

TE UREWERA

TE UREWERA

VOLUME I

WAI 894

WAITANGI TRIBUNAL REPORT 2017



National Library of New Zealand Cataloguing-in-Publication Data
*A catalogue record for this book is available from the National
Library of New Zealand*

ISBN 978-1-86956-325-7 (pbk)

ISBN 978-1-86956-326-4 (PDF)

www.waitangitribunal.govt.nz

Typeset by the Waitangi Tribunal

This report was previously released online in pre-publication format in six parts
between 2009 and 2015 as *Te Urewera – Pre-publication Version*

This edition published 2017 by Legislation Direct, Lower Hutt, New Zealand

Printed by Printlink, Lower Hutt, New Zealand

Reprinted with corrections 2018

21 20 19 18 5 4 3 2

Set in Adobe Minion Pro and Cronos Pro Opticals

JOSEPH TUAHINE NORTHOVER MNZM

1928–2011



'Ko Rūaumoko e ngunguru nei i au, au, aue ha!

I haruru tō kainga tupu a Iritekura i tō rironga e Tuahine.

Ka oioi te whenua o tō tupuna a Hineamaru i te pukenga wai.

Ka ngāueue tō whare a Kahukuranui i te pukenga tangata.

E te manu mātārae kua tāroretia e te ringa kaha o Aituā, e moe!

Ko te Amorangi ki mua . . . ko koe tēnā e Koro

Tamaiti akonga ki te kainga, ka hua mai ko te tangata kiri kawa ki te kupu.

Nāu ngā karaipiture o te Atua i horahia, nāu hoki ngā kupu o

te Matua Tangata i horapa.

Tangata ū ki te tika, ū ki te pono.

E te manu taupua i ōna uri, i ōna marae, i tōna whenua, ka mihi.

Ko te hāpai ō ki muri . . . ko koe hoki tēnā

He ihu oneone, he kaiahuwhenua, he momo nō Te Hāpuku.

He ringa tōhau nui o te iwi i whakaarahia e ngā poupou o Te Ara o Tāwhaki!

Te mūrau o te tini. Ko koe te whakatinanatanga o ngā kupu *'e tu i runga i te*

whakapono, whakatangata kia kaha!

E te manutaki, takina e koe te Roopu Whakamana ki roto o te kōhanga o Tūhoe.

Tākina e koe te kupu. Nāu te taki i hiki. Ko te utu ō ēnei mahi mō te whenua,

ko te tangata.

E te rangatira e moe.

*Though small in stature, a towering figure in Māoridom and a pillar of
the Waitangi Tribunal.*

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REPORT NOTES

PUBLICATION HISTORY

The *Te Urewera* report was originally released online in pre-publication format in six parts between April 2009 and December 2015:

- ▶ Part I, comprising chapters 1 to 5, appendix I, and the glossary of Maori terms was released in April 2009.
 - ▶ Part II, comprising chapters 6 to 12 and appendix III, was released in July 2010.
 - ▶ Part III, comprising chapters 13 to 16 and appendixes III, v, VI, and VII, was released in October 2012.
 - ▶ Part IV, comprising chapters 17 to 19, was released in December 2012.
 - ▶ Part v, comprising chapter 20, was released in December 2014.
 - ▶ Part VI, comprising chapters 21 to 23, was released in December 2015.
- Appendixes II and IV appear here for the first time.

LETTERS OF TRANSMITTAL

As described above, the report was originally released online in six parts. Each of these parts was preceded by a letter of transmittal, and these letters have been reproduced as they originally appeared, in order, from page xxxiii on.

THE APPENDIXES

Please note that appendix III (the Urewera District Native Reserve Act 1896), which originally followed chapter 9 in the pre-publication version, now appears with the rest of the appendixes at the end of the report in volume 8. In addition, some of the appendixes have been renumbered since their appearance in the pre-publication version: appendix II is now appendix III, appendix IV is now appendix VII, and appendix v is now appendix VI.

SUMMARY ANSWERS

To make them easier for readers to locate, in this edition the summary answers have been visually highlighted by grey bars located in the margins.

THE PANEL

The Urewera panel consisted of Judge Patrick Savage (presiding), Joanne Morris, Tuahine Northover, and Dr Ann Parsonson. Sadly, Mr Northover passed away in April 2011, before the completion of part III. He was not replaced.



Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Dr Pita Sharples
Minister of Maori Affairs
Parliament Buildings
WELLINGTON

6 April 2009

E te Minita o nga Take Maori

Tena koe e tu nei i te kei o te waka, e whakatinana nei i nga tumanako, e whakatutuki nei i nga wawata a te iwi Maori. Ki nga tini mate haere ra e te aumangea, puawhiowhio atu ki te nohopukutanga o te tangata ki te whare ahuru o tuawhakarere.

Tihei Mauriora.

This part of the report opens with a description of Te Urewera communities today. It gives an account of the origins of the Maori people of our inquiry district, their settlement of Te Urewera, and their development over generations as hapu and iwi by the time of substantial contact with Europeans in the 1860s. We discuss the core beliefs and values of the people and the exercise of authority in traditional Te Urewera society to help to explain how its peoples responded to the challenges of contact and the operations of new institutions of government and law within their rohe. We would draw your attention in particular to the importance to Tuhoe, over many generations, of mana motuhake. It was clear to us from their sustained explanations that this is hardly a recent slogan, as some might assume. Rather, the urge for independence and the determination to secure their own destiny, so that their customs and beliefs – and thus their identity – can be protected, has long been intrinsic to the Tuhoe way of life.

The Maori people of Te Urewera were not offered the opportunity to sign the Treaty of Waitangi and did not sign it. One of the claims before us, the Tuhoe ‘constitutional claim’, concerns the Treaty implications of this absence

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of consent to the Treaty. In chapter 3, we discuss the relevant facts and their Treaty implications through to 1865. The Crown and claimants agree that in 1840 the Crown undertook Treaty obligations to all Maori, whether or not they had signed the Treaty. We uphold the claimants' view, however, that since their tipuna knew nothing of the Treaty, it could not, in any real sense, take effect to bind them to its terms. Article 2 promised to protect their tino rangatiratanga and, in Tuhoe terms, mana motuhake. We shall return to this issue at appropriate points in the later parts of our report.

Chapter 4 concerns confiscation in the eastern Bay of Plenty. The district involved in the whole of that confiscation can be generally described as the land north of a line running from approximately Opotiki through Putauaki (Mount Edgecumbe) and slightly further west, and then north to Otaramarakau. Tuhoe's customary rights and interests in the confiscation district were extensive, though not exclusive. For the sole purpose of facilitating negotiation, we have assessed Tuhoe's rights and interests as a percentage of total interests within the confiscation district. To this end, we have identified two adjacent zones – to the north and the south of a line drawn across the confiscation district and through Puketi and Whakarae – where Tuhoe's rights were markedly different. In the area to the south of that line, we consider Tuhoe have a 90 per cent interest. In the area to the north of Puketi and Whakarae, where Tuhoe shared rights and interests with other iwi, we consider Tuhoe have a 30 per cent interest. Based on these assessments, Tuhoe's interests within our inquiry district may be represented in acres by a figure of 59,655 acres (24,147 hectares). This amounted to about half of Tuhoe's best fertile land, of the kind suitable for development in the colonial economy. Its loss had serious long-term impacts on the iwi.

We note that this confiscation was probably unlawful, as the law then stood. We found that it was certainly in breach of the principles of the Treaty, as the Crown conceded in our inquiry. The land was taken for resistance to the East Coast Expeditionary Force, which landed in Opotiki in 1865. The Crown sent the force following the killing of the missionary Carl Sylvius Völkner and a number of others in the eastern Bay of Plenty. Tuhoe were not involved with these killings or in the resistance to the force. The Crown did not intend to punish Tuhoe, but it took their land anyway. When it became clear that Tuhoe claimed a significant part of the confiscated land, the Crown had a number of mechanisms available to return land to them. It could simply have abandoned its claim or returned land through its special commissioner or compensated Tuhoe through the Compensation Court. Tuhoe, however, were not successful – as they should have been – in that court, which was designed as a mechanism to mitigate the worst aspects of confiscation and to protect the innocent. For all practical purposes, Tuhoe got nothing back from any of the Crown's mechanisms for returning land.

The confiscation line remains a highly visible symbol of grievance on the ground today. Raupatu is a core, long-standing grievance, for which Tuhoe failed to secure any meaningful recognition by the Sim commission in the 1920s or by the Crown, despite their sustained efforts to do so. The Crown has acknowledged that its failure to address 'the wrongful confiscation of Tuhoe land' itself constitutes a breach. We found that confiscation is a grievance which needs to be addressed urgently.

After confiscation, and given that it was the first substantial contact that Tuhoe in particular had with the Crown, it is unsurprising that the Crown came to be regarded, almost immediately, as an enemy. Confiscation was in large part the driving force that led Tuhoe and their close relatives Ngati Whare to ally themselves shortly after with Te Kooti, a messianic leader. Te Kooti was fleeing, having committed a number of killings at Turanga (Poverty Bay) and having suffered a heavy defeat by Crown forces at Ngatapa. Under Te Kooti's leadership, Tuhoe and Ngati Whare, with some other Te Urewera groups, launched a series of attacks in the Bay of Plenty and at Mohaka in Hawke's Bay. Approximately 80 people were killed. In the light of those attacks and given the Crown's fear that it would be unable to protect innocent Maori and Pakeha citizens from any further such attacks, we find that the Crown was justified in launching a military operation into Te Urewera in 1869 to apprehend Te Kooti and those responsible. We find however, that the Crown forces acted mercilessly. Non-combatants were killed intentionally and some prisoners were summarily executed. The Crown forces acted completely in breach of Treaty principles. We note particularly that the senior military officer involved in the operations of 1869 spoke to his troops of 'extermination'. It is likely that rape was involved, and there are certainly strongly held beliefs that this was the case. People were intentionally starved out of the region with the wholesale destruction of crops, shelter, and taonga. Both sides were involved in the desecration of the dead.

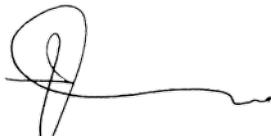
The Crown sent subsequent expeditions to Te Urewera in 1870 and 1871; the former was led by Kawanatanga Maori and ultimately resulted in a rongopai (peace) brokered by Te Keepa Te Rangihwinui and Tuhoe rangatira Tamaikoha. The Crown breached the rongopai on two occasions in 1870, notably by attacks at Waikaremoana during the autumn and winter which comprehensively destroyed all property and food supplies at the lake. This attack was unnecessary, unlawful, and in breach of the Treaty. The Crown's policy of removing all surrendered Urewera communities to the coast, despite the peace, and its failure to ensure that the people it held on reserves were properly provided for breached the Treaty rights of the peoples of Te Urewera. Much of the evidence for these facts is to be found in dispatches and writings or memoirs of Crown officers. On the heels of confiscation, this war was the worst of all starts for any relationship between the Crown and the peoples of

Te Urewera. It has echoed down through generations and explains the anguish and anger evident to this very day. We discuss the loss of life of the peoples of Te Urewera, both as a direct consequence of the conflict and through deprivation and disease, during the years 1869 to 1871.

There is little for the Crown to be proud of in its actions during this period. The alliance of Te Urewera people with Te Kooti and the attacks on Crown subjects, Maori and Pakeha, that followed, meant that military action was inevitable and justified. The roots of the conflict however, were in the Crown's wrongful confiscation. The confiscation of land from Tuhoe and the conduct of the war were such that they cannot be justified as having been in accordance with the values of the time, for they were not. These Crown actions have never been addressed or acknowledged and they must be, now.

We will report to you in due course, in further parts, to complete our report.

Heoi ano, naku na

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a long horizontal stroke that tapers to the right.

PJ Savage
Presiding Officer



Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Dr Pita Sharples
Minister of Maori Affairs
Parliament Buildings
WELLINGTON

31 July 2010

E te Minita o nga Take Maori

Tena koe e tu nei i te kei o te waka.

On 6 April last year, we submitted the first five chapters of our pre-publication Te Urewera report to you. We ended with the conclusion of the war in the centre of Te Urewera, in 1871. We now submit a further seven chapters, as part II.

This part of our report begins by stepping back in time from chapter 5. We turn to the period immediately after the siege of Waerenga-a-Hika at Turanga (Gisborne) in 1865. Its aftermath was a short and brutal war stretching broadly from Wairoa inland to Lake Waikaremoana, beginning in December 1865 and concluding in May 1866.

There were a series of engagements. The most significant, in January 1866, at Te Kopani near the southern shore of Lake Waikaremoana, involved the deaths of a minimum of 40–50 Maori. It ranks among the most grim battles in the New Zealand Wars, involving more deaths in battle than the entire campaign against Te Kooti in Te Urewera. We find that the Crown was wholly at fault, attacking people who were simply retreating or defending themselves. We cannot over-emphasise the reprehensible nature of the wholesale destruction and killing by Crown forces. Grave breaches of Treaty principle were involved in these events.

Three vignettes give us the flavour of the campaign. The first is a British officer expressing relish at the prospect of going ‘into the niggers at once’. The second was recorded by a newspaper correspondent after the battle at Te Kopani had moved to the southern shore of the Lake:

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The men, women and children were now to be seen running for their canoes to make their retreat across the Waikare Moana lake . . . Thirty-three of the enemy killed were buried by our people, and eight were shot while in the water, making their escape to their canoes, and were seen to sink.

The third scene involves the summary execution, by pistol, of four Maori prisoners at Onepoto. These executions went unpunished.

The consequences of the conflict were immediately catastrophic. Some ten settlements were destroyed and the southern shore of the lake was effectively depopulated for the best part of a decade.

We turn next to one of the most complex subjects in the report – the loss to Maori of land in four large blocks immediately to the south east of Lake Waikaremoana. In 1875, the Crown purchased this land, totalling 178,226 acres. This was the final act in a series of events arising from the Crown's attempt to punish those whom it considered rebels in the war of 1865 to 1866. But there had been no rebellion.

In 1867, the Crown held a hui at Te Hatepe with Ngati Kahungunu (many of whose chiefs had fought alongside it). It sought cession from them of a block of land for military settlement, while asserting confiscation (under special East Coast confiscation legislation) in a manner that was aptly described at the time as 'begging with a bludgeon'. There is little in these events of which the Crown can be proud.

At this hui, the Crown promised those who were 'ceding' land, or who had assisted it in the war, that it would recompense them with land which it believed, mistakenly, it had confiscated. The story is riddled with misunderstandings on the part of officials. The Crown did not appreciate how its own new East Coast confiscation legislation worked (for the first time it allowed the Native Land Court to decide which land belonged to those considered rebels) – and it did not even know what the boundaries were, on the ground, where the Act applied.

As a result, officials convinced themselves over time that the Crown had confiscated far more land than had been discussed with Maori at Te Hatepe, stretching as far as Lake Waikaremoana. In 1872, the Crown signed an agreement (the Locke deed) purporting to confirm the land's 'return' to Maori, and dividing it into four blocks. This was customary, not confiscated, land, and it was land in which Tuhoe and Ngati Ruapani – who were not concerned with the Te Hatepe agreement at all – also had important rights and interests. From this point an intricate history unfolded. On the one hand, it involved the interplay between Tuhoe, Ngati Ruapani, Ngati Kahungunu who had supported the Crown, Ngati Kahungunu who opposed the Crown, and those Ngati Kahungunu who had been promised land for services to the Crown. On the other hand, the Crown operated in a bungling and self-interested manner.

The Crown's obvious intention to assert itself in the southern Waikaremoana lands led to growing tensions among all groups with interests there. Crown agents encouraged Tuhoe to go to the Native Land Court in the hope that a decision on the ownership of the land would ease the tension. The result, in 1875, was one of the strangest court hearings we know of. After it had begun, the Solicitor-General, on inquiry from the court, advised that the four southern blocks had never been confiscated. This was completely contrary to what Crown officials had repeatedly told Maori. However, if the court case went ahead, the East Coast legislation would apply. This meant that the land of 'rebels' could in fact now be confiscated.

Facing this threat, Tuhoe and Ngati Ruapani withdrew from the court and sold their interests in the land to the Crown, salvaging some recognition in the form of a payment and small reserves. Ngati Kahungunu claimants also appeared in court, and were subsequently found to be the owners. They had already come under unfair pressure from Crown purchase agents, and the Crown now concluded its purchase from them. We found the Crown's actions in respect of these events to be in breach of Treaty principles.

Our next chapter picks up from the end of war in Te Urewera in 1871, and describes the affirmation of Tuhoe and Ngati Whare tino rangatiratanga, embodied in Te Whitu Tekau (the seventy) – the governing council of rangatira. Tuhoe and Ngati Whare today rightly regard this as mana motuhake in action. Te Whitu Tekau defined its boundaries and was resolute in its policy of opposing sales, leases, roads, the operation of the Native Land Court in its rohe, and surveys. Surveys, as they edged into the rohe, were a continuing source of conflict, which flared occasionally into minor violence and civil disobedience over the next 30 years. The Crown could and should have worked with Te Whitu Tekau in order to honour its Treaty guarantee of tino rangatiratanga. Promises that had been made at the conclusion of the conflict by Crown officials in 1871 heightened the Crown's obligation to respond positively to this tribal initiative. The Crown did exactly the opposite and can aptly be characterised as consistently chipping away at the power and structure of the council.

By the 1890s, both the Crown and the peoples of Te Urewera had a willingness to move on and discuss a form of self-government for Te Urewera. In our entire report to date, this is one of the moments where an accord of real promise was reached. In particular, as we see it, it is at this point that a genuine Treaty-based relationship was established between the Crown and Tuhoe. Premier Seddon, together with James Carroll, travelled the rohe, spoke with the leaders and then brought them to Wellington for negotiation and discussion. Agreement was reached, and in 1896 the Urewera District Native Reserve Act was passed. The Act embodied an arrangement unique in our history. The Crown saw itself as granting the peoples of Te Urewera real powers

of self-government and collective tribal control of their lands. The Crown's purpose, often stated at the time, was to protect the lands of Te Urewera and ensure the future prosperity of its peoples. It is a matter of huge regret that the implementation of the legislation did not fulfil its terms, let alone its potential to give effect to mana motuhake. But the ultimate and sad fate of the Urewera District Native Reserve is a subject for future pre-publication chapters of this report.

At the same time as Te Whitu Tekau leadership asserted itself, and then the Urewera District Native Reserve Act 1896 was passed and brought into operation, the Native Land Court was in full swing in the rim of lands surrounding what became the Reserve. From 1878 right through until 1894, approximately 377,000 acres were transformed from customary land to native land title and awarded to the claimants in our inquiry. By 1930, more than 82 per cent of that land had passed from Maori ownership. The Native Land Court was a highly effective engine for dispossession. A series of Treaty breaches by the Crown were involved in its establishment and operations. Cases could be forced through the court by an individual against the wishes of an overwhelming majority of the community. Land shares were individual property, and this imperilled the strength of Te Urewera kin groups, and their means of protecting their land. As such, they were particularly vulnerable to predatory purchasing – not least by the Crown, which had acquired nearly 65 per cent of the land awarded to claimants in our inquiry district by 1930. This dispossession was in large part paid for by the dispossessed, through the medium of survey costs, which in the case of some small blocks consumed the major part of the land. On top of that were court fees and the sheer inconvenience and cost of attending sometimes lengthy court sittings at a distance. The peoples of Te Urewera were never given the opportunity to manage these lands in a communal way recognised by the law, by trusts or incorporations such as presently operate.

The disgrace that was the Native Land Court is well-described by other Tribunals. The legislation that underpinned it was intensely complicated, changing almost yearly, and was difficult to understand for even the trained practitioner regularly concerned with it. The Crown was ever aware, but only in a superficial way, that it had an obligation to ensure that the peoples of Te Urewera were protected to some extent in their dealings with land. The mechanisms set in place were never well thought out, and were honoured in the breach or ignored.

The failure of the native land legislation is particularly illustrated in the tragic story of Ngati Haka Patuheuheu and the loss (through fraud) of their ancestral land. That hapu had always centred upon Waiohau, and particularly the land called Te Houhi, containing their major kainga and their wharenui, Tama-ki-Hikurangi. The story of loss was widely regarded as a disgrace at the

end of the nineteenth century. It has largely been lost to the national memory, but is vividly remembered by Ngati Haka Patuheuheu.

The land was awarded by the court to two individuals on the basis of perjured evidence. The protection mechanisms did not work in this case and the Chief Judge wrongly refused to grant a rehearing or, indeed, to even hear the parties on the application for rehearing. The land was then conveyed through a series of transactions to the point where the last in the chain of buyers could say that they held the land as a bona fide purchaser for value and without notice of the fraud. As such their title was not tainted by the fraud and they could hold the land and the law would remove Ngati Haka Patuheuheu from their ancestral home. This is a long story, involving predatory land dealers, complicated transactions, broken Crown promises, incompetent advice, and hard-hearted land speculators. A High Court judge, hearing one of the final parts of litigation, described the injustice in these terms:

That they [Ngati Haka Patuheuheu] have suffered a grievous wrong is, in my opinion, plain. It is doubly hard that this wrong should have resulted from a miscarriage, which certainly ought to have been avoided, in the very Court which was especially charged with the duty of protecting them in such matters.

It was headline news in newspapers, with a photo appearing of the actual dispossession of the community in 1907. The Crown could and should have taken control of the matter. The legislation could and should have been tighter to protect Maori. A number of people were culpable in a general sense, but that does not dilute the fact that this is a major Treaty breach by the Crown inflicted upon this community.

The final chapter in this part of our report deals with the management of lands in the eastern portion of our inquiry district in the first half of the twentieth century. These were lands consigned to a rescue scheme, a private trust, in the 1890s, after the failure of a series of East Coast ventures designed to assist Maori owners to develop and secure a return from their lands. The problems facing these ventures involved high costs, poor business decisions, and lack of Government assistance in the context of a financial blizzard that blew over the country in the 1880s. In 1902, the Government did finally come up with a rescue package that saw the East Coast Trust established, and (in 1906) management of all the lands by a sole commissioner for over 40 years. The problems of all the lands in the trust (which extended over a large part of the East Coast) were not fully resolved until the wool boom of the 1950s.

For Te Whanau a Kai, the grievances and the prejudice revolve around the sale of some 10,000 acres of their land without their consent (indeed, against their wishes). For Tuhoe, land was put in the East Coast trust without their

consent and left undeveloped for 60 years; when it was finally returned to them. The Crown effectively prevented them from making any use of it. It was not until 1973 that they finally got any economic benefit, when this land was finally exchanged with the Crown for other forest land. For Ngati Kahungunu, the Crown refused to return some 800 acres of land wrongfully acquired by a sidewind when the Crown purchased interests in an unsurveyed block. While not large in the aggregate, these losses were felt keenly at a time when the tribes had lost the great bulk of their land in the rim blocks, and had little enough left on which to sustain themselves.

All of the Treaty breaches and resulting prejudice that we have identified remain unaddressed by the Crown. We have refrained from making recommendations at this point in our inquiry except in relation to one particular piece of land at Onepoto, Lake Waikaremoana.

Heoi ano, naku na

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a long horizontal line that ends in a small flourish.

PJ Savage
Presiding Officer



Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Dr Pita Sharples
Minister of Maori Affairs
Parliament Buildings
WELLINGTON

19 October 2012

Tēnā koe e te Minita e tū nei i te kei o te waka,

Me huri tuatahi ki tō tātou kaumatua a Tuahine Northover. Ko ia te amokapua o te taraipiunara i ārahi i a mātou i ngā wā o te raru. Nā tōna ngākau pāpaku, me tōna matatau, i ārahi ia i a mātou i ngā piki mē ngā heke. E kore e ware-waretia ngā pōraruraru mē ngā wero a te hunga kawē take a te iwi, i tūtaki ai mātou i runga i ngā marae puta noa i Te Urewera. Nō reira, mei kore ko koe ka hinga te tāhūhū o te whare. Ko koe te pou a te iwi i tū ai hei āhuru mōai mō mātou. Haere atu rā Tuahine 'he kokonga ngākau e kore e kitea'. He koha tēnei ki a koe.

