

## **Speech to UNESCO ambassadors at the Paris Embassy:**

It is my pleasure to be speaking to you here in Paris.

Today I will be speaking to you about recent Treaty of Waitangi settlements that have recognised significant natural features as having legal personhood.

In the context of New Zealand's history the Treaty settlements of recent years are some of the most significant steps we have taken as a country

### *Historical context*

The Treaty of Waitangi is New Zealand's founding document. The Treaty was signed in good faith by representatives of the British Crown and by Māori chiefs on behalf of their people, between February and September 1840. It is a forward-looking agreement that sought to establish a peaceful and mutually beneficial relationship between the Maori people and British settlers under the protection of the British Crown.

The Crown intended Māori to be treated fairly and honourably, particularly in the course of land transactions. It envisaged that land would be acquired in situations where Māori were willing sellers and where the transfer of a particular area would not harm the relevant Māori tribe or sub-tribe. However, in the course of administering and growing a new colony, the Crown sometimes failed to honour its obligations to Māori and serious breaches of the Treaty were committed. These breaches of the Treaty included a wide range of different Crown actions, including, for example, military invasions against Māori tribes who refused to sell land, and the Crown's indiscriminate confiscation of land from tribes who were deemed to have 'rebelled' by fighting against Crown forces. Land laws were also enacted and applied to the disadvantage of Māori.

The impacts of the Crown's breaches of the Treaty were not just economic. In Māori culture land is inherently linked with tribal identity and personal identity. Widespread loss and alienation of land under British rule undermined these connections and contributed to the breakdown and dispersal of traditional communities, and the loss of Māori language and traditional knowledge.

As a result of these and other types of permanent alienation, Māori today possess only a small portion of the land that they held in 1840 when Māori tribes signed the Treaty of Waitangi. The Crown accepts that excessive land loss has had a harmful effect on Māori social and economic development in general. This loss of land has been accompanied by the loss of access to forests, waterways, food resources, sacred sites and other important treasures for Māori. Such large scale loss is at the

heart of the grievances Māori hold, and for which the Crown strives to provide restitution and achieve reconciliation.

### *Treaty Settlements overview*

A Treaty settlement has many different components. First and foremost it acknowledges and addresses the traumatic historical events of the past that have left Māori hurt and aggrieved. The Crown acknowledges its historical actions and omissions which breached its obligations under the Treaty and apologises for them. An agreed historical account is included in each settlement to provide context for the redress the Crown offers to Māori claimants. I often hear from members of Māori tribes, or iwi, that the historical account and the Crown apology are the most valuable components of the redress for them – they are, in a sense, the conscience of a settlement. In my view this is the first and most important step in building a new partnership with Māori tribes based on trust and respect.

The other parts of settlements are the provision of financial, commercial and cultural redress. The Crown does not have the resources to fully compensate Māori for the loss of their lands and other treasures, but the aim of redress is to recognise the historical grievances of the claimant group and provide assets that will help establish an economic platform for the growth of the claimant group.

The variety of redress items is broad and ranges from cash payments, to the vesting of historically or culturally significant sites, to co-governance arrangements over natural resources.

Each settlement negotiation has unique characteristics and challenges to navigate depending on the tribe's historical experience and contemporary circumstances. To achieve a successful settlement often demands innovation and creative thinking. There have been Health and Social Wellbeing Accords, cultural and Māori language revitalisation funds and more.

Settlements often provide the platform for the economic rejuvenation of tribes. The settlement with Ngai Tahu, one of the first Māori tribes to sign a Deed of Settlement with the Crown in 1997, is an example of this. Ngāi Tahu, having received \$170 million in financial redress through their settlement, now has over \$1.2 billion worth of assets invested in property, seafood, farming and tourism making them a major economic force in the South Island of New Zealand.

For the past nine years I have been Minister for Treaty of Waitangi Negotiations and have had the privilege of leading the New Zealand Government's effort to settle historical Treaty of Waitangi claims. Since the settlements began in the 1990s there have been 82 Deeds of Settlement signed between Māori and the Crown. This represents roughly 60% of historical claims across the country. In the last nine years

we have been successful in increasing the speed of Treaty settlement negotiations and as a result we have signed 56 Deeds of Settlement.

