

4. Human Rights and the Treaty of Waitangi

Te Mana i Waitangi



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UN Declaration on the Rights of Indigenous Peoples, Preamble (edited)

Introduction Tīmatatanga

The Treaty of Waitangi is the founding document of New Zealand. As outlined in its Preamble, the Treaty was signed between representatives of the British Crown and several rangatira (Māori chiefs) on 6 February 1840. It enabled subsequent migration to New Zealand and the establishment of government by the Crown. The Preamble sets out the purpose of the Treaty: to protect Māori rights and property, keep peace and order, and establish government. New Zealand's history since the signing of the Treaty has been marked by repeated failures to honour these founding promises.

The Treaty is also important as a 'living document', central to New Zealand's present and future, as well as its past. It establishes a relationship "akin to partnership" between the Crown and rangatira, and confers a set of rights and obligations on each Treaty partner.¹ This relationship has been described as "the promise of two peoples to take the best possible care of each other".²

Although there are areas of disagreement between the English and Māori texts of the Treaty, there are important areas where the texts do agree. Article 1 is essentially about the Crown, Article 2 is about rangatira, and Article 3 is about all citizens and residents (including Māori, Pākehā and other subsequent migrants). These Articles give each party both rights and responsibilities and invest them with the authority to act. These rights and responsibilities include:

- the rights and responsibilities of the Crown to govern (Article 1 – kāwanatanga/governance)
- the collective rights and responsibilities of Māori, as Indigenous people, to live as Māori and to protect and

develop their taonga (Article 2 – rangatiratanga/self-determination)³

- the rights and responsibilities of equality and common citizenship for all New Zealanders (Article 3 – rite tahi/equality).

Although it is not part of the text of the Treaty, Lieutenant-Governor Hobson, in response to a question from Catholic Bishop Pompallier, made the following statement prior to the signing of the Treaty: "The Governor says that the

THE TREATY AND MULTICULTURALISM

The Preamble to the Treaty enabled the first non-Māori people – immigrants 'from Europe and Australia' – to settle in New Zealand. In doing so, it set the stage for further waves of immigrants from around the world. While the Treaty established a bicultural foundation for New Zealand – which has still to be fully realised – it simultaneously established a basis for multiculturalism. Given the Crown's responsibilities under Article 1 to govern and make laws for all New Zealanders, this could include the establishment of multicultural policies.

There have been many engagements between Māori as tangata whenua and recent migrants, for example in citizenship ceremonies and marae visits. It is vitally important to the future of New Zealand that all groups in the community engage with the Treaty. The New Zealand Federation of Multicultural Councils has, for example, made a clear commitment to uphold the Treaty of Waitangi and "to raise the consciousness among ethnic communities of the needs, aspirations and status of Māori".

1 New Zealand Māori Council v Attorney-General [1987] NZLR 641

2 Bishop Manu Bennett, cited in Human Rights Commission (2003), Human Rights and the Treaty of Waitangi: te mana i Waitangi (Auckland: Human Rights Commission)

3 Article 2 of the Treaty also gave the Crown the right of pre-emption or hokonga (buying and selling). This gave the Crown the exclusive right to purchase land which tangata whenua wished to sell. In effect, this established 'property rights' in the European sense over the land.

several faiths (beliefs) of England, of the Wesleyans, of Rome, and also Māori custom shall alike be protected.” This is sometimes referred to as Article Four of the Treaty, and relates to the right to freedom of religion and belief (wairuatanga).

The Treaty has been described as having two key elements. The first relates to Articles 1 and 3, which give all people the right to live as citizens of New Zealand (under one law). The second focuses on Article 2, which affirms for Māori the right to live as Māori, with particular responsibilities for protecting and developing those things valued by Māori (ngā taonga katoa). Neither of these rights is exclusive of the other. What binds the two parts of the Treaty together is the concept of tūrangawaewae (a place to stand), which articulates one of the most important elements of the Treaty debate: the right of all peoples to belong, as equals.⁴ This means that the Treaty belongs to all New Zealanders, and all New Zealanders have responsibilities towards each other based on belonging to this place.

WHAT IS THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE TREATY OF WAITANGI?

The Treaty of Waitangi is New Zealand’s own unique statement of human rights. It includes both universal human rights and indigenous rights. It belongs to, and is a source of rights for, all New Zealanders.

The Universal Declaration of Human Rights (UDHR) affirms the value of every human life (for example, the right to dignity and the right to equality). Human rights do not exist in the absence of a collective environment where rights are acknowledged and duties recognised. Recent human rights developments – in particular, the work on the rights of Indigenous peoples – have built greater understanding of the interrelationship between individual and collective rights.

The Treaty (1840) and the UDHR (1948) therefore complement each other: both govern relationships between peoples in New Zealand and between peoples and the Crown, and both underpin New Zealand’s

constitutional framework. In doing so, they set out a foundation for good government that respects the rights of all New Zealanders.

The Treaty does not, as is sometimes claimed, confer ‘special privileges’ on Māori, nor does it take rights away from other New Zealanders. Rather, it affirms particular rights and responsibilities for Māori as Māori to protect and preserve their lands, forests, waters and other treasures for future generations. In 2005, United Nations Special Rapporteur Rodolfo Stavenhagen commented that he had been asked several times during his visit to New Zealand whether he thought Māori benefitted from ‘special privileges’. He responded that he “had not been presented with any evidence to that effect, but that, on the contrary, he had received plenty of evidence concerning the historical and institutional discrimination suffered by the Maori people”.⁵

The United Nations Declaration on the Rights of Indigenous Peoples (2007) explicitly refutes the notion that recognition of indigenous rights may somehow put other peoples’ rights at risk, and stipulates that indigenous rights are to be exercised in a manner that respects the human rights of others.

This chapter is primarily concerned with the indigenous rights guaranteed under Article 2 of the Treaty, and the specific aspects of Article 1 and 3 that pertain to Māori. General rights under Articles 1 and 3 are discussed in other chapters. Chapters of particular relevance to the Treaty of Waitangi include those on democratic rights; the right to justice, equality and freedom from discrimination; the rights of people who are detained; as well as those relating to economic, social and cultural rights: to education, to health, to an adequate standard of living and to work. Some of the areas for action identified in these chapters are also relevant to the full realisation of human rights and the Treaty of Waitangi.

CHANGES SINCE 2004

Internationally, the most significant event regarding human rights and the Treaty since 2004 was the

4 Turangawaewae “enables a person to say with confidence, ‘I belong’.” Hiwi and Pat Tauroa (1986), *Te Marae: A Guide to Customs and Protocols* (Wellington: Reed Methuen), p 129.

