

6 January 2025

United Nations Human Rights Committee (UNHRC)
Palais Wilson
GENEVA

E ngā rangatira, tēnā koutou

UNHRC Review of New Zealand Compliance with the International Covenant on Civil and Political Rights – List of Issues

This submission to the UNHRC is made by Wairarapa Moana ki Pouākani Incorporation (WMI) from Aotearoa New Zealand.

About Wairarapa Moana ki Pouākani Incorporation

Wairarapa Moana ki Pouākani Incorporation (WMI) is a Māori Land Incorporation. We represent descendants of the rangatira (chiefs), hapū (subtribes) and whānau (families) of Wairarapa Moana. WMI has over 4,000 Māori owners and whānau (families) and links through shared genealogy with the wider iwi (tribes) of Ngāti Kahungunu ki Wairarapa, and Rangitāne o Wairarapa.

WMI was formed by order of the Māori Land Court in 2002, following the amalgamation of the Pouākani II Trust and the Mangakino Township Incorporation.

WMI operate a large dairy farming and forestry enterprise at Mangakino in the South Waikato of New Zealand. We are also one of the major shareholders in the dairy processing company, Miraka.

WMI are a Non-Government Organisation (NGO) and made a submission on the New Zealand's Universal Period Review (UPR) in October 2023, and presented to Permanent Representatives to the UN, Geneva in February 2024 as part of the UPR pre-session.

A copy of our submission (Appendix 1), and February 2024 statement (Appendix 2) and supporting Factsheet (Appendix 3) is enclosed.

Our Story

Our journey to have our lands returned dates back to events in the 1850s – 170 years ago.

The New Zealand Government took land under the Public Works Act in the 1940s. We had a right to seek the return of this land under New Zealand domestic law.

In 2017 WMI lodged an application with the Waitangi Tribunal seeking the return of some of the lands taken from us. This application was made under section 8A of the Treaty of Waitangi Act 1975. The Waitangi Tribunal is an expert body set up to make recommendations on claims brought by Māori relating to Crown actions which breach the Treaty of Waitangi.

The right to have these lands returned was confirmed by the New Zealand Supreme Court, who referred the matter back to the Waitangi Tribunal for a decision. The legislative provisions under which we sought the return of our lands is the only instance in New Zealand law in which the Waitangi Tribunal is able to make a determination which is binding on the New Zealand Government.

Rather than allow the legal proceedings to reach a conclusion, the New Zealand Government **violated our human right to have our claim heard and properly determined**. They ignored the expert advice of the Waitangi Tribunal, that the mandate to settle the WMI Treaty of Waitangi claim, rested with WMI, and not the wider tribe.

They instead proceed to settle our claim with the wider tribe, and through an Act of Parliament, **forced a settlement of our claim without our free, informed, and prior consent**.

New Zealand's actions were inconsistent with Articles 2(3) (a), 14(1) and 26 of the ICCPR.

List of Issues – New Zealand Compliance with the International Covenant on Civil and Political Rights (ICCPR)

WMI recommend that the Committee include the following issues in the *List of Issues Prior to Reporting for New Zealand*:

1. Constitutional and legal framework within which the Covenant is implemented

New Zealand need to **strengthen the Bill of Rights Act 1990 to encompass all Covenant rights (economic, social, cultural and the right to self-determination)** and strengthen the role of the judiciary in assessing the consistency of laws with the Act and the ICCPR.

This is consistent with the 2016 Human Rights Committee (CCPR) recommendation to the New Zealand Government.¹

2. Treaty of Waitangi and Constitutional protections

WMI experience with the New Zealand Government raises concerns about the continued emphasis on unilateral Parliamentary sovereignty. In the absence of any constitutional protection, Executive Government in New Zealand and Parliament continues to breach the fundamental rights of Māori as guaranteed by the Treaty of Waitangi.

The Treaty Principles Bill and the Marine and Coastal Area Amendment Bill are current examples of the violation of the rights of Indigenous Peoples of New Zealand, and continued breaches of the Treaty of Waitangi.

The Waitangi Tribunal stated in their *Report of the Tomokia Ngā Tatau o Matangireia – The Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* if enacted, will have a profound impact on the mana² of the Treaty / te Tiriti and its constitutional status. The Tribunal state, "the words and spirit of the Treaty / te Tiriti will be stated in law to be something that they are not,

¹ CCPR/C/NZL/CO/6 (10).

