**From Submission by the Human Rights Commission *Review of New Zealand’s Constitutional Arrangements to the Constitutional Advisory Panel***

Protection of property rights

5.57 Property plays a fundamental role in our society, providing us with material things we need to sustain life and a base from which we can participate in civic life. For most of us it does much more. We use our clothes, automobiles, and personal possessions to differentiate ourselves from one another; we use our property to shelter and nurture our families; and we use our wealth to support causes we want to promote. Protection of our property is vital to our sense of security and is a core function of our legal system.[[1]](#footnote-1)

Common law right to property

5.58 The right to property can be traced back to the Magna Carta[[2]](#footnote-2) which became part of New Zealand law in 1840. In 2013 more than 50 English statutes were still in force in New Zealand[[3]](#footnote-3) including Chapter 29 of the Magna Carta[[4]](#footnote-4) which provides that “No freeman shall be ... disseised of his freehold ... but ...by the law of the land”. This aspect of the Magna Carta has been recognised by the Courts over the years[[5]](#footnote-5) and is implicit in Article 2 of the Treaty of Waitangi.

5.59 As a result property rights are protected to some extent by the common law[[6]](#footnote-6)and legislation such as the Public Works Act 1981 and the Resource Management Act 1991, but they are not among the rights and freedoms in the New Zealand Bill of Rights Act (NZBORA)/[[7]](#footnote-7)

Property as a human right

5.60 The Universal Declaration of Human Rights (UDHR) is regarded as the bedrock of the contemporary human rights framework. Article 17 of the UDHR states that:

Everyone has the right to own property alone as well as in association with others. No-one shall be arbitrarily deprived of his property.

5.61 The UDHR is essentially aspirational. In order to make the rights enforceable, they are translated into a number of international treaties: ICCPR and ICESCR are the two major treaties. The right to property is not found in either of these - principally as a result of the intractable differences that arose out of the ideological division between the capitalist and socialist countries during the Cold War. A number of the other treaties, however, include clauses that prohibit discrimination on the basis of property, or in relation to property, by reason of a person’s sex, religion, race or similar ground[[8]](#footnote-8)

5.62 By contrast, regional arrangements such as the European Convention of Human Rights include the right to property (in the sense of peaceful enjoyment of possessions)[[9]](#footnote-9) as do both the American and African Charters - although the protection against expropriation and regulatory takings is relatively weak. As a general principle, the right to property is recognised as a personal right but State interference is permitted in the public interest.

What does the right to property consist of?

5.63 A major obstacle to the human right to property is what is meant by ‘property’. While the UDHR does not explicitly refer to private property, it is often conceived of as such. As a result, much mainstream human rights thinking is averse to the notion of property because historically it has been:

... the privilege of the few and served as a means of excluding the large mass of non-possessors from social and political life. The merit of this argument is that it pinpoints an intrinsic tension between the right to property as a civil right and its social function. The right to property, understood as means of survival, is closely related to the realisation of the right to life and of other human rights of the individual. At the same time, however, its limitation may be necessary for the realisation of other human rights....Western liberal tradition places this right among other freedoms, while its characteristics unequivocally would lead to its inclusion among economic, social and cultural rights.[[10]](#footnote-10)

5.64 Some commentators have gone so far as to interpret the right to property as requiring the redistribution of property so that everyone can live a life of dignity.[[11]](#footnote-11) How far one can go with this line of reasoning is debatable, but it is clear that the right to property can impact on the realisation of many economic and social rights such as the right to food and an adequate standard of living.

5.65 Property rights can also be as fundamental to civil and political rights.[[12]](#footnote-12) Those who endorse the concept of private property argue that it is integral to individual autonomy and a free society[[13]](#footnote-13)arguing that:

...property rights allow human beings to have autonomy of action over their own property; rights-holders can put property to the uses they desire, provided such uses are socially acceptable; and they can reap the rewards from those uses without fear of unjustified and uncompensated expropriation of their property rights by government.’[[14]](#footnote-14)

Obligation to respect, protect and fulfil the right

5.66 If the right to property is considered necessary to realise human rights, then it imposes certain obligations:[[15]](#footnote-15)

1. To *respect* the right, States must refrain from arbitrarily interfering with it - for example, by expropriation or not acting in the public interest;
2. To *protect*the right, for example, by preventing encroachment by third parties or people being expelled for their property, or property destroyed;
3. To *fulfil* the right, States must take positive steps to create an enabling environment particularly in those countries where there is extreme poverty

Limitation on right to property

5.67 The right to property, however conceptualised, is not absolute. Property can be taken by the State provided the “taking” is not arbitrary. This has been interpreted as meaning that the taking must be prescribed by law and in the public interest.

