European schools, but also aimed at reducing the negative effect of some untrained practitioners.

Public Works Act 1908

Authorised the taking of Māori land for public works. The Māori Trustee was usually given some compensation.

Native Health Act 1909

Māori could no longer use the whāngai system for adopting children within extended families. A regulation prevented Māori women from breastfeeding (a misguided attempt to prevent the spread of disease).

1911 *Māori land 7,137,205 acres.*

Land Laws Amendment Act 1912

Conditions under which Crown and Māori leases could be converted into freehold were relaxed. This fulfilled Massey’s election promise “I want to see the settlers of this country not tenants of the Crown or private individuals, not afraid of a government agent or a private landlord, but sturdy free holders farming their own land.”

1918 *Māori servicemen who returned after World War I were not eligible for the benefits of the Rehabilitation Scheme.*

1920 *Māori land 4,787,686 acres.*

1923 *Wiremu Tabupotiki Ratana snubbed when he took Treaty grievances to King George (as others such as Tamihana previously had been) on advice of the settler government.*

Public Works Act 1928

The government was authorised to take land for forestry, airports, roads, land development and subdivision, etc. Failure to advise Māori owners of pending confiscation was not illegal.

1932 *Māori MPs present a petition to parliament with 30,000 signatures calling for ratification of the Treaty. Pākehā MPs leave the chamber, no action taken.*

1932 *Māori received half the unemployment benefit. A single Māori received 7s 6d, Pākehā 15s. This was amended in 1936.*

1939 *Māori land 4,028,903 acres. Māori population doubles over 50 years to 82,000, as does Pākehā, to 1.5 million.*

Māori Social and Economic Advancement Act 1945

Some attempts were made under this Labour legislation to return some Māori land after the expiry of leases over them.

Māori Affairs Act 1953

Māori land deemed “uneconomic” could be compulsorily purchased at state valuation. The Māori Trustee (a Pākehā) was given power to compulsorily sell Māori land worth less than £50 without the owners’ consent. If the owners couldn’t or wouldn’t develop land to “European standards”, the trustee could insist that the land be used or developed by someone else. At the end of the lease period if the original owners wanted the land back they had to pay compensation for the improvements. If they couldn’t raise the capital for the improvements, they lost the land. Tens of thousands of acres were leased to forestry companies who have continued to exploit the land for maximum profit.

Town and Country Planning Act 1953

Rural Māori are prevented from building on their land, forcing many to move - 60 per cent of Māori shifted to towns and cities between 1950 and 1980.

1960 *The Hunn Report. Jack Hunn, a top civil servant, recommended stepping up the assimilation process to improve Māori educational achievement and reduce other social and health disparities, to “close the gaps”.*

1961 *Māori population 167,000.*

1965 *The systematic process of stripping Māori of their land achieved its ends. In this year, only an estimated 3,680,585 acres remained in Māori hands. Of that, 271,226 acres were classified as “probably of no use”; 915,970 acres were unoccupied and unsuitable for farming or forestry; and 1,281,240 were on long term leases, most of which were unlikely to return to Māori control. That left 695,063 acres still in actual Māori occupation.*

Māori Affairs Amendment Act 1967

Membership of Incorporation Trust Boards was opened to people other than owners, including the



October 2007. Placard and photo: Peace Movement Aotearoa.

Historical events and laws which breach te Tiriti o Waitangi

No
raupatu
in our
time

Badge from the
Pakeha
'No raupatu
(confiscations)
in our time'
campaign,
co-ordinated by
Peace Movement
Aotearoa.

Māori Trustee. The trustee could seek sales from individual owners to the Crown. Once sufficient numbers were obtained, the way was open to freehold the land.

Rating Act 1967

This enabled local bodies to lease or sell Māori land where rates were outstanding, even though the land was not producing any income for its owners.

1975 Māori land ownership at its lowest – 3 million acres. Māori Land March led by Dame Whina Cooper from Cape Reinga to parliament in protest, using “Not one more acre (of Māori land)” as its catchery.

Treaty of Waitangi Act 1975

Established the Waitangi Tribunal, selected by the Crown, to inquire into Crown breaches of the Treaty on or after 1975. The Tribunal only has the power to recommend compensation or redress to claimants, which the government does not have to accept.