² [mana - Te Aka Māori Dictionary](#)

thereby disturbing the constitutional foundation of this country and the legitimacy of the Crown.³

Similarly, the Marine and Coastal Area Amendment Bill currently before the New Zealand Parliament, seeks to undermine the agreement reached with Māori in 2010, and cut across matters currently before the New Zealand Courts.

For many years now, United Nation bodies', including the Human Rights Committee in 2016⁴, have called on successive New Zealand Government's **to strengthen the role of the Treaty of Waitangi in the existing constitutional arrangements** and guarantee the informed participation of Indigenous Peoples in all relevant national and international consultation processes, including those directly affecting them.

There has been no progress in implementing these recommendations.

This is most recently evidenced in the New Zealand Government's response to the recommendations of the Report of the Working Group on the 4th Universal Periodic Review, where it chose to only note, rather than support similar recommendations.

WMI are agreeable to this submission being published on the Committee's website.

Nāku noa, nā



Kingi Smiler
Chairman
Wairarapa Moana ki Pouākani Incorporation

³ Waitangi Tribunal, Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – The Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies (pre-publication version, 2024), p 141.

⁴ CCPR/C/NZL/CO/6 (46).

Summary

1. Wairarapa Moana ki Pouākani Incorporation (WMI) had an active claim before the Waitangi Tribunal for the return of land that had been taken from us under the Public Works Act in the 1940's, a breach of te Tiriti o Waitangi.
2. The New Zealand Supreme Court in December 2022 upheld WMI right to have the land returned. Before the Waitangi Tribunal could reach a final determination, the claim was overridden by the New Zealand Parliament through the passage of legislation, blocking the Waitangi Tribunal returning the land.
3. This act by the New Zealand Parliament was also a breach of te Tiriti o Waitangi.
4. The extinguishment of active legal proceedings violated WMI human rights to have our claim and lawful rights heard and properly determined by the New Zealand courts. The New Zealand Parliament overrode a Supreme Court decision, overturned WMI human rights, and right to justice.
5. This egregious act by the New Zealand Parliament was a breach of WMI's rights pertaining to our lands, territories, and resources in the United Nations /Declaration on the Rights of Indigenous Peoples, particularly:
 - a. *Article 25*: WMI right to maintain and strengthen our spiritual relationship with the land.
 - b. *Article 26*: WMI right to legal recognition and protection of our interests in the land.
 - c. *Article 27*: WMI access to a fair, independent, impartial, open, and transparent process for recognising and adjudicating our rights in relation to the land.
 - d. *Article 28*: WMI right to redress through the return of land or fair and equitable compensation, and complete disregard for our clear indication that we did not give free, prior, and informed consent to settlement of our claim through the wider iwi (tribe) Treaty of Waitangi settlement process.
6. In addition, the New Zealand Parliament's actions were inconsistent with:
 - a. Section 27(3) of the New Zealand Bill of Rights Act 1990, which affirms and protects the right of every person to bring civil proceedings against the Crown, and to have those proceedings heard, according to the law.
 - b. Article 2(3) (a) of the International Covenant on Civil and Political Rights (ICCPR) which provides that state parties will ensure those whose rights are violated have an effective remedy.
 - c. Article 14(1) of the ICCPR which provides that all persons shall be equal before the courts and tribunals, and that everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.
 - d. Article 26 of the ICCPR which provides that all persons are equal before the law and are entitled without any discrimination to equal protection of the law.

Wairarapa Moana ki Pouākani Incorporation

7. Wairarapa Moana ki Pouākani Incorporation (WMI) is a Māori Land Incorporation. We represent descendants of the rangatira (chiefs), hapū (subtribes) and whānau (families) of Wairarapa Moana. WMI has over 4,000 Māori owners and whānau (families) and links through shared genealogy with the wider iwi (tribes) of Ngāti Kahungunu ki Wairarapa, and Rangitāne o Wairarapa.
8. WMI operate a large dairy farming and forestry enterprise at Mangakino in the South Waikato of New Zealand. We are also one of the major shareholders in the dairy processing company, Miraka.
9. A full chronology setting out the historical context of the New Zealand Parliament breach of WMI human rights, and te Tiriti o Waitangi is at Annex 1.

