

The promise of two peoples to take the best possible care of each other.

This resource, *Te Mana i Waitangi* (the authority established at Waitangi), aims to capture what was in the hearts and minds of tipuna/ancestors in 1840 and look at how these are reflected today. This resource promotes the Treaty as:

- The promise of two peoples to take the best possible care of each other.
- Belonging to all of us.
- The founding document of Aotearoa, New Zealand.

and provides a framework for you to consider how the promise can be realised.

The two peoples are:

Tangata Whenua (land people) represented by Rangatira from whanau Hapu and Iwi of Aotearoa; and
 Tauwiwi (landed or landing people) represented by the Crown.
 (Dr Merimeri Penfold)

All people have human rights and responsibilities. The Treaty framework aims to explore and explain the rights and responsibilities of the parties to the Treaty. It focuses on where the two texts agree.

The political status of the Treaty remains unresolved between the Crown and Rangatira.
 One Treaty, two versions.

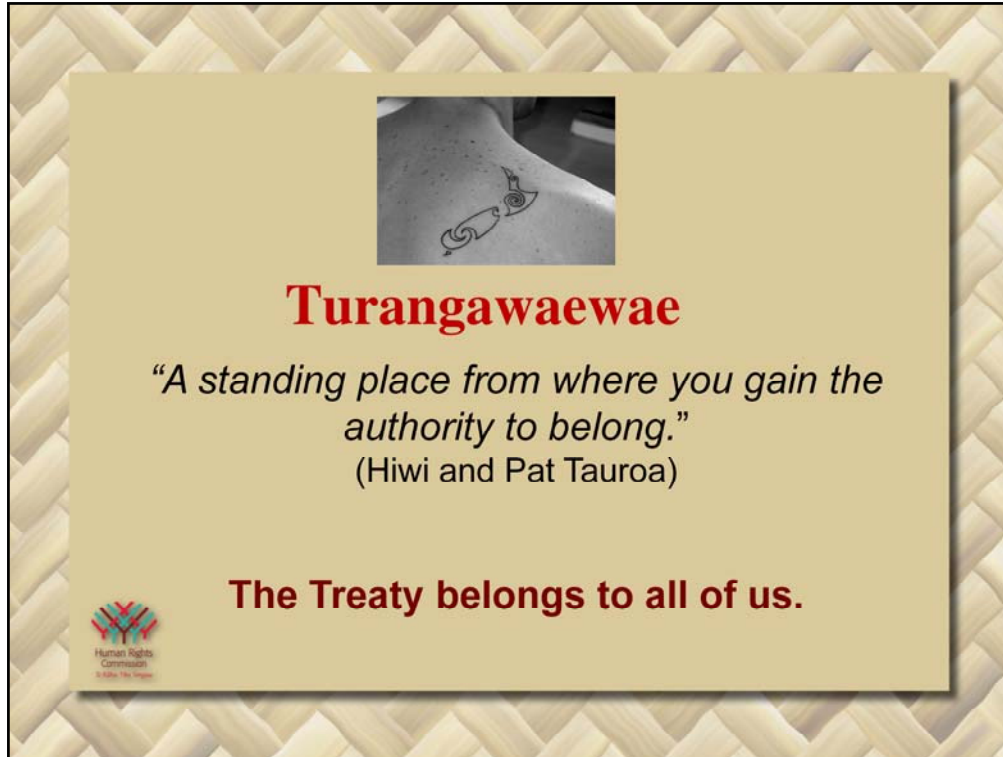
Note: Bishop Manuhuia Bennett's quote is from the *Te Roroa Report* to the Waitangi Tribunal, 1992

Suggested activity:

Consider if you are Tangata Whenua, Tauwiwi, or both. Describe your situation.

What does the promise involve?

What were the motivations for the promise? What did Rangatira want for their whanau? What did the Crown want for their whanau?



The Treaty belongs to all of us

The Treaty is often thought to be a Māori only Treaty. In fact, the Treaty protects all New Zealanders, giving all citizens the authority to belong. We all have turangawaewae, it is our authority and right to belong. Turangawaewae, has both rights and responsibilities.

UMR survey results

A Human Rights Commission survey conducted in 2010 showed that 51% of New Zealanders believe the Treaty belongs to all of us.