Compensation

5.68 Although the absence of a specific right to property means there is no jurisprudence from the international treaty bodies, there is enough comment from courts such as the European Court of Human Rights (ECtHR) to suggest that protection of property rights would be “largely illusory and ineffective” in the absence of compensation[[16]](#footnote-16).

5.69 The level of compensation has, however, been the subject of debate particularly the question of whether full compensation is necessary. In *Lithgow & Ors v. the United Kingdom*[[17]](#footnote-17)for example,the ECtHR stated that full compensation is not a guaranteed right and reimbursement of less than the full market price of a property may be legitimate if the aim is economic reform or greater social justice.

How property rights are addressed in other jurisdictions

5.70 Although most of the world’s liberal democracies include property rights in their constitutions (see Appendix D), the nature of the right can differ significantly. As *noted* earlier it may be conceived of as an individual or personal function closely connected to personal liberty and economic activity; or as a social and public good which advances the collective good of society[[18]](#footnote-18). The United States provides an example of the former and the German Constitution, the latter.

5.71 The US Constitution does not include a property clause as such. Property is only *mentioned* in the takings clause of the Fifth Amendment and the due process clause of the Fourteenth Amendment. While human dignity is the cornerstone of the German Constitution, it is not construed as an individual right but rather the right of a person as part of the community. Article 14 of the German Basic Law recognises the right to property as indispensable for individuals to realise their own potential[[19]](#footnote-19). As the Constitutional Court has noted:

The image of man under the Basic Law is not that of [an] isolated, sovereign individual; rather, the Basic Law resolves the conflict between the individual and the community by relating and binding the citizen to the community but without detracting from his individuality[[20]](#footnote-20)

5.72 The right to property under Article 14 can be infringed even if the property is taken in the public interest and monetary compensation provided. The basis for this conception of private property as a social obligation finds no real analogy in legislation such as the American constitution.

Domestic legislation

5.73 There is no specific statutory recognition of the right to property in the NZBORA. In 1988 the Final Report of the Justice and Law Reform Committee on a White Paper on a Bill of Rights for New Zealand noted that submissions to the Committee suggested that certain social and economic rights should be included in the Bill - including the right to property[[21]](#footnote-21). The Committee also suggested that the Bill should include “the right to own property and not be deprived of private property for public use without just compensation”[[22]](#footnote-22).

5.74 The Parliamentary Counsel Office subsequently drafted a version of the NZBORA which included a clause that read:

*Right to own property*

Every person has the right to own property, and the right not to have that person’s property taken, for public use, without just compensation.

5.75 The clause (and other clauses dealing with economic and social rights) did not survive the Bill’s introduction as it was opposed by the Government of the day, the then Prime Minister, Sir Geoffrey Palmer, stating that:

The Select Committee recommended the inclusion of some social and economic rights as principles to aim at. Such rights would not have been enforceable, and it was decided not to include any of them in the Bill. Bills of Rights are traditionally about putting restraints on the powers of the State. Hence, they tend to focus on procedural rather than substantive rights. Social and economic rights are in a different category.That does not mean that those rights are of lesser importance, but, rather that they should be protected in a different way*.*[[23]](#footnote-23)

5.76 21 years after the NZBORA was enacted Palmer considered that the right to property could be included, subject to certain qualifications – including how property should be defined and “the cost implications of providing compensation for statutory invasion of property rights.” [[24]](#footnote-24)

5.77 In 2005 a private member’s bill was drawn from the Ballot that would have added a right to property to the NZBORA. The argument in support of the Bill was that it would have influenced judicial interpretation and promoted greater discussion about proposed legislation involving the infringement of property rights. The Bill was eventually defeated because interpretation of certain terms (including what was meant by property) was unclear; it could have complicated the legal interpretation of property for the purposes of the Resource Management Act 1991; and the right to compensation could have incurred unintended costs by government and local authorities[[25]](#footnote-25).