1985 Decline in the use of the Māori language leads to a claim to the Waitangi Tribunal, which rules that Treaty obligations require affirmative action to protect and sustain the language. Legal action funded by Māori over the next 20 years results in a Privy Council ruling forcing the government to commit funds to Māori language broadcasting and language immersion schooling.

Treaty of Waitangi Amendment Act 1986

Allowed claims to the Tribunal dating back to 1840.

1986 The Crown created a new property right with the introduction of a fisheries quota system, without inquiry into any pre-existing Māori fishing rights.

State Owned Enterprises Act 1986

Provided for the transfer of Crown land to state owned corporations. This was a step towards the privatisation or sell-off of Crown assets, reducing the possibility of the return of publicly-owned resources to settle Treaty claims. Also introduced the problematic concept of Treaty “principles”.

Māori suffered 80 per cent of the redundancies caused by the Act, and subsequent high unemployment levels led to a sharp decrease in health outcomes, including life expectancy, compared to Pākehā.

Māori Language Act 1987

Made Māori an official language and recognised it as a taonga under the Treaty.

1987 New Zealand Māori Council takes the government to court over the State Owned Enterprises Act. The Court of Appeal finally requires the government to consult Māori before public assets are transferred, and defines another set of “principles”.

Ports Reform Act 1988

Allowed privatisation of Harbour Boards and the right to sell assets including Crown land and foreshore, under the 1951 Companies Act, thus placing them outside the jurisdiction of the Waitangi Tribunal.

1989 Labour government announces its set of “Principles for Crown Action on the Treaty of Waitangi”, despite rejection of concept by Māori.

Māori Fisheries Act 1989

Māori legal challenges to the fisheries quota system and the Waitangi Tribunal’s Muriwhenua report forced the Crown into negotiations to give effect to Treaty fishing rights. The Act, however, reduced Māori ownership of fisheries to a cash payment and 10 per cent of the total quota. Distribution of the quota to tribes is controlled by government appointees to a Māori Fisheries Commission.

The Crown continues to sell property rights in a resource which, in the Treaty, belongs to hapū.

1990 Electoral legislation prohibits any paid or unpaid electoral advertising by any political party contesting fewer than ten seats. No exception is made for parties such as Mana Motuhake contesting only the Māori seats.

1991 National government rewrites Crown Treaty principles.

Treaty of Waitangi (Fisheries Claim) Settlement Act 1992

Extinguishes “forever” all Māori commercial fishing rights in exchange for a cash settlement of \$150 million to purchase part of Sealord Products Ltd, plus 20 per cent of new species quota. All present and future fisheries Treaty claims by Māori are cancelled, while a vital section of the Fisheries Act 1983 which states that “nothing in the act will affect Māori fishing rights” is removed.

1995 The National government imposes a “fiscal envelope” policy which sets a cap of \$1 billion for all settlements - before the evidence is heard by the Waitangi Tribunal - and unilaterally decides a process for negotiations, despite opposition by Māori. The average value of compensation to Māori consequently amounts to two per cent of losses, as successive governments continue the policy from 1999.

2001 “Closing the Gaps” (a policy to reduce gaps between Māori, Pacific people and Pākehā in income and health, part of the 2000 Budget) is renamed “Reducing Inequalities” because targeted spending is perceived as a political liability.

2001 Almost 15 per cent (one in seven) of the population identify as of Māori descent: 526,281. The median age is 22 years, and median annual income \$14,800. Fifty per cent own their own homes, 70 per cent of non-Māori do. Māori are three times more likely to be apprehended for an offence and four times more likely to be convicted than non-Māori.

Historical events and laws which breach te Tiriti o Waitangi

2003 *The government's Sustainable Water Programme of Action is established. Issues around whether or not fresh water belongs to hapū and iwi in their respective areas are not addressed.*

2003 *The Treaty Information Unit of the State Services Commission is established. The timeline produced by the unit makes reference to the Treaty as having transferred sovereignty to the Crown, despite attempts by Pākehā Treaty educators and others to have this changed to make it clear that Māori did not cede sovereignty.*

Supreme Court Act 2003

The right of appeal to the Privy Council was removed, and replaced by a New Zealand Supreme Court "to enable important legal matters, including legal matters relating to the Treaty of Waitangi, to be resolved with an understanding of New Zealand conditions, history and traditions" despite Māori opposition.