5 United Nations (2006), Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Accessed 15 June 2010 from <http://iwgja.synkron.com/graphics/Synkron-Library/Documents/InternationalProcesses/Special%20Rapporteur/SRreportNewZealand2005.pdf>

HUMAN RIGHTS COMMISSION INITIATIVES

Since 2004, the Commission has:

- delivered the Te Mana i Waitangi programme, to promote better understanding of human rights and the Treaty, including publication of a discussion document, 45 regional symposia and over 200 community dialogues
- established a Te Mana i Waitangi network; published a regular newsletter, *Whitiwhiti Kōrero*; and developed case studies on Crown-Tangata Whenua partnerships
- published the Declaration on the Rights of Indigenous Peoples in te reo Māori and English
- published an annual review of developments in relation to the Treaty, in the Commission's Race Relations Report
- worked with Te Taura Whiri i te Reo Māori and Te Puni Kōkiri to promote and support Te Wiki o Te Reo Māori – Māori Language Week.

adoption of the Declaration on the Rights of Indigenous Peoples by the United Nations in 2007. Twenty years in the making, the declaration provides a clear set of standards that apply existing human rights treaties to the specific situation of Indigenous peoples. It affirms treaties, agreements and partnerships between states and Indigenous peoples, and reiterates the full range of civil, political, economic, social and cultural rights. In doing so, it provides guidance to New Zealand on ways in which the Treaty partnership can be interpreted in the 21st century.

The Māori Party was formed in 2004 in response to the foreshore and seabed controversy. In 2008, it entered into a confidence and supply agreement with the newly elected National Government, which has led to the review of the Foreshore and Seabed Act, a planned constitutional review, and the launch of the Whānau Ora policy.

The Māori Party's role in government indicates that a heightened political role for Māori has the potential to strengthen the Treaty partnership and advance the human

rights of Māori. The diversity of Māori voices, both within Parliament and in the wider community, is testament to strengthened Māori leadership and the development of iwi authorities.

In the community, the realisation of the human rights of Māori as Indigenous people has improved since 2004. This is particularly evident in the steady improvement of overall socio-economic indicators for Māori and in the growth of the Māori economy and asset base. The latter has grown in part due to progress in Treaty settlements, including further implementation of the fisheries settlements and major settlements relating to aquaculture and forestry. An acceleration in the pace of Treaty settlements since late 2007 (in response to ambitious settlement targets of 2020 and now 2014) has the potential to further strengthen the Māori economy and empower Māori organisations.

In the health sector, services have been devolved to Māori providers, with some success. In education, the establishment of the Treaty as a foundational principle of the new New Zealand curriculum, coupled with the development of its partnership document *Te Marautanga o Aotearoa*, marks an important step in developing the Treaty partnership for future generations.

With regard to language and cultural revitalisation, both the growth of the Māori economy and government initiatives have contributed to the increased number of te reo speakers, as shown in the reports on the health of the Māori language. Since the establishment of the Māori Television Service in 2003, the indigenous broadcaster has significantly contributed to linguistic and cultural revitalisation, and to increasing diversity in the media.

International context Kaupapa ā taiao

Something that's dear to my heart is kaupapa Māori. I was excited to realise it lined up with the human rights kaupapa – respect for others, right to shelter (our marae), food (kai – an important part of tikanga), education (traditionally, this was a must), freedom of speech (marae hui) and health (hauora).

(Paula Pirihi, Human Rights Commission Kaiwhakarite, March 2009)

This section outlines the rights standards relevant to the specific collective situation of Indigenous peoples. Indigenous peoples are entitled to all the rights and protections set out in the International Covenants on Civil and Political Rights (1968) and Economic, Social and Cultural Rights (1968), the Convention on the Elimination of Racial Discrimination (1966), and other international human rights treaties. International instruments specifically expressing these rights, as they apply to Indigenous peoples, have been adopted by the International Labour Organisation (ILO Convention 169 on Indigenous and Tribal Peoples, 1991) and the United Nations General Assembly (the UN Declaration on the Rights of Indigenous Peoples, 2007).

The 2007 Declaration is particularly relevant to the Treaty of Waitangi, as it affirms that Indigenous people have the right to the recognition, observance and enforcement of existing treaties and agreements (Article 37). In affirming the foundational status of the Treaty of Waitangi, the Declaration therefore upholds the rights conferred by that agreement, including the Crown's right to govern and to make laws (as envisaged in Article 1 of the Treaty).

INTERNATIONAL COVENANTS ON CIVIL AND POLITICAL RIGHTS (ICCPR) AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

The first Article of both ICCPR and ICESCR states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development." This fundamental right is reiterated in the Preamble to the 2007 Declaration on the Rights of Indigenous Peoples, which acknowledges both ICCPR and ICESCR, and affirms "the fundamental importance of the right to self-determination of all peoples". This echoes the right to self-determination (*rangatiratanga*) in Article 2 of the Treaty.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD)

CERD affirms the rights to equality and freedom from discrimination also contained in ICCPR and ICESCR. The

Convention requires governments to eliminate racially discriminatory policies, prohibit racial discrimination, encourage intercultural communication, and undertake, where required, special measures to achieve equality. It declares all people, without distinction as to race, colour, national or ethnic origin, to be equal before the law and in the enjoyment of civil, political, economic, social and cultural rights. This reaffirms the guarantee of equal rights in Article 3 of the Treaty.

ILO CONVENTION 169 ON INDIGENOUS AND TRIBAL PEOPLES⁶

Respect and participation are the core principles of ILO Convention 169. Several articles provide for states to respect Indigenous peoples' culture, spirituality, social and economic organisation, and identity. Article 6 requires governments to establish means by which Indigenous peoples can freely participate at all levels of decision-making in elective and administrative bodies. Article 7 states that Indigenous peoples have the right to decide their own development priorities and to exercise control over their own economic, social and cultural development. These rights affirm the right to self-determination contained in Article 2 of the Treaty.

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly of the United Nations in 2007. As a declaration, it is not ratifiable by or binding on states. By bringing together the various existing provisions of binding human rights treaties, however, it forms part of the international human rights framework. International human rights bodies – such as the Committee on the Elimination of Racial Discrimination⁷ – have affirmed that the declaration should be used when interpreting states' human rights obligations, regardless of a country's position on the declaration. New Zealand initially voted against the declaration in 2007. In 2010, however, New Zealand reversed its position and the Government indicated its support for the declaration as "both an

⁶ This convention has been so far been ratified by 20 states, but not New Zealand.

⁷ Concluding observations of the Committee on the Elimination of Racial Discrimination (2008). USA, CERD/USA/CO/6.

affirmation of existing rights and [an] expression of new and widely-supported aspirations".⁸

Indigenous peoples have the same human rights as all others, and "indigenous rights" express how these are interpreted and applied in the context of their specific collective situation. Indigenous rights affirm that Indigenous peoples, like other peoples, are entitled to their distinct identity. They recognise the historical and ongoing circumstances that have prevented them from fully enjoying their rights on an equal basis with others.

The rights set out in the declaration are to be interpreted as minimum standards (Article 43). The declaration cannot be construed as diminishing any other rights which Indigenous peoples have (Article 45); and it is to be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith (Article 46).