I must first speak of the passing of our kaumatua, Tuahine Northover. He was the spirit of this Tribunal guiding us forward through many difficult days. It was his quiet grace and wisdom that carried us through many stormy seas. We will never forget the tribulations and the challenges that we faced as we went from marae to marae in Te Urewera hearing the claims of the people. On reflection it is clear that we could not have functioned properly without him. We would have stumbled and fallen. We were sheltered by the respect and love given to him by the people, and we are bereft at his loss. Farewell Tuahine, our thoughts are ever of you. This part of our report is for you.

In this, the third part of our report, we address one of the central grievances brought by the claimants to this inquiry: much of the land that in 1896 was protected by legislation as a self governing reserve for the iwi of Te Urewera, had been acquired by the Crown three decades later, and the Crown subsequently created Te Urewera National Park on that land.

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The demise of their reserve through the Crown's relentless land purchase is a long-held grievance for the peoples of Te Urewera, and Tuhoe in particular. The question put to us by claimants during our hearings forms the title of this part of the report: how was it that a self-governing native reserve became a national park?

The grief and anger the people expressed to us can be appreciated only when it is understood how their self-governing aspirations were undermined by the Crown, and how they have become marginalised in their homeland. The Crown's actions during the period covered by this part of our report represent a long-unfolding betrayal of the Treaty relationship between the Crown and the peoples of Te Urewera established in 1896. This betrayal has played out over a 100-year period through to today, and is made worse in the context of the multiple Treaty breaches that took place in the 30 years before the agreement was entered into in 1896.

Four themes run through our report:

- › the Crown's defeat of promised self-governance;
- › its repeated broken promises;
- › extensive land loss; and
- › the creation of a national park in Te Urewera which has come to symbolise dispossession.

In this part of our report, we reach the point where our findings on the loss of land by the peoples of Te Urewera are complete. It is a stark fact that by 1930, they retained just 19 per cent of the 1,266,000 acres in our inquiry district; and 25 per cent of the 656,000-acre reserve that Premier Richard Seddon had promised would be their permanent homeland only a generation before.

As a nation, we must be shamed by these events. To the peoples of Te Urewera who held such high hopes for a Treaty relationship with the Crown, they were a shattering blow.

You will recall that in the second part of our report we described Premier Richard Seddon's visit to Te Urewera in 1894. Tuhoe and Ngati Whare leaders met with him in the hope that they would finally see the policies of their governing council – Te Whitu Tekau – recognised. These policies, developed over a 20-year period, were designed to give effect to mana motuhake in the management of tribal affairs, but also in partnership with the Crown. Terms for the self-governing Urewera District Native Reserve were agreed and legislation followed in 1896. The Reserve was to be managed by its peoples through elected hapu committees and a tribal General Committee, and to be effectively protected from alienation. We described this as a high-water mark in the relationship between the peoples of Te Urewera and the Crown. It was of national significance, because of the support the Crown gave at that time to the self-governing aspirations of Tuhoe. For the first time, the Crown placed

its relationship with the peoples of Te Urewera on a genuine Treaty-based, and unique, constitutional footing.

But the great promise of this arrangement quickly dissipated; though not for lack of enthusiasm among Te Urewera leaders, who were anxious to see the institutions provided for in their special legislation take shape. The Crown subverted self government, first by its inaction, but later quite deliberately. It failed to take active steps to ensure that the tribal General Committee was set up expeditiously, in accordance with the steps in the Act. And it finally moved only when the Committee seemed to be needed to assist the Crown acquire land for settlement and to permit prospecting for gold.

Ten years after the Urewera District Native Reserve Act was passed, there was growing public pressure to 'open' land in the Reserve for settlement. And because there had been no tribal or hapu committees, and no opportunity to begin economic development in Te Urewera, some leaders were prepared now to sell land to raise funds for that purpose, although the general preference was to lease. The spiritual leader Rua Kenana, in particular, offered to sell some blocks in the hope of developing Maungapohatu lands for community farming. The protected status of the Reserve quickly became an inconvenience to the Crown, which began to develop new objectives for Te Urewera. By 1909, it had successfully orchestrated a route to achieving these objectives. The Crown finally allowed the General Committee, which was the only body that could authorise and conduct land sales, to be established, and members favourable to sale (including Rua) appointed to it. The first sales took place in 1910.

What followed in the next 10 years was a determined Crown assault on Te Urewera reserve lands, conducted with complete carelessness for the well-being of an entire tribal community. From 1915, after a pause, the Crown established a ruthless and efficient machine to buy shares in blocks from individual Maori owners. It could buy from individuals because the special commission it had set up under the 1896 act to determine ownership of Reserve blocks did not provide the hapu titles that Te Urewera leaders wanted and expected. Instead it determined lists of individual owners for each block. This reflected the practice of the Native Land Court, which cast a long shadow over the commission's proceedings. The General Committee should have protected both individual owners and their communities, as it was designed to do, because only the Committee had the legal power to sell. But the Crown now decided to bypass the General Committee. The Crown thus breached its fundamental undertaking not to purchase from individuals but to recognise and respect tribal collective control and management of tribal lands. The Native Land Court and individualised titles were supposed to have been banished from the Reserve for this very reason, but collective management

was bypassed all the same and tribal leaders were unable to prevent the bleeding of individual interests. The Crown intended to buy as much of the Reserve as possible, and to do so from individuals; all for a pastoral farming scheme for settlers comprising several hundred large farms, on over half of the Reserve lands. For anyone with a passing knowledge of the terrain and quality of Te Urewera lands, this plan was pure folly. It must rank among the most ill-informed schemes in New Zealand's history.

Over a seven-year period, the Crown's land purchase officer combed ownership lists and pursued individual owners with great zeal. The Crown was completely undeterred by the impossible position of the sellers, who had been through famine and epidemics, and who continued to live in a state of abject poverty. They used the money to survive. The Crown's actions were contrary to Seddon's promises, and for a time, its purchasing activities were unlawful. In 1916, the Crown simply legislated retrospectively to validate its purchase of individual interests. By the time Maori owners began to rally, petitioning the Crown to stop purchasing and coordinating opposition to the activities of the Crown's purchase agent, it was too late. By July 1921, the Crown had purchased 54 per cent of the Reserve.

The destructiveness of the Crown's purchasing campaign is worse because ultimately it was quite futile. It is a sad irony that when the Crown finally tried to sell land in the 1920s for farming, it could not sell a single block. Eventually, another purpose was found for the land. We have found that the Crown breached the Treaty principle of active protection by predatory purchasing in the great majority of blocks in the Reserve, by controlling valuations and prices, valuing Reserve lands by unlawful and flawed processes, and being quite unable to justify the prices it paid. It failed also to assign any value to the timber on Reserve blocks other than Te Whaiti 1 and 2; and it paid the Te Whaiti owners unjustifiably low prices for their very valuable timber, without considering the present and future importance of the timber resource to its owners.

The Crown conceded during our hearings that its failure to establish effective self-governing institutions and its purchase of interests from individuals was a breach of the Treaty. We have welcomed these as among the most significant Crown concessions in our inquiry. But they do not capture the depth or seriousness of the Treaty breaches committed during this period. For this reason, these events have received our full attention in this part of our report.

By 1921, with Maori owners steadfast in their refusal to part with any more shares, the Crown had a significant problem on its hands. It had purchased over half of the Reserve, but only in the form of undivided shares in many blocks. It had acquired a large interest, but it could not point to any piece of land it owned on the ground.

The Crown's answer to this dilemma was a consolidation scheme: that is, it would separate its interests from those of Maori, and pool them all in one large block. In this scheme, the Crown appointed its own commission, which was not independent and which controlled the proceedings and made the decisions and awards, even though the Crown was a co-owner in the land and thus an interested party. Maori owners, in our view, entered the scheme at a disadvantage. They had little choice, since they too had to know which blocks were theirs. But they did bargain hard at the start, and secured the pick of their lands in some areas (particularly the river valleys).

We have found, however, that the Urewera consolidation scheme as a whole was conceived and carried out in breach of Treaty principles.

The Crown argued in our inquiry that the consolidation scheme was designed and implemented to bring mutual benefits to Maori and the Crown. The one exception was the Crown's failure to complete the promised arterial roads, though this, in the Crown's view, did not detract from the scheme's overall outcome. We were told that much of the historical research on the scheme commissioned for our inquiry was inadequate to resolve the issues raised by the claimants. The Crown commissioned no research of its own, but submitted extensive document banks, and asked us to inquire into the issues before us. We were left to pick laboriously through the opaque and often incomplete documentation produced at the time of the scheme in an attempt to understand how it worked. We note also that we have been further delayed by the diversion of Tribunal resources in 2012 to a flurry of urgent inquiries which have been given priority over other inquiries in progress.

The consolidation scheme took place over a period of four years. At its conclusion, 183 Maori-owned blocks had been created in nine areas of the former Reserve, totalling 106,287 acres. In 1927, the Crown's award of 482,300 acres was made. It included 71,500 acres that Maori owners had contributed to pay for arterial roads and surveys for their new titles. These were two cornerstone promises made to the Maori owners by the Crown at the start of the scheme. The roads would provide the newly made Maori-owned blocks with access to markets, and surveys would be done to give owners state-of-the-art land transfer titles, which would allow them to develop their land in the modern economy.

But the Maori owners were never issued with land transfer titles, and the roads were never completed. The Crown's cornerstone promises were not only completely dishonoured; they were also misguided from the start. Maori owners bore the full cost of surveying for titles they did not need. The type of survey plans produced for the Maori-owned blocks meant that they could never be registered in the land transfer system. The people were deprived of 31,500 acres for little benefit – a fifth of the land they were entitled to on entering the scheme. We asked ourselves whether Maori would have agreed

to the scheme had they known they would lose one acre in every five of their remaining land to pay for surveys that would be of little practical benefit, and for titles they would never receive. We think not.

But a more significant failure – as the Crown acknowledged – was the fate of the two roads that Maori hoped would form the arteries for modern farming enterprises. They contributed land toward the cost of construction because they were misled into thinking if they did so the work would get started more quickly. But in fact they should never have been asked for a contribution towards the roads. Main roads at the time were often built by central government funds without a local contribution. Work on the roads was gradually abandoned shortly after it had begun. In exchange for 40,000 acres, between a quarter and a third of the arterial roads were built; much of which quickly fell into disrepair. The Crown later acknowledged its liability and reached a settlement in 1958 over this dishonoured promise; but the settlement did not take into account the impacts on owners who got dairy or sheep farming under way but were left stranded in some of their settlements without roads.

The consolidation scheme itself had other grave impacts. The Crown took advantage of the scheme to acquire prized forest assets in the Te Whaiti valley and lands in the Ruatahuna region. And the Crown acquired the large Waikaremoana block on the north of the lake in the course of the scheme, even though it had never purchased a single interest there, threatening compulsory acquisition of the block under scenic preservation legislation. The block was acquired from its Tuhoe, Ngati Ruapani and Ngati Kahungunu owners, who each reached their own settlement (under duress) with the Crown. This series of transactions left Waikaremoana peoples with only 4.3 per cent of their land surrounding the lake. Ngati Ruapani lost most heavily. The Crown broke its promise to find them more useable land to the south of the lake in exchange for their interests in the Waikaremoana block, and refused to make reserves of the size Ngati Ruapani wanted in that block. Instead, they were paid in debentures (a form of government debt). But in the last of what can only be considered as a series of shameful events, Ngati Ruapani beneficiaries were at times not paid interest due to them, and were left without an income during the depression when they needed it most. Over a period of sixty years the land holdings of Waikaremoana peoples were reduced to a mere fragment of their original size and for very little return.

By the end of the Crown's purchasing and the Urewera Consolidation Scheme Maori owners were left with only 25 per cent of their former Reserve. They were gravely prejudiced by land loss on this scale and the defeat of self-government that was so closely tied to it. The people's economic base suffered a crippling blow, especially on the back of large-scale losses (of lands

outside the Reserve) in the nineteenth century. They have suffered endemic long-term deprivation. And as claimants to our inquiry repeatedly told us, any enthusiasm for a Treaty relationship with the Crown was significantly diminished in the wake of a betrayal of this magnitude.

This is the inconvenient and uncomfortable history that lies behind the creation of the Te Urewera National Park, so valued today. We hope that our report lays to rest the myth that the Crown acquired the park lands in fair and clean transactions. The Crown admitted in our inquiry that it obtained most of the park lands in breach of the Treaty, and this needs to be more widely known if grievances are to be properly acknowledged and resolved.

In 1952, the National Parks Act was passed, under which Te Urewera park was created in two stages. The first was in 1954 – a park of approximately 150,000 acres – centred around Lakes Waikaremoana and Waikareiti, established in the national interest and for the national benefit. The rest of its land was added to the park in 1957, thus forming the boundaries of the park as we know it today.

We have found that Te Urewera National Park was established in breach of the Treaty. But what was wrong was not a park per se, but the kind of park that was established. There need have been no inconsistency between the establishment of a park, in the national interest, and the active protection of Maori interests in lands they will always regard as their ancestral lands, despite the Crown's title. Both interests could have been provided for. There was much Tuhoe support for conserving the forest resource provided they were able to utilise the timber assets on their remaining lands. But the park could have been smaller so as not to enclose significant parts of their lands. It could have been differently designed, perhaps as a forest park (like Tararua forest park, created at exactly the same time), which would have allowed for a greater range of public uses – including some milling. If a state forest had been established, there could have been controlled logging and pest control to protect enough forest to prevent erosion and control flooding. These were the twin key purposes of the park at the time – to protect the low-lying farmlands of the Bay of Plenty and Hawke's Bay, and the electricity-generating capacity of Lake Waikaremoana.

And if Tuhoe had been consulted, and the options discussed with them, a solution might have been found at the beginning. But they were not consulted, though the Crown had a clear Treaty duty to consult in such a case, where the entire fate of their remaining ancestral lands was at stake. The Crown missed a unique opportunity for a unique circumstance. No other national park was designed to enclose significant Maori communities and Maori land within its borders. It was obliged to have considered the fundamental needs and interests of those communities – ongoing customary use of the natural resources of the

area and ongoing economic benefit from their remaining lands. But in the end a national park was established to protect and preserve the indigenous forests of Te Urewera; and Maori were overlooked, or inadequately provided for.

The prejudicial impacts on those communities, especially Tuhoe, have been severe. Public fears about milling led to Maori being denied the use of their own forest lands from the 1960s. And the Crown pressed to buy these lands too for the park. In the 1960s and '70s, its policy was to secure a mass-surrender of all Maori land in or adjacent to the park. It failed, though not for want of trying. When logging ended on Tuhoe lands in the 1970s it no longer needed to worry. Tuhoe lands, as one official said, had become virtual national park. The Crown breached the Treaty and its duty of active protection in restricting Tuhoe ownership rights and land development without sufficient cause.

Nor have the people derived much economic benefit from the park in return. There has been some opportunity in the past for income earning through pest control, and (on a small scale) from tourism. While we have not found a Treaty breach here, we think the Crown should take the necessary steps to ensure the park becomes an economic boon for its Maori neighbours, to the fullest extent practicable.

We have found that the national parks legislation also is in breach of Treaty principles. We understand that the legislation reflected not only the national interests, but the ideals of those interest groups who worked so hard for it to ensure the preservation of unique landscapes. But we are surprised that Maori interests were so completely ignored. The peoples of Te Urewera should not have been put in a position where their customary uses, generations old – harvesting plants, and hunting- were transformed into offences unless they were authorised by park staff. This caused huge resentment from a feeling that the people had been marginalised in their own ancestral lands, with which their links had been maintained in the intervening years in a way that settlement would have precluded. Yet their rights and interests seemed to be accorded less recognition than those of park visitors. There was wide provision in the legislation, after all, for recreational uses and for modifying the environment to provide for visitors' needs. We are at a loss to account for the Crown's failure over time to amend the national park legislation to accord recognition and standing to Maori communities' responsibilities as kaitiaki, and to their sustainable resource use.

Finally, the Crown failed to provide for the peoples of Te Urewera to participate fully in the governance and management of the park. The minister appointed one or two Tuhoe representatives to the park board after 1961, and a Ngati Kahungunu member from 1974, and these members worked hard for their people. But it was minority representation, and it was not of right; they were too few to have any real power. In the day-to-day running of the park,

local Maori have a greater involvement now than in the past, but they are still without statutory representation in the park's governance.

To the peoples of Te Urewera, particularly Tuhoe, the national park is the symbol of all that has gone wrong in their relationship with the Crown. To them, it is just a further stage in their dispossession, an extension of the raupatu of their northern lands in the 1860s, the brutal war that followed it, the work of the Native Land Court and large-scale land alienation in the 'rim' blocks, the defeat of their promised self-government, predatory purchasing in their Native Reserve and the resulting consolidation scheme, which further reduced their remaining core lands. And with that has come an embittered relationship with a Crown which has failed to honour its Treaty obligations and repeatedly broken explicit promises.

The Wai 262 Tribunal, in its recent report, stated that title-return and joint management arrangements have been carried out successfully for national parks in Australia, and could also be carried out here in appropriate situations. We can think of no more appropriate situation than that of Te Urewera National Park.

Heoi ano, naku na

A handwritten signature in black ink, appearing to be 'PJ Savage', written over a horizontal line.

PJ Savage
Presiding Officer



Waitangi Tribunal
Te Rōpū Whakamana i te Tiririti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Dr Pita Sharples
Minister of Maori Affairs
Parliament Buildings
WELLINGTON

20 December 2012

E nga Minita e noho mai na i runga i tera taumata tiketike, e mihi whakaiti ana matou ki a koutou katoa.

In this, the fourth part of our report, we move beyond large-scale land alienation in Te Urewera to look at how Maori communities fared in the twentieth century, with only fragments of their original land holdings remaining. By 1930, over a million acres had been alienated in the UDNR and in the surrounding lands. Some 250,000 acres were left in Maori ownership, primarily located around long-established settlements. We explained in part III of our report how a significant portion of the land acquired by the Crown became Te Urewera National Park. This had significant impacts on the ability of Maori owners to develop their remaining lands. As early as the 1930s, the Crown had restricted the milling of timber in Te Urewera, in the belief that this was necessary to prevent soil erosion and flooding. At first, the creation of the national park in the 1950s was accompanied by a relaxation of these restrictions. The Minister of Maori Affairs at the time, Ernest Corbett, recognised that Te Urewera communities risked starvation (as he said) unless they were allowed to begin milling their timber. From 1961, however, public opinion and a policy of expanding the park (where possible) resulted in a second, blanket restriction of milling across the whole of Te Urewera. But, during this period, the Crown also undertook a series of initiatives designed to resolve ongoing title problems and to provide economic assistance in the form of farm development and training. This was to the credit of the Crown. We look at how these policies were applied in Te Urewera and their effects on the Maori communities, which were by then in a parlous position because of successive Crown actions.

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We begin this part of our report with a chapter on the Crown's actions in relation to Rua Kenana and his community in Maungapohatu in April 1916 (chapter 17).

The Crown has conceded that its use of force at Maungapohatu was excessive, and that it breached the Treaty by not acting in a reasonable manner towards the Maungapohatu community in its actions to arrest Rua. The events of 2 April 1916, when a military-style police expedition burst onto the marae at Maungapohatu, have been well recorded in several histories and we do not attempt to repeat them in any detail here.

The Crown operation has, rightly in our view, been characterised as an invasion. It is bitterly remembered. Rua's civil disobedience resulted in three contingents of police descending on a community which peacefully awaited their arrival. They were led by Police Commissioner Cullen, remembered as an aggressive and uncompromising person who had demonstrated these qualities both at the Waihi miners' strike in 1912 and the waterfront strike in 1913. It is telling that the two small groups of police who arrived first had been welcomed by Rua. The third, led by Cullen, marched and rode straight on to the Marae provoking violence immediately. Shots were fired. Two young Maori including Rua's younger son, were killed, and three were wounded; four policemen were also wounded, one seriously. People of the area sincerely and clearly hold a received memory that there was rape, theft and that at least one of their young men killed was in fact summarily executed. There is evidence for these propositions, but at this distance in time there is insufficient for us to say that they have been proved satisfactorily. It is however, significant that the police operation was brutal and fostered these memories which are honestly held to this day. After a lengthy trial Rua was acquitted of all but one of the charges against him and a majority of the jurymen immediately protested against the [harsh] sentence that he received. We are clear that the sentencing was not an action of the Crown but the decision to invade this community was. The way in which the matter was handled effectively destroyed the community which struggled even when Rua revived it in the late 1920s, particularly when the arterial road promised during the Urewera consolidation scheme did not eventuate. It is also to be remembered that in its land purchasing operations earlier in the century, the Crown had been very willing to rely on Rua who supported alienation at that time in the hope of funding economic development for Maungapohatu.

The Crown's actions were the very opposite of active protection of this community and constituted a most serious Treaty breach. In 1916, Maungapohatu was a functioning, vibrant community, which the Crown effectively destroyed. We are not suggesting that Rua was completely blameless in the matter and we can see that the heightened sensibilities of the First World War played a part, for it is suggested that Rua had told people that he

supported the German Kaiser. Even in those circumstances however, we find the Crown's actions completely inexcusable.

It has to be asked why liquor licensing offences at the lower end of the scale, the failure to submit to a warrant for arrest and some blustering talk in a creek bed deep in the bush could provoke a response such as this. The Crown was right to concede Treaty breach.

The context for the two remaining chapters is the long and sorry history from 1840 through to the middle of the 1920s. The people of Te Urewera suffered Treaty breach upon Treaty breach and loss upon loss against a backdrop of unremitting poverty, recurring famines, outbreaks of disease, and (in the nineteenth century) war. We now turn to consider the Crown's attempts to improve the situation faced by Maori owners of the remaining Te Urewera lands.

We begin with the Ruatoki–Waiohau consolidation scheme in the 1920s. This was a very different kind of scheme from the larger-scale Urewera consolidation scheme, which we discussed in part 3 of our report. We have already explained that the usual purpose of consolidation schemes was to rectify problems created by Native Land Court titles. But the fundamental problems still remained even after consolidation schemes, which were characterised by officials in the 1960s as ultimately futile. This was certainly true of the Ruatoki–Waiohau scheme. It had many unique features but the basic picture is the same. Of major concern to the claimants in our inquiry is that the Crown retained land at Ruatoki that was originally purchased with the intention of returning it to Maori owners as part of the scheme. At Waiohau, the Ngati Haka Patuheuheu community, already the victims of the Waiohau fraud, were deprived of even more land as a result of this scheme. Ngati Manawa, on the other hand, sought a consolidation scheme for their lands and were promised it, but it did not come about for a number of reasons. The Crown conceded in our inquiry that it was principally to blame for preventing the promised scheme. Significant opportunities were lost to Ngati Manawa as a result. While ineffective as a solution to land court titles that continued to fractionate in successive generations, consolidation in this particular case was a vital first step to obtaining development assistance; without a consolidation scheme, it was known that farm development assistance from the Government was simply not possible for the affected lands.

This leads us to the issue of farm development schemes, a major theme for our inquiry into twentieth-century claims. Sir Apirana Ngata had observed that consolidation schemes would not be enough on their own to provide tangible assistance to Maori communities, and that active steps would have to be taken to revitalise their economic prospects. In particular, Maori could not obtain development finance from private lenders on the strength of their deficient Maori Land Court titles. They were also denied the cheap loans

that the Government made available to settlers. From 1929, Ngata initiated a series of Maori development schemes based around the idea of small family farms, in which the Government made state loans available to Maori farmers. The Maori Affairs Department would assume control of the land – with the agreement of the owners – until the debt was repaid, and it would also provide business and farm management and training.

Four schemes were initiated in Te Urewera in the 1930s, the last of which was wound up in the 1980s. These were community initiatives, but it was inevitable that some kind of Crown control would be retained as security for repayment of the loans. The Crown was funding the schemes and they produced significantly improved farming enterprises, but the ultimate outcome was a series of unit farms with heavy levels of debt. In the 1960s, titles had to be consolidated for the Ngati Manawa and Ruatahuna schemes. Larger-scale farming replaced unit farms at Ruatahuna, while Ngati Manawa switched to forestry. Given that the Crown had sole responsibilities for the farms, more debt could and should have been written off when the schemes were finally returned to the control of their Maori owners (still in debt, in the case of Ruatahuna, after 50 years of Crown management and control).