5.78 Then in 2011, the Government introduced the Regulatory Standards Bill to the House. The Bill was an ACT initiative and ostensibly designed to improve the quality of legislation. However, it also included the right “not to take or impair property... unless it is necessary in the public interest”. This was criticised as having the effect of preventing Parliament from doing anything redistributive as it would basically freeze the existing distribution of wealth[[26]](#footnote-26). It was also observed that “... as the principle would make it very expensive to impose limits on how property owners may act, this would sharply curtail planning and environmental protection laws among others”[[27]](#footnote-27). At the time of writing, progress on the Bill had stalled.

5.79 More recently, the Government passed the Canterbury Earthquake Recovery Act 2011 (CERA Act). The CERA Act sets out the functions and powers of the Minister and creates a new Authority - the Canterbury Earthquake Recovery Authority (CERA) - to ensure a coordinated recovery effort. The Act provides a framework for compensation for land compulsorily acquired under the Act[[28]](#footnote-28)which is set at the current market at the time of acquisition[[29]](#footnote-29).

5.80 However, while New Zealand’s domestic human rights legislation is silent on the right to property[[30]](#footnote-30), other legislation and policy – in addition to the Magna Carta - supports the existence of the right. For example, the Crown has the power to acquire property in the national interest (contingent on the payment of compensation) under the Public Works Act 1981; the Crimes Act 1961 proscribes property offences such as theft; the Land Transfer Act 1952 reflects the indefeasibility of title in s.62 (along with other sections of that Act); and the Resource Management Act 1991 is premised on ownership of property. The Treaty of Waitangi settlements negotiated by the Crown through the Office of Treaty Settlements also reflect the concept of property as a right.

Property and the Treaty

5.81 The right to property raises particular issues in relation to the Treaty of Waitangi, indigenous rights in the UNDRIP, and the right to self-determination in the various international treaties. Prior to the Treaty, the relationship between the people and the land was ‘we belong to the land’. Article 2 of the Treaty added a new relationship: ‘the land belongs to us’. This part of the Treaty created property rights for tangata whenua in Aotearoa.

5.82 The common law doctrine of native title recognised the pre-existing rights of Indigenous peoples in lands the Crown sought to acquire and required a clear process for extinguishing native title before it could assume authority over a new territory.

5.83 The establishment of the native land laws to convert customary tenure into individualised title, and extensive Crown purchasing of Māori land were the main processes by which the Crown sought to extinguish native title.[[31]](#footnote-31) The Treaty of Waitangi introduced, among other things, the common law doctrine of native title:

The Treaty of Waitangi thus endorsed the position at common law: a change in sovereignty does not extinguish Indigenous peoples’ property rights, and specifically, Māori remain the proprietors until they wish to sell to the Crown.[[32]](#footnote-32)

5.84 Treaty settlements are intended to provide some redress for historical breaches of the Treaty by the Crown. Compensation for property compulsorily acquired for public works, however, has historically been poorly observed for owners of Māori freehold land.[[33]](#footnote-33)

International standards

5.85 A variety of international standards are designed to ensure indigenous peoples are adequately compensated for loss or taking of their land. Article 8 (2) of UNDRIP, for example, requires ‘States [to] provide effective mechanisms for prevention of, and redress for: … any action which has the aim or effect of depriving them of their lands territories or resources.’ Under Article 28 redress can include ‘restitution or when this is not possible, just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned or occupied’[[34]](#footnote-34) and which have been taken without their ‘free, prior and informed consent’.

5.86 The UN General Assembly’s 1986 Declaration on the Right to Development[[35]](#footnote-35) states that:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.

The human right to development also implies the full realisation of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

5.87 Articles 3, 4 and 10 call on governments to assist with the realisation of these rights. In 1998 the General Assembly expressed its concern that the Declaration should be taken into account in national development strategies and policies and urged States to eliminate all obstacles to development by pursuing the promotion and protection of economic, social, cultural, civil and political rights.[[36]](#footnote-36)For Māori, the right to development is a Treaty right, extensively articulated by the Waitangi Tribunal, particularly in *He Maunga Rongo: Report on the Central North Island Claims*.[[37]](#footnote-37)

5.88 The right is also recognised in Article 32 of UNDRIP which states that Indigenous peoples have the ‘right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources’. The Waitangi Tribunal has found that the right to development is not ‘frozen in time’.[[38]](#footnote-38) Extensive Māori fishing rights, for example, have been formalised in settlement legislation, which enables Māori to fish both for traditional and commercial use.[[39]](#footnote-39)

Water as a property right

5.89 The ownership of water raises particular issues for tangata whenua as a result of the partial privatisation of certain State Owned Enterprises.