Today I will focus on two particular Treaty settlements that centre around the future governance and management of significant natural resources: first, the settlement with the tribe Ngāi Tūhoe and in particular the arrangements for Te Urewera (a former National Park); and secondly, the Te Awa Tupua settlement and the arrangements over the Whanganui River.

One challenge in Treaty settlement negotiations lies in reconciling indigenous Māori world views with modern day conservation and environmental management. This challenge is often at its greatest when negotiating the future governance and management of natural resources. In both the Ngāi Tūhoe and Whanganui River settlements the mechanism which enabled settlement was to recognise the natural features in question as having legal personhood.

I will now provide some further detail on the Ngāi Tūhoe and Whanganui River settlements and the implications of the recognition of legal personhood on the future protection of Te Urewera and the Whanganui River.

### *Te Urewera*

Ngāi Tūhoe is a tribe from the central North Island of New Zealand. Their rohe, or ancestral lands, are centred around a large area of native forest known as Te Urewera. Te Urewera encompasses some of the most remote, rugged and beautiful areas of our country.

Many of Tūhoe's grievances against the Crown were related to Te Urewera. In the late 1860s and early 1870s, the Crown confiscated vast tracts of Tūhoe's tribal land, waged war against them, implemented 'scorched earth' tactics, and illegally purchased land in and around Te Urewera. In the 1950s the Crown established Te Urewera National Park, including most of Tūhoe's traditional lands. The Crown neither consulted with Tūhoe, nor recognised that Tūhoe had any special interest in the Park or its governance.

For Ngāi Tūhoe, Te Urewera is of the utmost significance. It is their tūrangawaewae, their homeland, and a place of immense spiritual value with its own life-force.

Given the deep connection of Tūhoe to Te Urewera, it was crucial that Tūhoe's Treaty settlement provided redress that reflected both that connection and the depth of Tūhoe's grievances. Te Urewera was the focal point for the entire settlement negotiation and the challenge was reconciling the Tūhoe world view of Te Urewera with modern day conservation and environmental frameworks. The settlement had to not only meet the expectations of Tūhoe but address the concerns of the general public that environmental values and access would be protected.

The solution the Crown and Tūhoe came to was for Te Urewera to be recognised as a separate legal identity with all the rights, powers, duties and liabilities of a legal person. This reflected the Tūhoe view of Te Urewera as having an identity in its own right.

Conferring legal personhood on Te Urewera provided a path in this negotiation because it neutralised the issue of ownership. It was able to accommodate both the economic view of land and resources as property and the cultural view of land and resources as being inseparable from the people who have responsibility for its care, protection and management.

The Te Urewera Governing Board, established through the legislation giving effect to the Treaty settlement, is the human face of Te Urewera. The Te Urewera Board comprises Crown and Tūhoe appointees. For the first three years, while the Board establishes itself, it consists of four members appointed by Tūhoe and four by the Crown. After this three year period, in September this year, the board's composition will change to six members appointed by Tūhoe and three by the Crown—a Tūhoe majority. The board is required to act in the best interests of Te Urewera. It will develop and approve a management plan, make decisions on concessions and other permits, and undertake other statutory functions. It must at all times promote unanimous or consensus decision-making and the highest level of collaboration. Most importantly, the board works to enhance Te Urewera as a place of outstanding natural, recreational, and cultural value - a place that can be enjoyed by everyone.

This legislation was enacted in 2014. By all accounts the arrangements are working well and as intended. Tūhoe has taken on a strong role in the management of Te Urewera, working collaboratively with the Department of Conservation.

For me, this is a landmark settlement featuring an entirely unique piece of redress. For Tūhoe the earth is their ancestor. We found a way for the law to provide for Tūhoe custom.

### *Whanganui River*

Like Te Urewera the Whanganui River is central to the identity of Whanganui tribes.

The Whanganui River is New Zealand's third longest river originating in the mountains at the centre of New Zealand's North Island and flowing down to the sea at the west coast.

Prior to colonisation of New Zealand, Whanganui Iwi, the tribes and sub-tribes dispersed along the River and its tributaries, possessed and controlled the Whanganui River in line with their traditional customs.

Whanganui Iwi recite an ancient proverb that best describes their deep connection with their sacred river: “Ko au te awa, ko te awa ko au. I am the river, and the river is me.” Indeed, if the River is healthy, so too are the people.