With its strong focus on the reciprocal relationships between Indigenous people and the State, many of the Declaration's provisions reinforce the Treaty principles that provide for cooperation, good faith, consultation and partnership. For example, the Declaration:

- encourages cooperative relations based on principles of justice, democracy, respect for human rights, non-discrimination and good faith (Preamble, para 18)
- recognises treaties, and the relationship they represent, as the basis for strengthened partnerships (Preamble, para 15)
- affirms Indigenous peoples' rights to the observance and enforcement of treaties (Article 37)
- obliges states to take positive steps to "promote tolerance, understanding and good relations among Indigenous peoples and all other segments of society" (Article 15(2)).

In this reciprocal context, the Declaration sets out the individual and collective rights of Indigenous peoples, including rights to self-determination, culture, identity, language, employment, health, education, land and

resources. It emphasises the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their needs and aspirations. For example, the Declaration affirms that Indigenous peoples have the right to:

- enjoyment of all their human rights (Article 1)
- equality and freedom from discrimination (Article 2)
- self-determination of political status and economic, cultural and social development (Article 3)
- maintain and strengthen their distinct institutions (Article 5)
- practise and revitalise their cultural traditions and customs (Article 11) and language (Article 13)
- establish and control their own educational systems and institutions (Article 14)
- establish their own media and access non-indigenous media without discrimination (Article 16)
- participate in decision-making in matters that affect their rights through their own representatives (Article 18)
- improvement of their economic and social conditions (Article 21), particularly for women and children (Article 22)
- maintain and strengthen their distinctive relationships with traditional lands (Article 25)
- their lands, territories and resources which they have traditionally owned (Article 26)
- redress and just, fair and equitable compensation for lands and resources taken (Article 28)
- maintain, control, protect and develop traditional knowledge and cultural expressions (Article 31)
- determine and develop priorities and strategies for land and resource development (Article 32).

The Declaration sets out the responsibilities of states to assist Indigenous peoples in realising those rights, including:

- taking effective measures for prevention of, and redress for, dispossession, forced assimilation or rights violations (Article 8)

8 Announcing New Zealand's reversed position at the UN Permanent Forum on Indigenous Issues in April 2010, the Minister of Māori Affairs noted that the Government also "reaffirmed the legal and constitutional frameworks that underpin New Zealand's legal system". See Hon Pita Sharples, Minister of Māori Affairs (2010), 'Supporting UN Declaration Restores New Zealand's Mana', 20 April. Accessed 14 June 2010 from <http://www.beehive.govt.nz/release/supporting+un+declaration+restores+NZ039s+mana>

- providing redress with respect to cultural, intellectual, religious or spiritual property taken without consent (Article 11)
- enabling access and/or repatriation for ceremonial objects or human remains (Article 12)
- taking effective measures to ensure language revitalisation use and development and provision of interpretation (Article 13)
- taking effective measures to ensure that State-owned media reflects indigenous cultural diversity (Article 16)
- consulting and cooperating in good faith with Indigenous peoples, through their representative institutions, in order to obtain their free, prior and informed consent before implementing measures that affect them (Article 19) and any project affecting lands and resources (Article 32)
- taking effective and, where appropriate, special measures to ensure continuing improvement of economic and social conditions (Article 21), particularly of women and children (Article 22)
- taking appropriate measures in consultation with Indigenous peoples to give effect to the Declaration (Article 38).

As many of the Articles in the Declaration intersect with the principles of the Treaty (as interpreted by the Waitangi Tribunal and New Zealand Courts), there is considerable scope for the Declaration to be used to support, clarify, and promote understanding of the human rights dimensions of the Treaty. The Māori Land Court, for example, has indicated that several of the Declaration's Articles (Preamble paragraphs 10 and 15, Articles 3, 11, 13, 18, 25, 26, 27, 32 and 40) will have particular significance for its work. The court's jurisdiction under Te Ture Whenua Māori Act 1993 has addressed, or has the potential to address, issues arising from these Articles because they are concerned with the rights of Indigenous people to retain, manage, utilise and control their lands and waters in accordance with their own cultural preferences. The court's jurisdiction also enables the full participation of Māori in the mediation and adjudication of issues concerning the administration of these resources.

New Zealand context Kaupapa o Aotearoa

CUSTOMARY RIGHTS AND RANGATIRATANGA

International instruments affirm the customary rights of Indigenous peoples as central to the realisation of their human rights. In New Zealand, Māori customary rights are formed by whakapapa (genealogical connections), tikanga (the customary equivalent of law) and mātauranga (traditional knowledge). Exercised collectively, these rights and responsibilities existed prior to colonial contact and have survived – though not necessarily in their original form – into the present. Article 2 of the Treaty of Waitangi protects Māori rangatiratanga, which refers to chiefly authority and self-determination rooted in tikanga, and the protection of lands, forests, fisheries and other taonga or treasures.

Māori society was collectively organised with whakapapa (genealogy) forming the backbone or a framework of kin-based descent groups held together by rangatira – leaders for their ability to weave people together.

(Linda Te Aho, 'Contemporary Issues in Māori Law and Society' *Waikato Law Review* 15, p 140.)

Some legislation refers to and incorporates aspects of 'tikanga Māori', including kaitiakitanga (the exercise of guardianship), mātaītai (food resources from the sea), and tangata whenua (the iwi or hapū that holds mana whenua – that is, the authority, rights and responsibilities derived from the land – over a particular area).⁹

Te Puni Kōkiri, the Ministry of Māori Development, is the Crown's principal advisor on Crown-Māori relationships. Te Puni Kōkiri administers relevant legislation and has developed the 'Māori Potential Approach' as a Māori public policy framework. The ultimate aim of this approach is to better position Māori to build and leverage off their collective resources, knowledge, skills and leadership capability in order to regenerate an economic and cultural base.

A range of non-traditional entities also exercise aspects of contemporary rangatiratanga. These include the New Zealand Māori Council, the only national Māori organisation supported by legislation; the National

9 Hirini Moko Mead (2003), *Tikanga Māori: Living By Māori Values* (Wellington: Huia Publishers), p 5

Māori Congress; the Māori Women's Welfare League; the Federation of Māori Authorities; and the Iwi Leaders' Group.

THE TREATY IN NEW ZEALAND'S CONSTITUTION AND LEGISLATION

Since the 1970s, there has been a persistent call, particularly from Māori, for constitutional change to give greater effect to the Treaty of Waitangi. Submissions to the Constitutional Arrangements Committee, a select committee established in 2004 to inquire into New Zealand's existing constitutional arrangements, echoed this call. While the committee found that any significant constitutional change should be made with great care and be subject to informed public debate, it noted an issue of continuing significance: "the relationship between the constitution and the Treaty of Waitangi, including whether it should and how it might form a superior law".¹⁰

Several pieces of specific legislation provide for the principles of the Treaty to be given effect; the Treaty itself, however, is not directly enforceable in New Zealand courts. The courts' adopted practice is to interpret legislation according to the principles of the Treaty where appropriate, except where legislation states that this is not to be done. Although it is the principles of the Treaty that are legally enforceable, there is a range of views on them. In particular, there is concern that the focus on the principles moves away from focussing on the Treaty itself. More recently, Parliament has opted to describe Treaty implications for a particular policy area in legislation, rather than solely relying on generic references to the principles of the Treaty.

