

IN THE WAITANGI TRIBUNAL
THE MANA WAHINE KAUPAPA INQUIRY

WAI 2700
WAI 1632

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

the Mana Wahine Kaupapa Inquiry

AND

a claim by Hari Benevides, Hoani Hipango and the
late Wilson Ropoama Smith (WAI 1632)

AMENDED STATEMENT OF CLAIM

Dated 3 September 2018

RECEIVED

Waitangi Tribunal

4 Sep 2018

Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. This Statement of Claim is filed on behalf of Hari Benevides, Hoani Hipango and the late Wilson Ropoama Smith (**“the Claimants”**).
2. The Claimants amend their Statement of Claim and assert further Treaty breaches by the Crown in relation to the Crown’s failure to protect and uphold the rights of mana wahine.

Treaty of Waitangi/Te Tiriti o Waitangi

3. Under the Treaty of Waitangi / Te Tiriti o Waitangi, the Crown:
 - a) Confirmed and guaranteed to the Claimants tino rangatiratanga including the full, exclusive and undisturbed possession of their lands, estates, forests, fisheries, other properties, rivers, waterways and taonga;
 - b) Promised to protect their rights guaranteed by the Treaty and perform their obligations arising out of the Treaty; and
 - c) Extend to the claimants all the rights and privileges of British subjects.
4. Through both historic and contemporary health regimes (or lack thereof), the Crown has continued to neglect to adequately address the rights of mana wahine.
5. Under the Treaty of Waitangi / Te Tiriti o Waitangi, the Crown has a duty to:
 - a) Recognise that Māori women rights should be provided for at the same level as Pākehā as their Treaty partner;
 - b) Consult with and allow Māori women to participate and be represented in decision making processes regarding issues affecting them.
 - c) Recognise that Māori society was not patriarchal. Māori women had mana and

authority.

- d) Recognise that the introduction of Pākehā laws altered Māori women's value, recognition and their direct involvement in Māori self-governance.

Breaches

- 6. According to its duties under the Treaty of Waitangi / Te Tiriti O Waitangi, the Crown failed to:
 - a) Protect interests of Māori women;
 - b) Adequately ensure the mana of Māori women were preserved;
 - c) Recognise Māori women as Treaty partners;
 - d) Allow Māori women to access, participate, contribute and be represented in decision making processes;
 - e) Adequately consult with Māori women; and
 - f) Allow Māori women to become fully involved in policy development.

FIRST CAUSE OF ACTION – DIMISHING THE VALUE AND RECOGNITION OF MĀORI WOMEN

Particulars

- 7. The Crown failed to adequately ensure the value and recognition of Māori women were preserved.
- 8. Māori women have always played important roles and carried out responsibilities crucial to tikanga Māori.¹

¹ Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington). page 3.

Value and Recognition of Māori women in Te Ao Māori

9. In accordance with tikanga Māori, women were held in high regard as they are the 'whare tangata'.²
10. Unlike European woman, Māori women of rank had leadership status equal to that of Māori men of rank, such as land tenure of Māori held customary land.
11. Māori women played an important role in the maintenance and conveyance of iwi history and knowledge.³
12. Of particular importance is the Māori woman's dominant role in the composition of waiata which recorded tribal knowledge for future generations.⁴
13. The significance of Māori women in Māori society is also evident in the naming of hapu and whare tupuna after women.⁵
14. Māori women were leaders and spokespersons for their whanau, hapu and iwi.⁶ They had a say in the affairs concerning their hapu, iwi and could inherit land.⁷
15. By tradition, Māori land was 'bequeathed to women, as the mana of women to give birth to descendants meant that mana whenua (authority over land) was not lost through marriage'.⁸
16. In the early 1820s when the process of British colonisation over the islands of Aotearoa took place, the usurpation of mana wahine was integral to that process of colonisation.
17. The process usurped and replaced the mana of certain Māori women and reduced it to that of the Westminster European land tenure system whereby European women were considered

² Ibid page 3.

³ Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*. Waikato Law Review 2. Retrieved from https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7.

⁴ Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture: Te Matauranga o nga Wahine Māori e pa ana ki Tenei*. (Report 53). Retrieved from <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R53.pdf>

⁵ Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*. Waikato Law Review 2. Retrieved from https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7.

⁶ Ibid.

⁷ Rawinia Higgins rāua ko Paul Meredith, 'Te mana o te wāhine – Māori women - Education and sport', Te Ara - the Encyclopedia of New Zealand, Retrieved from <http://www.TeAra.govt.nz/en/te-mana-o-te-wahine-Māori-women>

⁸ Ibid page 5.

chattels of males.