Yet the development schemes were, in general, initiated in good faith, characterised by honest administration and well intentioned paternalism. We can identify mistakes in the conduct of the schemes in retrospect, but the owners would not have received the benefits that did accrue to them had the schemes not taken place. We found no Treaty breaches in the inception and conduct of these schemes. Ultimately however, there was too little land remaining in Maori ownership for the schemes to have delivered benefits on the scale required to substantially improve the well being of Maori communities in Te Urewera. This was the sad and lasting effect of earlier Treaty breaches.

We also consider one specific claim relating to an initiative arising out of the Ruatoki development scheme, namely the construction of irrigation dams and the reticulation of water supply to Ruatoki farms. The scheme was constructed at the expense of the Maori owners, charged to them as debt. This debt was almost paid off in 1960 when the water scheme broke down irretrievably. Crown officials removed the water scheme from the development scheme unilaterally, despite a promise to the contrary made in the 1950s, and wrongly transferred that which they did not even own to the Whakatane County Council. This was a Treaty breach.

A further matter that requires to be reported on is amalgamation and particularly the amalgamation of titles at Ruatahuna (as the Tuhoe Tuawhenua block) in 1972. Tuhoe saw significant benefits to title-amalgamation at the time, including the possibility of exotic forestry (for which larger blocks were required) and of a united position in discussing land exchanges and other

matters with the Crown. Tuhoe leaders believed that their economic future in Te Urewera was dependent on rationalising the many small blocks that had emerged from the Urewera consolidation scheme, and establishing a system for collective management of those lands. In 1972, the Maori Land Court dealt with applications to amalgamate 160 blocks into four blocks, which were then vested in trust in the Tuhoe Waikaremoana Maori Trust Board. Towards the end of the 1970s, however, the amalgamation of Tuhoe Tuawhenua (the Ruatahuna lands) became bitterly disputed within the tribe. Eventually, the Tuawhenua claimants sought a judicial review of this amalgamation, which – because of an error in the Maori Land Court’s process – was quashed by the High Court in 1984. The dissatisfaction and dissent that this litigation fostered still remains today. We have found that there were no Treaty breaches. Nonetheless, we do suggest that the Crown is morally bound because of the peculiar circumstances of the case to provide assistance to achieve a proper outcome. This is particularly so because the amalgamation was an inevitable flow-on effect from the Crown’s defeat of the Urewera District Native Reserve Act, the Crown purchasing that followed and its ultimate outcome in the Urewera Consolidation Scheme.

There was a somewhat different outcome at Te Whaiti where owners had consolidated a number of blocks into the large Te-Whaiti-Nui-a-Toi block. A lease of the block was negotiated with the Forest Service in 1974. The lease was not a purely commercial agreement but aimed in part at providing development to a Maori community in desperate need of assistance. The way in which the rental was negotiated was therefore of pivotal significance to these people. The rental proved totally unfair and, to the Crown’s credit, the terms of the lease have since been renegotiated. There remains a live question in relation to the Crown’s approach to this lease and its Treaty relationship with the lessors.

Timber milling, as we have seen, was a core economic activity for Maori owners in the early twentieth century. The Crown imposed restrictions on the milling of blocks in Te Urewera in the 1930s and 1940s, mainly due to an increased focus on soil and water conservation, to prevent flooding of lower lying farmland and to preserve the levels of Lake Waikaremoana for hydroelectricity. Restrictions were relaxed temporarily in the 1950s to allow the milling of some of the more accessible timber but – especially in response to public fears about erosion and flooding – a blanket ban on milling was imposed across Te Urewera in 1961. There were exceptions and some milling continued into the 1970s on particular blocks, but millions of dollars of timber was locked up from milling.

Although the Crown had a duty to provide the protections necessary to prevent environmental catastrophes, it was also obliged to compensate the Maori owners whose livelihoods and development opportunities were

curtailed. Governments recognised this as a moral obligation from the 1930s onwards, and it also became a legal obligation (under the Soil Conservation and Rivers Control Act 1959) when the blanket ban was imposed in the 1960s.

The Crown failed to pay compensation before 1961 because the only form of compensation it would consider was to buy both land and trees – and Tuhoe refused to alienate any more land. Then, after the 1961 ban, the Crown did eventually negotiate with Tuhoe about compensation in the 1970s. The tribe took the view that, if it was truly necessary to stop milling in the public interest, then the principles of a democratic nation required that they be compensated for what they saw as yet another confiscation of their property. But no compensation was made this time either. While the Crown was not solely to blame for the unsuccessful outcome of the negotiations, its failure to compensate for timber restrictions over many decades (restrictions which are now permanent) constitutes a breach of Treaty principles. This breach, and the economic prejudice to Te Urewera communities, is made more significant because the Crown's actions had already cut to the bone the economic capacity of Maori communities throughout Te Urewera.

Naku noa, na



Patrick Savage
Presiding Officer



Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Te Ururoa Flavell
Minister for Maori Development
Parliament Buildings
WELLINGTON

12 December 2014

Tena koe e te Minita hou e noho mai na i runga i tera taumata tikeitike, e mihi whakaiti ana matou ki a koe.

This is the fifth part of our report on Te Urewera claims, which is being released in pre-publication form. It deals with Treaty claims in respect of Lake Waikaremoana, lodged by Tuhoē, Ngati Ruapani, Ngati Kahungunu, Ngai Tamaterangi, and various associated groups and individuals. These important claims were the subject of extensive evidence and submission from both the Crown and the claimants, which required a lengthy response on our part in order to determine all the matters of alleged breach and prejudice.

Lake Waikaremoana is a taonga of immense importance to the claimant groups. They have an ancient connection with this lake, which their tradition says was created by their ancestress, Haumapuhia. Over generations they forged associations with every part of the lake and their histories have been recorded in names all along its shores and headlands and in long-remembered traditions. The waters of the lake are still used in rituals and for healing and it is an economic resource providing traditional food to them. In all these things, the iwi are kaitiaki of Waikaremoana, its guardians or custodians. They possessed the lake, exercising exclusive rights to it; they are thus also its owners. And they exercised tino rangatiratanga – full authority – over Waikaremoana at the time of the Treaty of Waitangi in 1840.

Today, they are still its owners and its kaitiaki, but their authority is a pale shadow of what it once was. In earlier parts of this report we found that the peoples of Waikaremoana suffered military invasion and destruction of their villages by Crown forces, displacement from their homes, and the loss by 1930 of nearly all their lands to the south and the north of the lake in circumstances

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that reflect no credit upon the Crown. They were reduced to a dire and lasting poverty. Despite these circumstances, and the limitations of the law – which recognised only individual title in the land beneath the waters of the lake, not tribal rights in a taonga waterway – they tried to protect their rights to the lake, and the lake itself.

But their dispute with the Crown would prove a long and difficult one. Those who were able to achieve recognition as owners by the Native Land Court had to endure contest by the Crown for no less than 41 years (1913 to 1954) before it would accept Maori ownership, rather than its own. Certainly the Crown had the right to appeal the Native Land Court's decision in 1918, but not to procrastinate and delay the hearing of its appeal, as it did in the 1930s and early 1940s. Even after the Crown finally appeared in the Native Appellate Court in 1944 to prosecute its appeal against the decision of the Land Court, and lost its appeal, it would not concede Maori ownership, or embark on negotiations with the owners with any real commitment to reaching a solution. So for 17 more years iwi leaders had to contest with the Crown before an agreement could be reached in 1971, by which the Crown leased the lake from its Maori owners and began to pay for its use (but backdated only to 1967).

From that year on, the Crown has paid for the use of Lake Waikaremoana as the 'jewel in the crown' of the Te Urewera National Park (the legal status of which has changed recently). But for half a century after the Native Land Court first recognised Maori ownership of Lake Waikaremoana in 1918, the Crown used the lake without permission or payment, ignoring the authority of its tribal custodians. Further, the Crown has never paid for using this taonga to generate electricity, or for substantially damaging and modifying the taonga for that purpose. Nor did it provide the kaitiaki with an appropriate role in governance and management of their taonga when the lake was leased for the national park.

In this part of our report, we make findings of Treaty breach arising from the Crown–Maori contest over Lake Waikaremoana, which have resulted in prejudice to the claimants.

Our first finding of Treaty breach is that the Crown failed to provide for legal recognition of the people's relationship with their taonga the lake, through a community title specific to a taonga waterway, that is, a form of title that recognised their tribal kaitiakitanga and tino rangatiratanga. The Land Court, in accordance with the native land legislation, instead individualised title to the lakebed.

Our second finding of Treaty breach is that, in the 1930s and early 1940s, the Crown:

- ▶ negated the increasingly urgent attempts of the Maori owners and the Appellate Court to get it either to prosecute its appeal, or give it up; and

- ▶ unfairly discriminated between tribes when it accepted and settled other Maori lake claims (including Taupo and the Rotorua lakes) by negotiation in the 1920s yet persisted in its Waikaremoana appeal.

Justice delayed was justice denied; the Crown's delays effectively denied Maori access to the courts. The Crown in fact subverted the legal process. In the meantime, the Crown continued to use the lake as if it was the owner, and its actions were prejudicial to the mana, the tino rangatiratanga, and the economic well-being of the Maori owners.

Our third finding is that the Crown breached the Treaty when it acted in an unprincipled and unfair manner after the decision of the Maori Appellate Court went against it in 1944. The Crown continued to deny Maori ownership for a further 10 years yet failed to take the necessary action in the mainstream courts (from 1944 to 1947 and 1950 to 1954) that would have settled the matter. It did so, in our view, because it was unlikely to win. Prime Minister and Minister of Maori Affairs Peter Fraser showed the way when he said in 1947 that the Government must accept the Appellate Court's decision and negotiate with the owners. Even so, he did not do this until 1949, and lost office before he could take matters very far. Overall, the Crown's conduct from 1944 to 1954 breached the standards of active protection and good faith required of a Treaty partner. The Maori owners of Lake Waikaremoana were prejudiced because the Crown prevented the Maori Land Court from completing their titles, and denied their mana, tino rangatiratanga, and their legal ownership of the lake. They were denied the rights of owners, including any economic benefit, while the Crown continued to control and use their property throughout this period without permission or payment.

We do accept the Crown's argument that – for the most part – no Treaty breaches arise from the negotiation of the 1971 lease. The Crown's conduct from 1967 to 1971 was generally honourable and Treaty-consistent. The owners' representatives, who had the benefit of legal advice, were fully consulted about the draft lease and the legislation, which they played a large part in shaping and improving. But there were two exceptions, which are the subject of our fourth and fifth findings.

Our fourth finding is that the Crown breached Treaty principles when it insisted that rents would be backdated only to 1967. This reversed its previous understanding with the owners that the Crown would pay for its past use of the lake, and was fundamentally unfair to them. In doing so, the Crown went beyond any reasonable or Treaty-consistent compromise, taking advantage of the uneven playing field on which the parties were negotiating to insist on the point. The claimants were prejudiced by the Crown's continued use of their property (from 1954 to 1967) without permission or payment.

Our fifth finding is that the Crown acted inconsistently with the plain

meaning of article 2 and the principle of active protection when it refused to include payment for use of the lake for hydroelectricity in the negotiations for the 1971 lease. The claimants had been seeking such a payment ever since negotiations opened in 1949, and – under the Treaty guarantee of their property rights and their full, exclusive, and undisturbed possession of their taonga – they were entitled to it. If the Crown had to interfere with those rights in the national interest, the least it should have done was to have paid for it. The claimants were prejudiced economically by the Crown's refusal to do so, and their mana and tino rangatiratanga were infringed.

Our sixth finding is that the Crown also breached the Treaty in 1946 when it modified and permanently lowered Lake Waikaremoana without consulting the kaitiaki or compensating them for the immense damage to their taonga. Prejudice to the claimants has been significant and long-term. Foreshore erosion is evident to this day.

Finally, our seventh finding is that the Crown failed to give effect to the principles of partnership and Maori autonomy in its governance and management arrangements for Lake Waikaremoana during its lease to the Crown for the national park. The claimants have been prejudiced by having to 'work in' with processes controlled by others, seeking to exercise some influence and not always succeeding. As a result, they have been unable to prevent such prejudicial effects as the pumping of untreated or partially treated sewage into their taonga. The situation has been mitigated to an extent since 1999 by the Aniwanuiwa cooperative or consultative system of management, but it is under-funded, insecure, and limited to management in the field. And partnership mechanisms were not established to include Genesis or other bodies which make decisions about the lake. We found that the Ngati Ruapani, Nga Rauru o Nga Potiki, and Ngai Tamaterangi claimants have been prejudiced by these actions of the Crown.

The late Sir Rodney Gallen, who had a long association with Waikaremoana kaumatua, concluded his evidence to us with these words: 'The history of the relationship of the Crown to the people of Waikaremoana has been a sorry one for a very long time.' He expressed the hope that the Crown's 'partial and inadequate' attempt to provide redress in 1971 would not stand as its final act. We are of the same view.

Naku noa, na



Patrick Savage
Presiding Officer



Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Te Ururoa Flavell
Minister for Māori Development
Parliament Buildings
WELLINGTON

22 December 2015

Tena koe e te Minita Whanaketanga Māori,

‘Aha Toia mai! Te Waka!’

Ka tu koe ki te kei o te waka, ka matai koe i te iwi Māori. Ka kawea tatou i nga wawata o onamata, o anamata. Ka waihoe tatou i te waka ki te pae tawhiti, whakamaua kia tina. Koutou nga kaihoe kua rere atu ki te waka o Tamarereti, haere whakangaro atu ra. Ma tatou nga urupa o ratou ma e whakatutuki i nga wawata o te iwi. Tihei Mauriora!

This is the sixth and last volume of our report in pre-publication form. In total, the report comprises approximately 3,500 pages and covers the entire body of claims that deal with the period from 1840 through to the middle of the last decade in Te Urewera.

We did not set out to write a history but it was necessary to report on 41 claims, most of them challenging and complex in the extreme. The claims were, to an extent, intertwined. The interaction between the Crown and the peoples of Te Urewera had to be reviewed in a continuing narrative, while the chapters dealt with quite different issues that arose during successive periods in the last 160 years.

The relationship between the Crown and the peoples of this district could not have got off to a worse start. Almost immediately after there was contact, the Crown wrongly confiscated a large area of Tuhoe’s best land, in the eastern Bay of Plenty. This was followed very shortly after by a devastating war in Te Urewera. Recovery in a social sense has not been rapid or easy and the awful start soured the relationship for a long time.

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We do want to take this opportunity to congratulate Ngai Tuhoe, Ngati Manawa and Ngati Whare, Ngati Hineuru, and the Crown on being able to reach settlement and move forward.

Of course, in terms of the legislation underpinning the settlement, this means that our jurisdiction to make recommendations is largely gone.

This volume is made up of three chapters, and reports on: environment and waterways claims; some specific claims; and socio-economic claims.

When we look back at the report as a whole, there are recurring themes and recurring ways in which the claimants see the relationship with the Crown:

- ▶ The claimants' search for recognition of their mana motuhake/tino rangatiratanga. This pervades all of the claims and is dealt with by us throughout the report.
- ▶ Their belief that the Crown has repeatedly made and broken promises, particularly promises made by Premier Richard Seddon over a hundred years ago and some of which was enshrined in legislation. In earlier chapters, we dealt with this in relation to the Crown's grant to the peoples of Te Urewera, through the Urewera District Native Reserve Act 1896, of real powers of self-government and collective tribal control of their lands. The outcome was not the functioning partnership with the Crown that Te Urewera leaders had expected, but the Crown's abandonment of its promises to uphold their self-government, and protect their Reserve lands. In the Urewera Consolidation Scheme, Maori owners of the Reserve lands that survived the Crown's predatory purchasing were made two cornerstone promises: they would receive two arterial roads (to assist their development of modern farming enterprises) and state-of-the-art land transfer titles (to assist them develop their land). For this, they contributed over 70,000 acres of land; but the Crown dishonoured both promises. The same theme of broken promises recurs regularly in this volume.
- ▶ Their belief that Te Urewera peoples have been treated less than fairly, left behind, ignored, and not been allowed to progress to the same degree as other citizens of Aotearoa. This is particularly dealt with in this volume of our report in relation to socio-economic matters.
- ▶ The claimants also believe that the Crown has ignored and usurped their customary rights, particularly their authority over their lands and waterways and resources. Raupatu was the first example. A later example is the claimants' long struggle over ownership of the bed of Lake Waikaremoana and a struggle over rights to waterways which is still playing out in the general courts, most recently in relation to a part of the Waikato River. In our environment chapter we deal with forests, rivers and customary rights. Forests of course are particularly referred to and reserved to Maori in article 2 of the Treaty.

There are, of course, other themes. We do not intend to list or discuss them all. What is important, however, is to have regard to the main ones, for it gives the reader a chance to see the bigger picture both from a Crown and claimant perspective.

In the first chapter in this volume, the twenty-first in our report, we discuss environmental issues particularly in relation to forests and rivers.

We find that the word ‘forests’ as used in article 2 of the Treaty included not just the trees and the land upon which they stood, but also encompassed all the flora and fauna that thrived within them. It was in that sense that the Crown was required to actively protect the forests of Maori.

We have found that the Crown has failed and the forests have been changed dramatically by introduced species. Deer, opossums and mustelids are a particular problem. Opossums and mustelids (stouts, weasels, and ferrets) were introduced by the Crown itself: opossums were released in Te Urewera, mustelids in their thousands were imported into New Zealand and distributed (among other regions) to Hawke’s Bay. Their spread into the pristine forests of Te Urewera was entirely predictable. The destruction caused by deer and mustelids was well established and it was well known by the 1920s. Mustelids met with particular settler opposition, except from pastoralists plagued by rabbits. Opossums, however, had supporters amongst eminent scientists, who did not think they posed a risk to forests, and it took many years before Government departments were convinced otherwise. Their inaction was unwise, but in the circumstances not a Treaty breach. But the Crown’s failure to take firm steps to control deer and mustelids, once their destructive impact on the forests was clear, was entirely inadequate and a breach of the Treaty.

In 1895, Premier Richard Seddon, speaking to a delegation of Te Urewera leaders in Wellington, fully acknowledged the customary rights of the peoples of Te Urewera: ‘the lands are yours, the forests are yours, and the birds that flock there they are yours’. Since then, the Crown has usually acted as though this were not the case. As an example of what has happened, in the late nineteenth century in Te Urewera, bird song at the change of light was said to be almost deafening. Now there is silence broken only by the call of an occasional morepork.

Kereru are an iconic species for most New Zealanders. That is particularly so for the people of Te Urewera, for whom they were and are a taonga species, and a prized food, preserved and presented to their manuhiri in carved and decorated taha on important occasions. Kereru had clearly withstood centuries of taking in a customary way and in accordance with tikanga and were present in Te Urewera in the nineteenth century in good numbers.

The claimants’ paramount concern for kereru today is their preservation and they are not seeking to resume taking kereru at this time.

We hold that Te Urewera peoples hold a customary right to take this food.

The right was taken from them by legislation a century ago. The Crown may well have been quite justified in taking this step had it been clear that the species was in decline in Te Urewera, and had there been proper consultation. Seddon knew in fact that kereru were an important food in Te Urewera, and the district was excepted at first from the operation of the Crown's laws. But by 1912 this came to an end. There were letters of protest sent from Te Urewera to Parliament and support for the people from Maori members. The prohibition on harvesting was not well understood or enforced until in the 1930s prosecutions began, and the cost of fines hit home hard. Fowling then declined drastically. But the Crown's assumption of the right to control the taking of native birds, and prohibit the storage of huahua, to criminalise an important customary activity, while failing even to consider other ways of protecting kereru such as ensuring that food trees, miro and hinau, were preserved, has remained a deep grievance in Te Urewera.

Continuing prohibition may be justified if it can be shown to be necessary. But there are no figures or studies available to present to us. We recommend for those parties who have not settled with the Crown that the matter be investigated. We find a Treaty breach in relation firstly to the prohibition without consultation, secondly allowing the population to be degraded, and thirdly the lack of monitoring with a view to perhaps restoring a customary take. Our recommendations must be limited to claimants who have not settled their historical Treaty grievances. We do not recommend that the prohibition be lifted now. We do recommend that the Crown and appropriate parties work together to monitor the kereru population in Te Urewera, and to protect and enhance it and, if and when it is established that a limited, controlled, and culturally appropriate taking does not endanger the species, that it be allowed.

Tuna, another prized food source which there is a cultural right to take, have been significantly depleted. It seems agreed that the blocking of migration in two directions by hydro schemes, commercial fishing, and degradation of habitat are to blame. The claimants say, and we accept, that to allow damage to their fisheries in this way is a breach of the principles of the Treaty. Native species of fish have been wiped out or grievously depleted. It should be noted, however, that we do not find Treaty breach in relation to the introduction of trout.

When we consider the fate of forests, birds, eels and native fish, it can be seen that the over-arching Treaty breach is that the Crown has not properly recognised the mana motuhake/tino rangatiratanga of the people. A consequence is that the obligation of the people to be kaitiaki of their forests and rivers was thwarted and they were left powerless and pushed to the side.

And so we turn to rivers. The concept of a river as a whole entity, not broken down (as by the common law) into the water, the banks, and then the land beneath the water, has been well traversed by other Tribunals. We agree

with that approach to rivers in a Treaty context. Maori owned and respected these rivers, used them for traditional purposes, and they were taonga (prized possessions).

But the confusion as to who owns what is truly startling. How can the Crown or a private landowner, be they Maori or Pakeha, who has title to land adjoining a river know who owns the bed of the river or the river as a whole? For many blocks in Te Urewera it seems highly likely that customary title to rivers has not in fact been extinguished. The land (riverbed) remains uninvestigated customary land. The consolidation commissioners whose role in the 1920s was to finalise the awards of Maori owners and the Crown respectively on the ground, following the intense years of Crown purchase of individual interests in many UDNR blocks, specifically said they had not awarded rivers to the Crown. Yet, rivers and streams were used extensively as boundaries of the massive Urewera A block awarded to the Crown, which later assumed that it was self evident that it owned to the centre line in accordance with English common law. It also took ownership of riparian strips or reserves along the Tauranga River and its major tributaries. Then, in the 1950s, came its most far-reaching assertion of ownership. The Crown included all beds and waters of the riverbeds in the Urewera A block in the Te Urewera National Park. It is clear that no compensation was provided for the taking of rivers.

Much doubt remains as to who does own the riverbeds of Te Urewera. It may be that in accordance with English common law the owners of land on each side of a river own the bed of it to the centre line. That leads to particular difficulties when the bed of a river is prone to sudden and dramatic change as is the case for a number of Te Urewera rivers.

On the other hand, it may be that the bed of the river belongs to the Crown. The Crown passed legislation in 1903 providing that it owned and had always owned the beds of 'navigable' rivers. What constitutes a navigable river has been a vexed question from the beginning. Another issue is whether the legislation takes the bed of certain sections of a river or the bed of the entire river. No one can establish without long and prohibitively expensive investigation and litigation what the position is now.

For the country as a whole, rivers and their beds must constitute a sizable area. It must now always be remembered that Maori owned and exercised customary authority over the rivers. That customary right remains unless it has been lawfully extinguished. It is a breach of the principles of the Treaty for the Crown to have allowed these rights to be the subject of uncertainty and called into question. This is the opposite of actively protecting Maori rights. If it is said that the right has been extinguished for any particular part of any particular river then the Crown should clarify how it claims that this has happened. Our recommendation is that this should happen and the law reformed to conform with Treaty principles.

Whatever the current position of legal ownership, the beds of rivers are de facto in the control of central and local government. Te Urewera rivers are a good example of this. The Resource Management Act 1991 is a significant improvement on the previous regime for management of rivers. It makes provision for powers exercised by local authorities to be transferred to iwi authorities. But no management powers in respect of any rivers in Te Urewera had been transferred to iwi at the time of our hearings.

We turn now to our chapter on specific claims. Often claims that weigh heavily on people's minds relate to small parcels of land or very particular grievances arising from what are seen to be unfulfilled Crown obligations. Or the grievances may be ongoing ones: rating is an example. This chapter considers a group of discrete issues that fall within four categories:

- ▶ public works;
- ▶ rating;
- ▶ cultural property, specifically taonga tuturu; and
- ▶ schools in our district.