There are three main ways in which the principles of the Treaty are observed:

- The Waitangi Tribunal can inquire into claims by Māori that the Crown acted in breach of Treaty principles.
- The Crown has accepted a moral obligation to resolve historical grievances in accordance with the principles of the Treaty.

- The Courts can apply Treaty principles where relevant and not explicitly prevented by legislation, and many agencies and departments are required by legislation to consider Treaty principles when carrying out their functions.¹¹

The New Zealand Bill of Rights Act 1990 provides legal protection for the civil and political rights of all New Zealanders, including electoral rights, freedom of expression, freedom from discrimination, and freedom of thought, conscience and belief. While it includes provisions relating to the "rights of minorities", it does not specifically protect indigenous rights or refer to the Treaty of Waitangi. There are no protections in the New Zealand Bill of Rights Act for economic and social rights.

The Human Rights Act 1993 establishes the Human Rights Commission, with its primary functions being to advocate and promote respect for human rights and to encourage the maintenance and development of harmonious relations in New Zealand society. The act prohibits discrimination on the grounds of colour, race, and ethnic or national origins, and also (in specified circumstances) racial harassment and inciting or exciting racial disharmony. It provides exceptions to the grounds of discrimination for special measures to achieve equality. The Commission is required by the act to "promote by research, education and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international law".

The Electoral Act 1993 makes continued provision for Māori representation in Parliament. Four Māori seats were established in 1867. The number was increased in 1993, with the introduction of proportional representation, and is now determined by a formula that divides the number of voters enrolled on the Māori electoral roll by the 'South Island quota'.¹² The number of Māori seats is currently seven.

10 Constitutional Arrangements Committee (2005), *Inquiry to Review New Zealand's Existing Constitutional Arrangements*, Report of the Constitutional Arrangements Committee, 47th Parliament, Hon Peter Dunne chairperson, p 25. Accessible online at http://www.parliament.nz/NR/rdonlyres/575B1B52-5414-495A-9BAFC9054195AF02/15160/DBSCH_SCR_3229_2302.pdf

11 Office of Treaty Settlements (2004), *Ka Tika ā Muri, Ka Tika ā Mua – Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown* (Wellington: Office of Treaty Settlements), p 11

12 For more information see the official elections website. Accessible online at <http://www.elections.org.nz/elections/electorates/rep-comms-faqs.html>

The Treaty of Waitangi Act 1975 established the Waitangi Tribunal as a permanent commission of inquiry. From 1975 to 1985, the tribunal was able to hear only contemporary claims by Māori against the Crown for breaches of the principles of the Treaty in government legislation, policies and practices. The Treaty of Waitangi Amendment Act 1985 extended the tribunal's jurisdiction to include historical claims dating back to 1840. Since 1985, the tribunal's principal function has been to investigate historical and contemporary claims against the Crown, and report its findings and recommendations to both claimants and the Crown. In doing so, it has been considered to function as a 'truth and reconciliation' process. A further Treaty of Waitangi Amendment Act in 2006 established a cut-off date of 1 September 2008 for the lodging of historical (pre-1992) claims. Contemporary claims – those relating to breaches of the Treaty after 1 September 1992 – can still be lodged with the tribunal.

The tribunal has exclusive authority, for the purposes of the act, to determine the meaning and effect of the Treaty, and must consider both the English and the Māori texts. The two core Treaty principles that have guided the tribunal's work are those of partnership and active protection. Other principles derived from the Treaty include the principles of reciprocity, mutual benefit, redress, development, and the duty to act reasonably, honourably and in good faith.

Historical and contemporary claims under the Treaty of Waitangi are settled through negotiations between the Crown and iwi and hapū representatives. The Office of Treaty Settlements negotiates historical claims on behalf of the Crown. Once an historical account, an acknowledgement of Treaty breaches, an apology from the Crown, and a package of commercial and cultural redress have been agreed, a deed of settlement is signed by both parties and settlement legislation is passed. Settlements of contemporary claims and of some very specific historical claims have been negotiated by other government departments, including the Ministry of Health (for example, the Napier Hospital settlement) and Te Puni Kōkiri (for example, the vesting of Whakarewarewa and Roto-a-Tamaheke in Ngāti Whakaue and Tuhourangi-Ngāti Wāhiao).

The Conservation Act 1987 was enacted to promote the conservation of New Zealand's natural and historical resources and establish the Department of Conservation. At section 4 it provides that the act shall be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. A range of principles and actions derived from section 4 have subsequently been developed to guide the department's work.¹³

Te Ture Whenua Māori Act 1993 lists four principles in its Preamble:

- that the Treaty of Waitangi established the special relationship between the Māori people and the Crown
- that it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed
- that it is desirable to recognise that land is a taonga tuku iho (inherited treasure) of special significance to the Māori people and for that reason:
 - to promote the retention of that land in the hands of the owners for their whānau, and their hapū and to protect waahi tapu (sacred sites); and
 - to facilitate the occupation, development and utilisation of that land for the benefit of its owners, their whānau and their hapū.
- that it is desirable to maintain a court and to establish mechanisms to assist the Māori people to achieve the implementation of these principles.

The act also incorporates tikanga Māori concepts, including ahi kā (fires of occupation), tipuna (ancestor) and kai tiaki (guardian). The act continues the Māori Land Court and Māori Appellate Court, which have the primary objective of promoting and assisting in the retention of Māori land. The court must also promote and assist Māori in the effective use, management and development of that land by and on behalf of its owners. The court now has extensive jurisdiction to hear matters relating to the Māori land title system, the protection of historical artefacts or taonga Māori, and the mediation and adjudication of disputes concerning Māori fisheries and aquaculture (under the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Act 2004, respectively).

13 Department of Conservation, Conservation General Policy – 2. Treaty of Waitangi Responsibilities. Accessed 15 June 2010 from <http://www.doc.govt.nz/publications/about-doc/role/policies-and-plans/conservation-general-policy/2-treaty-of-waitangi-responsibilities/>

The Historic Places Act 1993 provides for the recognition of “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu (sacred sites), and other taonga”. The act establishes the Māori Heritage Council, which comprises a minimum of three appointed or elected Māori members of the Historic Places Trust Board, one other board member, and four people appointed by the Minister of Culture and Heritage. The functions of the council include: protecting and registering wāhi tapu and wāhi tapu areas; assisting the Historic Places Trust to develop and reflect a bicultural view in the exercise of its powers and functions; and providing assistance to whānau, hapū and iwi in the preservation and management of their heritage resources.

The Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001 was passed after an extensive process of public consultation. It gives Bay of Plenty Māori on the Māori electoral roll the right to vote for regional councillors in Māori constituencies. The number of constituencies is determined by a formula, set out in section 6 of the act, that preserves the democratic principle of ‘one person, one vote’ across both general and Māori constituencies. There are currently three Māori wards in the Bay of Plenty which return councillors to what is now called Environment Bay of Plenty.