In May 1840 Whanganui Iwi chiefs signed the Treaty of Waitangi and shortly after the Crown purchased a block of land on which to found the town of Whanganui at the mouth of the River on the west coast. From this point on the Crown began to assert authority over the River and this led to ongoing conflicts and grievances.

Throughout the 19th and 20th Centuries the Crown carried out actions on the River that were of great harm to Whanganui Iwi. These included interfering with important rapids to establish a steamer service on the River, the destruction of eel weirs and fisheries which provided an important food source to Whanganui Iwi, the diversion of water for hydro-electricity schemes and significant gravel extraction from the riverbed. From the 1870s onwards, Whanganui Iwi have continually sought justice for their claims and grievances and for protection of the Whanganui River. The Whanganui River claim was the longest running litigation in New Zealand’s history.

The challenge of the settlement negotiations was once again to find a way to provide for the Whanganui River to be governed and managed in a way that was both consistent with Whanganui Iwi’s traditional customs and modern day conservation and environmental management.

To achieve this the settlement provides for the recognition of the River as a legal person, with its own legal personhood and all the corresponding rights, duties and liabilities. Te Awa Tupua, the indivisible and living whole comprising the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements is now recognised in legislation. The parts of the Whanganui Riverbed that were formerly owned by the Crown are now owned by the River itself.

The settlement also establishes Te Pou Tupua to act as the human face of the River and promote and protect the health and wellbeing of the River. Two people will be appointed jointly from nominations made by tribes with interests in the Whanganui River and from the Crown. This arrangement symbolises true partnership between Māori and the Crown.

Furthermore, the settlement legislation establishes the Te Awa Tupua Strategy Group as a forum that brings together stakeholders with interests in the River to monitor and discuss issues relating to the health and wellbeing of the River. The Forum has representatives of Whanganui Iwi, central and local government, and other groups with interests in the River, including the primary sector, recreational users and environmental groups.

Last month in Wellington, the settlement legislation bringing into force the Whanganui River Deed of Settlement was passed into law. This was a momentous occasion for Whanganui Iwi and all New Zealanders. This settlement changes how all people view and relate to the River and aligns with what Whanganui Iwi have always known: the River is not just a resource for exploitation and it must be treated with a deep respect.

Legal personhood for natural resources has been discussed in North American academia for a number of years. The recent decision from the High Court in India declaring the Ganga and Yamuna Rivers as living entities demonstrates the worldwide support for this approach to natural resources.

### **Post-Settlement**

The thing about building a new partnership with Māori is the work doesn't end at a Treaty settlement; it simply marks the beginning of what must be a long and enduring partnership between the settled group and the Crown.

To this end I have established the Post Settlement Commitments Unit to ensure that the Crown upholds all commitments made to Māori tribes through the settlement process. The Post Settlement Commitments Unit also serves as a useful first port of call for tribes with post-settlement concerns, and as a bridge between settled iwi and relevant Crown agencies. As more groups settle, I see the role of the Unit expanding and its contribution to the Crown-Māori relationship becoming more prevalent.

### **Conclusion**

The negotiations over Te Urewera and the Whanganui River presented significant challenges and took many years to complete. Negotiators had to find a way to reconcile the tribes' aspirations for the natural features, including a removal from Crown ownership, with public expectations that conservation values and access would be preserved.

Legal personhood allowed us to reach an outcome which is not only mutually beneficial for the Crown and iwi, but also for Te Urewera and the Whanganui River themselves. These two settlements stand testament to the fact that, through diligence and a mutual desire for reconciliation and partnership, agreement can be reached. In these two particular cases, a better outcome than both parties expected was achieved.

I see Treaty settlements as a catalyst for change in New Zealand across many different areas and I do believe they are resulting in greater outcomes for all New Zealanders. By enabling Māori to participate in matters of national importance such

as conservation and resource management by sharing their knowledge and tikanga, the outcomes benefit everybody.

On an international level, we are all facing challenges in terms of environmental management. We must recognise that no single world view has all the answers. New Zealand has found a way to bring ancient knowledge into modern legal decision making frameworks. In doing so we are leading the way in building and maintaining a strong, principled relationship between the Crown and indigenous people. That is not to say that what we are doing is without difficulty, as issues will undoubtedly arise as we navigate this new space for us all, but I am proud of the progress being made and am confident that we are building a strong and correct foundation for the future of the Treaty partnership between Māori and the Crown.

Thank you for inviting me to speak to you today.