5.90 The question of ownership has been the subject of long-standing claims based on the Crown’s failure to protect tangata whenua in their “full exclusive and undisturbed possession” or ‘”Tino rangatiratanga” of their water properties or taonga guaranteed by the Treaty.

5.91 In an interim decision in the *Freshwater and Geothermal Resources Inquiry* (2012), the Waitangi Tribunal established that the claimant iwi and hapū have property rights akin to ownership in English law over specific bodies of water based on:

1. reliance a source of textiles or other materials;
2. use for travel or trade;
3. use in the rituals central to the spiritual life of the hapū
4. the water has a mauri (life force);
5. it is celebrated or referred to in whakatauki;
6. taniwha reside in the water;
7. kaitiakitanga is exercised over the water;
8. mana or rangatiratanga exercised over the water;
9. whakapapa identifies a cosmological connection with the water; and
10. there is a recognised claim to land or territory in which it is situated, and title has been maintained to ‘some, if not all, of the land on (or below) which the water resource sits.[[40]](#footnote-40)

5.92 How Treaty rights are recognised in practice will be the subject of the second stage of the Inquiry and will build on the Tribunal’s finding that such rights are in the nature of ownership. It will inquire into whether such rights and interests are adequately recognised and provided for under existing regulation and whether Crown policies are in breach of the Treaty. If a breach of the Treaty is found, the Tribunal will then consider what steps should be taken to comply with the Treaty.[[41]](#footnote-41)

Conclusion

5.93 While there is no distinct right to property in human rights law, a case could be made for a more specific reference to property given its link to the realisation of social, economic and cultural rights.

5.94 If it was included in the NZBORA then some thought need to be given to the implications of the lack of an explicit remedies provision. As compensation is integral to the right, including it as part of the right itself establishes a new legislative path. However, this could be justified because the ICCPR imposes an obligation on States to ensure that any person whose rights have been violated has access to an adequate remedy by a competent authority and enforceable; international jurisprudence is clear that compensation should be available for breaches of human rights[[42]](#footnote-42).

5.95 In *Baigent’s case* the New Zealand courts developed the concept of a public law remedy for a breach of s.21 of the NZBORA, noting:

[The Act’s] purpose being the affirmation of New Zealand’s commitment to the Covenant ... it would be wrong to conclude that Parliament did not intend there to be any remedy for those whose rights have been infringed ... I do not accept that Parliament intended it to be what most would regard as no more than legislative window dressing, of no practical consequence, in the absence of appropriate remedies for those whose rights and freedoms have been violated.[[43]](#footnote-43)

5.96 If it is considered appropriate to include property rights in the NZBORA then the Commission considers that the following wording would reflect the international standards: [[44]](#footnote-44)

The right to property

1. Everyone has the right to own property alone as well as in association with others;
2. No person shall be arbitrarily deprived of property;
3. No person shall be deprived of property except in accordance with the law, in the public interest, and with just and equitable compensation;
4. Everyone has the right to the use and peaceful enjoyment of their property. The law may subordinate such use and enjoyment to the interests of society.

5.97 Specific wording to address the right to property and the Treaty of Waitangi and indigenous rights (including over natural resources such as water) should be negotiated between the Crown and tangata whenua.