The Local Government Electoral Amendment Act 2002 extended the option of Māori wards or constituencies that had been established in the Bay of Plenty to all regional councils and territorial local authorities. As a result of the amendment, section 19Z of the **Local Electoral Act 2001** provides that a territorial authority may resolve that its district be divided into one or more Māori wards, and any regional council may resolve that its region be divided into one or more Māori constituencies, for electoral purposes. The council must notify the public of their right to demand a poll of all voters on the question. The resolution takes effect for the next two triennial elections and continues thereafter subject to any further resolution or poll demanded by voters.

A number of councils have considered the option since then, but none have taken it up. The Royal Commission

on Auckland Governance considered Māori representation when making recommendations on the composition of the new Auckland Council,¹⁴ but the final legislation establishing the council did not include Māori wards.

The Local Government Act 2002 gives recognition to the Crown’s responsibilities under the Treaty of Waitangi. This includes the maintenance and improvement of opportunities for Māori to contribute to local government decision-making processes. Specific processes are set out for consulting Māori, and annual reporting is required to illustrate what has been done to strengthen Māori participation.

The Resource Management Act 1991 incorporates a number of tikanga Māori concepts and provides for local authorities to have particular regard for kaitiakitanga and the principles of the Treaty. It also declares the relationship of Māori, and their culture and traditions, with their ancestral lands, water, sites, wāhi tapu and other taonga to be a matter of national importance.

The Ministry for the Environment, the Ministry of Fisheries, the Ministry of Agriculture and Forestry and the Department of Conservation have important roles in relation to Māori resource management issues. For example, the Ministry of Fisheries can establish protective mechanisms (taiapure-local fisheries and mātaihai reserves) in conjunction with iwi to protect significant sites for Māori. Since 1996, eight taiapure-local fisheries and 10 mātaihai reserves have been established.

The Resource Management Act 1991 also established the Environment Court (previously the Planning Tribunal), and two of the judges of the Māori Land Court hold alternate warrants to sit and hear cases on it. The Environment Court is continuing to build its own capacity through training and the experience of hearings commissioners knowledgeable in Māori issues to deal with matters of kaitiakitanga and the relationship, culture and traditions that Māori have with their ancestral lands, water, sites, waahi tapu and other taonga.

The Māori Language Act 1987 recognises Māori as an official language of New Zealand. It established Te Taura

14 Royal Commission on Auckland Governance (2009), *Report of the Royal Commission on Auckland Governance* (Auckland: Royal Commission), volume 1, part 4: Structural Reform, section 22: Maori, pp 477–496. Accessible online at [http://www.royalcommission.govt.nz/rccms.nsf/0/553AC2E8BDABC593CC25758500423FA5/\\$FILE/Vol1Contents.pdf?open](http://www.royalcommission.govt.nz/rccms.nsf/0/553AC2E8BDABC593CC25758500423FA5/$FILE/Vol1Contents.pdf?open)

Whiri i te Reo Māori, the Māori Language Commission, to protect and foster the use of te reo Māori. The act was a response to the comprehensive te reo Māori Treaty claim to the Waitangi Tribunal in the 1980s, concerning the Crown's failure to protect the language, as required by Article 2 of the Treaty.

Te Māngai Pāho is a Crown entity established to make funding available to the national network of Māori radio stations and for the production of Māori language television programmes, radio programmes, music CDs and news services.

The Iwi Radio Network was established in the early 1990s in response to the Waitangi Tribunal's recommendations on the radio spectrum Treaty claim. The government reserved the frequencies for the promotion of Māori language and culture. Iwi radio frequency licences are issued to the 21 iwi stations under section 48(b) of the Radiocommunications Act 1989. The licence stipulates that frequencies must be used for the purpose of promoting Māori language and culture and broadcasting to a primarily Māori audience.

The Māori Television Service Act 2003 (Te Aratuku Whakaata Irirangi Māori) established Māori Television as a statutory corporation to protect and promote te reo in broadcasting. Māori Television has two stakeholder interest groups: the Crown and Te Pūtahi Paoho (the Māori Electoral College).¹⁵ In 2008, Māori Television launched a Māori-language-only channel, *Te Reo*.

Te Waka Toi, the Māori arts board of Creative New Zealand, is responsible for developing Māori arts and artists. It invests contestable funding, develops initiatives and delivers tailored programmes for Māori. The Government also funds the Aotearoa Traditional Māori Performing Arts Society through Vote Culture and Heritage.

The Education Act 1989 requires all New Zealand children aged between seven and 16 to be enrolled at

a school. The majority of Māori students are educated in English-medium schools. Within this system there is provision for bilingual classes (reo rua), total immersion classes (rumaki reo) and whānau units. Under the act, the Minister of Education can also designate a state school as a kura kaupapa Māori by notice in the *New Zealand Gazette*. All kura kaupapa Māori are required to adhere to the principles of Te Aho Matua (a statement that sets out the approach to teaching and learning applicable to kura kaupapa Māori). One of the key National Education Goals is for "increased participation and success by Māori through the advancement of Māori education initiatives, including education in te reo Māori, consistent with the principles of the Treaty of Waitangi".¹⁶ The Treaty is both one of the foundational principles of the new New Zealand curriculum, and the central guiding principle of Te Marautanga o Aotearoa, its companion document. This document is used by Māori-medium schools to guide teaching and learning, and to support learners, schools and whānau. The Ministry of Education provides funding for both English and Māori-medium education. The Ministry also provides funding and support for kōhanga reo (language nests – early childhood education) and whare wānanga (tertiary education institutions).

At the centre of 20 pieces of legislation that govern the health sector, the **New Zealand Public Health and Disability Act 2000** provides for the recognition of the principles of the Treaty of Waitangi in health and disability support. With the aim of improving health outcomes for Māori, the Act also provides mechanisms to enable Māori to contribute to decision-making and the delivery of health and disability services.

Measures provided for in the act include minimum Māori membership on district health boards (DHBs); a requirement for DHBs to establish and maintain processes to enable Māori to participate in and contribute to strategies for Māori health improvement; a requirement

15 The Crown is represented by the Minister of Māori Affairs and the Minister of Finance. Te Pūtahi Paoho (Māori Electoral College) comprises Te Kōhanga Reo National Trust, Te Ataarangi Inc, Te Rūnanga o Ngā Kura Kaupapa Māori, Te Taihū o Ngā Wānanga, Ngā Kaiwhakapūmau i te Reo Māori, National Māori Council, Māori Women's Welfare League, Māori Congress, Te Whakaruruhau o Ngā Reo Irirangi Māori, Kawea Te Rongo and Ngā Aho Whakaari. See the Māori Television website. Accessible online at: <http://www.maoritv.com/Default.aspx?tabid=227>

16 National Education Goals. The relevant goal is NEG 9. Accessible online at <http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/PolicyAndStrategy/PlanningReportingRelevantLegislationNEGSAndNAGS/TheNationalEducationGoalsNEGs.aspx>

that DHBs continue to foster the development of Māori health capacity for participating in the health and disability sector and for providing for their own needs; and an expectation that DHBs provide relevant information to Māori to enable effective participation.