The comparatively limited public works takings in Te Urewera reflect the sparse nature of infrastructure development throughout the region, and the fact that large-scale alienation of Maori land tended to occur in advance of such development. But it is precisely because the peoples of Te Urewera have had so little utilisable land left in their possession that the significance of further land losses for public works has been magnified. We find the Crown in breach of the Treaty for failing to build an access road to Papapounamu and other blocks, despite promising to do so and despite taking a quarter each of the affected blocks, as part of the Urewera consolidation scheme. The Tahora 2F2 block claim arose from the Crown's failure to return land taken for an access road. The land was under the control of the East Coast Commissioner. He was not part of the Crown, but had been granted power by the Crown, in breach of the principles of the Treaty, namely to alienate Maori land without the consent of its owners. He gifted the land to the Crown under section 12(3) of the Land Act 1924, when he was only a trustee, and the owners received no compensation. Also, the transaction did not include any provision for the land to be returned when it was no longer being used for its intended purpose. These two aspects of the transaction are breaches of Treaty principles, and the prejudice is manifest.

We are unable to make any finding of Treaty breach arising from the building of transmission lines across part of the Te Manawa o Tuhoe block, preventing the land from being used for forestry. We note that the Tuhoe Waikaremoana Maori Trust Board was involved in planning for the Aniwhenua hydroelectric power scheme which the lines are part of, that it also negotiated a 30-year afforestation lease with the Forest Service, and that it is clear that the Trust Board did not lose any income from the location of the lines in the first few

years of the lease. (Beyond that time we have no evidence.) We find, however, that the taking of land from the Heiotahoka and Te Kopani reserve blocks to the south east of lake Waikaremoana for a hydroelectric power plant was in breach of Treaty principles, first because there was no real consultation with the owners and the Crown had insufficient regard for the fact that the owners had already lost nearly all their land, and secondly because of the Crown's process for taking the land in this case. Crown agents were rather dismissive of the land's significance for its owners, and failed also to take into account their poverty. Given that many parts of the works were permanent structures, alternatives to purchase should have been given more consideration, and at higher levels. The hydro works project left the owners with only remnants of the remnants of their land. We consider that if the Crown needed to take land from the extremely limited acreage they retained, it had a duty to provide other suitable land in exchange.

Ongoing claims relating to rating are of importance in our inquiry district, either because of the difficulty that Maori owners have had in paying them, or because particular demands levied on lands that produce no income are felt to be unfair, or both. We consider that rates should only be imposed in the following circumstances:

- ▶ consideration should be given to rating relief for land incapable of returning a profit, such as urupa, marae, land not capable of development, and land with significant legal restrictions;
- ▶ those owning and/or using the land will receive a reasonable level of services and amenities in return;
- ▶ rating assessment takes into account past contributions (such as land, gravel, labour) made to construction and upkeep of roads and other amenities.

Where those terms are met, we consider that the imposition of rates on Maori land is not in breach of Treaty principles. We have made particular findings on the imposition of rates and levies on Ruatoki and Ruatahuna lands before 1964 (the date when the exemption from rates on most land within the Urewera District Native Reserve, provided for in the Urewera Lands Act 1921-22, ended). Our findings on general rating policy and practice are as follows:

- ▶ It is understandable that local authorities did not want to pay for roads in areas where they were collecting few or no rates. However, this does not mean that Maori landowners should have shouldered the burden of high rates or bad roads. The Crown, in the Urewera Consolidation Scheme, had taken large areas of their land to pay for roads that were never built, and the roads served the National Park as well as Maori communities. The Crown should therefore have made more of a contribution towards roads in Te Urewera, and its failure to do so was a breach of the principle of partnership with its requirement of good faith.

- ▶ We consider that it was not a breach of the Treaty principle for productive Maori land in the former UDNR to incur rates after 1964, but only if those rates related to services and amenities (other than roads) which the landowners were able to use.

Claims relating to taonga tuturu that are considered in this chapter relate to significant Te Urewera taonga that were presented to high-ranking Crown representatives on historic occasions but not returned in accordance with tikanga. Where the Crown has mislaid such taonga, we find it in breach of its Treaty duties. We commend the Crown however for its recent return of the taiaha Rongokarae presented to Premier Richard Seddon by the Tuhoe rangatira Kereru Te Pukenui in 1894.

Three claims were before us involving schools and school property which relate primarily to issues other than education. We find that:

- ▶ The claim that the Crown's failure to meet the terms of the Tuararangaia land transfer of 1,000 acres to the Crown in 1912, in the expectation that a college would be established at Ohiwa for the benefit of Tuhoe, Ngati Awa, and Te Arawa, is well founded and a Treaty breach, and the Crown, as trustee, has not accounted for the profit that it made on the forest that it planted and was later harvested.
- ▶ We have been unable to make findings of Treaty breach in respect of the claim of the uri of Rama Te Tuhi of Tuhoe, who gifted land for playing fields for Te Whaiti school in 1938, setting four conditions that the claimants say were unfulfilled. We have no evidence on reasons why certain conditions were unfulfilled.
- ▶ We find, in respect of pine seedlings planted by the pupils at two Te Whaiti schools and one at Ruatahuna (the pupils being Maori) in the course of a Forest Service school planting project, that there was an unfulfilled agreement that at least some of the profits would eventually go to the schools, and that the Crown failed in several respects after the Forest Service was corporatised in the mid- to late 1980s, breaching its duty of good faith.

Our socio-economic chapter is a sad history for the peoples of Te Urewera and damning for the Crown. It chronicles over a century of neglect, relieved only somewhat by the impact of the welfare state and of the expansion of the forestry industry. Hardship, poverty, disease and lack of opportunity pervaded the twentieth century experience of the peoples of Te Urewera. This was all the worse because it was preceded by the loss of much of the best land, a devastating war, famine, and the continuing impact of Western diseases. The population dramatically reduced and then the arrival of influenza in 1918 again decimated a people under threat.

There was some improvement following the founding of the welfare state after 1935 and the expanded involvement of the State in the economy. Maori in

Te Urewera and elsewhere were major beneficiaries. The timber industry in Te Urewera, improved access to education, increased welfare benefits, and better access to health care significantly improved standards of living in Te Urewera Maori communities, but this started from a very low baseline. The changes were not enough to close the huge socio-economic gaps between Maori and non-Maori. Health care might have been free, but it was geographically remote from most Maori in Te Urewera. People were documented as suffering from malnutrition right through to the 1950s. Secondary education was not easy to get to: it involved long bus journeys or boarding costs that were beyond the means of most families. Housing assistance was out of the reach of the most impoverished communities, as it was usually only granted to those who individually owned land or could repay loans. Parents of people living today lived on dirt floors and even in caves.

The district's dependence on the timber industry and the Crown's support for it made it highly vulnerable to economic downturns and policy changes. This became clear as the Crown became increasingly sympathetic to conservationist arguments against logging of native timber, restricting and then banning the harvesting of native trees from the Whirinaki Forest. But the main blow was the restructuring and privatisation of state departments in 1984. The transformation of the Forest Service into a State-owned enterprise not only meant massive job cuts, but also the sale of the Forest Service's housing stock. At the same time, similar changes in the Post Office led to local post office closures. Ngati Manawa, Ngati Whare, Tuhoë, and other Te Urewera iwi experienced high levels of unemployment.

Thus extreme poverty continued right up to the time of our hearings. We travelled to Minginui, and saw for ourselves the abject and shocking poverty in the former timber town that had been transferred back to Ngati Whare by the Crown during privatisation of the timber industry. In the course of the hearings, I asked Crown counsel who had been to Minginui with us whether a child born there at the time had any real chance in the wider world. She agreed with me immediately that it was doubtful. I put it to her that the average New Zealander could not believe that such awful living conditions existed in New Zealand now. She agreed.

The notion of the Crown's responsibility for provision of welfare changes from time to time and is not the province of this Tribunal. However, the promises in the principles of the Treaty of Waitangi include fairness and equity. The Crown acknowledged that it has a clear obligation to provide aid and social services to Maori on the same basis as other New Zealanders. Under article 3, that, in our view, is clearly the case.

To allow the peoples of Te Urewera to slip so far behind the living standards, medical care, and educational and employment opportunities of the general population falls well below a fulfilment of the Treaty promise. As a simple

example, in the Waikaremoana area in the 1930s poverty was extreme and was a major concern for a number of public servants and judicial officers. Notwithstanding that, the Crown defaulted on the payment of monies that it owed to these people and it fought a fierce rearguard action in relation to the ownership of the bed of Lake Waikaremoana, which, if properly and promptly settled, would have provided an income to these people.

There were people of goodwill and humanity who did their best to provide, but the Crown never did enough and was consistently uncaring. We find a major breach and extreme prejudice in this regard.

The Crown spoke in our hearings of the distinction between equal and equitable treatment, though we think it has a much broader application than the Crown was prepared to admit. Most importantly, we do not think that the Crown's obligations under article 3 should be conceived as a duty to provide aid and services to Maori on exactly the same basis as non-Maori. Equitable provision in our view derives from unequal needs. Indeed, there were circumstances in the past when the Crown itself recognised such needs, and provided differing but broadly equitable services which were intended to improve the living standards and economic position of Maori communities.

Another crucial aspect of equitable provision is the removal of barriers which may prevent Maori from accessing social services, by delivering services that are culturally appropriate. That means that the routine marginalisation and disparagement by Crown bodies of Maori language and culture in Te Urewera until about the 1950s, especially in schools, was unacceptable. Crown policies relating to land and housing that ignored the realities of traditional land ownership and ties to ancestral land, were also unacceptable. We accept that such policies were often well-intentioned on the part of the Crown, but policies encouraging Maori to become fluent in English, or move from home to gain better access to education and housing did not have to happen at the expense of Maori language and culture or of the Crown ignoring the expressed preferences of Maori to remain in their traditional rohe.

Where aid or services are tailored to Pakeha needs, or are more accessible to Pakeha than to Maori, Maori are not receiving the same privileges as other New Zealanders. If the Crown's 'equality' provided Maori and Pakeha alike with monolingual English-language schooling, and penalised Maori and non-Maori alike for ownership of unproductive land, it can hardly be said that the impact fell equally on both groups.

We have considered the Crown's submissions to us that in assessing the adequacy of social service provision we must take into account all the prevailing contemporary circumstances, especially the cost, the location, and practical considerations. But, when we consider the particular circumstances of Te Urewera, we cannot conclude that Te Urewera should have been neglected as it was. Te Urewera is not so remote that the costs of providing

services were an insuperable barrier. In addition, the neglect of communities such as Murupara and Minginui had impacts which were different from those in other, non-Maori communities that were neglected. That is partly because deprivation has been so prolonged and so marked in Te Urewera. It is because the destruction of the Whirinaki job market severely damaged the ability of the tangata whenua to maintain their ahi ka. We heard painful evidence about the profound cultural and spiritual pain felt by those who had to leave their ancestral land. Those who stayed to maintain ahi ka, and sustain the ancestral home to which others could return, often did so at risk to their own health, and at the expense of a reasonable standard of living.

It is only recently, with greater recognition of the Treaty of Waitangi obligations, that the Crown has enabled Maori groups and organisations to play a significant role in the design or delivery of social services such as health and education. This was well overdue, and was also offset by the dramatically decreased economic capability of whanau in the inquiry district who faced the consequences of extremely high unemployment as a result of timber industry restructuring.

The Urewera District Native Reserve agreement established a Treaty relationship between the Crown and the hapu and iwi of Te Urewera, and the Crown had a particularly strong obligation to meet the commitments it made, as well as its wider obligations under the Treaty. That it largely failed to do so was a failure to meet its duties of good faith and partnership.

We find that the poor socio-economic standing of the peoples of Te Urewera is in large part a prejudice arising from the Crown's repeated and often grievous breaches of the Treaty, which we have detailed through all parts of this report.

As we end this report we must thank so many people without whose industry, generosity and assistance our report could not have been completed. We thank the claimants who hosted us so magnificently during our hearings. Even in the most trying times, they treated us with dignity and generosity. Even in the tumultuous entry we had into Ruatoki, we were in fact treated with respect. The tears and the laughter at our hearings will remain in our minds forever. Even when anger was shown, we knew that it was never aimed at us as a Tribunal, and there was never really a moment when our proceedings were disrupted.

We want to thank the legal profession appearing for both Crown and the claimants. Crown counsel had a difficult task. She had a hard case to present and was very much on hostile ground. She remained calm, poised and her fairness and objectivity meant that we were not far into the hearing before she was on cordial terms and trusted by all the parties. All counsel had an arduous task to present huge amounts of historical evidence and law to us. We are sure they will remember this Tribunal's hearings as a highlight in their career.

Our staff have put a great portion of their lives into this report. We, the three remaining Tribunal members, are only the tip of a large iceberg, most of which floats unseen below the surface of the waters. Thank you all.

Finally, we want to pay tribute to those who have passed away during the course of our hearings and through to the completion of this report. There are many who have not lived to see the result of their labours. Wharekiri Biddle immediately comes to mind. We remember vividly the tangihanga that we attended in Te Urewera.

We turn aside to pay tribute to our kaumatua Tribunal member who died during the writing of this report. Tuahine Northover was a special person. He was wise and gracious, and we had the greatest respect for him. The people of Te Urewera regarded him as a man of knowledge and a link from them to us. He made our journey through hearings and the compilation of the report so much the easier and we have felt his loss so deeply both on a personal and a practical level.

E nga kaka tarahae, e nga rearea hiere o te wao-nui kua taroretia e te ringa kaha o Aitua, rere atu ki to kahui e korihirihi ana ki a koutou, e whanga ana i a tatou. Okioki, e moe.

Naku noa, na



Patrick Savage
Presiding Officer

ABBREVIATIONS

AC	<i>Appeal Cases</i> (England)
AJHR	<i>Appendix to the Journals of the House of Representatives</i>
app	appendix
art	article
ATL	Alexander Turnbull Library
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> , 17 vols (Shannon: Irish University Press, 1968–69)
CA	Court of Appeal
ch	chapter
comp	compiler
DNZB	<i>The Dictionary of New Zealand Biography</i> , 5 vols (Wellington: Department of Internal Affairs, 1990–2000)
doc	document
DOC	Department of Conservation
DOSLI	Department of Survey and Land Information
DSIR	Department of Scientific and Industrial Research
ECEF	East Coast Expeditionary Force
ECLTIA	East Coast Land Titles Investigation Act
ECNZ	Electricity Corporation of New Zealand
ed	edition, editor
encl	enclosure
fn	footnote
fol	folio
GPS	global positioning system
GV	Government valuation
ha	hectare
intro	introduction
LINZ	Land Information New Zealand
ltd	limited
MA	Department of Maori Affairs file, master of arts
no	number
NZED	New Zealand Electricity Department
NZFS	New Zealand Forest Service
NZ ConvC	<i>New Zealand Conveyancing Cases</i>
NZLR	<i>New Zealand Law Reports</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
p, pp	page, pages

ABBREVIATIONS

para	paragraph
PC	Privy Council
PEP	Project Employment Programme
pt	part
RDB	<i>Raupatu Document Bank</i> , 139 vols (Wellington: Waitangi Tribunal, 1990)
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
sec	section (of this report, a book, etc)
sess	session
SGGSC	Sir George Grey Special Collections
TEP	Temporary Employment Programme
trans	translator
UCS	Urewera Consolidation Scheme
UDNR	Urewera District Native Reserve
UDNRA	Urewera District Native Reserve Act 1896
UNESCO	United Nations Educational, Scientific, and Cultural Organisation
v	and
vol	volume
Wai	Waitangi Tribunal claim

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 894 (Te Urewera) record of inquiry, a select copy of which is reproduced in appendix II. A full copy is available on request from the Waitangi Tribunal.

ACKNOWLEDGEMENTS

The Tribunal wishes to acknowledge the staff and contract writers who provided us with valuable support during the hearings and in the preparation of this report.

Many staff, past and present, assisted during the inquiry and the hearing of claims. We would like to thank Heidi Hohua, Danny Merito, Tina Mihaere-Rees, Rhonda Pohatu, and Pam Wiki (claims coordinators); as well as Ralph Johnson, Anita Miles, Barry Rigby (inquiry facilitators). During hearings, we relied on the particular assistance of Rangi McGarvey (simultaneous interpretation) and Alan Doyle (sound technician).

Our report was produced with the assistance of a range of writers and support staff. In particular, we thank Grant Phillipson (formerly the chief historian), Michael Allen, and Vaughan Wood for their significant contribution as report writers. We acknowledge also the work of Toby Boraman, Helen Robinson, Paul Christoffel, Margot Fry, David Haines, Cathy Marr, Sonja Mitchell, Nigel Murphy, Richard Towers, Jonathan West, and Tom White (report writing and facilitation staff); Nicholas Bayley, Ewan Johnston, Raeburn Lange, Kathy Orr-Nimmo, Robert Peden, and Keir Wotherspoon (report writing contractors); Sarah Burgess, Harry Chapman, Amy Howden-Chapman, Ulrich Kuehn, Esther McGill, Josie Reid, Andrew McIndoe (report-writing assistants), and Jane Latchem (reference checking). Racheal McGarvey assisted us with translation.

Our maps were provided by Noel Harris, Barry Bradley, and Max Oulton. Jane Parkin, Stephen Minchin, and Richard Thomson contributed to the editing and typesetting, but the greater part of this work – both for our pre-publication parts and for this report – was conducted by Dominic Hurley.

ESTABLISHING THE INQUIRY DISTRICT

In establishing the boundaries of the inquiry district, the Tribunal considered it essential to include all the central Te Urewera area normally identified as the rohe of Ngai Tuhoe. At the same time, it was important to include those neighbouring groups whose claims are properly considered within a wider Te Urewera context – Ngati Whare, Ngati Manawa, Ngati Ruapani, Ngai Tamaterangi, Ngati Kahungunu, Ngati Hineuru, Te Whanau a Kai, Te Aitanga a Mahaki, Te Upokorehe, Whakatohea, Ngati Rangitihi, and Ngati Awa. All these groups, with the exception of Ngati Whare, have interests inside and outside our inquiry area. The resulting district includes some lands that overlap with other inquiry districts so that those issues intrinsically linked with Te Urewera can be considered (see map p.1). The inquiry boundary starts at the eastern Bay of Plenty confiscation line near Putauaki (Mount Edgecumbe), marked ‘A’ in map p.1. This north-western boundary tracks the western edge of the Matahina block to join the Rangitaiki River. It continues along the river past Murupara to follow the western side of the Heruiwi block (marked ‘B’). It continues from Heruiwi along the south-western side of the Waikaremoana block, where it meets (at point ‘C’) the four southern blocks – Waiau, Tukurangi, Taramarama, and Ruakituri. These blocks are part of our inquiry up till the time the Crown concluded its purchase of them in 1877. From that time on, they fall within the inquiry district of another Tribunal. There were four Tuhoe reserves created within these blocks, which we deal with to the present time so that we cover Tuhoe interests in their entirety. At point ‘D’ at the south-eastern corner of the Waipaoa block, the boundary swings north to include the entire Tahora 2 block. The Waioweka River is the north-eastern boundary of Tahora 2 until the river meets the confiscation line (at point ‘E’). Our boundary follows that line west to the Waiotaha River, and then north along the Waiotaha to its mouth (marked ‘F’) just east of Ohiwa Harbour. The land at the harbour above the mean high-water mark, and the hinterland (shaded in map p.1), are included in our inquiry to ensure that all Ohiwa and raupatu issues affecting Ngai Tuhoe were heard, because they were not heard in the Ngati Awa raupatu inquiry.¹

1. Reported in Waitangi Tribunal, *Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999); see also Waitangi Tribunal, memorandum, 14 March 2002 (paper 2.15), pp 3–5; Waitangi Tribunal, memorandum, 12 April 2002 (paper 2.32), pp 8–9

CHAPTER 1

TE UREWERA – THE LAND, THE PEOPLE, THE CLAIMS

1.1 WHAKATAKI – INTRODUCTION

Te Urewera was settled by peoples who moved across the region in ancient times, followed by those who arrived later on waka whose names are well known: Mataatua, Horouta, Takitimu, Te Arawa, Tainui, and Nukutere. Today, the descendants of those peoples live within the rohe in nine main communities. Many are native speakers of te reo Maori; they preserve strong oral traditions and live in accordance with tikanga Maori. The peoples of Te Urewera are fiercely protective of their tribal identities and their mana motuhake. They have an abiding sense of injustice, born of land seizure and war 150 years ago and exacerbated by successive Crown policies affecting every aspect of their lives.

This report confirms that their perceptions are understandable and, in large part, justified.

Pakeha New Zealanders know little about Te Urewera and its peoples. The region was a mystery to nineteenth-century settlers and remains geographically and culturally remote to all but a small minority. Te Urewera today evokes images for Pakeha of a misty mountain enclave, scenic lakes within a unique national park, a place of wilderness and recreation. Pakeha have always regarded the people as highly independent, somewhat hostile, and unwilling to commit to mainstream values.

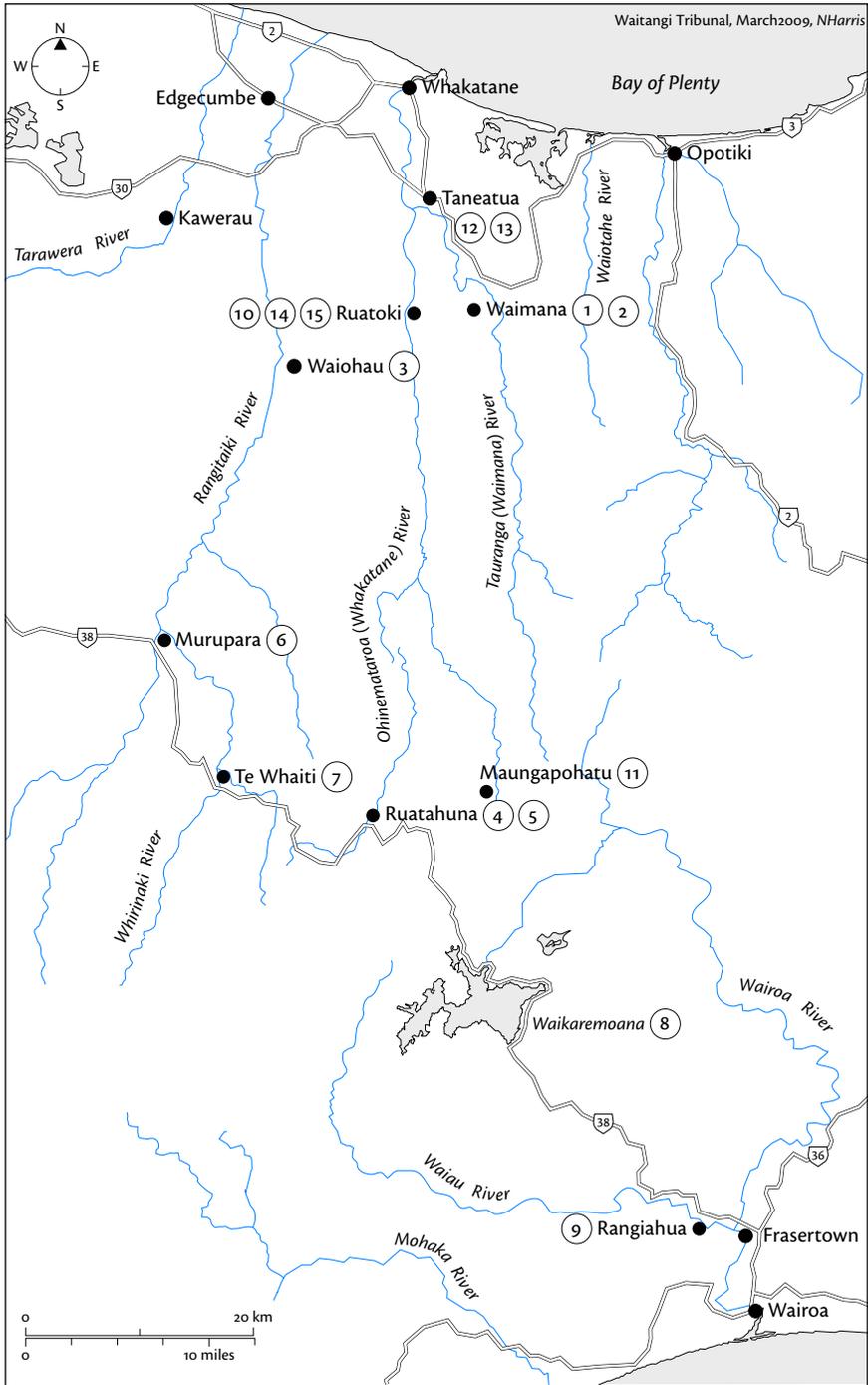
The disjunction between Te Urewera peoples' knowledge and experience and Pakeha perceptions has created conflicting understandings about the past and the present, shaping many of the issues that we had to consider.