Māori women and colonisation

18. Prior to colonisation Maori women enjoyed a status and rank, equal yet different to men. They had a range of strengths and qualities not readily acknowledged in today's society but none-the-less fulfilled roles as exceptional leaders, positive role models, loving mothers and wise nurturers.⁹
19. Colonial standards were forced on Māori women¹⁰. This was done through the imposition of British and Christian values and the application of English common law over indigenous lands, indigenous modes of production, indigenous law and government, indigenous knowledges, languages and culture.¹¹
20. Amidst the dramatic and wide-ranging changes of the time, the voices of Māori women were some of those that officials were keen to render silent.¹²
21. As a result, the status of Māori women was reduced to that of their English counterparts.¹³
22. Crown assimilation policies also directly contributed to the diminution of Māori women value in Māori society.
23. Under the English common law, men were deemed the head of the family, whereas "women and children were chattels to be used and abused by the paterfamilias as he chose".¹⁴
24. The English common law concept of marriage treated women like property – that upon

⁹ Turner, T.V (2007). *Tu Kaha: Nga Mana Wahine Exploring the role of Mana Wahine in the Development of Te Whare Rokiroki Maori Women's Refuge* (Master thesis, School of Geography, Environment and Earth Sciences Victoria University of Wellington)

¹⁰ Ibid.

¹¹ Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington). at page 69.

¹² Wai 1040, #A37, page 510

¹³ Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture: Te Matauranga o nga Wahine Māori e pa ana ki Tenei*. (Report 53). at page 17.

¹⁴ Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*. Waikato Law Review 2. Retrieved from https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7.

marriage she was transferred to her husband's care from her father's.¹⁵ Also, any property that a woman brought into a marriage was directly vested in the husband, who was free to do with it as he pleased.¹⁶

25. However, marriage in accordance with tikanga Māori is the opposite. Marriage did not affect a Māori woman's status. A Māori woman would continue to be a part of her own whanau even if she chose to live with her husband's whanau and allow her in-laws to take responsibility for her well-being and support¹⁷.
26. Missionaries and early Pākehā settlers brought with them their ideologies of the role and status of women – that women did not possess any form of authority or autonomy.¹⁸
27. Māori mythologies expressed noble stories of “the wonder of women”.¹⁹
28. Nevertheless, early European writers marginalised the importance of the Māori female essence.²⁰ This is evident in the re-telling of Māori cosmology. There was a change in emphasis from the powerful female influence in the stories to the male characters.²¹
29. Under the New Zealand Constitution Act 1852, women were denied a say in the parliamentary process because the Act gave voting rights only to certain Pākehā, Māori and half-caste men.²²
30. The marginalisation of Māori women continued with the insistence on the use of patronymic surnames and with the emphasis placed on the patriarchal dominance by Pākehā population.²³
31. Legislation with embedded contemporary Christian doctrines fostered assumptions that men

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington). page 22.

¹⁸ Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*. Waikato Law Review 2. Retrieved from https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7.

¹⁹ Ibid.

²⁰ Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture: Te Matauranga o nga Wahine Māori e pa ana ki Tenei*. (Report 53). at page 17.

²¹ Ibid.

²² Wai 1040, #A37, page 510

²³ Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*. Waikato Law Review 2. Retrieved from https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7.

were the family breadwinners, which led to economic discrimination against women.²⁴

32. The continuous imposition of Pākehā colonial views in conjunction with Christian teachings regarding women's roles was progressively internalised by 19th century Māori males resulting in women's roles being re-defined by Māori men.²⁵
33. The internalisation of colonial and Christian values by Māori men is evidenced in the resistance of Māori men to allow Māori women participation in the Māori Parliament/ Te Kotahitanga. It was not until 1897 that the right for Māori women to vote was granted.²⁶
34. The early Native Land Courts were inclined to select males as trustees of the original large partitions, and those individuals then became legal owners with usufruct, lease, or sale rights. This was in accordance with contemporary British patterns of male inheritance but was out of step with customary law in Te Taitokerau Māori society.²⁷

Māori women and the Treaty/Te Tiriti

35. Mana wahine rights are Treaty rights.²⁸
36. Under the Treaty/Te Tiriti, Māori women derive specific rights through the guarantees of kawanatanga, tino rangatiratanga and equality.²⁹The Crown therefore has an obligation to protect the interests of Māori women, "facilitate Māori women's self-determination over their own affairs; and ensure Māori women derive equality of outcomes".³⁰
37. The Treaty/Te Tiriti process predominantly involved men.³¹ The issue of Māori women's involvement in the Treaty/Te Tiriti decision – making processes remains largely

²⁴ Wai 1040, #A37, page 511

²⁵ Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture:Te Matauranga o nga Wahine Māori e pa ana ki Tenei*.(Report 53).at page 17.