The Climate Change Response Act 2002 and the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009, which finalised the details of the emissions trading scheme, contain a section on the Treaty of Waitangi, section 3A. This section provides for a number of ways in which the Crown will give effect to its responsibilities under the Treaty in terms of consultation on issues of importance to Māori, and five-yearly review. During negotiations on the emissions trading scheme, the Māori Party was able to gain some concessions for iwi and hapū, including the ability for five iwi to farm trees on 35,000 hectares of low conservation value land managed by the Department of Conservation, and Māori representation in international negotiations.

THE TREATY IN NEW ZEALAND'S FREE-TRADE AGREEMENTS

In the free trade agreements that New Zealand has signed with China and the ASEAN nations, clauses related to the Treaty of Waitangi have been included. The New Zealand–China Free Trade Agreement 2008 states at Article 205 that nothing in the agreement will prevent the adoption by New Zealand of measures to fulfil Treaty obligations (provided such measures are not used as a form of unjustified discrimination or disguised restriction on the other party).¹⁷ The same provision regarding the Treaty is included in chapter 15, Article 5 of the ASEAN–Australia–New Zealand Free Trade Agreement 2009.¹⁸

New Zealand today Aotearoa i tēnei rā

A Treaty and human rights-based path forward for New Zealand means considering the impact the situation today will have on future generations of New Zealanders.

IMPLICATIONS FOR THE WIDER PACIFIC: CONSTITUTIONAL LINKS AND HUMAN RIGHTS

Māori are not only indigenous to New Zealand but have whakapapa connections across the wider Pacific. Although not signatories to the Treaty of Waitangi, Pacific peoples from Niue, Tokelau and the Cook Islands are indigenous to their own islands, which are part of the wider Realm of New Zealand. The New Zealand government therefore has responsibilities towards them, which could be explored further.

In 2000 the Ministry of Pacific Island Affairs commissioned a report from the Ministry of Justice on the constitutional position of Pacific peoples in New Zealand. The Pacific Peoples Constitution Report 2000 emphasised that “New Zealand has a special relationship with Pacific people” due to: historical relationships

(many fostered by New Zealand’s early colonial aspirations); high proportions of Pacific peoples in New Zealand (including nearly all of the population of some Pacific nations); geographical proximity; and constitutional links (particularly in the case of the Cook Islands, Niue, Tokelau, and Samoa).

New Zealand is also a Pacific nation with responsibilities to the wider Pacific. These historical connections are becoming increasingly urgent as climate change impacts on low-lying Pacific islands such as Kiribati and Tuvalu. If the land on which these Indigenous peoples live disappears, what will happen to their cultures, languages and identities?

17 See Article 205 of the New Zealand–China Free Trade Agreement. Accessed 15 June 2010 from <http://www.chinafta.govt.nz>

18 ASEAN–Australian–New Zealand Free Trade Agreement. Accessed 15 June 2010 from <http://www.asean.fta.govt.nz/assets/Agreement-Establishing-the-ASEAN-Australia-New-Zealand-Free-Trade-Area.pdf>

Socio-economic inequalities for Māori and incomplete redress for past breaches of the Treaty mean that today's children do not share equally in the realisation of their human rights. This is especially significant given demographic projections, which indicate that the Māori population has a younger age structure.¹⁹

This section provides an overview rather than a comprehensive picture of the status of human rights and the Treaty in New Zealand today. The concluding section provides an outline of what has changed since 2004, an assessment of current status, and what the areas for action are now.

INTERNATIONAL REVIEWS OF NEW ZEALAND'S HUMAN RIGHTS PERFORMANCE

In 2009, New Zealand was the subject of a Universal Periodic Review by the United Nations Human Rights Council on its human rights performance. Many of the recommendations New Zealand received focused on the Treaty relationship and were drawn from the 2007 recommendations of the UN Committee on the Elimination of Racial Discrimination (CERD)'s. These in turn drew on the 2005 report of the United Nations Special Rapporteur on Indigenous Rights, who visited New Zealand in the wake of the Foreshore and Seabed Act controversy. The Special Rapporteur welcomed New Zealand's moves toward a bicultural approach based on the Treaty, but noted with concern the increasing promotion of an assimilationist position. He found that the controversy reflected the lack of constitutional recognition of the inherent rights of Māori, and he called for responsible debate on constitutional issues.²⁰

During its most recent review of New Zealand in 2007, CERD welcomed the reduction of socio-economic disparities between Māori and Pacific peoples and the rest of the population, and the significant increase in the number of Māori and non-Māori who had proficiency in te reo.

It recommended that New Zealand:

- continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm
- ensure affected communities participate in reviews of targeted policies and programmes, and inform the public about the importance of special measures to ensure equality
- ensure the 2008 cut-off date for the lodging of historical Treaty claims does not unfairly bar legitimate claims
- ensure the Treaty of Waitangi is incorporated into domestic legislation where relevant
- consider granting the Waitangi Tribunal binding powers to adjudicate Treaty matters
- renew Crown–Tangata Whenua dialogue on the Foreshore and Seabed Act 2004
- include references to the Treaty in the new New Zealand curriculum
- address the over-representation of Māori and Pacific peoples in the criminal justice system.²¹

In 2009, the Universal Periodic Review recommendations reiterated a number of the CERD recommendations. These included the need for public discussion on the constitutional status of the Treaty, addressing socio-economic disparities and possible bias in the criminal justice system. New Treaty-related recommendations in 2009 included reviewing New Zealand's stance on the Declaration on the Rights of Indigenous Peoples, and engaging with Māori on the realisation of indigenous rights.²²

THE CROWN-TANGATA WHENUA RELATIONSHIP

After the 2008 election, the National Party entered into a confidence and supply agreement with the Māori Party, in which both parties agreed to act in government according to the Treaty. Māori Party leaders were given prominent

19 Statistics NZ projections. Cited in Te Puni Kōkiri (2007), *For Maori Future Makers* (Wellington: Te Puni Kōkiri), pp 7–8. Accessible online at <http://www.tpk.govt.nz/en/in-print/our-publications/publications/for-maori-future-makers/download/tpk-demotrends-2007-en.pdf>

20 Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: New Zealand, 62nd session of the Commission on Human Rights, E/CN.4/2006/78/Add.3. Accessed 15 September 2010 from <http://www2.ohchr.org/english/issues/indigenous/rapporteur/vists/htm>

21 Committee on the Elimination of Racial Discrimination (2007). Concluding observations New Zealand. CERD/C/NZL/CO/17

22 United Nations Office of the Commissioner for Human Rights (2009), Universal Periodic Review – New Zealand. Accessed 10 December 2009 from <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/NZSession5.aspx>

ministerial portfolios outside Cabinet. The Government commissioned a review of the Foreshore and Seabed Act, approved a Māori flag to fly on Waitangi Day, made a commitment to a constitutional review and established the Whānau Ora policy. Conversely, recommendations by the Royal Commission on Auckland Governance for Māori representation in decision-making for the Auckland 'super-city' council were rejected.