1.2 NGA TONO – THE CLAIMS

This report addresses major historical and contemporary claims brought by the peoples of Te Urewera. The claims are listed in full in appendix 1.

While the claims have different geographical and historical focal points, there is a constant theme in the evidence. It is a sense of grievance, born of injustice, experienced from the beginning, and unanswered to this very day. The claims are advanced on a number of levels. Some are by or for tribal bodies created by statute, others are by individuals speaking for iwi and hapu. There is one whanau claim specific to a particular issue.

Some claims originated in particular communities, and their people presented evidence when we sat on their marae. There were, however, many claimants and many histories. During the 11 weeks spent hearing claimant evidence, spread over



No	Venue	Place	Duration
1	Tataiahape Marae	Waimana	24–28 November 2003
2	Tataiahape Marae	Waimana	8–11 December 2003
3	Waiohau Marae	Waiohau	22–26 March 2004
4	Mataatua Marae	Ruatahuna	16–17 May 2004
	District Court*	Wellington	14–15 June 2004
5	Mataatua Marae	Ruatahuna	28 June – 2 July 2004
6	Rangitahi Marae	Murupara	16–20 August 2004
7	Murumurunga Marae	Te Whaiti	13–17 September 2004
8	Waimako Marae	Waikaremoana	18–22 October 2004
9	Rangiahua Marae	Rangiahua	28 November – 3 December 2004
10	Taurau Marae	Ruatoki	17–21 January 2005
11	Mapou Marae	Maungapohatu	21–23 February 2005
12	Taneatua School	Taneatua	28 February – 4 March 2005
13	Taneatua School	Taneatua	11–15 April 2005
14	Te Wharekura o Ruatoki	Ruatoki	7–10 June 2005
15	Te Wharekura o Ruatoki	Ruatoki	13–17 June 2005

* Reconvened in Wellington

Table 1.1: Tribunal hearings

14 months, we attempted to cover both local and larger historical issues by dealing, each hearing week, with an assigned theme of particular significance in that area.

The Wai 36 claim was brought in 1987 by Wharehuia Milroy, joined by Tamaroa Nikora, on behalf of the Tuhoe tribe and the Tuhoe-Waikaremoana Maori Trust Board. The claimants presented evidence and submissions covering the entire range of Ngai Tuhoe issues for those who supported it.

For the beneficiaries of the Wairoa-Waikaremoana Maori Trust Board, Rangi Paku claimed for Kahungunu, for the south-east of our region, in relation to land, waterways, hydro development schemes, and Lake Waikaremoana. The trust board was also concerned to hold the line against other claimants from the west. Other Kahungunu claimants with specific concerns were Charles Cotter and Lillian Tahuri, on behalf of Ngai Tamaterangi. Individual claims were made by Te Okoro Joe Runga of Rongomaiwahine hapu, and by Huriana Lawrence.

For Ngati Ruapani, whose rohe is also in the south-east of our district, Vernon Winitana brought claims, as did Nicky Kirikiri and Des Renata.

Further north, on our eastern boundary, we had claims brought by Eric John Ruru for Te Aitanga a Mahaki and by David Hawea for Te Whanau a Kai. These are peoples whose influence extends west from the Turanga region.

Just beyond the southern boundary of our inquiry district is Tarawera on the



Waitangi Tribunal hearing, Mapou Marae, Maungapohatu, February 2005

Napier to Taupo road, the centre of Ngati Hineuru, whose claims were brought by Kori Hill.

On the western boundary, centred at Murupara, Topia Hall and Renata Pouwhare made comprehensive claims on behalf of Ngati Manawa.

Further north, at Waiohau, Robert Pouwhare claimed for Ngati Haka Patuheuheu.

At the north-western side of our inquiry district, Ngati Rangitihī claimants David Potter and Andre Paterson focused mainly on particular forestry blocks.

At the north-eastern corner, the Mokomoko whanau claimed through Tuiringa Mokomoko. These Whakatohea people were included only for a particular issue.

In the centre of our inquiry district, Edward Rewi, for Ngati Whare, brought forward a broad range of issues. A claim relating to a specific forestry transaction with the Crown was made by Jack Ohlson.

Peter Keepa addressed the Tribunal on a wide range of issues for Te Mahurehure, a hapu at Ruatoki.

Seventeen claims brought by individuals were amalgamated in the grouping known as Nga Rauru o nga Potiki. These claims were brought, by and large, to further hapu interests. Viewed together, they cover the whole range of issues dealt with in this report. They were wisely amalgamated to avoid duplication in preparation and presentation, and to unify the claimants' focus and resources.

These lead claimants were Roland Mason, Rose Lackner, Claude Tihi, Hiraina Hona, Kirituia Tumarae, Jennifer Takuta-Moses, Tame Iti, Hohepa Kereopa, Tamati Kruger, Hirini Paine, Rangimarie Pere, Maraea Rakuraku, Trainor Tait, Robert Takao, Billy McLean, Te Weeti Tihi, and Matthew Te Pou.



The Te Urewera Tribunal sitting in Te Whai-a-te-Motu, Ruatahuna. *From left:* Joanne Morris, Judge Patrick Savage (presiding officer), kaumatua Tuahine Northover, Dr Ann Parsonson.

As the pre-hearing process rationalised pleadings and organised the claimants for hearing, some new lead claimants were added. The description above, however, gives a sufficient picture for present purposes.

We sat for 11 weeks on marae to hear the claimants' evidence and some Crown evidence (see table 1.1).

We also sat for two days to hear historical evidence in the District Court at Wellington because of changes to our timetable arising from tangihanga at Ruatahuna.

The remaining Crown evidence was heard over a two-week period in March and April 2005 at Taneatua School. Closing submissions were made by the claimants and the Crown over a two-week period in June 2005 at Te Whare Kura o Ruatoki.

The organisation that was required of Tribunal staff and members to achieve these hearings was huge but small indeed when measured against the effort and dedication of the claimants and their communities. We thank them for that. For the great majority, this was the first time they had been able to have their say and to tell their stories on grievances that are very real and enduring in their collective memory, and also on a day-to-day and practical level.

1.3 TE WHENUA – THE LAND

Te Urewera is mountainous, geographically remote, and not readily accessible, even by road. Its heavily bushclad mountains enclose swiftly flowing rivers and



Chris Rudge (Department of Conservation, 10/05/0812)

The forested mountains of Te Urewera cloaked in mist. Tuhoe tradition emphasises their ultimate origins in the ancient people Nga Potiki through the tipuna Potiki-Tiketike, born from the whenua itself, in the union of Te Maunga (the mountain) and Hinepukohurangi (the mist).

dramatic lakes. Today, the land and waters make up much of the magnificent Te Urewera National Park, generally regarded as a jewel in the national conservation estate. Lake Waikaremoana is the south-eastern limit of the park.

The river valleys still link communities where modern roads do not exist. Most of the peoples of Te Urewera live in two of the three northern river valley systems.

- ▶ In the catchment area of Ohiwa Harbour, the Nukuhou River forms a pathway from Te Urewera to the harbour. For generations, the people travelled that path to maintain their contact with coastal iwi (in particular, Whakatohea and Ngati Awa) and to exercise their rights to the harbour's resources. There are no longer any Te Urewera communities along the Nukuhou.
- ▶ The central river system, comprising the Ohinemataroa (Whakatane) and Tauranga (Waimana) Rivers, rises in the mountainous interior. The two rivers join at Taneatua and flow out to the sea at Whakatane. The Ohinemataroa has its source near Ruatahuna, and the Tauranga rises near the sacred mountain Maungapohatu. This river system connects the communities of Maungapohatu, Matahi, Waimana, Ruatahuna, Ruatoki, and Taneatua.
- ▶ The western Rangitaiki River system rises in the rugged hill country to the east and south of the Kaingaroa Plains. Its tributary, the Whirinaki, flows north-west through the Whirinaki Forest Park past Minginui and Te Whaiti, and joins the Rangitaiki just north of Murupara. The Rangitaiki then drains

the Galatea Plains, and flows past Waiohau before descending into the Bay of Plenty lowlands west of Whakatane.

The Ohinemataroa and Tauranga River valleys have no roads south of the main Ruatoki and Waimana communities. The road up the Tauranga–Waimana Valley becomes a six-foot-wide horse track at least 25 kilometres from Maungapohatu. There is an even longer walking track approaching Ruatahuna from Ruatoki through the precipitous Ohinemataroa Valley.

Modern road access from the coast to the interior follows the western side of the Rangitaiki Valley to Murupara. From there, State Highway 38 crosses the Ikawhenua Range in a south-easterly direction to reach Ruatahuna. From a junction at the summit of the Huiarau Range, there is unreliable road access to Maungapohatu. State Highway 38 descends to skirt the shores of Lake Waikaremoana, then continues to the hydro village at Tuai and to Wairoa 50 kilometres away.

1.4 NGA IWI – THE PEOPLE

The people who live in Te Urewera are predominantly Maori, living by Maori values and speaking te reo Maori. The Ringatu Church, founded by Te Kooti, has a significant following. As with any hui in the rohe, our hearings always began and closed with solemn karakia. During the hearings, traditional waiata were sung with passion to illuminate historical events referred to in the evidence. We felt we were in one of the few places in Aotearoa where Maori culture is truly dominant.

The peoples of Te Urewera identify strongly with distinct tribal groups, but they also value the whakapapa links between groups. Whanaungatanga is the lived experience of Te Urewera communities. Ngati Whare and Ngati Manawa often described their relationships with one another and with Tuhoë as *taharua*, or as having dual descent and identity. Ngati Kahungunu, Ngati Ruapani, and Ngai Tuhoë have similar relationships. This is not to say that these iwi are always in agreement; their shared history has often been troubled. But the close links among the people were illustrated by Des Renata, standing with his *mokopuna*, at our Waikaremoana hearing. Pointing to one of the children, he asked rhetorically whether people could identify any part of his *mokopuna* as belonging exclusively to a particular iwi, then answered his own question: ‘we cannot separate us from each other.’¹

Most of the major issues in our inquiry are shared by most claimant groups. All the peoples of Te Urewera have been affected to a greater or lesser extent by *raupatu*, military conflict throughout the rohe from 1869 to 1871, the Native Land Court and land alienation, the establishment and failure of the Urewera District Native Reserve, the Urewera Consolidation Scheme, the creation and management of the national park, and the Crown’s handling of environmental and socio-economic issues. The history of their relations with the Crown has left its imprint

1. Des Renata, oral evidence, Waimako Marae, Tuai, 20 October 2004 (transcript 4.11, pp147–148)



Robert Pouwhare

Whanau listen to evidence at a Tribunal hearing

on them all. And it has provoked a Tuhoe claim about the constitutional implications of the Treaty of Waitangi for them as non-signatories.

Approximately 85 per cent of the tangata whenua of our inquiry district live outside it² – the outcome of historical and contemporary factors that we discuss later in this report. Many who have moved to urban centres play a pivotal role in New Zealand's health and educational institutions, the media, and Government bodies. Yet, if history and circumstance have seen so many leave home, they remain in close contact with those who keep the home fires burning, and resolutely refuse to disconnect from the source of their culture. They regularly return with their families for tangihanga, holidays, and special occasions, such as the two-yearly Hui Ahurei a Tuhoe cultural festivals.

The peoples of Te Urewera live with the cumulative effects of Crown actions over generations. We estimate that as little as 14 per cent of the total Urewera land area remains in Maori ownership – this in a district with so many long-established Maori communities. Land loss on this scale has left the people with lasting resentment. The residents of Ruatoki and Waimana face a grim reminder of history

2. Brian Murton, 'The Crown and the Peoples of Te Urewera, 1860–2000: The Economic and Social Experience of a People' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc H12), p17

every time they travel past the raupatu line. Te Urewera National Park likewise represents a heartland no longer the preserve of its peoples. It is an essential part of their heritage, but it is now Crown land and the people have no real say in how others use it. For example, it is abhorrent to them that outsiders should scatter cremated human remains within the park, yet they are unable to prevent such practices. This sense of powerlessness is particularly galling for the community of Ruatahuna, which is virtually surrounded by the park.

Te Urewera communities endure rates of poverty much higher than those experienced in most parts of New Zealand.³ In recent decades, Government services to the people have been inadequate and spasmodically provided. At Ruatahuna, postal services, public transport, health care, and other social services dwindled from the late 1980s, as vividly described in the evidence of Tangiora Tawhara.⁴ In some Te Urewera communities, poverty, and the absence of public services to ameliorate its consequences, has almost reached Third World proportions. The sense of hopelessness evident when we visited Minginui in 2004 shocked us. Our presiding officer later asked Crown counsel what chance a child from Minginui would have of succeeding in New Zealand today. Crown counsel conceded the point.⁵ Most New Zealanders would not believe such conditions exist in this country; nor would they find them acceptable in a fair society.

1.5 IWI WHANUI – COMMUNITIES

The nine Te Urewera communities in our district may be briefly described as follows.⁶

1.5.1 Tuai

Tuai is a community that includes the old hydro village built to serve the Waikaremoana power stations. The village itself is outside our inquiry district, but the community includes the adjacent Te Kuha Tarewa and Waimako marae complexes on the Te Kopani reserve. In the 2006 census, 73.5 per cent of Tuai's people identified as Maori.⁷

The Electricity Corporation of New Zealand greatly reduced its workforce during the 1980s and 1990s, before selling its hydroelectric facilities to Genesis Power in 1999. The reduction in employment adversely affected the entire community, particularly its growing Maori population. Local Maori land ownership has diminished to about 1,300 acres (526.091 ha) on the old Te Kopani and Heiotahoka reserves near the village. Instead of supporting Maori wishing to return to their papakainga, this multiply owned land remains uneconomic, requiring owners to apply for repeated rate remissions.⁸

3. Murton, 'The Crown and the Peoples of Te Urewera, 1860–2000' (doc H12), p 40

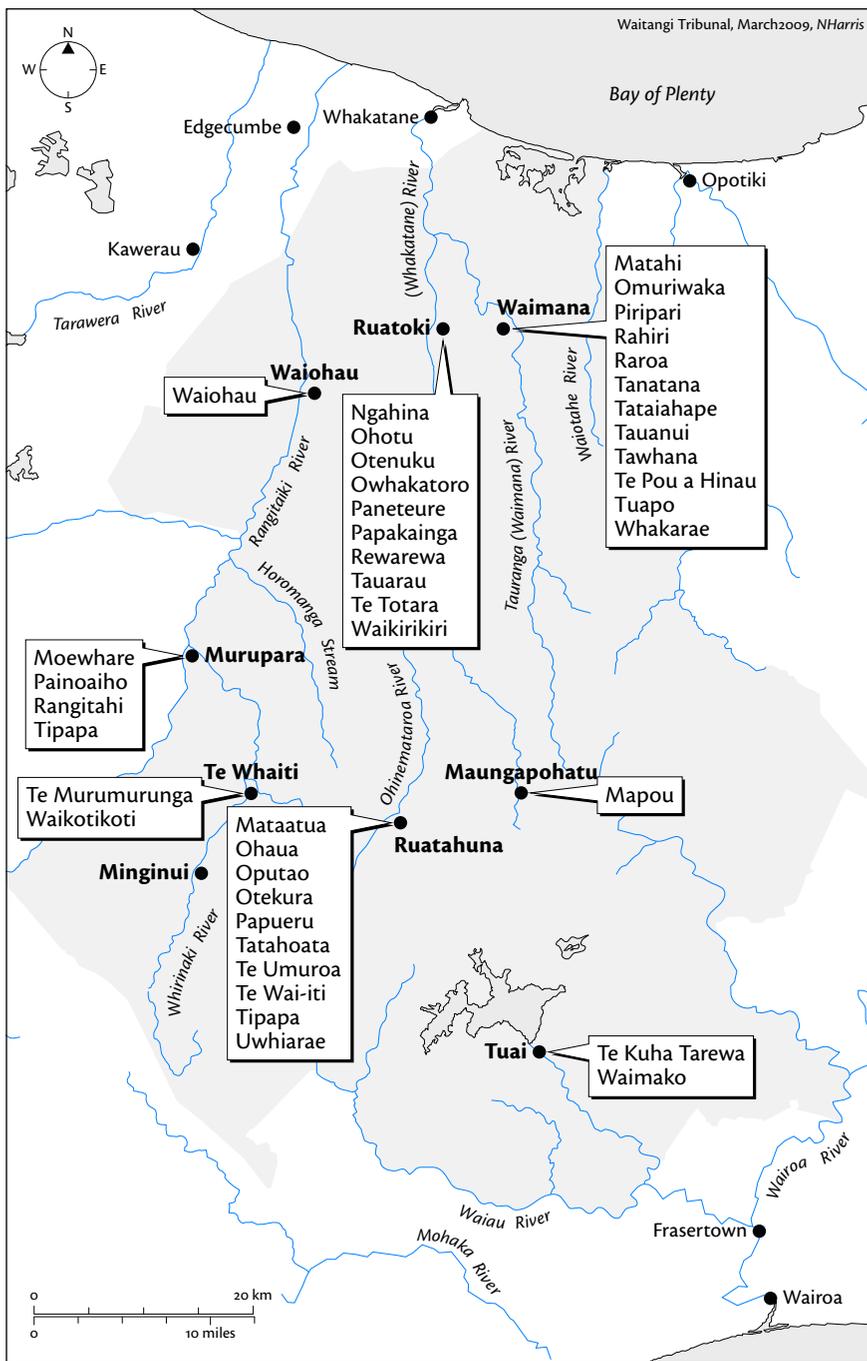
4. Tangiora Tawhara, notes in English, no date (doc E42)

5. Crown counsel, response to questioning by Judge Savage, 17 June 2005, track 4, 43:16–51 minutes

6. It should be noted that we held hearings outside our inquiry district, at Taneatua and Rangiahua.

7. www.stats.govt.nz, accessed 12 February 2009

8. Vernon Winitana, brief of evidence, no date (doc H28), paras 26, 29, 67



Map 1.2: Marae and communities of Te Urewera

Source: 'Te Kahui Mangai', www.tkm.govt.nz

In the face of economic adversity, Tuai supports an array of community organisations, and there is a high degree of cooperation among the three local iwi – Tuhoe, Ngati Ruapani, and Ngati Kahungunu. This paid dividends when the Crown transferred the old Tuai workingmen’s hostel to Ngati Ruapani ownership in a Treaty settlement during the late 1990s. It is now the Whakamarino Lodge, operated by a whenua topu trust, and a source of great community pride.

1.5.2 Waimana

Waimana, situated in the fertile lower reaches of the Tauranga–Waimana Valley, is a community divided by the legacy of colonial history. Pakeha dairy farms predominate north of the confiscation line, while a mosaic of small, multiply owned Maori blocks surround no fewer than 12 local marae (see map 3). The 1866 confiscation of the most productive Waimana land, and the fragmentation of the remnants through the processes of the Native Land Court, condemned the hapu to generations of deprivation.

Within the valley is the marae Whakarae, particularly significant as it represents the mana of the lost fortress at Ohiwa, taken in the confiscation. Nearby Matahi is the site of Rua Kenana’s tomb, and a resting point between Waimana and Maungapohatu.

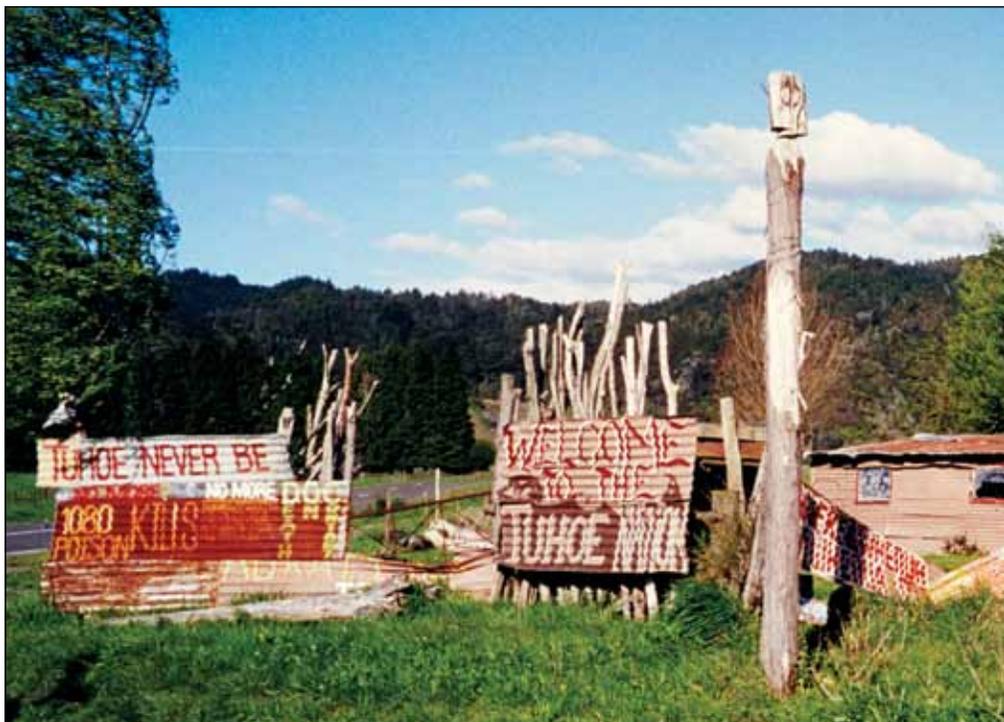
1.5.3 Maungapohatu

Maungapohatu, in a clearing beneath the mountain, is but a remnant of the vigorous community founded by Rua Kenana. This is where the police invasion of 1916 took place, which culminated in the killing of Rua’s son Toko and the arrest of Rua, whose trial was, at that time, the longest in New Zealand history. Maungapohatu is now accessible only by a rough road from the south and a walking track from the north. It is a historic marae with a small number of modest dwellings. The last permanent resident, Smokie Tawhara, died a few months before we arrived in February 2005. Our hearing provided the occasion for an emotional reunion of hundreds of members of the many whanau and hapu with ancestral associations there.

1.5.4 Ruatoki

Ruatoki is one of the core Tuhoe communities today. The 10 local marae indicate the strength of local whanau and hapu (see map 1.2). Most of the people who affiliate to these marae now live outside Te Urewera. As at Waimana, substantial Pakeha farms occupy the area north of the confiscation line. South of the line is a series of fragmented, often uneconomic Maori land blocks. This pattern, carefully described by Stokes, Melbourne, and Milroy in 1986, has changed little over the past century.⁹

9. Evelyn Stokes, James Wharehuia Milroy, and Hirini Melbourne, *Te Urewera Nga Iwi te Whenua te Ngahere: People, Land and Forests of Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111), pp 142–147



Signs on the 1866 confiscation line at Ruatoki. Tuhoe concern at the longstanding failure of the Crown to recognise mana motuhake was evident in signs proclaiming the Tuhoe nation.

Despite the shortage of land even for housing families, Ruatoki remains a cultural and social magnet, a focus for the returns home. Continuing effort and impetus from Ruatoki has seen the introduction of Maori-language programmes in schools, the recently established Tuhoe Education Authority Charitable Trust, and Anamata, the new tertiary institution based in Whakatane. Community-based health and social service providers have replaced faltering public services.

Our visit here began with great drama, the point of which was to convey Tuhoe's sense of loss and anger at raupatu. Unfortunately, the message was misconstrued by the media, and thus by the wider New Zealand public, as simply unfocused hostility. In fact, our hearings that week were conducted with complete propriety and in accordance with tikanga.

1.5.5 Ruatahuna

Ruatahuna, like Ruatoki, supports 10 marae (see map 1.2). At the source of the Ohinemataroa River, Ruatahuna is known as Te Manawa o te Ika, the heart of the fish, and as Te Kohanga o Tuhoe, the cradle of Tuhoe. Almost a century ago, this community fostered the Apitihana movement in opposition to the consolidation



Judith Birney (ATL, PACOLL-9928-20-22)

of the Crown purchases in the Urewera heartland.¹⁰ Generally, the land the Crown acquired became Te Urewera National Park, which surrounds the remaining Maori land at Ruatahuna.