1. Kochan D*.The Property Platform in Anglo-American Law and the Primacy of the Property Concept* Georgia State University Law Review Vol.29 no.29 (2013).citing Casner et al*., Cases and Text on Property* (5th ed. 2004). [↑](#footnote-ref-1)
2. See also Sir William Blackstone *Commentaries on the Laws of England,* Clarendon (1765) [↑](#footnote-ref-2)
3. Imperial Laws Application Act 1988 [↑](#footnote-ref-3)
4. Chapters 1 to 28 having been repealed by s.4(1) of the Imperial Laws Application 1988 [↑](#footnote-ref-4)
5. In decisions such as *Cooper v Attorney-General* [1996] 3 NZLR 480 & *Maori Council No.2* [1989] 2 NZLR 142 [↑](#footnote-ref-5)
6. A concept reflected in the well known adage, “a man’s house is his castle” [↑](#footnote-ref-6)
7. But see Andrew Butler, *The Scope of s.21 of the New Zealand Bill of Rights Act 1990: Does it provide a general guarantee of property rights?* NZLJ, February 1996 at 58. The author considers that s.21 (which refers to the protection of property) should be interpreted restrictively and confined to breaches of privacy committed by law enforcement agencies. However, he also notes that provisions other than s.21 – for example, s.9 which relates to cruel and unusual punishment - may be implicated if, for example, property is taken without compensation [↑](#footnote-ref-7)
8. The travaux preparatoires state that non-inclusion does not equate with denial of the right ... *“(...) no one questioned the right of the individual to own property (...) it was generally admitted that the right to own property was not absolute” and there was wide agreement that the right (...) was subject to some degree of control by the State” while “certain safeguards against abuse must be provided*”: Annotations on the text of the draft International Covenants on Human Rights, 1/7/95 UN Doc. A/2929 , para.197,202, 206 [↑](#footnote-ref-8)
9. It does afford some protection against expropriation but allows the State a very wide margin of appreciation: Mchangama, J *The Right to Property in Global Human Rights Law* Cato Policy Report (2011) available at [http://www.cato.org/pubs/[policy\_report/v33n3/cprv33n3-1.html](http://www.cato.org/pubs/%5bpolicy_report/v33n3/cprv33n3-1.html) [↑](#footnote-ref-9)
10. Golay, C.& Cismas, I. *Legal opinion: The Right to Property from a Human Rights Perspective*, Geneva Academy of International Humanitarian Law and Human Rights (2010) [↑](#footnote-ref-10)
11. Eide, A. Krause, C.& Rosas (eds) *Economic, Social and Cultural Rights: A Textbook*, Martinus Nijhoff (2001) [↑](#footnote-ref-11)
12. The US Supreme Court for example, has even gone so far as to state: “Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation ... is in truth , a “personal” right ...In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognised“: *Lynch v Household Corp*., 405 U.S 538, 552 (1972) [↑](#footnote-ref-12)
13. Ibid. & Robertson (supra at 60) It is argued that if this interpretation is adopted, property rights underpin the right to self-determination found in all of the core international human rights instruments to which New Zealand is a signatory. [↑](#footnote-ref-13)
14. Evans et al. (supra) at 9 [↑](#footnote-ref-14)
15. Golay & Cismas (supra) at 28 [↑](#footnote-ref-15)
16. *James & Ors v.The United Kingdom:* Application no.8793/79, Judgment of 21 February 1986, para 54. [↑](#footnote-ref-16)
17. Application no.9006/80,9262/81,9263/81,9266/81,9313/81, 9405/81. Judgment 8 July 1986 [↑](#footnote-ref-17)
18. Alexander, G. “Constitutionalising Property: Two Experiences, Two Dilemmas” in *Property and the Constitution,* McLean, J (ed.) Hart Publishing 1999 at 89 [↑](#footnote-ref-18)
19. *Property as a Fundamental Constitutional Right? The German Example,* Alexander, G available at [www.scholarship.law.cornell.edu/clsops\_papers](http://www.scholarship.law.cornell.edu/clsops_papers) [↑](#footnote-ref-19)
20. Quoted in Sontheimer, K “Principles of Human Dignity in the Federal Republic” in Karpen, U (ed.) *The Constitution of the Federal Republic* (Baden-Baden: Nomos Verlagsgesellschaft,1988) at 213 [↑](#footnote-ref-20)
21. Final Report of the Justice and Law Reform Committee *On a White Paper on a Bill of Rights for New Zealand* 1.8C, 1988 at 10 [↑](#footnote-ref-21)
22. Citing Art.17 of the Declaration, the Fifth Amendment to the US Constitution and section 51 (xxxi) Australian Constitution Act [↑](#footnote-ref-22)
23. Hansard: Introduction of New Zealand Bill of Rights, 10 October 1989, Rt. Hon Geoffrey Palmer. See also G. Palmer, *New Zealand’s Constitution in Crisis* (Dunedin, McIndoe, 1992) at 57 (cited in Joseph, P. *Constitutional and Administrative Law in New Zealand* (2nd ed) Wellington, Brookers, 2001 at para 26.3) [↑](#footnote-ref-23)