Human rights and Indigenous Peoples' Rights breaches by New Zealand on Wairarapa Moana ki Pouākani Incorporation

10. On 10 February 2017 WMI applied to the Waitangi Tribunal (expert body) for the return of Pouākani lands previously in our ownership under section 8A of the Treaty of Waitangi Act 1975.ⁱ Applicants are required to have a well-founded claim that relates to the land to which return is sought.ⁱⁱ Our claim was Wai 85.
11. The preliminary determinationⁱⁱⁱ of the Waitangi Tribunal was appealed by the various parties to these proceedings before the High Court and then the Supreme Court.
12. In October 2021, WMI sought an urgent hearing by the Waitangi Tribunal into the Crown's process to force a settlement of our claim for the return of lands through the Treaty settlement process with the wider iwi (tribe) of Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-rua. The Waitangi Tribunal concluded that:
 - the Crown's process was unfair and would exacerbate divisions amongst the iwi (tribe) and the Māori claimant community, and that the settlement would not be durable: and
 - the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-rua Settlement Trust had no mandate to enter into settlement with the Crown concerning the WMI Wai 85 claim and the land at Pouākani.
13. The Waitangi Tribunal recommended that the Crown's proposed settlement with Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua should not proceed, and that the litigation before the Supreme Court should be allowed to take its course. They also recommended that the Crown support all parties to commit to a process to resolve conflicts, to uphold the mana^{iv} of all, restore relationships, and come finally to reconciliation with the Crown.
14. The treaty settlement process is a Crown designed and controlled process over which Māori have little control and protection. The Waitangi Tribunal recommendations were completely ignored by the Crown, who does not appear to consider itself in anyway accountable for the impact that its actions have on Māori communities. There are no consequences for the Crown, and this allows them to continue to "divide and rule" and create grievances within Māori communities that will transcend generations.
15. On the 7 December 2022 the Supreme Court^v upheld the WMI appeal and determined we were eligible for the return of the lands at Pouākani, and the matter should be referred

back to the Waitangi Tribunal for a final determination. A copy of *Wairarapa Moana ki Pouākani v Mercury NZ Ltd* [2022] NZSC 142 is at Annex 2.

16. On the 12 December 2022, the Waitangi Tribunal issued a memorandum – directions^{vi} observing:

“...if the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Claims Settlement Bill were not passed into law tomorrow, the Tribunal would pursue the path outlined for it in Wairarapa Moana ki Pouākani v Mercury NZ Ltd [2022] NZSC 142. This might have the effect of returning significant hydro assets to the Wairarapa Moana ki Pouākani Incorporation or another appropriate entity. It might also have resolved longstanding raru between tangata whenua at Pouākani and Wairarapa Māori through a tikanga process that was allowed to run its course. However, the government has decided to extinguish those possibilities by passage of law tomorrow.”

17. A copy of the Waitangi Tribunal memorandum, 12 December 2022 is at Annex 3.
18. On 13 December 2022, the New Zealand Parliament passed legislation (the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Claims Settlement Act) which forced a settlement of the WMI Wai 85 claim. The impact of this was to bring to an abrupt end active legal proceedings before the Waitangi Tribunal and extinguish the WMI Wai 85 claim. These legal proceedings were matters in which the Crown were a party and had a vested interest in the outcome.
19. The decision to force a settlement of Wai 85 without our free, informed, and prior consent was a breach of Article 28 (1) of the United Nations Declaration on the Rights of Indigenous People.
20. The extinguishment of WMI’s active legal proceedings violated our human rights to have our claim and lawful rights heard and properly determined by the New Zealand courts.
21. This egregious act by the New Zealand Parliament was a breach of WMI’s rights pertaining to our lands, territories, and resources in the United Nations Declaration on the Rights of Indigenous Peoples, particularly:
- a. *Article 25*: WMI right to maintain and strengthen our spiritual relationship with the land.
 - b. *Article 26*: WMI right to adequate legal recognition and protection of our interests in the land.
 - c. *Article 27*: WMI access to a fair, independent, impartial, open, and transparent process for recognising and adjudicating our rights in relation to the land.
 - d. *Article 28*: WMI right to redress through the return of land or fair and equitable compensation and complete disregard for our clear indication that we did not give free, prior, and informed consent to settlement of our Wai 85 claim through the iwi Treaty of Waitangi settlement process.
22. In addition, the New Zealand Parliament’s actions were inconsistent with:
- a. Section 27(3) of the New Zealand Bill of Rights Act 1990, which affirms and protects the right of every person to bring civil proceedings against the Crown, and to have those proceedings heard, according to the law.