“But then we must not forget that the Treaty is not just a bill of rights for Māori. It is a bill of rights for Pākehā too. It is the Treaty that gives Pākehā the right to be here. Without the Treaty, there would be no lawful authority for the Pākehā presence in this part of the South Pacific.” Chief Judge Eddie Durie

Turangawaewae definition: It is a standing place from where one gains the authority to belong (Hiwi and Pat Tauroa, *Te Marae: A guide to Customs and Protocol*, Raupo Publishing (NZ) Ltd, 2004).

Tu = stand, **Turanga** = standing place, **Waewae** = feet

Suggested activity

Where is your turangawaewae

What are your rights and responsibilities?

What icons identify this place?

Why is that place your turangawaewae?



The Treaty is the founding document of our nation

Tangata whenua have always had turangawaewae status in Aotearoa New Zealand. The Treaty established this status for all other New Zealanders by building a foundation for Māori and all New Zealanders to live together.

“The Treaty is the founding document of our nation. It provides the basis for good relations between all citizens of Aotearoa, sets out how resources will be managed for the betterment of all and provides the framework for an ethical and inclusive society.”

UMR survey results

A Human Rights Commission survey conducted in 2010 showed that 60% of New Zealanders believe the Treaty is the founding document of our nation. However, only a third of New Zealanders say they have reasonable knowledge of the Treaty.

Suggested activity:

Why do we know so little about the Treaty?

As the founding document of our nation, how does the Treaty impact on our lives? (E.g. our whanau, community, workplace)

How does the Treaty influence our constitutional arrangements?

The Preamble tells us		
Who?	Why?	How?
<ul style="list-style-type: none"> • Queen Victoria • William Hobson • Native Chiefs • Confederated and Independent Chiefs • Rangatira • Hapū • Her Majesty's Subjects • Aborigines of New Zealand • Native population • Her subjects/people • Māori • Europeans • More will come • Australians 	<ul style="list-style-type: none"> • Recognition of Her Majesty's Sovereign authority • Establish a settled form of Civil government • Preserve rangatiratanga and their land • Peace and quietness • Her tribe have settled in this country and (more) will come • Rapid extension of immigration • Protect just rights and property • Avert the evil consequences which must result from the absence of the necessary Law and Institutions 	<ul style="list-style-type: none"> • Treat with the Aborigines of NZ • Concur • Make a statement • Negotiate with • Accept, Agree to • Constitute and appoint a functionary

Preamble

The next section looks at what the Treaty says. The Treaty has three parts. The preamble provides a context and tells us who, why and how; the articles tell us what was agreed; and the concluding statement authorises the Treaty.

When working through the framework, read the texts (English and Māori) individually or collectively. That will help explain the resource.

The preamble provides a context for the Treaty. It tells us:

- who it was for (parties)
- why they wanted it; and
- how they were going to go about getting a Treaty.

The wording on this slide is copied from the Treaty's preambles.

The Treaty of Waitangi and Immigration in 1840

The Treaty is recognised as the first immigration agreement between Māori and Pākehā (European settlers). The Treaty originally allowed settlers to emigrate peacefully to New Zealand under the British flag. The Treaty was important, firstly, to control the thousands of future emigrants to Aotearoa New Zealand, and secondly, to protect the rights of Māori people. The benefits to both parties were clear – settlements rights for Pākehā and the natural right of the tāngata whenua (the people of the land) would be respected and affirmed. *01 The Treaty of Waitangi, An introduction to the Treaty of Waitangi for Migrants*, Immigration New Zealand

Activity

Who are the parties to the Treaty identified by the preamble?

Represented by whom?

What benefits were being sought through the Treaty? To whom?

Article One – Kāwanatanga	
Purpose	Governance/Kāwanatanga
Who?	Crown/Government
What	Rangatira gave and the Crown gained the authority to govern
Rights – for example:	To make laws Gather taxes Set up institutions Make agreements with other peoples Represent the State Create property rights
Responsibilities – for example:	Ensure laws are fair Observe principles of natural justice Protect our constitution Provide services Ensure democracy Act in good faith Respect the Treaty

Kawanatanga

The articles of the Treaty tell us **what** was agreed.

Article One established the Crown as a party to the Treaty. Rangatira gave the Crown an authority to govern. This authority comes with rights and responsibilities. The English text claims sovereignty as the extent of governance and the Reo text claims Kawanatanga. This difference remains unresolved between Rangatira and the Crown.