Using the evocative images of Mihikitekapua's famous lament *Taku Rakau*, claimants described this alienation as Te Mowai, cutting the land adrift.¹¹ Yet, Ruatahuna has retained its vitality. Hikawera Te Kurapa led a protest to regain local control of the last remaining Maori land during the late 1970s.¹² Soon afterwards, the late Wharekiri Biddle founded Te Rehutai, a Maori tourism venture. Fishing, hunting, deer farming, venison recovery, and tourism have offered wider opportunities than traditional pastoral farming.

10. Stokes, Milroy, and Melbourne, *Te Urewera Nga Iwi te Whenua te Ngahere*, pp 73–77

11. Tuawhenua Research Team, 'Ruatahuna: Te Manawa o te Ika, Part 2: A History of the Mana of Ruatahuna from the Urewera District Native Reserve Act 1896 to the 1980s' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc D2), p 255; Brenda Tahī, summary of evidence concerning Mowai whenua, 22 June 2004 (doc E18), paras 1–3

12. Heather Bassett and Richard Kay, 'Ruatahuna: Land Ownership and Administration, c1895–1990' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A20), p 299

1.5.6 Minginui

Minginui is a town purpose-built by the New Zealand Forest Service in the 1940s. It is at the headwaters of the Whirinaki River, and eight kilometres south of the traditional centre of Ngati Whare, at Te Whaiti. Minginui declined with the last mill closure in 1988. This once model village is now a dilapidated remnant, a victim of changed economic policies and circumstances. A State Services Commission Social Impact Unit report warned of adverse consequences during the 1986–88 period of restructuring and privatisation.¹³ Following the corporatisation of the Forest Service in 1987, the administration and ownership of Minginui passed to Ngati Whare.¹⁴

1.5.7 Te Whaiti

Te Whaiti struggles with the same economic decline that has devastated Minginui. Long before 1987, Te Whaiti had to endure the slow decline of the private indigenous forestry industry. Although Te Whaiti and Minginui both benefited from the extension of exotic forestry into the Whirinaki Valley during the 1960s, there were few other economic alternatives for the development of remaining Maori land. During the 1970s, local landowners leased almost 5,000 acres at Te Whaiti to the Forest Service for 90 years. This lease has yielded a low rate of return and little local employment, and the lessors have long sought the renegotiation of its terms.¹⁵ The two local marae are Murumurunga and Waikotikoti.

1.5.8 Murupara

Murupara is the main community of Ngati Manawa. This iwi has connections east into Te Urewera, where their mountain is Tawhiauau, and west, across the Rangitaiki River, to the vast Kaingaroa Forest. In 2006, Murupara's population had declined from a peak of 3,000 during the 1970s to fewer than 2,000 people.¹⁶ Despite the downturn in commercial forestry, Murupara remains the loading point for Kaingaroa logs bound by rail for processing at Kawerau. Murupara today is a run-down forestry town, with standardised mill housing and a reduced commercial centre.

Ngati Manawa support four marae. Their independent kura, Te Kura Kaupapa Motuhake o Tawhiauau, is a justifiable source of pride. The old Ngati Manawa development scheme lands have been vested in the Ngati Manawa Incorporation, operating dairy, beef, and forestry enterprises.¹⁷

13. John Hutton, summary of evidence from 'Ngati Whare and the Crown, 1880–1999' concerning Minginui and the effects of corporatisation, 2004 (doc G5), paras 17, 41

14. The official return of Minginui to Ngati Whare occurred on 29 March 1989: John Hutton and Klaus Neumann, 'Ngati Whare and the Crown, 1880–1999' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A28), pp 771–772.

15. John Hutton, summary of evidence from 'Ngati Whare and the Crown, 1880–1999' concerning forestry development, August 2004 (doc G4), paras 38, 54, 67–73

16. In the 2006 census, the population of Murupara was 1,839.

17. Rangiura Briggs, brief of evidence, 9 August 2004 (doc F17), paras 5.1–5.5, 6.7–6.10

1.5.9 Waiohau

Waiohau is a tiny community 35 kilometres north of Murupara. It is home to Ngati Haka Patuheuheu, a hapu of Tuhoe and the keepers of the western entrances to Te Urewera. In 1908, they were forcibly relocated from Te Houhi, further up the Rangitaiki Valley, as a result of a notorious land fraud case. Having originally occupied thousands of acres of fertile valley land, today Ngati Haka Patuheuheu have only 24 acres in hapu ownership.¹⁸

1.6 NGA TAKE – OVERVIEW OF ISSUES PRESENTED BY THE CLAIMANTS

Conditions in Te Urewera today reflect the bleak relationship of its peoples and the Crown from the start.

The 1866 land seizure is bitterly remembered and the confiscation line is daily seen and crossed. It is a reality to the communities of Waimana and Ruatoki, and is seen as severing Tuhoe from Ohiwa Harbour, where they had long exercised customary rights. Similarly, Waikaremoana claimants believe that the Crown purchased the four blocks to the south and east of the lake as spoils of war and under threat of confiscation.

The state of the remaining Maori land in Te Urewera – fragmented, uneconomic, and multiply owned – is seen to be a result of native land legislation and land court activity. That court cut a swathe through the ‘rim’ blocks of our district, making large areas vulnerable to purchase. In the same way, the Urewera commissions swept through the central heartland. The court and the commissions imposed a defective land title system, based on undivided, individual, and unequal shares. Crown purchase agents then purchased a large proportion of these shares, without proper regard to the fact that this alienated much of a native district reserve created by the Crown, the only one in New Zealand. The Crown then established the Urewera Consolidation Scheme, merging its own interests into large blocks, leaving Maori land divided and isolated.¹⁹ This is how the people remember the history, and it is the case that, by the end of the 1920s, the peoples of Te Urewera retained only about one-sixth of their lands (see chapter 10).

Much of the consolidated Crown land became Te Urewera National Park. As a result, the peoples of Te Urewera feel that they are strangers in their own land. They believe that the national park is part of the Crown’s ill-gotten gains and that they are denied proper recognition as the tangata whenua with the ability to exercise kaitiaki responsibilities. Iwi concern for the protection of the environment is based on the knowledge that this is their land, their lakes, and their waterways.

Underlying all these issues is the theme of legitimate authority in the district – mana motuhake, sometimes described as sovereignty. After land seizure and

18. Robert Pouwhare, brief of evidence, 14 March 2004 (doc C15), para 109

19. In June 1927, the Crown owned 482,300 acres, representing almost 75 per cent of the original Urewera reserve: see also Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p 473.

military conflict, it was exemplified in the tribal body Te Whitu Tekau in the 1870s. It continued in the 1890s with the struggle for recognition of an autonomous district native reserve and with Rua Kenana's community at Maungapohatu, then the more recent advocacy of mana motuhake. Te Urewera communities well remember and still carry the strength of their ancestors.

This mana and kaha was ever-present in the manner of presentation and the content of the claims brought before us. The tenor and directness of the challenge to the Crown inherent in these claims, and yet the willingness of the claimants to engage in the Tribunal's process, proved to us that mana motuhake is no mere slogan but that it drives and sustains the communities of Te Urewera.

CHAPTER 2

TE AO O TE UREWERA – ORIGINS AND TRADITIONS

Te Iho o Te Urewera

He Mana

He Mauri

He Tapu

Rurea

Taitea

Kia Toitu

Ko Taitaka Anake

Ko te Iho o Te Urewera. . . .

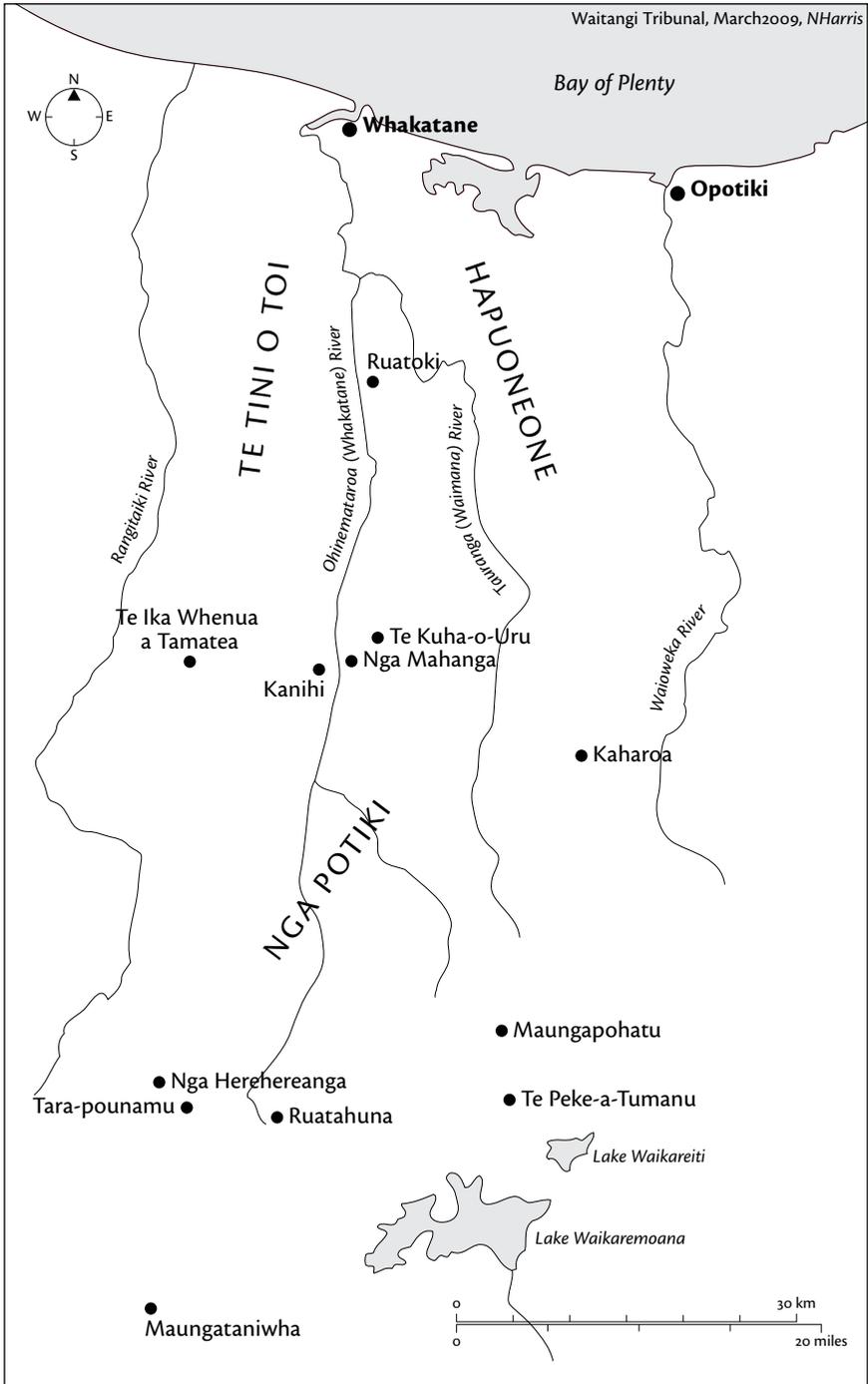
Hohepa Kereopa¹

2.1 WHAKATAKI – INTRODUCTION

The peoples of Te Urewera introduced themselves to us in the traditional way. They did so in their wero (challenges) and karanga (welcomes), through whaikorero (oratory) when they welcomed us to their marae, and through their waiata, pepeha (tribal sayings), and whakatauaki (proverbs). They did so throughout our hearings – as they presented their oral histories. They shared whakapapa with us – the lines of descent that bind them together in kinship. They explained their core values of mana (authority), whanaungatanga (kinship), and utu (reciprocity), the values by which they live, and have always lived.

These and other korero (traditions) were presented orally in te reo Maori, and also translated simultaneously into English, for the benefit of all those who had come to listen to their histories being told, or retold. In sharing these taonga, the tangata whenua spoke to us of who they are – and where they have come from – as peoples. We came to know them as tribes with vibrant cultures, identities, and histories. In recounting some of the tribal histories and the knowledge that was presented to us, our purpose is not to give a comprehensive account of those histories. That is not our task, nor could we do it justice. Our purpose, rather, is to introduce the reader to:

1. Hohepa Kereopa, brief of evidence, no date (doc B15), p1



Map 2.1: Hirini Melbourne's map – Nga lwi Onamata

- ▶ the various tribal groups of the region; their origins and settlement; and historical relationships between the tribes, which reverberate through the post-1840 period with which our report is concerned (see section 2.2); and
- ▶ the exercise of authority and the operation of customary law in Te Urewera society; and the values and beliefs by which people lived and exercised their rights to land and resources (see section 2.3).

It is only with some knowledge of tribal relationships and the nature of customary society that it is possible to understand the bases of claims and the issues before us. Most prominent among the issues are:

- ▶ the source and nature of authority to make decisions affecting Te Urewera;
- ▶ the Crown's confiscation of a substantial area of Tuhoe lands;
- ▶ the Crown's use of military force against the peoples of Te Urewera;
- ▶ the purpose and effect of the land title and Native Land Court system;
- ▶ the nature and extent of Crown purchases and other Crown acquisitions of Maori land;
- ▶ the Urewera District Native Reserve and the Crown's admitted departure from the law's terms for purchasing land in the reserve;
- ▶ the Urewera Consolidation Scheme, the Crown's broken promise to build roads in the area, and its later payment of compensation;
- ▶ the establishment and management of a national park in the midst of communities who had owned and used the resources of that land for generations;
- ▶ the adequacy of Crown efforts to enable the profitable use of the remaining Maori land in Te Urewera – in the face of legal restrictions on certain land uses, limited availability of finance, remoteness from markets, and inadequate roading;
- ▶ the nature and effect of the Crown's laws regulating uses of the environment, including hydroelectric development; and
- ▶ the nature and effect of Crown efforts in the twentieth century to address the socio-economic conditions of the peoples of Te Urewera.

For reasons that we have already explained, this chapter must dwell on the history of Tuhoe – both because of the number of claims they presented to us and, more importantly, because of their central position in the cultural landscape of Te Urewera. But there are other claimant iwi and hapu who must be considered in their own right, namely: Ngati Whare; Ngati Manawa; Ngati Ruapani; Ngati Kahungunu; Ngai Tamaterangi; Te Aitanga a Mahaki; Te Whanau a Kai; Ngati Hineuru; and Ngati Rangitihī.

The rohe of all these iwi except Tuhoe and Ngati Whare straddle our inquiry boundary – which is an artificial line. Ngati Manawa kaumatua Wiremu Bird reminded us that the boundary of two inquiry districts bisects the rohe of his iwi and that this impacts on their claims.² His concerns were echoed by most other claimant groups, who find themselves in the same position. In discussing wider tribal origins we have not of course been constrained by our inquiry boundary – though the settlement of Te Urewera is of most interest to us.

2. Wiremu Bird, brief of evidence, 9 August 2004 (doc F14), p 3

Conversely, there are some iwi whose histories are part of the overall story of Te Urewera, but who are not claimants in our inquiry. Many of these peoples – particularly Ngati Awa, Ngati Pukeko, Ngati Tuwharetoa, and some Te Arawa groups – must be referred to here because of their relationships to the claimants before us. Some Whakatohea groups presented their histories to us, but for various reasons withdrew to await a future inquiry. These people are also referred to where

Note on Sources

The Tribunal received a wealth of tangata whenua evidence about their histories, tikanga, values and relationships among the communities. Much of this evidence was delivered in te reo Maori. Simultaneous translation of this evidence was provided at all our hearings.

Among the tangata whenua evidence we received was a report by Te Wharehuia Milroy and Hirini Melbourne, 'Te Roi o te Whenua' (commenced in 1989 and collated in 1995), which sets out the story of Tuhoe's 'search for redress for their grievances'; it begins with sections on the history of the tangata whenua who occupied some of the lands later confiscated by the Crown. We have also drawn on 'Ruatahuna: Te Manawa o te Ika' – generally known as the 'Tuawhenua Report'. This two-volume report, produced by the people of Ruatahuna over more than two years, is based on oral histories, on many interviews and wananga, and on the work of other historians. The aim of the Tuawhenua Research Team was to convey 'the history of Ruatahuna's mana and the experience of Ruatahuna at the hands of the Crown', in a way that reflected their own knowledge and perspectives.¹ Brenda Tahim managed the overall project and produced the report in English. Motoi Taputu produced the report in te reo o Tuhoe.

In addition, Ngati Whare and Ngati Manawa each commissioned mana whenua reports. Robert Wiri wrote the Ngati Whare report, working with kaumatua, and Merata Kawharu wrote the Ngati Manawa one, to which Robert Wiri also contributed.

The knowledge of some of the old people of Te Urewera (more particularly Tuhoe) was also of course recorded generations ago by early ethnographers – notably Elsdon Best, WE Gudgeon, and JH Mitchell – and where appropriate we have drawn on this material. We are aware that these writers tended to overlay the histories and accounts they recorded with their own interpretations. We refer below specifically to the works of Elsdon Best, of which claimants have a range of views; they are both valued and subject to criticism.

1. Tuawhenua Research Team, 'Ruatahuna: Te Manawa o te Ika' (English), 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003–04), vol 1 (doc B4(a)), p325

appropriate. We acknowledge that the histories of all these peoples are part of the history of Te Urewera. However, our discussion of them is necessarily limited.

Our approach in this chapter reflects the way in which the histories, and the values of those who shaped them, were presented to us in hearings by the people themselves. We draw primarily on their oral and written evidence, supplemented as appropriate by the work of ethnographers such as Elsdon Best (see the sidebar on pages 57 to 59). Those histories reflect the mana of key tipuna who secured the survival of their people, shaped their expansion, or provided strong leadership in difficult times. They are histories which belong to the hapu and iwi of Te Urewera, to be preserved and passed on by them in accordance with their own tikanga. It is not our role to retell them in detail; nor do we try to smooth those histories into a single historical narrative. Tribal histories embody the experiences and the understandings of different hapu and iwi as they have been passed down and retold over generations; they are not necessarily compatible with one another.

We note also that it is not our role to make findings on mana whenua – that is, the extent of authority over and rights to land exercised by each iwi in relation to its neighbours. Rather, we acknowledge the statements of all claimant iwi about their rohe and the nature of their rights. In chapter 4, however, we must quantify Tuhoe's loss in the eastern Bay of Plenty lands confiscated by the Crown in 1866. This necessarily involves a consideration of the territorial extent of Tuhoe's exercise of authority and rights in that district before confiscation.

The first part of the chapter begins with an overview of the tribal histories of Te Urewera: settlement by the earliest peoples, the arrival of the main group of waka from Hawaiki, the emergence of hapu and iwi who are prominent in the region today, and the widespread conflict of the early nineteenth century which was followed by a number of peacemakings. We then consider each major tribal grouping in more detail, based on the histories they presented to us. We look first at settlement in the heart of Te Urewera by hapu who are predominantly associated with Tuhoe, then at broad patterns of settlement throughout the region – beginning in the west and moving to the east.

2.2 NGA IWI O TE UREWERA – THE PEOPLES

2.2.1 Whakataki – introduction

The history of the peoples of Te Urewera is characterised by successive waves of expansion, integration, and resettlement. From the beginning, Te Urewera has seen continuous interaction between old and newer groups: those who, according to their traditions, originated from the land itself and those who migrated across the ocean. Kinship bonds woven between peoples stretched beyond the region, to hapu and iwi throughout Te Ika a Maui. This is a human history that defies the common depiction of Te Urewera as isolated and removed. In the Maori world, isolation was rarely the norm. Te Urewera was no different: the net of whakapapa stretched far across neighbouring regions and further afield.

As in every tribal area, hapu formed throughout Te Urewera whose identity was based in an eponymous ancestor whose name was taken by the hapu. Kinship

links, forged through intermarriage, secured and strengthened alliances between hapu. Within Te Urewera, the very earliest peoples survived as autonomous groups in their own right after the arrival of the last wave of named waka from Hawaiki. In most cases, these early peoples would form an integral part of the hapu that emerged after the arrival of these waka. Tipuna of the original inhabitants were often as important in descent lines as those from Hawaiki who brought new strands of whakapapa. But new hapu and ultimately iwi formed who came to dominate Te Urewera in more recent times.

2.2.1.1 *Nga Tipuna Onamata – first peoples*

Numerous early peoples – all with distinct origins – settled in and around Te Urewera. They established their own unique connections to the land, imbuing it with the spirit of passing generations. They were also mobile, expanding from their original settlements into regions formerly unoccupied. Though ancient, these peoples did not remain isolated: their rohe contracted as they encountered and interacted with one another.

The people whose whakapapa links extended most widely throughout the region were the descendants of Toi. They were known as Te Tini o Toi – the multitudes of Toi. This tribal name is testament to his wide influence throughout New Zealand. Many iwi today source their origins in Te Tini o Toi. According to most traditions, Toi arrived in Aotearoa from Hawaiki. He and his descendants settled and spread out across the Bay of Plenty, thus giving the first name for the region – Te Moana a Toi. Te Tini o Toi gradually extended their reach eastwards, settling in the alluvial valleys on the northern edges of Te Urewera.³

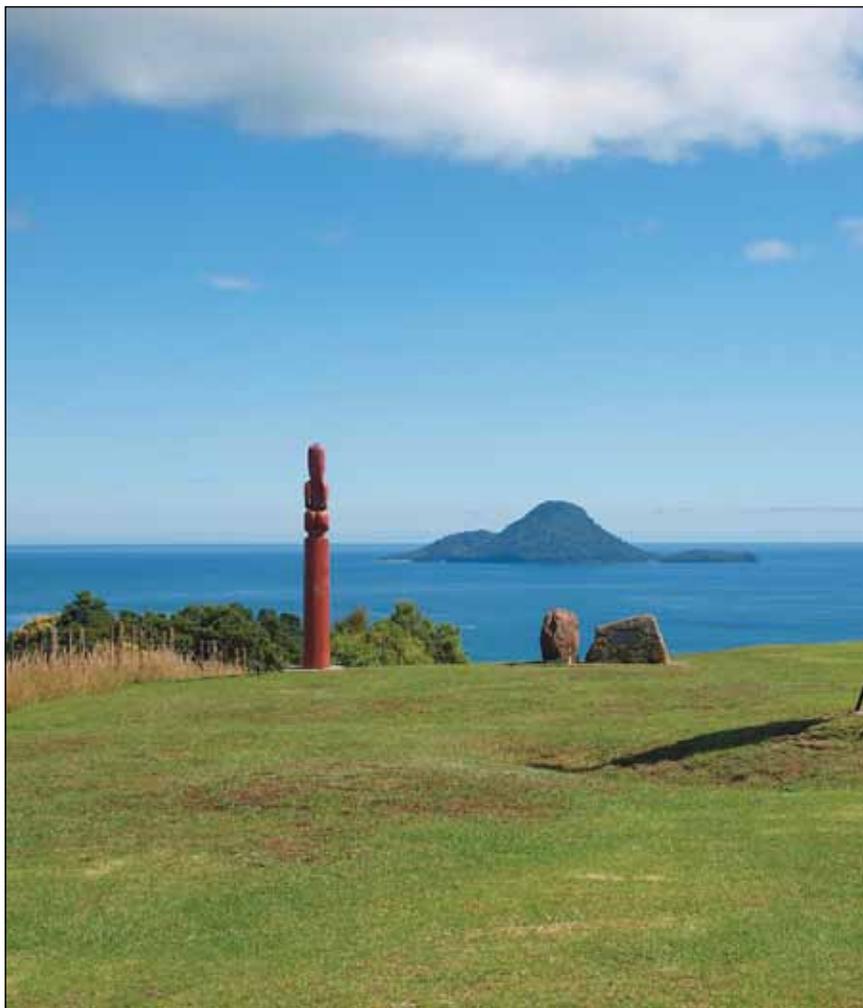
From Te Tini o Toi other distinctive groups formed. Ngai Turanga, whose tipuna was Turanga-Pikitoi, held the lands at Ruatoki and Opouriao.⁴ Another people who descended from Toi were Te Marangaranga. They became established in the Te Whaiti region. Toi was known to have discovered the area after arriving in the Bay of Plenty. Thus, the region along the Whirinaki River eventually became known as Te Whaiti-nui-a-Toi – the great canyon of Toi. Groups descended from Toi also spread to the east of Te Urewera, down the East Coast to Turanga.⁵ Of most importance to the peoples of Lake Waikaremoana was Toi's descendant Mahu-tapoa-nui. It was from his daughter, Haumapuhia, that the name of the lake

3. Te Wharehuia Milroy and Hirini Melbourne, 'Te Roi o te Whenua: Tuhoe Claims under the Treaty before the Waitangi Tribunal' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1995) (doc A33), p15; Tamaroa Raymond Nikora, brief of evidence, 17 November 2003 (doc B11), pp 6–7; Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), pp 11–12; Tuawhenua Research Team, 'Ruatahuna, Te Manawa o te Ika, Part 1: A History of the Mana of Ruatahuna from Early Origins to Contact and Conflict with the Crown' (English) (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc B4(a)), p 7

4. Tamati Kruger, brief of evidence (English), 17 January 2005 (doc J29(b)), paras 4.2–4.6; Tamati Kruger, claimant translation of transcript of oral evidence, 17 January 2005, Tauarau Marae, Ruatoki (doc J48(a)), pt 1, p 5; Miles, *Te Urewera* (doc A11), p 12

5. Miles, *Te Urewera* (doc A11), p 12

Ulrich Lange



The site of Toi's pa, Whakatane. In most traditions, Toi arrived in the Bay of Plenty from Hawaiki. His descendants gradually spread across the region, including into Te Urewera. Those of the tipuna Turanga-Pikitoi (of Te Tini o Toi) settled in the northern part of Te Urewera, becoming known as Ngai Turanga.

is derived. Her ceaseless thrashing on being turned into a taniwha – her father's punishment after she disobeyed him – gave the name Waikaremoana (the sea of rippling waters).