- b. Article 2(3) (a) of the International Covenant on Civil and Political Rights (ICCPR) which provides that state parties will ensure those whose rights are violated have an effective remedy.
 - c. Article 14(1) of the ICCPR which provides that all persons shall be equal before the courts and tribunals, and that everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.
 - d. Article 26 of the ICCPR which provides that all persons are equal before the law and are entitled without any discrimination to equal protection of the law.
23. The Aotearoa Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples in their July 2023 report^{vii} state that the WMI case highlights the complexity of the treaty settlement process, the emphasis on unilateral parliamentary sovereignty above all else, and that in the absence of any constitutional protection, the legislature continues to breach the fundamental civil and Tiriti rights of Māori.
24. The WMI experience at the hands of the New Zealand Government, highlights the need for greater constitutional protections for Te Tiriti o Waitangi and human rights in Aotearoa New Zealand. In addition, Aotearoa New Zealand's obligations under the International Covenant on Civil and Political Rights should be more comprehensively incorporated into law. Aotearoa New Zealand urgently needs to progress implementation of a National Action Plan for the United Nations Declaration on the Rights of Indigenous Peoples, grounded in te Tiriti o Waitangi.

Recommendation

25. Either New Zealand commit to returning to WMI the lands which were the subject of our resumption application to the Waitangi Tribunal; or New Zealand meet its obligations under Article 28(2) of the United Nations Declaration on the Rights of Indigenous Peoples to provide compensation that is 'equal in quality, size, and legal status or of monetary compensation or other appropriate redress.' This would be consistent with Article 2 (3)(a) of the International Covenant on Civil and Political Rights, which provides that state parties will ensure those whose rights are violated have an effective remedy.

Organisations in support^{viii} of WMI Submission

26. This submission by WMI on the New Zealand 4th Periodic Review is supported by the Federation of Māori Authorities, New Zealand Māori Council, Pouākani Claims Trust, Rangitāne Tū Mai Rā Trust, and New Zealand Human Rights Commission.

ⁱ [Treaty of Waitangi Act 1975 No 114 \(as at 17 December 2022\), Public Act Contents – New Zealand Legislation](#)

ⁱⁱ Waitangi Tribunal, *Wairarapa ki Tararua Report, Chapter 7*.

ⁱⁱⁱ Preliminary Determination of the Waitangi Tribunal, 24 March 2020.

^{iv} Mana means influence, status, authority. [mana - Te Aka Māori Dictionary \(maoridictionary.co.nz\)](#)

^v *Wairarapa Moana ki Pouākani v Mercury NZ Ltd* [2022] NZSC 142.

^{vi} Waitangi Tribunal Memorandum following Supreme Court decision, 12 December 2022.

^{vii} Aotearoa Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples, July 2023 Report, pages 12 -13.

^{viii} Refer Annex 4 for details of Māori organisations supporting WMI submission.

Updated Statement on the Universal Periodic Review on New Zealand

Wairarapa Moana ki Pouākani Incorporation (WMI) represent the descendants of the original owners of Wairarapa Moana – 4,000 Māori owners, and their whānau (families). Our people have genealogical links to the wider iwi (tribes) of Ngāti Kahungunu ki Wairarapa and Rangitāne o Wairarapa. WMI is led by the Committee of Management, who are elected by the Māori owners. We are a Māori Land Incorporation, with a large dairy farming and forestry enterprise at Mangakino in the South Waikato of Aotearoa New Zealand.

In preparing our submission on the 4th Universal Periodic Report on New Zealand we consulted with other key Māori organisations, the Human Rights Commission and received significant support from the New Zealand Māori Councilⁱ, Federation of Māori Authoritiesⁱⁱ, Pouākani Claims Trustⁱⁱⁱ, and the Rangitāne Tū Mai Rā Trust^{iv}.

Our case is about the New Zealand Government's breach of our human rights, rights as Indigenous Peoples, and the Treaty of Waitangi – the founding document of Aotearoa New Zealand.

This statement focuses on **two** themes: **Indigenous Peoples Rights and Justice**.