2004 *National Party leader Don Brash delivers Ōrewa speech calling for an end to "race-based" policies, and this has a marked effect on NZ politics, encouraging parties' social policies to move to the right for some years afterwards.*

2004 *Constitutional Arrangements Committee "to undertake a review of New Zealand's existing constitutional arrangements" is established, and calls for public submissions in early 2005. The Committee's report, released in August 2005, says "the demand for constitutional change to give effect to the Treaty of Waitangi has been persistent and from a variety of sources", but there has been no follow up of this by the government.*

April 2004 *A hikoī begins in Cape Reinga and marches to Parliament in protest at the Foreshore and Seabed legislation.*

The Foreshore and Seabed Act 2004

Māori customary rights and title to the foreshore and seabed were extinguished and replaced with the government's version of customary rights. The UN Committee on the Elimination of Racial Discrimination says the law breaches the International Convention on the Elimination of All Forms of Racial Discrimination, to which New Zealand is a state party.

2005 *The government withholds part of Te Wananga o Aotearoa's funding, then takes control of the university; funding for non-degree courses at Māori tertiary education institutions is reduced.*

2006 *Mission to New Zealand, the Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples on his visit in 2005 (at the invitation of the government) is released in April. The Report judges the Foreshore and Seabed Legislation to be discriminatory and recommends that Foreshore and Seabed legislation be repealed or amended. The Labour Government dismisses the report as unbalanced, and*

says it will not act on the Report's recommendations.

2006 *Principles of the Treaty of Waitangi Deletion Bill is introduced, has its first reading and is sent to Select Committee as part of the Labour/New Zealand First confidence and supply agreement. Of the 171 submissions received by the Select Committee 160 were opposed. The Bill is voted out 17 months later at its second reading.*

2006 *Treaty of Waitangi (Removal of Conflict of Interest) Amendment Bill is introduced, has its first reading and is sent to Select Committee as part of the Labour/New Zealand First confidence and supply agreement. The Bill proposes to remove the possibility of serving judges on the Māori Land Court or the High Court also serving on the Waitangi Tribunal. It is voted out 20 months later at its second reading.*

Members of the Women's Anti-Racism Action Group (WARAG). Their 1985 report - Institutional Racism in the Department of Social Welfare Tamaki Makaurau - led to major changes in the department.



Historical events and laws which breach te Tiriti o Waitangi



Hands Across the Beach, an event organised by Te Rarawa in 2004 at Ahipara to link communities during the foreshore and seabed confiscation.
Photo: Gil Hanly.

Treaty of Waitangi Amendment Act 2006

Sets arbitrary deadline of September 2008 for lodging historical claims (up to September 1992) to the Waitangi Tribunal.

2006 Funding for the Treaty Information Unit of the State Services Commission is removed.

Te Arawa Lakes Settlement Act 2006

The government returned ownership of lake beds to Te Arawa, but not the waters nor aquatic life, except in relation to the plants attached to the lake beds.

2006 Census: Departing from previous practice, Statistics NZ says Maori ethnicity and descent are different concepts. In 2006 there are 643,977 people (17.7 % of the population) usually living in Aotearoa New Zealand who are of Maori descent.

2006 The New Zealand Curriculum: Draft for consultation 2006 is released in July; the main document has no reference at all to the Treaty. The majority of responses received on the draft - from Māori and non-Māori submitters alike - commented on the absence of the Treaty, and the minimising of te reo Māori (the Māori language) as well as Maori concepts and content. After considerable protest, in 2007 a Ministry of Education official acknowledges the Ministry was wrong, and says references to the Treaty will be included in the final version.

2006 A letter is sent to all District Health Boards saying the Ministry of Health has been given clear directions that there will no longer be any direct references to the Treaty of Waitangi or its principles in new policy, actions, plans or contracts in the health and disability sector.