Te Hapuoneone are another early tangata whenua group who emerged in the north of Te Urewera. They also are described as having been born of the earth. The name itself – Te Hapuoneone – means 'the earth-born people'. But Te Hapuoneone are also known to have a waka tradition. A significant Te Hapuoneone tipuna,

Early Tangata Whenua Groups

Early tangata whenua groups were Te Tini o Toi; Ngai Turanga; Te Marangaranga; Te Hapuoneone; Nga Potiki; and Ngai Tauria.

Ko Toi te tangata tuatahi ki te taunaha i te rohe ki uta o te Moana a Toi.

Toi was the first to proclaim his mana over the lands from the shores of Te Moana-a-Toi inland.

Tamaroa Raymond Nikora¹

1. Tamaroa Raymond Nikora, brief of evidence, 17 November 2003 (doc B11), p7; Tribunal's translation

Hape-ki-tumanui-i-te-rangi, is said to have arrived at Ohiwa on the Rangimatoru waka.⁶ The descendants of Hape settled at Ohiwa and in the Waimana Valley, where they are known as the original inhabitants of that area.⁷

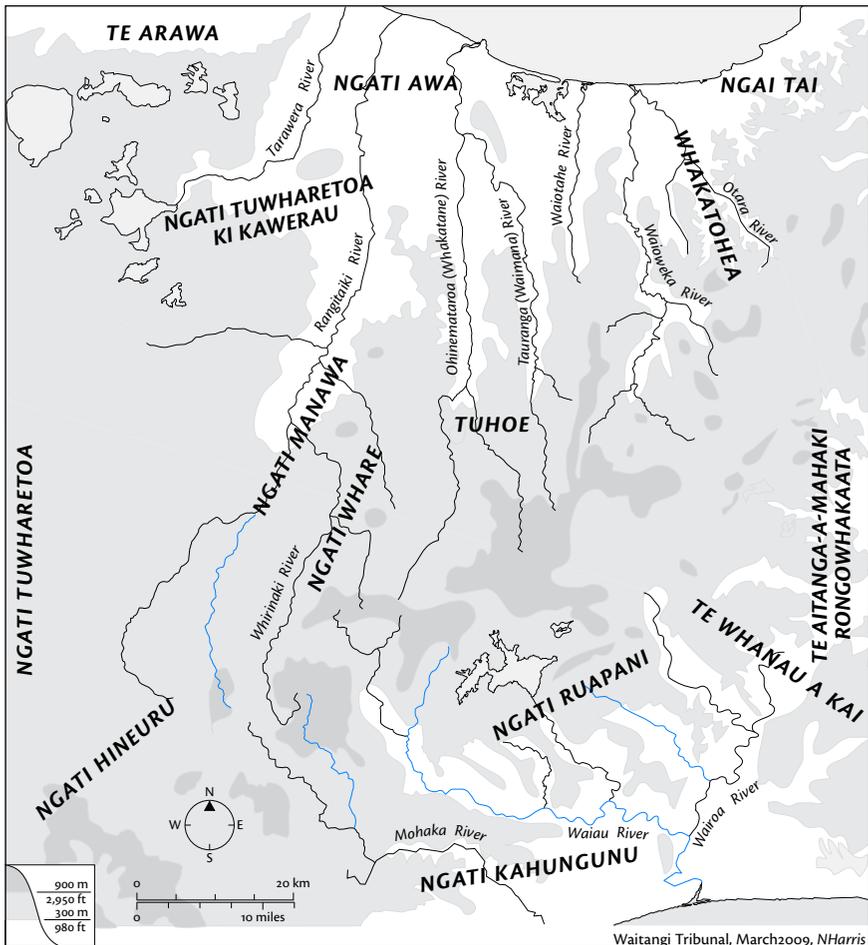
Nga Potiki, in all the traditions describing their origins, are a people born entirely of the land. The traditions explain how Potiki-Tiketike (or Potiki i) – the eponymous ancestor of Nga Potiki – was the son of a union between Te Maunga (the mountain) and Hinepukohurangi (the mist). The world of Nga Potiki was Te Urewera. They established settlements in the Ruatahuna and Maungapohatu districts, and gradually expanded north to Ruatoki and Waimana and west to the Rangitaiki district. Over many generations they came to occupy a great expanse of the region.⁸

These three groups – Te Tini o Toi, Nga Potiki, and Te Hapuoneone – occupied Te Urewera and the northern alluvial plains up until the arrival of the last wave of waka. In some traditions another early group, Ngai Tauria, also lived in

6. Hape is also known as Hape-ki-tu-matangi-o-te-rangi. The waka is also known as Rangimatoru.

7. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), pp 15–16; Nikora, brief of evidence (doc B11), pp 7–8; Kruger, claimant translation (doc J48(a)), pt 1, p 3; Jeffrey Sissons, 'Waimana Kaaku: A History of the Waimana Block' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A24), p 8; Miles, *Te Urewera* (doc A11), p 12

8. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 3–12; Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), pp 14–15; Miles, *Te Urewera* (doc A11), p 12



Map 2.2: Major tribal groupings in general locations

the Waikaremoana region.⁹ They are said to have emerged from an even earlier people, Te Tini o Maru, descended from the atua Maru, and were located in valleys of the Waiau and Wairoa Rivers.¹⁰ It became apparent in our hearings, however, that not everyone accepts that such a group occupied the land before Te Tini o Toi.¹¹

9. Miles, *Te Urewera* (doc A11), p 15

10. Elsdon Best, *Waikaremoana, The Sea of Rippling Waters: The Lake, the Land, the Legends; with a Tramp through Tuhoe Land* (Wellington: Government Printer, 1897), p 26; Elsdon Best, *Tuhoe: The Children of the Mist – A Sketch of the Origin, History, Myths, and Beliefs of the Tuhoe Tribe of the Maori of New Zealand; with Some Account of Other Early Tribes of the Bay of Plenty District*, 2nd ed, 2 vols (Wellington: AH & AW Reed, 1972–73), vol 1, p 191

11. See Desmond Renata, brief of evidence, 15 October 2004 (doc H49), paras 11.1–11.12

Over time, alliances were formed between these early groups through intermarriage. By the time of the arrival of the last wave of named waka from Hawaiki, many of the emergent hapu could draw on multiple descent lines.¹² While all of these early peoples remained distinct, the range of their kinship links had extended considerably.

These early peoples remained important to the identity of the hapu (and eventually, iwi) which formed over time, following the arrival of the waka. They were more important, however, to some than to others. There is a marked difference today between those to whom early groups are honoured ancestors and those who emphasise their conquest of such groups. For most peoples of Te Urewera today, the founding tipuna remain important to their identity. They are not merely distant echoes.

2.2.1.2 *Te hekenga o nga waka – the migration*

A number of generations after the emergence of these early peoples, waka whose names are well known – and perhaps others less well known – arrived from the Pacific homeland, and the voyagers began to make their mark on the region. Of the waka that landed in Aotearoa in this later era, six were particularly significant for Te Urewera peoples: Mataatua, Horouta, Takitimu, Te Arawa, Tainui, and Nukutere. These waka were led by rangatira – including Toroa, Taneatua, Paoa, Kiwa, and Tamatea – who would become renowned tipuna. The traditions relate that many of these leaders travelled great distances as they explored the land, founding new peoples and creating an intricate web of whakapapa across the country.

The descendants of these voyagers ultimately moved into Te Urewera and neighbouring regions, integrating with the original inhabitants of the area. Sometimes these encounters were hostile. But intermarriage between emerging hapu played a crucial role in forming or cementing alliances, which in turn led to greater cooperation between them.

The waka of most significance in Te Urewera history, in terms of the wide net of whakapapa that formed among the descendants of its voyagers, is Mataatua. The commander of the waka, Toroa, along with other voyagers, made the decision to stay and settle in Te Moana a Toi (the Bay of Plenty). Toroa's descendants formed unions with the original inhabitants of the region – Te Tini o Toi, Nga Potiki, and Te Hapuoneone – and settled in local coastal areas. Tuhoe-Potiki – the great-grandson of Toroa – was the product of one of these unions. He and his brothers settled to the west of Ruatoki in the Owhakatoro Valley. Over the next few generations, the descendants of Tuhoe-Potiki and other Mataatua-descended peoples formed closer bonds with the original hapu of the area, particularly Nga Potiki of the interior of Te Urewera. Thus, a number of new hapu emerged that had strong links to both the tangata whenua and the new arrivals – all of whom

12. Tamati Kruger illustrated this point by explaining the connections between Te Hapuoneone and Te Tini o Toi: Kruger, brief of evidence (doc J29(b)), paras 2.6–2.8.

Brenda Tahī



Mataatua waka depicted on one of the rafters of the tipuna whare Te Puhi o Mataatua at Te Totara Marae, Ruatoki. The waka was of great significance in Te Urewera history after its commander, Toroa, decided to settle in Te Moana a Toi (the Bay of Plenty).

had connections to settlements up and down the Ohinemataroa (Whakatane) and Tauranga (Waimana) Rivers.¹³

At about the same period as the arrival in Te Urewera of Mataatua peoples, people descended from other waka groups – particularly Te Arawa and Tainui – were arriving from the west. Wharepakau – of Te Arawa, Tainui, and Te Tini o Toi descent – and his nephew Tangiharuru are especially important in the history of Te Urewera. Like other early leaders, they travelled across the country, naming places as they went, before arriving in the Te Whaiti region. In a number of battles, Wharepakau and Tangiharuru defeated Te Marangaranga, the original inhabitants of Te Whaiti, establishing their own place in the region. Most traditions state that Te Marangaranga either were driven away or became subsumed into newly forming groups. By and large, Te Marangaranga ancestors were not prominent in the whakapapa of the emergent hapu. The descendants of Tangiharuru later became Ngati Manawa; those of Wharepakau became Ngati Whare.¹⁴

Some of the descendants of those who arrived on the Horouta, Takitimu, and Nukutere waka migrated from eastern regions into the upper Wairoa and Waikaremoana districts. Particularly important were the descendants of Paoa (also given as Pawa) and Kiwa of the Horouta waka, and Tamatea-Arikinui of the Takitimu waka. The high-born chief Ruapani, descended from Paoa and Kiwa, is a significant tipuna in the history of the East Coast; he named many sites inland

13. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), pp 19–22; Kruger, brief of evidence (doc J29(b)), paras 7.3–7.8; Kruger, claimant translation (doc J48(a)), pt 1, pp 15–16; Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 30–44

14. Dr Robert Wiri, 'The Lands of Te Whaiti-Nui-a-Toi: The Ngati Whare Mana Whenua Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000) (doc A29), pp 47–56; Merata Kawharu and Robert Wiri, 'Te Mana Whenua o Ngati Manawa' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc C11), pp 15–33



Lake Waikaremoana, viewed from Panekire Bluff

of Turanga, and established his mana at Lake Waikaremoana. And Kahungunu, descended from Tamatea-Arikinui, is known for his many marriages; he was a great traveller. One of the many places he stopped – and made marriages – was the upper Wairoa Valley. The descendants of Ruapani and Kahungunu intermarried, forming strong lines of descent.

2.2.1.3 *Te whakatoputanga o nga hapu – the consolidation*

Several generations of interaction between ancient peoples, and those more recently arrived, saw the emergence and consolidation of new hapu. In the centre of Te Urewera, some of these hapu – such as Te Urewera and Ngati Karetehe – were direct descendants of Tuhoe-Potiki; others – such as Ngati Rongo and Ngati Tawhaki – were not. All, however, established a distinct presence in Te Urewera. The Ohinemataroa and Tauranga Rivers became important highways between the principal areas of settlement: Ruatoki and Ruatahuna in the west, and Maungapohatu and Waimana in the east. The relationship between Ruatahuna and Maungapohatu peoples also became closer. While some hapu were most strongly established in particular places, most had a presence in each of the four primary areas through strong bonds that were forged over generations. Thus, the basis was laid for the eventual emergence of Tuhoe as an iwi.

To the west, the descendants of Wharepakau and Tangiharuru put down deep roots at Te Whaiti. The people who emerged as Ngati Whare settled predominantly to the east of the Whirinaki River. Their kin – those who came to be known as Ngati Manawa – settled to the west. Although both of these groups became iwi in their own right, they maintained relationships with each other through intermarriage and through the exercise of rights to resources in shared areas. Other groups who came to settle in the west of Te Urewera included Ngati Hineuru and Ngati Rangitihi. Ngati Hineuru, descended from Apa-Hapai-Taketake, settled



Christiaan

mainly in the region south of Te Urewera known as Tarawera. They established rights in the area to the south of Te Whaiti known as Heruiwi, as did Ngati Whare, Ngati Manawa, Ngati Kahungunu, and Tuhoe. Ngati Rangitihī, a Te Arawa people, were established, they told us, in a region stretching from Otamarakau on the coast inland to Lakes Rotoehu, Rotorua, and Tarawera. They exercised rights in the Matahina region, which they also called Pokohu. Matahina was an area where Tuhoe, Ngati Awa, and other iwi all exercised rights to resources; it was the site of conflict over many generations.

Lake Waikaremoana became the domain of Ruapani's descendants. There was intermarriage between Ngati Ruapani at the lake and Tuhoe at Ruatahuna, but Ngati Ruapani remained a distinct people.

Waikaremoana lands were also the home of Kahungunu-descended peoples, particularly Ngati Hinemanuhiri, Ngai Tamaterangi, and Ngati Hinganga.¹⁵ Ngati Ruapani and Ngati Kahungunu negotiated their relationship through times of conflict and peace. Shared lines of descent could be called on both to secure allies in war and to assist peacemaking. Ruapani and Kahungunu groups, however, maintained their own spheres of influence, each establishing pa and kainga throughout the region.

Ngati Kahungunu groups settled as far north as Tahora on the eastern edge of Te Urewera. Tahora was a border area between Tuhoe in the west and groups settling from the east. As well as Ngati Kahungunu, Horouta-descended iwi – Te Aitanga a Mahaki and Te Whanau a Kai of Turanganui – also extended their settlements into Tahora.

15. Ngati Kahungunu witnesses before us tended to use 'Hinganga' in their evidence. Some witnesses, however, preferred 'Hinaanga' or 'Hinanga'. We have adopted 'Hinganga' here as it represents the majority usage. See also the sidebar on page 49.

2.2.1.4 Te riri, te maungarongo – conflict and peace

Te Urewera, like many parts of the country, experienced a major though short-lived upheaval at the beginning of the nineteenth century, with a series of conflicts throughout the region over a period of some 15 years. In the west, Tuhoe, Ngati Whare, Ngati Manawa, Te Arawa, and Ngati Pukeko (a Mataatua-descended people located in the eastern Bay of Plenty) engaged in hostilities. In the Waikaremoana region a succession of battles between Tuhoe, Ngati Ruapani, and Ngati Kahungunu left occupation in the region uncertain and insecure. In the fertile northern alluvial valleys of Ruatoki, Opouriao, and Waimana, ongoing conflict between Tuhoe, Ngati Awa, and Ngati Pukeko created similar uncertainty.

From 1818, a succession of Ngapuhi taua (war parties) made their impact on Te Urewera, although there were no direct hostilities with Tuhoe. The first two raids saw Ngati Awa and Ngati Pukeko retreat into Te Urewera, but left Tuhoe in their heartlands unchallenged and unscathed.¹⁶ The final Ngapuhi taua, along with contingents from the Hauraki iwi, Tauranga, Te Arawa, Ngati Awa, and Whakatohea, arrived at the invitation of Tuhoe chief Te Maitaranui (Te Mautaranui) to support them in their battles against Ngati Kahungunu. The Ngapuhi force, led by Pomare, again inflicted some casualties on Ngati Awa and Ngati Pukeko on its way to Ruatahuna, and there was some uncertainty about their intentions towards Tuhoe. But in the heart of Te Urewera, peace between Tuhoe and Ngapuhi was sealed, and Pomare withdrew to the coast to prepare for the attack on Ngati Kahungunu.¹⁷

Thus, Tuhoe escaped the kind of attacks mounted by Ngapuhi taua elsewhere. But attacks did come from other quarters. At this time, Tuhoe moved inland to Ruatahuna to coordinate their efforts on several fronts.¹⁸ They faced attacks from Te Arawa, from Ngati Raukawa–Maniapoto, and from Ngati Tuwharetoa. Ruatahuna was breached in these encounters more than once. In the late 1820s, after some 15 years of hostilities, peace began to return to the region. A series of peacemakings took place between Tuhoe and other iwi – the term ‘tatau pou-namu’ (greenstone doors) indicating the intention of the parties to each peace that it should be permanent. The final tatau pounamu was that between Tuhoe and Ngati Awa in 1834.

After the establishment of peace in the late 1820s and early 1830s, hapu returned to areas that had previously been battle zones. This resettlement left ongoing tensions which were to have a considerable bearing on the course of events when Te Urewera became engulfed in war in the 1860s (see chapters 5 and 6).

Having outlined these broad historical developments, we return to the history of hapu and iwi in more detail. The accounts that follow are based on the histories presented to us by each iwi in turn, reflecting their own perspectives.

We begin in the centre of Te Urewera with Tuhoe.

16. The first taua, led by Te Morenga and Hongi Hika, attacked Ngati Awa at Whakatane and on the Rangitaiki River. Ngati Awa and Ngati Pukeko withdrew into Te Urewera. Four years later, in 1822, Ngapuhi returned. Once again, Ngati Awa and Ngati Pukeko withdrew in the face of the taua; once again, Tuhoe avoided any confrontation.

17. Miles, *Te Urewera* (doc A11), pp 27–30

18. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 95

KORE rawa he tangata, he hapu, he iwi ke atu ranei i aheitia e au i a Tuhoe, e tika ana he Rangatira moku.’

NO other man, or sub-tribe, or other tribesmen were authorized by me, Tuhoe, to have the right to subdue me.’

Tuhoe whakatauaki¹

1. Tamati Kruger, claimant transcript of oral evidence, Tataiahape Marae, Waimana, 25 November 2003 (doc B31), p2; Tamati Kruger, claimant translation of transcript of oral evidence, Tataiahape Marae, Waimana, 25 November 2003 (doc B31(a)), p2

2.2.2 Tuhoe

Here, we consider the origins and formation of the Tuhoe iwi: the importance of their Nga Potiki forebears; the impact of the arrival of the Mataatua voyagers; and the importance of Ruatahuna and its leadership in the heartland of Te Urewera. Over generations, hapu emerged – some direct descendants of the tipuna Tuhoe-Potiki, others not – which all took their tribal name and identity from him. The strong links between these hapu laid the basis for an emerging iwi, whose leaders, by the early nineteenth century, were tribal leaders. It was explained to us by Tuhoe that the key to understanding their history is the single-minded preoccupation of the iwi with establishing and upholding mana – a trait that characterised both Tuhoe and their Nga Potiki ancestors. We discuss mana in more detail in section 2.3.

2.2.2.1 Na Toi raua ko Potiki te whenua: ‘From Toi and Potiki comes the land’

Tuhoe place great emphasis on their origins in the ancient people, Nga Potiki, and particularly in the eponymous ancestor Potiki-Tiketike (or Potiki 1 as he is otherwise known). For the people of Ruatahuna in particular, the primary tipuna is Potiki-Tiketike, not Tuhoe-Potiki. Nga Potiki’s origins lie in the land itself. Potiki-Tiketike was born ‘from the union of the elements of te whenua – Te Maunga [the mountain] and Hine-Pukohurangi [the mist]; at Onini.’¹⁹ To the descendants of Potiki, as the Tuawhenua researchers explain, the names of the ‘original tipuna . . . embody the mist and the mountains of the Urewera.’²⁰ Because of the nature of Potiki-Tiketike’s origins, all Tuhoe have direct ancestral ties to the land. Through him, they are tangata whenua. Nga Potiki sprang from the land; thus the land is ancestral to the people.

19. Ibid, p 3. According to the Tuawhenua report, ‘Onini is on the left bank of the Manga-o-rongo stream, near the present Ruatahuna village.’

20. Ibid, p 7

<i>Hiki ake te kohu e</i>	<i>The mist lifts</i>
<i>Ko Hinepukohurangi</i>	<i>It is Hinepukohurangi</i>
<i>Tapapa ana ki nga koawa</i>	<i>Lying in the valleys</i>
<i>Hei kakahu mo Papatuanuku</i>	<i>As clothing for the earth</i>
<i>Ka hora nei te moenga</i>	<i>The bed is laid</i>
<i>Mo te tipua nei a Te Maunga</i>	<i>For this tipua Te Maunga</i>
<i>Ki runga Onini e</i>	<i>At Onini</i>
<i>Ka hono ki a Hinepukohurangi</i>	<i>And he joins with Hinepukohurangi</i>
<i>Huraina nga rarauhe</i>	<i>Lift up the bracken fern</i>
<i>Kia puta ko Nga Potiki</i>	<i>To reveal the children of Potiki</i>
<i>Nga uri o Te Maunga</i>	<i>The descendants of Te Maunga</i>
<i>Nga tamariki o te kohu¹</i>	<i>The Children of the Mist²</i>

1. Tuawhenua Research Team, 'Ruatahuna: Te Manawa o te Ika' (Maori), 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003–04), vol 1 (doc B4), p 5

2. Ibid, vol 2 (doc B4(a)), p 5

Tuhoe see the birth of Potiki-Tiketike as equivalent to a waka tradition – a voyage from one world to another. Tamati Kruger, a key holder of Tuhoe knowledge, told us:

Kare he waka o Nga Potiki. Kare a Nga Potiki e korero ana mo Hawaiiiki. Koinei tona Hawaiiiki. Kare ona tipuna e hoe mai i nga moana whatiwhati a Kupe.²¹

Potiki did not have a canoe, Nga Potiki do not talk about Hawaiiiki. This is their Hawaiiiki. Their ancestors did not row the breaking seas of Kupe.²²

Similarly, Tuhoe kaumatua Rehita Taputu said: 'If you know where the mist comes from, then that is where I come from. I never came here on a canoe.'²³ In the early days of their existence, Nga Potiki were nurtured by the forest and streams of Te Urewera.²⁴

21. Tamati Kruger, claimant transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44), pt1, p 5

22. Tamati Kruger, claimant translation of transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44(a)), pt1, p 3

23. Rehita Taputu, summary of evidence, 11 May 2004 (doc D25), para 1

24. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 15

Ruatahuna is known as ‘Te Pa Harakeke’ – the many blades of flax. This phrase describes the importance of Ruatahuna as the place where people were nurtured and grown. Nga Potiki lines stretched from Ruatahuna into other areas of Te Urewera, as the many blades of a flax plant grow from its centre.²⁵ For this reason, Ruatahuna is seen in their histories as ‘Te Kohanga o Tuhoē’ – the origin of Tuhoē. This expansion from Ruatahuna primarily occurred through a major hapu of Nga Potiki–Ngati Rakei.