The rights and responsibilities associated with Kawanatanga are protected by law and regulation

Suggested activity:

There are differences in interpretation. Where do the texts agree?

What was agreed? (gained, given, affirmed)

What are the rights and responsibilities associated with this?

What does that mean in practice especially the promise of two peoples to take the best possible care of each other?

Article Two: Rangatiratanga	
Purpose	Self Determination, Rangatiratanga
Who?	Rangatira
What - 1	The Crown promised to protect and Rangatira affirmed their authority over their taonga
What - 2	Rangatira gave and the Crown gained the pre-emptive right to purchase properties Rangatira wished to sell
Rights – for example:	To protect and develop their laws (tikanga, kawa) Approve the use of their resources (rauemi) Protect and develop their institutions (whānau, hapū, marae) Make agreements with other peoples (whānaungatanga) Self determination (rangatiratanga) Maintain their distinct identity (whakapapa) Protect and develop beliefs (wairuatanga) Own property (hoko whenua)
Responsibilities – for example:	Respect the rights of others (manaakitanga) Exercise fair judgement (kawa) Sustainable protection of land, people and values (kaitiakitanga) Act in good faith (whakapono) Protect their world views (mātauranga) Respect the Treaty

Rangatiratanga

Article Two established Rangatira as a party to the Treaty. It has two parts. In this article Rangatira affirmed their authority over their taonga and the Crown guaranteed to actively ensure the protection of those taonga.

In addition, Rangatira gave the Crown the pre-emptive right to purchase land Rangatira wished to sell. The relationship between Tangata Whenua and their land (we belong to the land) was supplemented by “property rights” (and the land belongs to us).

The rights associated with Rangatiratanga are indigenous rights. They are protected by tikanga and kawa, and in some cases, by law and regulation,.

The Treaty Settlement process is evidence these agreements have been breached by the Crown.

Once again there is a difference in interpretation. The English text claims “possession” will remain with Rangatira and the Reo text claims “Rangatiratanga.” The difference remains unresolved between the Crown and Rangatira.

Suggested activity:

There are differences in interpretation. Where do the texts agree?

What was agreed? (gained, given, affirmed).

What are the rights and responsibilities associated with this?

What does that mean in practice especially the promise of two peoples to take the best possible care of each other?

Article Three: Rite Tahī	
Purpose	Rite Tahī, Equality, Turangawaewae
Who?	Citizens and Residents
What	The Crown gave Māori the same rights as British subjects, who gained the authority to belong
Rights – for example:	Equality before the law Fair process Free speech, thought and beliefs Good health and education Culture Vote To belong (turangawaewae) Own land or property
Responsibilities – for example:	Obey the law Participate in community Pay taxes Vote Protect and assist youth Look after people who are vulnerable Respect the Treaty

Citizenship

Article Three gave Tangata Whenua the same citizenship rights as British subjects (tauīwi) who gained an authority to belong. The notion of citizenship has expanded beyond those two groups since 1840 to include all citizens and residents.

Citizenship has rights and responsibilities and the examples on this slide reflect a sample of rights and responsibilities identified by participants.

Newly arrived tauīwi eg from the Pacific, Europe, Asia and Africa, often ask how the Treaty relates to them. If they are citizens or residents, it entitles them to the full protection of human rights and responsibilities as other New Zealanders.

These rights are generally protected by law and regulation, and in some cases, by kawa and tikanga.

Many Pacific peoples have whakapapa links to Tangata Whenua. Those links have still to be fully realised in the Treaty today.