2007 Transit NZ refuses a request to fly the Māori sovereignty flag on the Auckland Harbour Bridge on Waitangi Day.

2007 Ministry of Social Development research shows that out of 20 indicators of wellbeing, the only four where Māori are not below the European average are participation in tertiary education, physical activity and cultural and arts activities, and regular contact with friends and family.

2007 New Zealand is one of only four countries to vote against the UN Declaration on the Rights of Indigenous Peoples when it is adopted by the UN General Assembly - with 143 member states voting in favour of it. There was no consultation with hapu or iwi about the government's position.

2007 Searches and arrests are made in "anti-terrorist" dawn raids around the country. Non-Māori as well as Māori are affected by the raids, but Māori individuals, families and communities are treated very differently - for example, only Tuhoe communities in the Ruātōki valley are locked-down and blockaded by armed and masked police.

Policing Act 2008

An amendment "in interpreting and administering this Act, effect will be given to the Treaty of Waitangi" is voted out. The Commissioner of Police's Māori Focus Forum considers "the absence of a Treaty clause to be a particular disappointment".

Climate Change Response (Emissions Trading) Amendment Act 2008

An amendment "that this Act should give effect to Treaty of Waitangi" is voted out.

2008 First Foreshore and Seabed Act agreement on the East Cape was ratified with Ngāti Porou. The deed protects customary rights of the iwi and retains public access.

2009 The Treaty of Waitangi Amendment Act set a closing date of 1 September 2008 for submitting historical claims to the Waitangi Tribunal. More than 1,800 claims were lodged between 1 August 2008 and 1 September 2008. As of the 19 June 2009, 529 claims had been registered making a total of 2,034 claims on the Tribunal's register.

Historical events and laws which breach te Tiriti o Waitangi

2010 *New Zealand announced support, albeit limited, for the UN Declaration on the Rights of Indigenous Peoples - the second of the four UN member states that voted against the UN Declaration in 2007 to do so (Australia's announcement of support was in 2009, and Canada then the US followed New Zealand in 2010). The Prime Minister described the UN Declaration as "an expression of aspiration; it will have no impact on New Zealand law and no impact on the constitutional frameworks".*

Marine and Coastal Area (Takutai Moana) Act 2011

Repealed the Foreshore and Seabed Act 2004 and replaced "Crown ownership" with a new "common marine and coastal area" (essentially a legal fiction because the Crown retains the authority to make decisions about foreshore and seabed areas, including the granting of mineral licences and resource consents). The 2011 Act retained most of the discriminatory aspects of the 2004 Act because it treats Māori property differently from that of others, it limits Māori control and authority over their foreshore and seabed areas, and it also effectively extinguishes customary title.

2012 *The Waitangi Tribunal found that the Te Kōhanga Reo Trust's claim "was well founded in that the Ministry of Education was destroying the kaupapa of the movement in imposing Crown criteria on Māori Taonga".*

2012 *The government confirmed it was preparing to remove four state-owned enterprises (SOEs) from the State-Owned Enterprises Act 1986 (SOE Act) in order to partially privatise them, and drafted new legislation that did not contain the Treaty provisions in the SOE Act.*

Mixed Ownership Model Bill 2012

The legislation to enable partial privatisation of state-owned assets was enacted; while it included the provision "Nothing in this Part shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)", it also specified that this "does not apply to persons other than the Crown".

2012 *The Waitangi Tribunal held urgent hearings for the National Freshwater and Geothermal Resources Inquiry (WAI 2358) and was pressured by the government to issue its findings within one month. The Tribunal's Stage I Interim Report said, among other things: "In our view, the recognition of the just rights of Māori in their water bodies can no longer be delayed. The Crown admitted in our hearing that it has known of these claims for many years, and has left them unresolved" and that "Although the claim was filed in February 2012, it is but the latest in a long series of Māori claims to legal recognition of their proprietary rights in water bodies, many of which date back to the nineteenth century." The Tribunal concluded that: "If the Crown proceeds with its share sale without first creating an agreed mechanism to preserve its ability to recognise Māori rights and remedy their*

breach, the Crown will be unable to carry out its Treaty duty to actively protect Māori property rights to the fullest extent reasonably practicable. Its ability to remedy well-founded claims will also be compromised. We find in chapter 3 of this report that the Crown will be in breach of Treaty principles if it so proceeds."

