

The Treaty of Waitangi

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The Treaty of Waitangi is the founding document of New Zealand. Under the terms of the Treaty the Crown was given the right to govern in New Zealand and peaceful settlement was allowed to take place. In exchange Maori rights to their lands, resources and taonga were affirmed and Maori were granted the rights and privileges of 'British citizenship'. As New Zealand became constitutionally independent from Britain the Treaty obligations of the Crown were transferred to the Crown in New Zealand. The following sections give the texts of the Treaty in Maori (with a translation) and English.

THE TREATY OF WAITANGI

Te Tiriti o Waitangi

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 o ratou rangatiratanga me tō rātou wenua, ā kia mau tonu hoki te Rongo ki a rātou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tētahi Rangatira - hei kai wakarite ki ngā Tāngata:māori o Nu Tīrani - kia wakaetia e ngā Rangatira māori te Kāwanatanga o te Kuini ki ngā wāhi katoa o te wenua nei me ngā motu - nā te mea hoki he tokomaha kē ngā tāngata o tōna Iwi Kua noho ki tēnei wenua, ā e haere mai nei.

Nā ko te Kuini e hiahia ana kia wakaritea te Kāwanatanga kia kaua ai ngā kino e puta mai ki te tangata māori ki te Pakeha e noho ture kore ana. Na kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kāwana mō ngā wāhi katoa o Nu Tīrani e tukua āianei āmua atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te wakaminenga o ngā hapū o Nu Tīrani me ērā Rangatira atu ēnei ture ka kōerotia nei.

Ko te tuatahi

Ko ngā Rangatira o te wakaminenga me ngā Rangatira katoa hoki kī hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu - te Kāwanatanga katoa o ō ratou wenua.

Ko te tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki ngā Rangatira ki ngā hapū - ki ngā tāngata katoa o Nu Tīrani te tino rangatiratanga o ō rātou wenua o rātou kāinga me o rātou taonga katoa. Otiia 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 kai hoko e meatia nei e te Kuini hei kai hoko mōna.

Ko te tuatoru

Hei wakaritenga mai hoki tēnei mo te wakaaetanga ki te Kāwanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani ngā tāngata māori katoa o Nu Tirani ka tukua ki a rātou ngā tikanga katoa rite tahi ki āna mea ki ngā tāngata o Ingarani.

[signed] W. Hobson Consul & Lieutenant Governor

Nā ko mātou ko ngā Rangatira o te Wakaminenga o ngā hapū o Nu Tirani ka huihui nei ki Waitangi ko mātou hoki ko ngā Rangatira o Nu Tirani ka kite nei i te ritenga o ēnei kupu. Ka tangohia ka wakaaetia katoatia e mātou, koia ka tohungia ai o mātou ingoa o mātou tohu.

Ka meatia tēnei ki Waitangi i te ono o ngā ra o Pēpueri i te tau kotahi mano, e waru rau e whā te kau o tō mātou Ariki.

Note: This treaty text was signed at Waitangi, 6 February 1840, and thereafter in the north and at Auckland. It is reproduced as it was written, except for the heading above the chiefs' names: ko ngā Rangatira o te Wakaminenga.

A Literal Translation into English of the Maori Version of the Treaty

Victoria, the Queen of England, in her gracious remembrance of the Chiefs and Tribes of New Zealand, and through her desire to preserve to them their chieftainship and their land, and to preserve peace and quietness to them, has thought it right to send them a gentleman to be her representative to the natives of New Zealand. Let the native Chiefs in all parts of the land and in the islands consent to the Queen's Government. Now, because there are numbers of the people living in this land, and more will be coming, the Queen wishes to appoint a Government, that there may be no cause for strife between the Natives and the Pakeha, who are now without law: It has therefore pleased the Queen to appoint me, WILLIAM HOBSON, a Captain in the Royal Navy, Governor of all parts of New Zealand which shall be ceded now and at a future period to the Queen. She offers to the Chiefs of the Assembly of the Tribes of New Zealand and to the other Chiefs, the following laws:-

I. The Chiefs of (i.e. constituting) the Assembly, and all the Chiefs who are absent from the Assembly, shall cede to the Queen of England for ever the government of all their lands.

II. The Queen of England acknowledges and guarantees to the Chiefs, the Tribes, and all the people of New Zealand, the entire supremacy of their lands, of their settlements, and of all their personal property. But the Chiefs of the Assembly, and all other Chiefs, make over to the

Queen the purchasing of such lands, which the man who possesses the land is willing to sell, according to prices agreed upon by him, and the purchaser appointed by the Queen to purchase for her.