²⁶ Ibid page 20.

²⁷ Wai 1040, page 513

²⁸ Paul,W.T.(2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington). page 5.

²⁹ Ibid.

³⁰ Ibid.

³¹ Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*. Waikato Law Review 2. Retrieved from https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7.

unaddressed.³²

38. There were 13 women who have been identified to have signed the Treaty/Te Tiriti on behalf of their hapu.³³ This is significant as it shows that when the Treaty/Te Tiriti was signed, Māori women of rank upheld authoritative positions within the social and political organisations of their hapu and iwi.³⁴
39. The lack of Māori women in the Treaty/Te Tiriti process highlights colonial patriarchal influence.
40. The Christian missionaries responsible to the Crown for the Treaty/Te Tiriti, actively and purposefully excluded Māori women, preventing participation by many Māori women.³⁵ An example of this, is Major Bunbury's refusal to allow a Māori woman of rank to sign the Treaty of Waitangi.³⁶
41. The exclusion of Māori women from participation in decisions that directly affected them, undermined their status within Māori society. As such, it can be said that very little has been done to actively protect the rights of Māori women as guaranteed in the Treaty/Te Tiriti.³⁷
42. The undermining of Māori women and their ability to exercise tino rangatiratanga is also demonstrated in negotiations regarding the sale and purchase of Māori land that involved only men.³⁸

³² Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington). page 5

³³ Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture: Te Matauranga o nga Wahine Māori e pa ana ki Tenei*. (Report 53). Page 15.

³⁴ Ibid.

³⁵ Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington). page 5.

³⁶ Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture: Te Matauranga o nga Wahine Māori e pa ana ki Tenei*. (Report 53). Page 17.

³⁷ Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington). page 5.

³⁸ Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture: Te Matauranga o nga Wahine Māori e pa ana ki Tenei*. (Report 53). Page 17.

Land Alienation

43. When the Treaty/Te Tiriti was signed, Māori women were owners of Māori land under Māori customary law and traditions.³⁹
44. Pākehā settlers regarded Māori women as potential sources of land and economic security.⁴⁰
45. The Native Lands Act 1873 (“The Act”) was prejudicial to Māori women.
46. Under section 86 of the Act, the execution of any deed of sale or purchase by Māori women was conditional upon their spouse being a party to the deed.⁴¹ However, the husband was allowed to dispose of any interests in land of their Māori wives without the obligation that the wife be a party to the deed.⁴² This directly undermined and eroded the mana of Māori women in Māori society.
47. Moreover, the transfer of Māori communal ownership of land to individual titles in accordance with Native Land legislation undermined Māori women’s control.⁴³
48. In 1897, a petition from the Kotahitanga movement to Queen Victoria was signed by Māori men and women. The petition argued for a legislative change - that the New Zealand law recognise Māori women as land owners and leaders in their own right.⁴⁴
49. The combined effect of land alienation and English common law has been to place Māori family forms and values under great stress.⁴⁵

Relief Sought

50. The Claimants seek the following relief:

³⁹ Ibid page 16.

⁴⁰ Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*. Waikato Law Review 2. Retrieved from https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7.

⁴¹ Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture:Te Matauranga o nga Wahine Māori e pa ana ki Tenei*. (Report 53). page 17.

⁴² Ibid page 21.

⁴³ Ibid.

⁴⁴ Rawinia Higgins rāua ko Paul Meredith, 'Te mana o te wāhine – Māori women - Education and sport', Te Ara - the Encyclopedia of New Zealand, Retrieved from <https://teara.govt.nz/en/te-mana-o-te-wahine-Māori-women/page-5>.

⁴⁵ Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture:Te Matauranga o nga Wahine Māori e pa ana ki Tenei*. (Report 53). page 21.

- a) A finding that this claim is well-founded;
- b) A formal apology from the Crown for its breaches under Te Tiriti in regards to inequitable, prejudicial treatment in relation to the value and recognition of Māori women;
- c) A finding that the Crown breached its duties under Te Tiriti by failing to ensure Māori women tino rangatiratanga and rights under the Te Tiriti were adequately protected;
- d) Any other recommendations the Tribunal sees fit to make.

SECOND CAUSE OF ACTION – MĀORI WOMEN AND EDUCATION

Particulars

- 51. The Crown continues to fail to adequately provide for Māori women education needs.
- 52. There is wide acknowledgement of the failure to achieve equality in outcomes of the educational achievements of Māori.⁴⁶
- 53. The wide gap between high and low achievers in education reflects a racial divide, where Māori are more inclined to be positioned negatively than their Treaty partner.⁴⁷
- 54. Māori society highly valued knowledge systems and maintained various institutions to safeguard knowledge and disseminate at various levels.⁴⁸
- 55. Māori knowledge was retained “through oral traditions and was written into highly technical carvings and weaving”.⁴⁹ The accurate preservation of knowledge for future learning and generational transfer was vital to the survival of iwi.⁵⁰

⁴⁶ Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington. page 66.