The Tribunal recommended: "that the Crown urgently convene a national hui, in conjunction with iwi leaders, the New Zealand Māori Council, and the parties who asserted an interest in this claim, to determine a way forward. We recognise the Crown's view that pressing ahead with the sale is urgent. But to do so without first preserving its ability to recognise Māori rights or remedy their breach will be in breach of the Treaty. As Crown counsel submitted, where there is a nexus there should be a halt. We have found that nexus to exist. In the national interest and the interests of the Crown-Māori relationship, we recommend that the sale be delayed while the Treaty partners negotiate a solution to this dilemma."

A hui subsequently organised by Māori, which was attended by more than 700 representatives of hapū and iwi, as well as Māori urban authorities and other Māori organisations, passed a resolution calling on national negotiations to take place before the sale of shares in state-owned power companies. In response, the Prime Minister said that there would be no national settlement of water rights, and subsequently commented that "Māori had more positions on water than Lady Gaga had outfits". Regardless of opposition from hapū and iwi, and ignoring the Tribunal Report, the government proceeded with its partial privatisation programme.

2013 *Te Puni Kokiri released the results of a survey into how iwi and hapū are involved in natural resource management by local authorities through processes such as the Resource Management Act 1991 - the survey found there is a tendency for local authorities to preserve their own authority and status, and to relegate Māori participation in decision making to a minor role.*

The police action on October 15 put fear into the hearts of the elderly and young people of Ruatoki and Tāneatua, because again they saw the force of the state unleashed on them as it has been within living memory. Derek Fox, 2007

Waitangi, 2003.



5 Further reading and websites

Cultural Safety/Equity

Alternatives to anti-Māori themes in news media. (2014) Kupu Taea: Media and Te Tiriti Project, <http://www.trc.org.nz/alternatives-anti-maori-themes-news-media>

Between the lines: Racism and the New Zealand media. Paul Spoonley and Walter Hirsh (1990) Heinemann Reed.

Beyond biculturalism: The politics of an indigenous minority. Dominic O'Sullivan (2007) Huia Publishing.

Considering culture. Lisa Terreni and Judi McCallum (2004)

Cultural identity: Whakamana tangata. (1992) Quest Rapuara Career Development and Transition Education Service.

Guidelines for cultural safety, the Treaty of Waitangi and health in nursing and midwifery education and practice. (2002) Nursing Council of New Zealand.

Kōrero tahi: Talking together. Joan Metge (2001) Auckland University Press.

Media and te Tiriti o Waitangi 2007. (2008) Kupu Taea Media and Te Tiriti Project, www.trc.org.nz/research-about-media-and-te-tiriti

Media and te Tiriti o Waitangi 2004. (2005) Kupu Taea Media and Te Tiriti Project, <http://www.trc.org.nz/research-about-media-and-te-tiriti>

Pou kōrero: A journalist's guide to Māori and current affairs. Carol Archie (2007) New Zealand Journalists Training Organisation.

Skin to Skin. Carol Archie (2005) Penguin.

Talking past each other: Problems of cross cultural communication. Joan

Metge and Patricia Kinloch (1989) Victoria University Press.

The Māori and the criminal justice system: A new perspective - He waipanga hou. Moana Jackson (1988) Policy and Research Division, Department of Justice.

History/Colonisation

Ask that mountain: The story of Parihaka. Dick Scott (1975) Reed.

A show of justice. A Ward (1978) Auckland University Press.

I shall not die: Titokowaru's war. James Belich (1989) Allen and Unwin.

Ka whāwhai tonu mātou: Struggle without end. Ranginui Walker (1990) Penguin.

Making peoples. J Belich (1996) Penguin.

Mihipeka: Early years. Mihipeka Edwards (1990) Penguin.

Ngāpuhi Speaks: He Wakaputanga o te Rangatiratanga o Nu Tīreni and te Tiriti o Waitangi, Independent Report, Ngāpuhi Nui Tonu Hearing, Susan Healy, Ingrid Huygens & Takawai Murphy (2012) Te Kawariki & Network Waitangi Whāngarei.