24. Palmer, G. “The Bill of Rights After 21 years: the NZ Constitutional Caravan Moves On” August 2011 at 28 cited by Mai Chen in *Public Law Tool Box* LexisNexis 2012 at 12.12.1 [↑](#footnote-ref-24)
25. Evans et al. supra citing *Report of the Justice and Electoral Committee: The New Zealand Bill of Rights (Private Property Rights) Amendment Bill* at <http://www.parliament.nz/NZ/rdonlyres> [↑](#footnote-ref-25)
26. Brian Fallow, *New Zealand Herald* 24 March 2011 [↑](#footnote-ref-26)
27. Richard Ekins, *Regulatory Responsibility?* [2010] NZLJ 25 [↑](#footnote-ref-27)
28. Subpart 5 & ss.40 & 41 [↑](#footnote-ref-28)
29. The Act also includes a mechanism for appealing a determination about compensation. [↑](#footnote-ref-29)
30. Evans et al. consider state that Australia and New Zealand are the only two OECD countries without explicit property rights protections - though the Constitution of Australia refers to the acquisition of property on ‘just terms.’ (supra, 10) [↑](#footnote-ref-30)
31. Jacinta Ruru (2009), “The common law doctrine of native title possibilities for freshwater’. Unpublished paper presented at the Indigenous Legal Water Forum, 27July 2009, Wellington. Accessed online at <http://www.otago.ac.nz/law/nrl/water/NativeTitlePossibilites.pdf> [↑](#footnote-ref-31)
32. Ruru, ‘Common law doctrine’, p 5 [↑](#footnote-ref-32)
33. See, for example, the chapter on public works acquisitions in Tauranga Moana, in Waitangi Tribunal (2010), *Tauranga Moana 1886-2006*, pp 280-307. Accessed online at [http://www.waitangi-tribunal.govt.nz/reports/downloadpdf.asp?ReportID={2ADE8F1E-FBB7-4402-88DB-C3C7B947A229}](http://www.waitangi-tribunal.govt.nz/reports/downloadpdf.asp?ReportID=%7b2ADE8F1E-FBB7-4402-88DB-C3C7B947A229%7d) on 15 November 2012. Māori freehold land is different to Māori customary land, of which there is very little now left in New Zealand. The native land laws established in the mid-nineteenth century facilitated the individualisation of Māori freehold land through fragmentation and fractionation of title. [↑](#footnote-ref-33)
34. Emphasis added. ‘Resources’ should be broadly construed to include water resources. [↑](#footnote-ref-34)
35. UN General Assembly *Declaration on the Right to Development* 4 December 1986 Resolution 41/128, at Article 1(1) & (2). A similar right is also provided the African Charter on Human and Peoples’ Rights, and the South African Constitution. Note that New Zealand’s UN membership obliges respect for the Articles of the Universal Declaration, and that this property right has been described as an emerging international customary law. [↑](#footnote-ref-35)
36. UN General Assembly Resolution 53/155, 9 December 1998 and 25 February 1999, at paragraph 7 [↑](#footnote-ref-36)
37. Waitangi Tribunal (2012), *Interim Water Report.* According to the Tribunal’s report on the Central North Island claims, the right to development ‘extended to the development of their property, including through the use of new technologies and/or for new purposes, and to having an equal opportunity to do so. It also included the ability to develop, or profit from, resources in which they have a proprietary interest under Maori custom, even where the nature of that property right was not necessarily recognised under British law.’ See summary of the findings of the Waitangi Tribunal’s report *He Maunga Rongo: Report on the Central North Island Claims*, accessible online at http://www.waitangi-tribunal.govt.nz/reports/summary.asp?reportid={F093A91B-6F97-408C-BBB7-C38873281702} [↑](#footnote-ref-37)
38. See, for example, Waitangi Tribunal *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* Wai 22 (1988), at pages 222 to 223. [↑](#footnote-ref-38)
39. Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 [↑](#footnote-ref-39)
40. Waitangi Tribunal, *Interim Water Report*, p 38 [↑](#footnote-ref-40)
41. New Zealand Maori Council v Attorney-General [2013] NZSC 6 at [para 11] [↑](#footnote-ref-41)
42. See, for example, *Maharaj v Attorney-General of Trinidad & Tobago* (No.2) [1979] Ac 385 (PC) which was instrumental in the New Zealand Court of Appeal developing the concept of a public law remedy in *Simpson v Attorney-General (Baigent’s case)* [1994] 1 NRNZ 42 [↑](#footnote-ref-42)
43. At pp.73 & 74 Two of the judges noted on the course of the judgment that “it would be strange if New Zealand citizens could get a remedy from the United Nations Committee in New York that they could not obtain in New Zealand”. [↑](#footnote-ref-43)
44. Human Rights Commission, *Submission on the New Zealand Bill of Rights (Private Property Rights) Amendment Bill*. [↑](#footnote-ref-44)