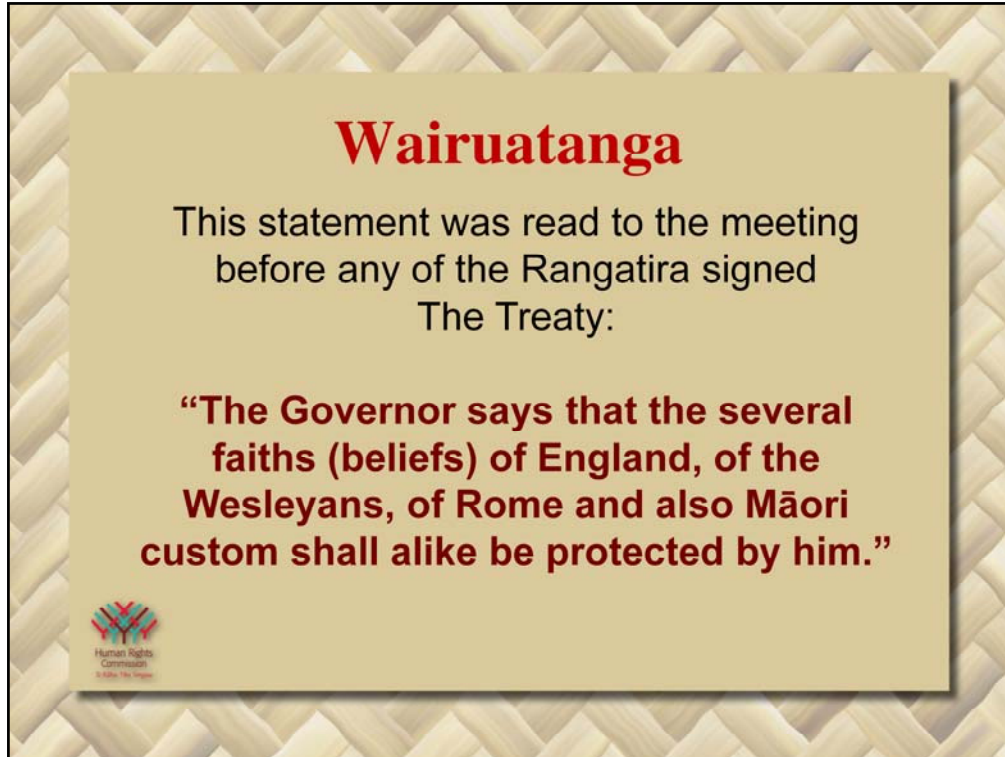
Suggested activity:

Where do the texts agree?

What was agreed? (gained, given, affirmed).

What are the rights and responsibilities associated with this?

What does that mean in practice especially the promise of two peoples to take the best possible care of each other?



Beliefs

Catholic Bishop Pompallier and the Anglican missionary, William Colenso, recorded a discussion on what today we would call religious freedom. In answer to a direct question from Pompallier, Hobson agreed to the statement on the slide. This was a verbal agreement.

The religions listed were the only organised religions present in the country at the time of the signing of the Treaty. However, this is seen as the right to practice religion and customs along with the right of the freedom to choose a religion.

This is often called the 4th Article.

It is unlikely Tangata Whenua would have signed if this was not agreed. The rest of the Treaty is about land and people. This is the Mana Atua dimension. That makes sense to Tangata Whenua values and practices. Merimeri Penfold

Questions to think about:

What are the rights and responsibilities associated with this?

What does that mean in practice especially the promise of two peoples to take the best possible care of each other?

International Standards

Declarations and Treaties help to:

- Establish standards
- Explain the rights and responsibilities of the parties

Examples:

- Universal Declaration of Human Rights (UDHR)
- Declaration on the Rights of Indigenous Peoples (UNDRIP)
- The International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social & Cultural Rights (ICESCR)

Human Rights Commission
Building the Future

International Standards

Declarations and treaties establish international human rights standards to be achieved.

The UN Universal Declaration on Human Rights (1948) explains human rights standards that are universal.

Since then, the UN has developed other treaties to which member countries sign up and report against periodically. Some of the better known treaties are

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Covenant on Civil and Political Rights (ICCPR)

Convention on the Elimination of Racial Discrimination (CERD)

Convention on the Rights of Children (UNCRC)

In 2007 the UN adopted the Declaration on the Rights of Indigenous Peoples and in 2010 New Zealand endorsed it. It is to be achieved in a spirit of partnership and mutual respect.

Suggested activity:

What are the rights and responsibilities associated with this?

What does that mean in practice especially the promise of two peoples to take the best possible care of each other?

How well does NZ perform to these standards?

How adequately are international standards achieved for the Treaty?

Current Issues

- Sovereignty vs Kāwanatanga
- Rangatiratanga vs possession
- Indigenous Rights
- Settlement of grievances
- Relevance to today: Constitution
- Forum for engagement




Current Issues

There are a number of issues that are unresolved and not clearly understood by many New Zealanders. The ones in this slide are recurring themes with participants. Following are some statements that highlight the issues.