Parihaka: The art of passive resistance. Ed. Te Miringa Hohaia, Gregory O'Brien and Lara Strongman (2001) City Gallery Wellington and Victoria University Press.

Te ara ki te Tiriti: The path to the Treaty of Waitangi. Paul Moon (2002) David Ling Publishing.

Te Kooti Tango Whenua: The Native Land Court 1864-1909. David V. Williams (1999) Huia Publishing.

The quest for origins: Who first discovered and settled New Zealand and the Pacific Islands. K.R.Howe (2003) Penguin.

The shaping of history. Ed. Judith Binney (2001) Bridget Williams Books.

The story of the Treaty. Claudia Orange (1990) Allen and Unwin.

The Treaty of Waitangi. Claudia Orange (1987) Bridget Williams Books.

The Treaty of Waitangi. Ross Calman (2003) Reed.

Two worlds: First meetings between and Europeans 1642-1772. Anne Salmond (1991) Penguin.

Waitangi Tribunal Reports. www.waitangi-tribunal.govt.nz/reports

Rights of nature

The Global Alliance for the Rights of Nature – www.therightsofnature.org

The Treaty Today

A question of honour? Labour and the Treaty 1984-1989. Jane Kelsey (1990) Allen and Unwin.

Bullshit, backlash & bleeding hearts. David Slack (2004) Penguin.

He tirohanga kawa ki te Tiriti o Waitangi: A guide to the principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal. Te Puni Kōkiri (2001).

Healing our history: The challenge of the Treaty of Waitangi. Robert Consedine and Joanna Consedine (2001, 2005, 2012) Penguin.

Hikoi: Forty years of protest. Aroha Harris (2005) Huia.

Honouring the Treaty. Yensen, Hague, McCreanor (1989) Penguin.

Māori sovereignty. Donna Awatere (1984) Broadsheet.

Māori sovereignty: A Māori perspective. Hineani Melbourne (1995) Hodder Moa Beckett.

Māori sovereignty: A Pākehā perspective. Carol Archie (1995) Hodder Moa Beckett.

New Zealand Māori Council v Attorney General. (1987) *New Zealand Law Review*

No 641.

Pākehā and the Treaty: Why it's our Treaty too. Patrick Snedden (2005) Random House.

Resistance: An indigenous response to neoliberalism. Ed. Maria Bargh (2007) Huia Publishers.

Tangata tiriti - Treaty people: An interactive workbook on the Treaty of Waitangi. Treaty Education for Migrant Groups (2006) Auckland WEA.

Te mana, te kawanatanga - The politics of self-determination (1998) Oxford University Press, Auckland.

The Treaty of Waitangi in New Zealand's law and constitution. Matthew Palmer (2008). Victoria University Press.

Treaty Conference 2000: Tauwi communities affirm the Treaty of Waitangi and explore the future of Aotearoa. (2000) Treaty Conference 2000 Publications Group.

Two peoples, one land. Elsie Locke (1988) GP Books.

Vision Aotearoa: Kaupapa New Zealand. Ed. Witi Ihimaera (1994) Bridget Williams Books.

Waitangi Revisited: Perspectives on the Treaty of Waitangi. M. Belgrave, M. Kawharu, & D. Williams (2005, 2nd edition) Oxford University Press.

Websites

Network Waitangi Ōtautahi, www.nwo.org.nz

Network Waitangi Whāngarei, www.nwwhangarei.wordpress.com

Peace Movement Aotearoa, www.converge.org.nz/pma/indig.htm and www.converge.org.nz/pma/cons.htm

Treaty Resource Centre, www.trc.org.nz

Tamaki Treaty Workers Blog, www.treatyblog.org.nz

Waitangi Tribunal, www.waitangi-tribunal.govt.nz/reports

KNOW WHERE YOU STAND NZ IS MAORI LAND AND THE TREATY IS OUR CONSTITUTION

The Treaty of Waitangi

THE TREATY IS A BROKEN CONTRACT

Maori sovereignty is good for Pakeha THE TREATY ALWAYS SPEAKS

HONOUIRĀ HE TĪREĀ

TINO RANGATIRANGA HONOURABLE KAWANATANGA
*blueprint for the Treaty document
the Treaty is a living document*