THEME 1: JUSTICE

The New Zealand Government took land under the Public Works Act in the 1940s. We had a right to seek the return of this land under New Zealand domestic law.

In 2017 WMI lodged an application with the Waitangi Tribunal seeking the return of some of the Pouākani lands taken from us. This application was made under section 8A of the Treaty of Waitangi Act 1975. The Waitangi Tribunal is an expert body set up to make recommendations on claims brought by Māori relating to Crown actions which breach the Treaty of Waitangi.

This right was confirmed by the New Zealand Supreme Court, who referred the matter back to the Waitangi Tribunal for a decision. The legislative provisions under which we sought the return of our lands is the only instance in New Zealand law in which the Waitangi Tribunal is able to make a determination which is binding on the New Zealand Government.

Rather than allow the legal proceedings to reach a conclusion, the New Zealand Government **violated our human right to have our claim heard and properly determined**. Forcing a settlement of our claim **without our free, informed, and prior consent**.

The New Zealand Government ignored the expert advice of the Waitangi Tribunal, that the mandate to settle the WMI Treaty of Waitangi claim, rested with the Incorporation, and not the wider tribe.

The New Zealand's actions were inconsistent with:

- a. Article 2(3) (a) of the International Covenant on Civil and Political Rights (ICCPR) which provides that state parties will ensure those whose rights are violated have an effective remedy.
- b. Article 14(1) of the ICCPR which provides that all persons shall be equal before the courts and tribunals, and that everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.
- c. Article 26 of the ICCPR which provides that all persons are equal before the law and are entitled without any discrimination to equal protection of the law.

THEME 2: INDIGENOUS PEOPLES RIGHTS

The New Zealand Government breached WMI rights pertaining to our lands, territories, and resources in the United Nations Declaration on the Rights of Indigenous Peoples, particularly:

- a. **Article 25:** WMI right to maintain and strengthen our spiritual relationship with the land.
- b. **Article 26:** WMI right to legal recognition and protection of our interests in the land.
- c. **Article 27:** WMI access to a fair, independent, impartial, open, and transparent process for recognising and adjudicating our rights in relation to the land.
- d. **Article 28:** WMI right to redress through the return of land or fair, equitable compensation, and complete disregard for our clear indication that we did not give free, prior, and informed consent to settlement of our claim through the wider iwi (tribe) Treaty of Waitangi settlement process.

Today, Māori possess within their exclusive authority and control **only 5 percent** of the total land mass of Aotearoa New Zealand. WMI take their obligation to retain Māori land and to have those lands wrongfully taken from them returned very seriously.

RECOMMENDATIONS

Wairarapa Moana ki Pouākani Incorporation **recommends** that the New Zealand Government:

COMMIT to returning to WMI the lands which were the subject of our resumption application to the Waitangi Tribunal; or **UNDERTAKE** to meet its obligations under Article 28(2) of the United Nations Declaration on the Rights of Indigenous Peoples to provide compensation that is ‘equal in quality, size, and legal status or of monetary compensation or other appropriate redress.’

URGENTLY amend the Bill of Rights Act to include economic, social and cultural rights and the right to self-determination as set out in the ICCPR.

WMI hope that these recommendations will be adopted and implemented by the New Zealand Government, relationships restored, and allow WMI to come finally to reconciliation with the Crown.

ⁱ The New Zealand Māori Council advocate at the national and local level for policy development and community initiatives that contribute to Māori self-determination. There are 16 District Councils throughout Aotearoa New Zealand.

ⁱⁱ The Federation of Māori Authorities is made up of a Collective of Māori Trusts and organisations across Aotearoa New Zealand.

ⁱⁱⁱ The Pouākani Claims Trust was established in 2000 as a Charitable Trust to receive, manage and administer the proceeds of the Pouākani Treaty Claim Settlement.

^{iv} The Rangitāne Tū Mai Rā Trust is the post settlement governance entity for Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua.



4th Cycle Universal Periodic Review on New Zealand Human Rights Themes: Indigenous Peoples Rights and Justice

About Wairarapa Moana ki Pouākani Incorporation

Wairarapa Moana ki Pouākani Incorporation (WMI) represent the descendants of the original owners of Wairarapa Moana – 4,000 Māori owners, and their whānau (families).