At the level of central and local service provision, relationships have been developed with individual central Government agencies, local bodies and service providers. Positive examples of the Crown and Tangata Whenua working together to advance common aspirations include the Crown–Tangata Whenua restoration programme to restore and protect the Te Arawa Lakes, and the co-management agreement which created the Guardians Establishment Committee to restore and protect the Waikato River. The establishment of Māori constituencies on Environment Bay of Plenty provides another example of positive Crown–Tangata Whenua interaction.

There is a long tradition, dating back to the origins of the Kīngitanga, of iwi convening at Pukawa on the shores of Lake Taupo to discuss issues of national importance. More recently, the Government has met with an Iwi Leadership Group to discuss matters such as climate change, water, and the foreshore and seabed. The continued growth and development of Māori authorities has worked to strengthen Māori leadership.

The Declaration on the Rights of Indigenous Peoples calls for the State 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 implementing measures that affect them (Article 19). There are currently no formal constitutional or legal mechanisms to provide for this, nor is there a consensus among Māori on the desirability of having a pan-Māori forum to exercise this function. Any such forum should be mandated to address issues in the Treaty partnership in a proactive rather than reactive way. Also at stake is whether such a forum would be established for the benefit of Māori or for the benefit of the Crown. The 2010 review of the Māori Community Development Act 1962, which established the New Zealand Māori Council, explores this issue. Currently, the primary means of Crown–Tangata Whenua consultation is between the Crown and iwi and hapū.

THE HEARING AND SETTLEMENT OF TREATY CLAIMS

By 2009, the Waitangi Tribunal had registered more than 2120 claims by Māori against the Crown. A substantial number were new claims received prior to the 1 September 2008 deadline for historical claims. As at September 2009, the Tribunal had reported on 15 of its 37 inquiry districts, covering 71 percent of New Zealand's land area. A further 15 districts were either in hearing or preparing for inquiry. In the remaining districts, major tribal groups have settled or are in negotiation.

By February 2010, nearly \$1.087 billion had been committed to final and comprehensive settlements and several part settlements. The total value of settlements has exceeded one billion dollars in nominal dollars, but has not yet reached the equivalent adjusted amount necessary to activate the relativity mechanism in the earlier deeds. The largest single settlement to date – enacted by the Central North Island Forests Land Collective Settlement Act – was passed in 2008, and was notable for its creative approach to achieving a complicated settlement affecting a number of iwi groups. This settlement alone transferred approximately \$450 million in land (176,000 hectares) and cash to eight central North Island iwi – Ngāti Tūwharetoa, Ngāti Whakaeue, Ngāi Tūhoe, Ngāti Whare, Ngāti Manawa, Ngāti Rangitīhi, Raukawa and the affiliate Te Arawa iwi and hapū – in order to settle their historical grievances against the Crown.

The allocation and transfer of assets from the 1992 Fisheries Settlement is almost complete, and only seven of 57 iwi have yet to assume 'mandated iwi organisation' status. Many iwi who have assumed this status are now well advanced in resolving coastline boundary agreements, and are consequently receiving the balance of their commercial fisheries assets.

The Māori Commercial Aquaculture Settlement Act 2004 provides full and final settlement for all Māori claims to commercial aquaculture arising after 21 September 1992. The settlement of aquaculture claims in May 2009 was a significant milestone. The Crown and 10 coastal iwi signed a deed of settlement that included a one-off payment of \$97 million. This deed covers the majority of New Zealand's aquaculture development areas.

Some foreshore and seabed agreements and deeds of settlement have been reached. Negotiations were suspended while a review of the Foreshore and Seabed Act 2004 took place. The Government indicated that it would keep faith with negotiations concluded under the 2004 Act. In June 2010 the Government announced its decision to repeal and replace the 2004 act, enabling Māori to have their rights determined in court or through settlement negotiations.

PROTECTION AND DEVELOPMENT OF MĀORI LAND

Te Ture Whenua Māori Act 1993 gives the Māori Land Court substantial powers to promote the retention of land with Māori owners, facilitate its utilisation and protect wāhi tapu.

There are now around 1.5 million hectares – about 6 per cent of the total land area – of Māori land in New Zealand. Most of this remaining Māori land is in Waiariki (Bay of Plenty), Tairāwhiti (East Coast) and Aotea (Manawatu/Wanganui/Taranaki), although activity in the court occurs throughout the country and can be highly contested in areas where there is less land. Māori land generally has multiple owners, with 10 per cent of Māori land having as many as 425 owners. As owners die and their descendants succeed to their interests, the number of owners of Māori land increases and the fragmentation of Māori land ownership continues. Te Ture Whenua Māori Act 1993 attempts to provide some relief from these effects in the form of ahu whenua trusts, whānau trusts and whenua topu trusts.

It is estimated that up to 80 per cent of Māori land is non-arable and can support only a limited range of productive uses, or is located in remote areas. Up to 30 per cent of Māori land could be landlocked, lessening its viability because of access issues.²³ Most of the 27, 411 blocks of Māori land are now registered under the Land Transfer Act 1952, following completion of the Māori Freehold Land Project (2005–10).

In 2009 the Kāinga Whenua scheme, designed to help Māori landowners build houses on multiply owned Māori

land, was established to ease some of the restrictions on development. This scheme is the most recent of several programmes designed to assist Māori owners in this respect, including schemes from the 1940s to the 1990s of the Department of Māori Affairs, Housing Corporation of New Zealand and Housing New Zealand Limited.

RECOGNITION OF RIGHTS IN THE FORESHORE AND SEABED

In 2003, the Court of Appeal decision in *Ngāti Apa v Attorney-General* held that legislation must be explicit if it is to extinguish customary rights to land (in this case, the foreshore and seabed).²⁴ The subsequent controversy about that decision led to the passing of the Foreshore and Seabed Act in 2004, which vested title to the foreshore and seabed in the Crown and effectively extinguished Māori rights. It did provide a settlement process, under which a few iwi reached agreements with the Crown.

A review of the widely criticised act was conducted in early 2009. Following a series of nationwide consultation hui, the panel reported in July that the act should be repealed and a replacement developed. The panel recommended that a new act be based on the Treaty of Waitangi partnership. It should acknowledge that customary rights in any particular area belong to hapū and iwi, and that these are property rights and should not be lightly removed. Further recommendations included restoring access to the courts to determine customary rights and providing reasonable access. The panel proposed two options for the apportionment of customary and public interest: regional or national settlements, or a mix of the two. In 2010, following discussions with iwi leaders, the Government announced its proposal for a new regime and embarked on a programme of discussion. The Government has affirmed its intention to repeal the act and establish a replacement regime that would place the foreshore and seabed in the public domain; create avenues for iwi and hapū to seek customary title; and recognise 'mana tuku iho' in the foreshore and seabed.