III. In return for their acknowledging the Government of the Queen, the Queen of England will protect all the natives of New Zealand, and will allow them the same rights as the people of England

(Signed) WILLIAM HOBSON

Consul, and Lieutenant-Governor

We, the Chiefs of this Assembly of the tribes of New Zealand, now assembled at Waitangi, perceiving the meaning of these words, take and consent to them all. Therefore we sign our names and our marks.

This is done at Waitangi, on the sixth day of February, in the one thousand eight hundred and fortieth year of our Lord.

Note: Text from J. Noble Coleman, A Memoir of the Rev. Richard Davis, London, 1865, pp.455-56.

The Treaty of Waitangi (English text)

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favor 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 authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those 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 authorize 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.

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 Forests Fisheries and other Preemption 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.

[signed] W. Hobson Lieutenant Governor

Appendices

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.

Note: This English text was signed at Waikato Heads in March or April 1840 and at Manukau on 26 April by thirty-nine chiefs only. The text became the 'official' version.

PRINCIPLES OF THE TREATY OF WAITANGI

There are two official versions of the Treaty: the English-language version, and the Maori-language version, neither of which is a direct translation of the other. The Treaty, in either version, is a brief and simple document, and as the courts and the Waitangi Tribunal have pointed out, the literal terms of the Treaty cannot easily be applied to New Zealand society in contemporary times. For these reasons, the practice has been to consider the principles of the Treaty, rather than to construe its literal terms. Lord Woolf, delivering the Privy Council's advice in *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (*Broadcasting Assets*), at 517 stated: 'With the passage of

time, the "principles" which underlie the Treaty have become much more important than its precise terms.'

Section 6 of the Treaty of Waitangi Act 1975 confers upon the Waitangi Tribunal jurisdiction to consider claims of breaches of the 'principles of the Treaty'. Several other statutes make reference to the principles of the Treaty. The courts and the Waitangi Tribunal consistently refer to and develop the principles and 'spirit' of the Treaty.

There is no definitive or exhaustive list of the principles of the Treaty of Waitangi. The Treaty is often referred to as a living document. The Waitangi Tribunal considers that the Treaty was intended to be the foundation for a developing social contract, and to provide a direction for future growth and development (*Motunui-Waitara Claim Report 1983 (Wai 6)*). This sentiment has frequently been expressed in the Court of Appeal. In particular, President Cooke has referred to the Treaty as an embryo rather than a set of fully developed ideas. Thus, if the Treaty is to be a living document which provides the foundation for present and future relations between Maori and the Crown, then the principles arising from it must be flexible and capable of adapting to changes in New Zealand society.

In the Privy Council's advice in the *Broadcasting Assets* case, Lord Woolf stated that: 'In Their Lordships' opinion the "principles" are the underlying mutual obligations and responsibilities which the Treaty places on the parties. They reflect the intent of the Treaty as a whole, and include, but are not confined to, the express terms of the Treaty.' This statement endorses the approach taken by the New Zealand Court of Appeal in *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641 (*Lands*).

Together, these two cases provide a considerable body of authority from which some basic 'principles of the Treaty' can be drawn. The first, and perhaps most fundamental 'principle' is that each Treaty partner is under a duty to act reasonably and in good faith towards the other. Secondly, the Crown must make informed decisions. In other words, it must have proper regard to the Treaty when making any decision. Thirdly, the principles of the Treaty clearly extend to the Crown's taking active and positive steps to redress past breaches. This duty includes active protection of Maori people in the use of their resources.

Arguably, other expressions of the principles of the Treaty are variations on one or more of the three general principles mentioned above. The following is a list of generally accepted principles, the origins of which can be traced to the decisions of the courts and the Waitangi Tribunal. This list is neither complete nor final, and is provided to demonstrate how the general principles of the Treaty discussed above have been formulated in more particular terms:

- the Crown should exercise the powers of government, and make laws in respect of all New Zealanders;
 - Maori have the right to self-management, to maintain Maori culture and to control their resources;
 - pursuant to the Treaty, the honour of the Crown is a form of constitutional guarantee;
 - Maori are to enjoy equality before the law, and are entitled to the protection of the Crown;
 - equality of Maori and Pakeha before the law implies equality in terms of civil, social, and economic rights and opportunities;
 - the Treaty signifies a relationship based on good faith and mutual co-operation;
 - the Treaty relationship implies the implementation of the Treaty in a broad and generous spirit that takes account of cultural difference;
 - the Treaty does not authorise unreasonable obstruction of the implementation of Government policy. Such an obstruction, itself, would breach the Treaty;
 - the responsibility of the Government towards Maori is in the nature of a fiduciary duty which requires active protection of Maori property and identity, in accordance with Maori values, to the fullest extent possible;
 - the Treaty implies consultation in the event that Government policies affect Maori interests;
- there exists a right of redress to either party in case of a breach, and the Treaty envisages adequate restitution or compensation. It would be inconsistent with the Treaty to cure one wrong by creating another.

Whatever form the principles of the Treaty may take, it is clear that they provide the basis for the present and future relationship between Maori people and the Crown.

HOW THE MINISTRY APPLIES THE TREATY

The Ministry is the Crown's principal adviser on the relationships between the Crown and iwi, hapu and Maori under the Treaty. The Ministry has developed a Treaty framework to assist it in formulating consistent and robust advice on these relationships. The purpose of the framework is to clarify the obligations of the Crown under each of the Articles of the Treaty. In particular, the framework highlights the different obligations which the Crown has to Maori as members of iwi and hapu under Articles I and II, and to Maori as citizens of New Zealand under Articles I and III.

Treaty Framework

The Treaty framework has two halves, representing the two Treaty partners. On the left-hand side are iwi and hapu. Representatives of these entities signed the Treaty on behalf of their people in 1840 and it is with them that the Crown has an ongoing constitutional relationship. Today iwi and hapu are usually represented by iwi authorities, such as Trust Boards and incorporated runanga, and provide services and representation to Maori as tangata whenua.

On the right-hand side is the other Treaty partner, the Crown. Today the Crown is represented by the Government, which is accountable to all New Zealanders. There are various Government agencies, of which the Ministry is one. The purpose of these Government agencies is to address collectively the needs of New Zealand citizens, either through the provision of services to them or through the provision of policy advice.

What links the two halves of the Treaty framework is the Treaty itself, which is a contract between iwi and hapu and the Crown. The framework also implies a duality of status under the Treaty for Maori, first as tangata whenua ('citizens' of iwi and hapu), and secondly as individual citizens of New Zealand. This leads to an important distinction between those rights of tangata whenua that are iwi or hapu-based, and the rights of Maori as individuals or as collectives of citizens.

Under Article II of the Treaty the Crown has an obligation to uphold the rights of iwi and hapu guaranteed by the Treaty. These Article II rights include rights to lands, resources and taonga, and the right to exercise tino rangatiratanga over these things (a discussion of various interpretations of tino rangatiratanga can be found at the chapter on Constitutional Issues, the Meaning of the Treaty). The work the Ministry undertakes in the Treaty settlements and constitutional areas tends to involve Article II issues. A balance always needs to be found between the Crown's recognition of Article II rights and its good government obligations to act in the best interests of all New Zealanders under Article I.

Under Article III of the Treaty Maori are granted full citizenship rights. These rights do not only include the right to equality under the law, but also embrace the right to relative equality in socio-economic outcomes. The chiefs would not have signed the Treaty in 1840 had they known their people would suffer from the type of socio-economic disadvantage that they currently do in what was once their own country.

Differences between Maori and non-Maori in incomes, health status, educational attainment, labour force participation and a host of other indicators suggest that individual Maori have not enjoyed the reciprocal benefits guaranteed to all citizens under the Treaty. Maori assert that both the failure to redress disparities, and the perpetuation of

disadvantage through generations of Maori, represent a breach of the Treaty by the Crown. Much of the work undertaken by the Ministry in the social policy area addresses these Article III concerns.

The Ministry's Treaty framework is not intended to be a definitive interpretation of the Treaty, nor is it intended to be overly rigid. Rather it is a tool of analysis to assist the Ministry in clarifying Treaty relationships, but not necessarily to prescribe them. There are also certain relationships under the Treaty which fall outside the framework, but which are nonetheless valid. For example, the recent decision by the Court of Appeal requiring the Treaty of Waitangi Fisheries Commission to take into account the interests of urban Maori when allocating fishing quota under the 1992 Fisheries Settlement indicates that in some circumstances it is not only iwi and hapu who have rights under Article II.