Our people have genealogical links to the wider iwi (tribes) of Ngāti Kahungunu ki Wairarapa and Rangitāne o Wairarapa. WMI is led by the Committee of Management, who are elected by the Māori owners. We are a Māori Land Incorporation, with a large dairy farming and forestry enterprise at Mangakino in the South Waikato of Aotearoa New Zealand.

The Issue

Our journey to have our lands returned dates back to events in the 1850s – 170 years ago.

In 2017 WMI lodged a resumption applicationⁱ with the Waitangi Tribunal under the Treaty of Waitangi Act 1975 for the return of lands, taken under the Public Works Act in the 1940s. Rather than allow this process to reach a conclusion, the New Zealand Parliament passed legislation which brought an abrupt end to our legal proceedings.

The New Zealand Government **stopped** the return of our lands by the Waitangi Tribunal.

This was a breach of our human rights and the Treaty of Waitangi.

What the experts have said about the Wairarapa Moana ki Pouākani Case

Waitangi Tribunal

The Waitangi Tribunal in their 18 November 2021 Reportⁱⁱ, on the WMI resumption application and the Treaty of Waitangi settlement process state:

- ▶ The Crown's Settlement process was unfair, will exacerbate divisions in the claimant community, and will not be durable.
- ▶ That the Settlement Trust (wider tribal grouping) had no mandate to enter into settlement with the Crown concerning the interests of WMI and the Pouākani lands (Wai 85)

On the 12 December 2022, following the decision of the New Zealand Supreme Court, the Waitangi Tribunal issued a memorandum – directionsⁱⁱⁱ observing:

"...if the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Claims Settlement Bill were not passed into law tomorrow, the Tribunal would pursue the path outlined for it in Wairarapa Moana ki Pouākani v Mercury NZ Ltd [2022] NZSC 142. This might have the effect of returning significant hydro assets to the Wairarapa Moana ki Pouākani Incorporation or another appropriate entity. It might also have resolved longstanding raru between tangata whenua at Pouākani and Wairarapa Māori through a tikanga process that was allowed to run its course. However, the government has decided to extinguish those possibilities by passage of law tomorrow."

Independent Monitoring Mechanism for the UN Declaration on the Rights of Indigenous Peoples

The Aotearoa Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples in their July 2023 report^{iv} state that the WMI case highlights the complexity of the treaty settlement process, the emphasis on unilateral parliamentary sovereignty above all else, and that in the absence of any constitutional protection, the legislature continues to breach the fundamental civil and Treaty of Waitangi rights of Māori.

Recommendation

Wairarapa Moana ki Pouākani Incorporation **recommend** the New Zealand Government:

- ▶ **COMMIT** to returning to WMI the lands which were the subject of our resumption application to the Waitangi Tribunal.

or

- ▶ **UNDERTAKE** to meet its obligations under Article 28(2) of the United Nations Declaration on the Rights of Indigenous Peoples to provide compensation that is ‘equal in quality, size, and legal status or of monetary compensation or other appropriate redress.’

Timeline of Wairarapa Moana ki Pouākani Incorporation Wai 85 Treaty of Waitangi Claim

- 1853 - 1896**
Wairarapa Māori successfully resisted strong pressure from the Crown to relinquish control of Wairarapa Moana.
- 1896**
Wairarapa Moana and surrounding lands, gifted to the Crown by Wairarapa Māori, with Crown agreeing to provide other land in the Wairarapa in return.
- 1916**
Crown refused to provide lands in the Wairarapa, and instead 30,486 acres of the Pouākani block in the South Waikato, was vested in Wairarapa Moana owners.
The land at Pouākani was inaccessible by road or rail. Promises were made about access that was not provided until the 1940's hydro scheme development.
- 1940s**
The construction of the town and the dam occurred before notice was given to the Wairarapa Māori owners or the process to acquire the land had begun.
- 1949**
787 acres taken under the Public Works Act for the development of hydro power.
- 1987**
Some of the lands taken for hydro-development was transferred to the Electricity Corporation of New Zealand, a State-Owned Enterprise.
- 1989**
WMI lodges a claim with the Waitangi Tribunal (Wai 85) claim in relation the Crown taking their land which breached the Treaty of Waitangi.
- 2011**
Wairarapa Moana owners mandate the Committee of Management to settle Wai 85 on their behalf. Mandating and negotiations begin with the wider Tribal group (Wairarapa Tamaki nui a Rua).
- February 2017**
WMI lodge application with Waitangi Tribunal for the return of some of the Pouākani lands under the Treaty of Waitangi Act 1975.
- March 2020**
Waitangi Tribunal issues “Preliminary Determination” indicating support for return of the Pouākani lands to an entity representing all of Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua. Decision appealed by various parties to the New Zealand High Court.
- March 2021**
High Court decision that section 8A of the Treaty of Waitangi Act 1975 that land can only be returned to *mana whenua* (those with customary interests). Decision appealed to the Supreme Court.
- November 2021**
Waitangi Tribunal releases report which concludes that only WMI have the mandate to settle Wai 85, and the Crown should “pause” the settlement process.
- 4 February 2022**
Crown introduces Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-rua Claims Settlement Bill, that extinguishes Wai 85 claim.
- 7 December 2022**
Supreme Court upholds WMI appeal and confirms eligible for return of lands. Case referred back to the Waitangi Tribunal.
- 13 December 2022**
Third Reading of Settlement Legislation Bill passed through New Zealand Parliament, followed by Royal Assent.