⁴⁷ Ibid.

⁴⁸ Ibid page 67.

⁴⁹ Ibid.

⁵⁰ Ibid.

56. Māori women are essential to Māori culture and play an important role in the continuation of whakapapa and iwi.⁵¹
57. Education was undertaken by all Māori and Māori women held positions of mana within the truths and teachings of Māori.⁵²
58. Education was highly valued in Māori society by both women and men. Māori adapted knowledge acquired from Pākehā on their arrival to New Zealand for their own use and incorporated ancient traditions with imported knowledge.⁵³
59. The arrival of missionaries and settlers imposed compulsory English models of education to New Zealand that originated from the Anglo – centric values and beliefs of Pākehā.⁵⁴ It undermined and corrupted indigenous authority and knowledge through “selective education and relentless cultural imperialism”.⁵⁵
60. Traditional Māori education and practices became forbidden.⁵⁶
61. Since the 1840’s, Crown legislative regime limited Māori education to non-academic curriculum with lesser opportunities for Māori women.⁵⁷
62. Mission schools were used in an effort to assimilate Māori.⁵⁸ The Crown viewed mission schools as an important tool in achieving social control and “civilising natives as a means of liberating Māori from the burden of their ethnicity”.⁵⁹
63. The Crown provided funding to mission schools under the Education Ordinance of 1847 and later under the Native Schools Act 1858.

⁵¹ Ibid.

⁵² Ibid page 68.

⁵³ Ibid.

⁵⁴ Ibid page 67.

⁵⁵ Ibid page 77.

⁵⁶ Ibid page 68.

⁵⁷ Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington). page 68.

⁵⁸ Ibid.

⁵⁹ Ibid.

64. Missionaries in mission schools made it peremptory for Māori women “to be domiciled very quickly to the values of the new regime”.⁶⁰
65. Native Schools were established under the Native Schools Act 1867. Education of Māori was done under a Pākehā-centric assimilation system that maligned Māori cultural values through “the primacy of the English language and normalisation of Pākehā values and beliefs”.
66. The Pākehā education system undermined the mana of Māori women as it did not place any value on them.⁶¹ Māori women were trained to be servants or “to be a good farmer’s wife”.⁶²
67. Education policies have consistently failed to deliver Māori women equal opportunity and equal outcomes.⁶³
68. Māori women often found themselves or have been placed by others at “the bottom of the heap”.⁶⁴
69. The consistent use of education policies negative toward Māori saw a disproportionate number of girls and women avoiding or leaving school with no formal qualification and were also left feeling “alienated and dumb”.
70. Māori women struggled to assert and maintain their rights under the Treaty / Te Tiriti in the education system.⁶⁵
71. Policy changes produced outside the experiences and understanding of Māori have ‘failed to acknowledge matauranga Māori within which mana wahine is located’.⁶⁶ It is only fairly recently policy makers have shifted priority to the importance of Māori achievement. However, success is still viewed through Eurocentric values and measures.⁶⁷

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid page 72.

⁶⁴ Ibid.

⁶⁵ Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington). page 72.

⁶⁶ Ibid page 77.

⁶⁷ Ibid.

72. The Education Act 1989 does not specifically mention the Treaty/Te Tiriti itself.⁶⁸ It does acknowledge that Māori have specific needs and aspirations in the education sector.⁶⁹ However, acknowledgement and implementation of Treaty/Te Tiriti principles are not the same.⁷⁰
73. The Education Act has been framed in the context of ongoing colonisation and lacked any explicit reference to Māori women's perspectives in the mainstream.⁷¹

Relief Sought

74. The Claimants seek the following relief:
- a) A finding from the Tribunal that this claim is well-founded.
 - b) A formal apology from the Crown and an acknowledgement of its breaches of Te Tiriti in relation Crown education policies that undermined the mana of Māori women;
 - c) The inclusion of more Māori women in decision making process that directly affects them whether legislative or policy.
 - d) Any other recommendation that the Tribunal sees fit to make.

Amendments to this claim

75. The claimants reserve the right to make any amendments to this claim they deem necessary throughout this inquiry.

Dated this 3rd day of September 2018.



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⁶⁸ Ibid page 81.

⁶⁹ Ibid.

⁷⁰ Ibid page 98.

⁷¹ Ibid page 96.