23 Office of the Controller and Auditor-General of NZ (2004), Report of the Controller and Auditor-General: *Māori Land Administration: Client Service Performance of the Māori Land Court and Māori Trustee* (Wellington: The Audit Office), March, part 2: Maori land, section 2.12. Accessible online at <http://www.oag.govt.nz/2004/maori-land-court/part2.htm>

24 In this instance, customary rights mean the rights Māori held, according to their own laws, prior to colonisation and which have survived in some form to the present day.

MĀORI ECONOMIC DEVELOPMENT

The commercial assets owned by Māori are key economic resources for iwi and New Zealand. Over half (52 per cent) of Māori investment is in primary industries, including agriculture, forestry and fisheries. A further 40 per cent is invested in tertiary industries, including cultural and recreational services; wholesale and retail trade; education; health; and community services. Māori commercial assets grew significantly between 2001 and 2005–06, and the value of Māori businesses has also increased. The increased business value is partly due to a greater number of Māori employers and Māori self-employed.²⁵

In 2009 the Minister of Māori Affairs organised a Māori employment hui and a Māori economic summit to coordinate a response to the economic recession. A Māori Economic Taskforce was subsequently established and will receive government investment of \$10 million over 2009–10 and 2010–11 to protect and support Māori through the period of economic recession; think beyond the recession and identify strategic economic development opportunities for Māori; and promote and utilise kaupapa Māori and Māori structures as drivers of prosperity. The taskforce works in seven key areas: tribal asset development, the primary sector, education and training, small to medium enterprises, social and community development, investment and enterprise, and economic growth and infrastructure.

ECONOMIC AND SOCIAL RIGHTS

Since 2001, the annual Social Report, published by the Ministry of Social Development, has charted improvements in socio-economic outcomes for Māori. A number of these improvements have occurred at a greater rate than for the total population. Outcomes for Māori have improved significantly in the areas of life expectancy, participation in secondary and tertiary education, and unemployment and employment rates. Despite improvements in these and other areas, average outcomes for Māori tend to be poorer than for the total population. Areas in which there are significant gaps between Māori and the rest of the population include health (especially smoking rates, obesity and potentially hazardous drinking

patterns), safety (assault mortality and victims of crime), employment (median hourly earnings and workplace injury claims) and housing (household overcrowding).

In June 2009, a Whānau-centred Initiatives Taskforce was established to develop a policy framework for a new method of government interaction with Māori service providers, to holistically meet the social service needs of whānau. This is known as 'Whānau Ora' – a whānau-centred approach to Māori wellbeing. After extensive consultation, the taskforce reported in April 2010 and government is considering how to implement its recommendations.

Gaps continue to exist between the Māori and non-Māori labour markets. Despite improvements over the last decade, these gaps have widened due to the economic recession that began in late 2008. Unemployment rates in particular have risen, and are higher for Māori than for non-Māori. Inequalities also persist in pay rates, occupational spread and representation in senior roles.

On average, Māori continue to have poorer health outcomes than any other ethnic group in New Zealand. Despite very slight improvements in 2008, Māori remain over-represented in all aspects of the criminal justice system. Criminal justice and social welfare legislative reforms undertaken in 2009 are likely to have a disproportionate effect on Māori. These issues are discussed in greater detail in other chapters.

PUBLIC AWARENESS OF THE TREATY AND HUMAN RIGHTS

In 2009, UMR Research found that 70 per cent of Māori and 56 per cent of all New Zealanders agreed that the Treaty was New Zealand's founding document. A total of 56 per cent of Māori and 49 per cent overall agreed the Treaty was for all New Zealanders.

In the same survey, 34 per cent of all respondents said they had high-level knowledge of indigenous rights, compared with 45 per cent who said they had a high level of knowledge of human rights. Declared high-level knowledge of the Treaty tends to be slightly higher among Māori respondents. (Due to the small sample size of Māori respondents, the results for Māori are indicative only.)

25 Te Puni Kōkiri (2008), Te Pūtake Rawa o Ngāi Māori: The Māori Asset Base, Fact Sheet 2001–2008. Accessed 30 November 2009 from <http://www.tpk.govt.nz/en/in-print/our-publications/fact-sheets/maoriassetbase/download/tpk-maoriassetbase-2008-en.pdf>

In addition, only 32 per cent of Māori and 28 per cent of people overall agreed that the relationship between the Crown and Māori was healthy.

DECLARED KNOWLEDGE OF THE TREATY

Year	All respondents	Māori respondents
2009	41%	55%
2008	34%	47%
2007	41%	57%
2006	42%	74%

Conclusion Whakamutunga

In respect of human rights and the Treaty in New Zealand today, there are legislative mechanisms in place to protect the principles of the Treaty and the rights of Māori as Indigenous people. In practice, the level of recognition and protection varies. There has been significant progress in hearing and settling Treaty claims, revitalising te reo Māori and establishing whānau-centred initiatives, particularly in health and education.

Systemic disadvantage remains to be fully addressed, however, and the process of providing redress for historical grievances is yet to be completed. Significant challenges also remain in Māori land development, in enabling Māori participation in decision-making at the local level, and in improving social and economic outcomes for Māori in health, education, employment, standard of living and imprisonment.

With the Māori population projected to grow to 810,000 or 16.2 per cent of the population by 2026, it is vital that representative structures and public services are optimised.²⁶ This is to ensure the endurance of the Treaty partnership and better economic, social and cultural outcomes for Māori and non-Māori New Zealanders.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. The Commission has identified the following areas for action to advance human rights and the Treaty:

Public awareness

Increasing public understanding of the Treaty and the human rights of Indigenous peoples – including the meaning of rangatiratanga today – and building relationships between Māori and non-Māori New Zealanders at the community level.

Constitutional arrangements

Reviewing laws that make up our constitutional framework, to ensure that the Treaty, indigenous rights and human rights are fully protected.

Treaty settlements

Concluding the settlement of historical breaches of the Treaty promptly and fairly.

Pathways to partnership

Building on existing processes and developing new fora for Tangata Whenua and the Crown to engage at local and national levels, and developing and implementing new pathways to partnership between Tangata Whenua and the Crown.

UN Declaration on the Rights of Indigenous Peoples

Promoting awareness of the Declaration on the Rights of Indigenous Peoples in New Zealand, particularly in fora charged with the responsibility for the management and/or administration of natural resources.

Children and their families

Ensuring all children and young people enjoy improved economic, social and cultural outcomes that more fully realise the rights set out in the Treaty of Waitangi and international human rights treaties, including the Declaration on the Rights of Indigenous Peoples.

²⁶ Statistics New Zealand (2010), National Ethnic Population Projections: 2006 (base) – 2026 update. Accessed 5 May 2010 from http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/nationaethnicpopulationprojections_hotp2006-26.aspx