Settlement of Wai 85 forced on WMI, and Waitangi Tribunal jurisdiction to continue consideration of resumption application for return of lands extinguished by New Zealand Parliament.

Questions

When the New Zealand Government decided to pass settlement legislation and extinguish WMI Wai 85 active legal proceedings what consideration was given to compliance with international human rights mechanisms, such as the International Covenant on Civil and Political Rights and the United Nations Declaration on the Rights of Indigenous Peoples?

Why did the New Zealand Government decide to ignore the recommendations of the Waitangi Tribunal (an expert body on the Treaty of Waitangi), and extinguish Wairarapa Moana ki Pouākani Incorporation Treaty of Waitangi claim, and bring an end to active legal proceedings?

The New Zealand Government's Treaty Settlement policy^v is that settlements are to be durable, fair, achievable, and remove the sense of grievance. How did the New Zealand Government achieve this, in the case of the Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua settlement?

Why has the New Zealand Government ignored the rule of law and the Constitutional rights of the people?

GLOSSARY

Wairarapa Moana	Lakes Wairarapa and Ōnoke and contributing waterways.
Māori Land Incorporation	Māori Land Incorporations are set up under Te Ture Whenua Māori Act 1993 (Māori Land Act).
Waitangi Tribunal	The Waitangi Tribunal is an expert body set up to make recommendations on claims brought by Māori relating to Crown actions which breach the Treaty of Waitangi.
Treaty of Waitangi	The Treaty of Waitangi is New Zealand's founding document signed in 1840 which formed the basis of the British annexation of New Zealand. Te Tiriti o Waitangi – known in English as the Treaty of Waitangi is a written agreement made between tangata whenua (the first peoples of Aotearoa) and the British Crown. The Treaty of Waitangi is a relationship between the indigenous peoples of Aotearoa – Māori and Crown.
Aotearoa Independent Monitoring Mechanism	Independent Māori working group created in 2015. Members have been selected by their iwi (tribal nation) and endorsed by the National Iwi Chairs Forum to act as independent experts.
Iwi	Tribe
Crown	The expression the Crown refers to the executive branch of government (which is the branch that carries out the administration of government) and stands for the historical authority of the sovereign (the King) as head of State. Executive government is made up of the Government-General (the King's representative), Ministers who are Members of Parliament (the legislative or law-making arms of the government) and their departments.
raru	conflict
Tangata whenua	The first peoples of Aotearoa New Zealand
mana whenua	The mana held by local people who have authority over land or territory in a particular area, derived from whakapapa(genealogy) links to that area.

REFERENCES

- i Resumption applications are made under s 8A of the Treaty of Waitangi Act 1975 for memorialised former State-Owned Enterprise land. [Treaty of Waitangi Act 1975 No 114 \(as at 17 December 2022\)](#), Public Act 8A Recommendations in respect of land transferred to or vested in State enterprise – [New Zealand Legislation](#)
- ii Waitangi Tribunal Decision, 18 November 2021 [Tribunal Decision.pdf \(justice.govt.nz\)](#)
- iii Waitangi Tribunal Memorandum following Supreme Court decision, 12 December 2022.
- iv Aotearoa Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples, July 2023 Report, pages 12 -13.
- v [Te Arawhiti – The Red Book](#)

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