Māori/English versions: There are differences in the text that have caused conflict. The international law of “contra proferentem” means that where there are two versions of an agreement or Treaty the preference goes against the drafter of the text. In the case of the Treaty of Waitangi preference would go to the te reo Māori text as the Crown drafted the Treaty. In New Zealand domestic legislation requires the Waitangi Tribunal to give **equal** weight to both texts – as both carry signatures.

“Today we are strong enough and honest enough to learn the lesson of the last 150 years, and to admit that the Treaty has been imperfectly observed. I look upon it as a legacy of a promise.” Queen Elizabeth II (Treaty of Waitangi celebrations, 1990).

Settlement of grievances:

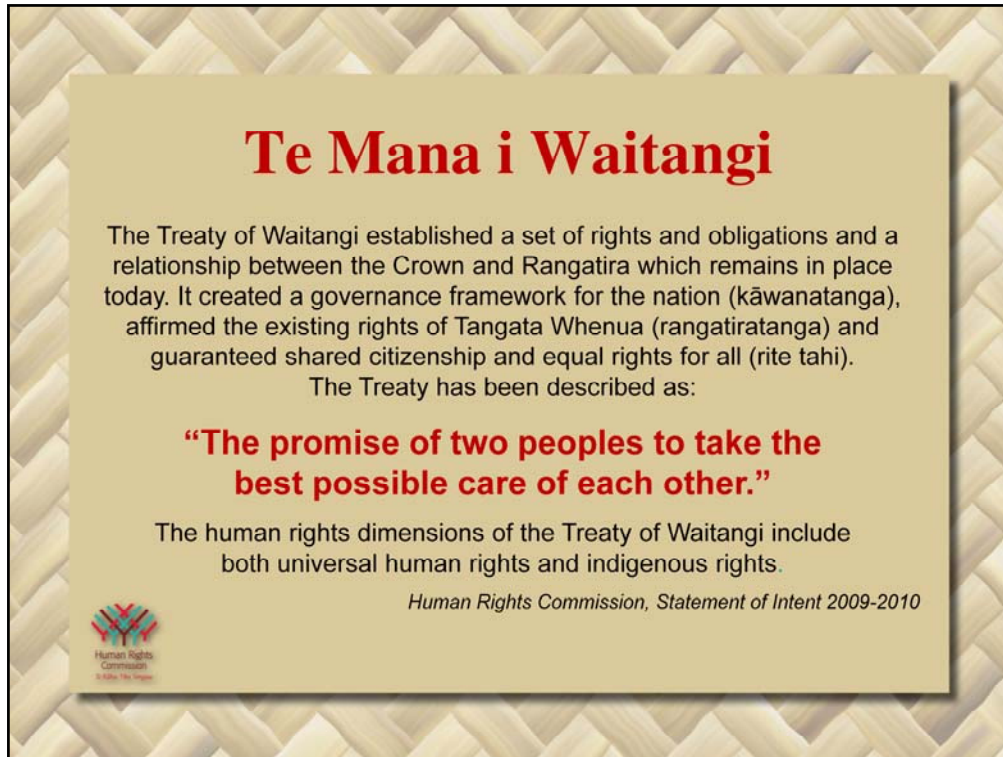
“Very few New Zealanders know that Iwi settlements to date are settled at 1-2% of the value of the land and other assets that were confiscated or illegally purchased. Iwi systematically contribute 98-99% of their redress entitlements back to the nation.” Bill Hamilton, Nga Rau Negotiator

Constitution:

“A constitution is simply the values, rules, and institutions through which people govern themselves. Every country develops its own constitution just as it develops its own law to reflect its own unique view of the world and then implements it through a concept and site of power that are also unique to it.” Moana Jackson, Constitutional Expert.

Suggested activity:

How significant are these issues regarding “the promise of two peoples to take the best possible care of each other”



One of the Commission's functions under the Human Rights Act is 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 human rights law" (section 5(2)(d), Human Rights Act 1993). This framework helps us to articulate, give advice and empower people about the human rights dimensions of the Treaty.

The above slide is the Commission's statement about the Treaty.

Questions to reflect on:

How do you think the promise has been kept?

How can we keep the promise (in our own lives/workplace/school/etc)?

How do you feel the Treaty applies to you, your whānau, workplace and community?

For assistance with facilitated discussion or to provide feedback on this resource, contact us on treaty@hrc.co.nz

For more information you can contact the Commission on:

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