

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.