The origins of Ngati Rakei lie in the marriage of Te Aotawhena to Morakitu. Four generations after Potiki-Tiketike, Te Aotawhena came to have great influence at Ruatahuna. He and his brother Puhou were early rangatira of Ruatahuna: ‘their descendants rapidly occupied the lands about Ruatahuna.’²⁶ Te Aotawhena had seven sons – Rakeinui, Rakeiora, Rakeihakoa, Rakeiauahi, Rakeihakeke, Rakeihakoro, and Potiki 11.²⁷ These sons in turn had significant families of their own. Collectively, they came to be known as Ngati Rakei. Tamati Kruger stated that ‘the Rakei dynasty held power in Ruatahuna for many, many generations.’²⁸

The sons of Te Aotawhena were also important in the early expansion of Ngati Rakei hapu in the interior of Te Urewera and beyond. ‘Within a few generations of Potiki 1, the numbers of his descendants had grown rapidly, his tribe moved to occupy the whole of what is now Ruatahuna and Maungapohatu and established many hapu in the process.’²⁹ These places became known to Nga Potiki as ‘Te Manawa o Te Ika’ – the heart of the fish.³⁰ Ngati Rakei also moved west to Te Waiiti, Te Whaiti, and to the edge of the Kaingaroa Plains.³¹ One division of Ngati Rakei, which had gone to the Galatea district and then to Waiohau, became known as Ngati Haka.³² The descendants of Potiki 11 – the youngest son of Te Aotawhena – emerged as the hapu known as Tamakaimoana.³³ They, and Ngati Huri, became important hapu at Maungapohatu.³⁴

In Tuhoē tradition, Toi is as important as Potiki. The descendants of Toi settled in the alluvial plains in the north of Te Urewera, and particularly in the Ruatoki, Opouriao, and Owhakatoro Valleys. Tuhoē tradition stresses the importance of

25. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 25; Tamati Kruger, summary of evidence concerning ‘Ruatahuna: Te Manawa o te Ika’, 11 May 2004 (doc D28), p 3

26. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 6–7

27. *Ibid*, p 13

28. *Ibid*, p 29

29. Kruger, summary of evidence concerning ‘Ruatahuna’ (doc D28), p 6

30. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 1

31. *Ibid*, p 71; Kruger, claimant translation (doc D44(a)), pt 1, p 7; Tama Nikora, ‘Tuhoē and the Rangitaiki’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc C30), p 25

32. Robert Pouwhare, introduction to Ngati Haka Patuheuheu and Wai 726 Treaty claims, 17 November 2003 (doc B10), pp 13–14; Kruger, claimant translation (doc D44(a)), pt 1, p 7; Kruger, summary of evidence concerning ‘Ruatahuna’ (doc D28), p 24; Nikora, ‘Tuhoē and the Rangitaiki’ (doc C30), p 25

33. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 20–22

34. *Ibid*, pp 13, 22, 73

Tamati Kruger's Account of the Origins of Nga Potiki

OTHER PEOPLE talk about how their ancestors voyaged across the Pacific and landed at various places on various waka . . . The Ruatahuna people basically say that if you know where those mountains come from then that's where we come from . . .

'If you can trace where the mist comes from and if you can age it then you have discovered how long we have been here and where we come from. That to me is the true meaning of Nga Tamariki o te Kohu . . . it's the Ruatahuna people saying we are the descendants of these mountains and the mist. A very poetical way of saying "We've been here forever. We didn't come from anywhere else. I tipu mai matou i te whenua . . . We are this land and we are the face of the land. When this land emerged from wherever we were on it . . . Wherever those mountains come from that's where we come from. Wherever the mist emerges from and disappears to, that's where we come from."

'That is the meaning of "The Children of the Mist". That is why it is referred to as the Kohanga of Tuhoe . . . the origins of Tuhoe.'

Tamati Kruger¹

1. Tuawhenua Research Team, 'Ruatahuna: Te Manawa o te Ika' (English), 2 vols, (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003–04), vol 1 (doc B4(a)), p 23

the tipuna Turanga-Pikitoi of Te Tini o Toi. The descendants of Turanga-Pikitoi spread out across these northern valleys and collectively became known as Ngai Turanga. Tamati Kruger told us that 'Ngai Turanga-Pikitoi has a long standing jurisdiction in Ruatoki. This was the tribe of Tuhoe.'³⁵

Hape-ki-tumanui-i-te-rangi of the Te Hapuoneone people is also a renowned tipuna.³⁶ Tuhoe kaumatua Tama Nikora told us that 'Hapuoneone's claim to history is that they are the "earth born peoples" . . . which indeed they were.'³⁷ Like Nga Potiki, Te Hapuoneone sprang from the earth. Tamati Kruger, speaking at the Ruatoki hearing, said that 'the first people here in Ruatoki were Te Hapu-oneone . . . Te Hapu-oneone were here well before Toi.'³⁸ Hape himself came from an early marriage between Te Tini o Toi and Te Hapuoneone. This marriage, between

35. Kruger, claimant translation (doc J48(a)), pt 1, p 6

36. Hape-ki-tumanui-i-te-rangi is also known as Hape-ki-tu-matangi-o-te-rangi.

37. Nikora, brief of evidence (doc B11), p 7

38. Kruger, claimant translation (doc J48(a)), pt 1, p 3

*‘H*E tangata whakamoe tau a Hape, he makuru te ringa ki te kai, he oranga ana, he Rangatira ana, a, tona iwi. Ka tika te whakatauki ra mona, “Aurara ou ringaringa kai te rokiroki, kai te penapena, kai te rakaiwhenua.”

*‘H*APE was a man who could control the elements. His hands were prolific at tending to crops. He was the sustenance and the chief of this tribe . . . the proverb for him [is so true], “Make your hands industrious in preserving, in storing, and carefully store in a safe place.”

Tamati Kruger¹

1. Tamati Kruger, claimant transcript of oral evidence, Tauarau Marae, Ruatoki, 17 January 2005 (doc J48), pt 1, pp 5–6; Tamati Kruger, claimant translation of transcript of oral evidence, Tauarau Marae, Ruatoki, 17 January 2005 (doc J48(a)), pt 1, p 4

Te Rake of Te Hapuoneone and Rongomai of Toi, is therefore deemed particularly significant.³⁹ In Tuhoe tradition, Hape is also said to have arrived on the Rangimatoru waka.⁴⁰ He was known to have introduced the kumara to the region, and to have lived at Waimana and Ohiwa. Hape’s prominence is evident in the whakapapa.⁴¹

Tuhoe traditions record that Te Tini o Toi and Te Hapuoneone established kinship links with one another from their very beginnings, although each of these groups retained their own identity. Subsequently, a ‘new order emerged in Ruatoki . . . under the mantle of Te Hapu-oneone and Te Tini-o-Toi.’⁴² This was Ngai Turanga. One of the most significant unions of that time was that of Te Koata (a descendant of Hape) and Nukutere (daughter of Turanga-Pikitoi).⁴³ Nukutere and Te Koata had five children, the descendants of whom flourished, founding hapu that came to have long-term significance. Mr Kruger explained that many Te Urewera hapu ‘multiplied from the union of Nukutere and Te Koata.’⁴⁴ These hapu included: Ngati Kareke, Ngati Rongo, Ngati Koura, Ngati Raka, Ngai Takiri, Ngai Tamaruarangi, Ngati Tawhaki, Ngati Raumoia, Te Aitanga-Wheturoa, Te Urewera, Te Mahurehure, and Ngai Te Kapo.⁴⁵ Speaking at Ruatoki, Mr Kruger said that ‘if

39. Ibid

40. Nikora, brief of evidence (doc B11), p 8

41. Kruger, claimant translation (doc J48(a)), pt1, pp 4–6; Kruger, brief of evidence (doc J29(b)), para 2.9

42. Kruger, claimant translation (doc J48(a)), pt1, p 5

43. Ibid, pp 5–6; Nikora, brief of evidence (doc B11), pp 41, 44

44. Kruger, claimant translation (doc J48(a)), pt 1, p 6

45. Kruger, brief of evidence (doc J29(b)), paras 4.7, 4.9

someone was to inquire where all the sub tribes of Ruatoki come from, they are from here [the union of Nukutere and Te Koata].⁴⁶

These peoples settled in the alluvial plains in the north of Te Urewera, particularly in the Ruatoki, Opouriao, Owihakatoro, and Waimana Valleys. Through Tairongo (one of the grandchildren of Nukutere and Te Koata), some of these people established rights at Ohiwa Harbour. Mr Kruger emphasised that ‘Tairongo had the authority of Ohiwa. If you do not have any connection to Tairongo you don’t belong in Ohiwa.’⁴⁷ Because of this, Ohiwa is often referred to as Te Moana o Tairongo.

Throughout this time, Nga Potiki remained the pre-eminent group in Te Urewera. Their influence spread into the upper reaches of the Ruatoki and Waimana Valleys.⁴⁸ Over time, they formed alliances with Te Tini o Toi, Nga Turanga, and Te Hapuoneone. These alliances were cemented by arranged marriages. We were told that what drove Nga Potiki was mana, rather than the attainment of resources.⁴⁹ Milroy and Melbourne said:

In areas where the boundaries of the three divisions of tribes met, inevitable inter-marriages set up new alliances and groups with new identities. However, politically and economically, each tribe was an autonomous unit whose authority and jurisdiction extended to the limits of their own territories. Group security was furthered through close co-operation with other groups sharing the same environment. Co-operation was easily solicited through shared lineages that extended back to one or more of the original ancestors Potiki, Toi and/or Hape.⁵⁰

From ancient origins, these early groups became well-established peoples with their own long-standing traditions. They held authority over their own lands, yet they met and interacted – initially at the outer edges of their territories – with their neighbours. The arrival of the last wave of named waka from Hawaiki would mark a turning point in their history. For Tuhoe, Mataatua waka would be of lasting significance.

2.2.2.2 *Te tokotoru a Paewhiti: from Tuhoe comes the mana and rangatiratanga*

The early peoples of Te Urewera began to establish kinship links with the Mataatua peoples shortly after their arrival. Among the distinguished people aboard the waka when it landed at Whakatane were Toroa, its commander, and his brother Taneatua, the tohunga wairua. According to Nga Potiki traditions, Taneatua had already voyaged from Hawaiki with his father Irakewa on an earlier occasion and had then married Hinemataroa of Nga Potiki descent; his father also took a Nga

46. Kruger, claimant translation (doc J48(a)), pt1, p 8

47. Ibid, p 7

48. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 15

49. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 25–26

50. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 16

‘It was some 50 years after the landing of Mataatua that Te Tokotoru-a-Paewhiti came to establish settlements within the Ruatoki district at Owihakatoro. Their occupational rights to these lands came from their father [Tamatea-ki-te-huatahi] through Ngai Turanga, a subtribe of Te Tini o Toi and Te Hapuoneone descent.’

Te Wharehuia Milroy and Hirini Melbourne¹

1. Te Wharehuia Milroy and Hirini Melbourne, ‘Te Roi o te Whenua: Tuhoe Claims under the Treaty before the Waitangi Tribunal’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 1995) (doc A33), p 20

Potiki wife. They all returned to Hawaiki. A number of years later the Mataatua waka was built for their return to Aotearoa.⁵¹ The union between Taneatua and Hinemataroa was of great importance. Although Hinemataroa was predominantly of Nga Potiki descent, she also descended from Te Tini o Toi. She therefore had whakapapa to two of the earliest peoples of the region. Taneatua, whose travels within Te Urewera have long been remembered, is a key tipuna.⁵² Hinemataroa too had great mana. Paewhiti – the daughter of Taneatua and Hinemataroa – was thus born of considerable lineage.

Paewhiti married Tamatea-ki-te-huatahi. His parents were Wairaka, the daughter of Toroa, and Te Rangikitua, a descendant of Nukutere and Te Koata. Paewhiti and Tamatea had three sons whose impact would be lasting: Ueimua, Tanemoeahi, and Tuhoe-Potiki. Their mother referred to them ‘proudly as Te Tokotoru a Paewhiti.’⁵³ The brothers settled to the west of Ruatoki in the Owihakatoro Valley, where each of them built pa.⁵⁴ Their descendants founded numerous hapu that came to dominate Te Urewera life. Tuhoe-Potiki himself later became the eponymous ancestor of the Tuhoe iwi – a tipuna with whom different but closely related hapu could identify. Paewhiti’s whakapapa provided all the descendants of Tuhoe-Potiki with a vital ancestral connection to Nga Potiki – those who sprang from the land and maintained a position of strength in the heart of Te Urewera. This would be crucial to the development of Tuhoe.

According to Tuhoe tradition, a dispute developed between Tuhoe-Potiki and Ueimua over cultivation rights at Owihakatoro. Facing the possibility of having

51. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 30–33

52. Rongonui Tahī told us about Taneatua’s visit to Te Iho-o-kataka (the Tree-of-life) at Ohau-o-te-rangi. ‘Taneatua the famous priest of Mataatua waka . . . visited that place during his travels, he deposited the “mauri” of the Mataatua Waka at Aropaki not far from Te Tawhiwhi’: Rongonui Tahī, summary of evidence, 11 May 2004 (doc D23), pp 3–4.

53. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 37–38

54. *Ibid*, p 38

KA noho a Tuhoe ka haere ki tana tuakana ki a Tanemoeahi, ka noho raua ki te whakariterite i tetahi rari-kai-po ara ki te patu i to raua tuakana. Ko te wahi ko Paimahoe. I reira ka tutaki a Tanemoeahi me tona tira, a, ki te ope taua a Ueimua. Ko te tangata nana tenei raruraru, i tae tomuri atu.

'I te taenga atu o Tuhoe kua mau ke i a Tanemoeahi me tana huata, a Ueimua ki raro, katahi ka karangahia atu a Tuhoe, ka tae atu tera ka kii atu, "E! Ko Ueimua koe!"'

TUHOE pondered, and sought counsel from his elder brother Tane-moe-ahi. They came up with an underhanded plan to kill their elder brother. They met at a place called Paimahoe. It was there that Tane-moe-ahi and his war party clashed with the war clan of Ueimua. The man who set this [thing] in motion arrived late.

'By the time Tuhoe arrived, Tane-moe-ahi had already had Ueimua pinned down with his spear. Tuhoe then called on his arrival, "Alas, you are Ueimua!" then killed his elder brother.'

Tamati Kruger¹

1. Tamati Kruger, claimant transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44), pt 2, pp 7–8; Tamati Kruger, claimant translation of transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44(a)), pt 2, p 5

to abandon his home permanently, Tuhoe-Potiki chose instead to kill his elder brother. Milroy and Melbourne explain that 'Ueimua was slain and his heart cooked and eaten by Tuhoe[-Potiki] who thus acquired Ueimua's mana and authority'.⁵⁵ The act sparked 'a spiralling feud' that drew in hapu from Te Urewera and across Te Moana a Toi.⁵⁶

The pivotal significance of Tuhoe's act was explained to us by Tamati Kruger.⁵⁷ By killing his older brother he demonstrated his utter determination to secure mana. That act, and the single-minded resolve it embodied, reverberated through Tuhoe history. We return to this theme more fully in section 2.3.

Tuhoe-Potiki left the region and moved finally to Kawhia, but the rights he had secured were maintained by his descendants. Of Tuhoe-Potiki's two sons – Murakareke and Karetehe – only Karetehe remained at Owihakatoro to cultivate his lands and carry on his legacy. But over time, the descendants of both sons

55. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 20

56. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 38

57. Kruger, claimant translation (doc J48(a)), pt 1, p 15

came to settle in the Ruatoki district and elsewhere in Te Urewera. Murakareke's descendants came to be known as the hapu Te Urewera. The name Te Urewera, as Tama Nikora has said, is synonymous with the Tuhoe tribe.⁵⁸ It was also later adopted for the region as a whole.

In the northern lands, the emergent hapu who descended from Tuhoe-Potiki derived their ancestral rights to the land through their whakapapa to Nukutere and Te Koata – to Ngai Turanga and Te Hapuoneone. From the very beginning of their history, Tuhoe had established ancestral rights at Owihakatoro, Ruatoki, Opouriao, Waimana, and Ohiwa Harbour. The older hapu of the region – including Ngati Raka, Ngai Takiri, and Ngati Kareke (all part of Ngai Turanga) – existed in their own right alongside the new hapu.

Over the generations following Tuhoe-Potiki and his brothers, kinship links between the new arrivals and Nga Potiki developed and flourished. These links were formed through deliberate intermarriage over a long period, rather than through war or overt expansion by either side. In this way, the peoples of Te Urewera and those of the coastal valleys became further intertwined. Nga Potiki men and women were sent out to Ruatoki and Waimana, and vice versa, thus securing the link that began with Paewhiti.

Many of the hapu in Ruatahuna came eventually to exercise rights to land in Ruatoki. Ruatoki hapu similarly had rights in Ruatahuna. Whanau of all these hapu would travel the pathways along the Ohinemataroa River. The enduring use of these pathways was testified to by Korotau Basil Tamiana, who described the many walking tracks that cross Te Urewera.⁵⁹ The same process occurred over time between Maungapohatu and Waimana. As anthropologist Jeffrey Sissons says, the various hapu of Te Urewera became 'bound together like the entangled growth of the kumara vine.'⁶⁰

2.2.2.3 *Te ao o Tutonga raua ko Te Arohana: The formation of Tuhoe*

He pohatu te maunga, he manawa te whenua, he whakahirahira te tangata.

*A mountain of rock, a land of heart, an extraordinary people.*⁶¹

Many of the older hapu who were descended from Nga Potiki, Te Hapuoneone, and Te Tini o Toi remained in the generations following the arrival of the Mataatua waka – including Te Whakatane, Ngati Raumoana, and Nga Potiki. But, as we have seen, a number of new and powerful hapu emerged descended directly from Tuhoe-Potiki. These included Te Urewera (whose ancestor was Tuhoe-Potiki's son,

58. Nikora, brief of evidence (doc B11), p 8

59. Korotau Basil Tamiana, brief of evidence, 10 May 2002 (doc E40), pp 1–4

60. Sissons, 'Waimana Kaaku' (doc A24), p 9

61. Te Arohana, famed chief of Te Urewera hapu, speaking of Ngati Huri/Tamakaimoana (counsel for Nga Rauru o Nga Potiki, closing submissions, 13 June 2005 (doc N14(b)), p 16)

Murakareke), Ngati Karetehe (who took their name from Tuhoe's second son), and Ngati Koura (a hapu which developed out of Ngati Karetehe).

But there were also a number of hapu who became established in Te Urewera who drew their descent from other Mataatua tipuna. These hapu did not whakapapa to Tuhoe-Potiki, but their leaders played a crucial role in the ultimate formation of Tuhoe as an iwi. Most notable among these hapu were Ngati Rongo and Ngati Tawhaki. The eponymous ancestor of Ngati Rongo was Rongokarae – a descendant of Awanuiarangi, the tipuna of Ngati Awa. Tawhaki – the eponymous ancestor of Ngati Tawhaki – also traced descent from Awanuiarangi and thus had strong Ngati Awa connections. But he also had kinship links with Nga Potiki at Ruatahuna, where he later married a Nga Potiki woman.⁶² Their son, Tutonga, played a considerable role in establishing Ngati Tawhaki at Ruatahuna.

It was in the time of Tawhaki and of Te Arohana of Te Urewera hapu (who, a generation later, was invited to live at Ruatahuna) that Mataatua influence became increasingly important at Ruatahuna – and with it 'a number of cultural and religious practices that were accommodated alongside the traditions of Nga Potiki.'⁶³ The Tuawhenua report introduced us for instance to the Tuhoe concept of aho ariki, 'which endows their chiefs with mana and renders them tapu'. This came from Toroa, rather than Potiki or Toi. As the Tuawhenua researchers put it:

The aho ariki is an example of a 'vertical' orientation of the Matatua tradition, where the heritage directly back in whakapapa is emphasised. In contrast, the people of Nga Potiki had more of a 'lateral' disposition, emphasising linkages across hapu and whanau.⁶⁴

Both perspectives became important at Ruatahuna, we were told, in matters such as whakapapa and inheritance.

Our attention was also drawn to the crucial importance of kinship associations through pakaokao (lateral linkages made to Tuhoe). While some hapu traced direct descent (termed taketake) from Tuhoe-Potiki, others whose ancestors were not his direct descendants nevertheless connected into Tuhoe through these lateral linkages. They included Ngati Tawhaki, Ngati Rongo, and Ngati Raka – all of whom developed settlements throughout Te Urewera.⁶⁵ It was, we were told, a Nga Potiki tradition to emphasise lateral whakapapa connections: 'Who you were connected to during your lifetime was important and who you were descended from took less emphasis.'⁶⁶

The significance of pakaokao linkages for the growth of Ngai Tuhoe was explained to us in these terms: 'at a point in time, the people of Ruatahuna, as

62. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 44–46

63. Ibid, pp 54, 55

64. Ibid, p 54

65. Ibid, p 55. The Tuawhenua report explains for Ngati Tawhaki: 'Although Ngati Tawhaki ultimately came under the banner of Ngai Tuhoe, and in time many of the hapu members could trace back to Tuhoe, Tawhaki himself was not a descendant of Tuhoe-potiki.'

66. Kruger, summary of evidence concerning 'Ruatahuna' (doc D28), p 7

Brenda Tahiri



Tawhaki in the great house, Te Whai-a-te-Motu,
Mataatua Marae, Ruatahuna



Brenda Tahiri

Tuhoe-Potiki, the great grandson of Toroa and an ancestor of Tuhoe iwi, at the poutokomanawa of the tipuna whare Tapuwae, Tatahoata Marae, Ruatahuna

others of the Urewera region, made a conscious decision to align under that name of Ngai Tuhoe, for the mana tangata that could be derived from that move.⁶⁷

Although mana whenua was derived from Potiki and Toi, the mana tangata came from Tuhoe. Hence, the whakatauaiki that is of such importance to Tuhoe, which ‘emphasises the strength of this political alignment’: ‘Na Toi raua ko Potiki te whenua, na Tuhoe te mana me te rangatiratanga.’ (‘The land comes from Toi and Potiki, the sovereign authority comes from Tuhoe.’)⁶⁸ Tuhoe strength, in other words, would be grounded in both the ancient association of Nga Potiki with the land, and the more recent Mataatua tradition of inherited chiefly mana.

While the formation of lateral lines of kinship was a gradual process, the actions of prominent rangatira could create strong political alliances within a single generation. Tuhoe tradition describes Te Arohana, the famed fighting

67. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 55

68. Ibid

chief of Te Urewera hapu whom we referred to above, and a direct descendant of Tuhoe-Potiki, as a leader who formed and strengthened bonds. This is evident, for instance, in Te Arohana's enlisting the support of Maungapohatu-based hapu Ngati Huri/Tamakaimoana on two notable occasions: to avenge his son's death at the hands of Ngati Karetehe, and also against the hapu Ngati Kareke.⁶⁹ His call for assistance drew Te Urewera and Tamakaimoana closer together. Te Arohana was also involved in the building of alliances between the hapu Te Urewera and Ngati Tawhaki, following a request from Whakarotu of Ruatahuna that her husband's killing be avenged.⁷⁰ (We discuss this further in the third section of this chapter.) At the same time, Ngati Tawhaki and Tamakaimoana established a strong alliance through marriage.⁷¹

These events were crucial for the development of a Tuhoe identity. It was explained to us that it was in Te Arohana's time that 'the name of Tuhoe as a tribal collective began to be used'.⁷² During this period, the hapu of Ngati Rongo, Ngati Tawhaki, Ngati Huri/Tamakaimoana, and Te Urewera built stronger alliances; so also did the four main areas of settlement – Ruatahuna, Ruatoki, Maungapohatu, and Waimana. The cohesion that would later characterise Tuhoe's collective action was becoming evident. As we have seen, in time the hapu 'made a conscious decision to align under the name of Ngai Tuhoe'.⁷³ Tuhoe would emerge as an iwi, whose leaders might make decisions – to which all the hapu, by consensus, committed.

At the same time, the hapu extended their reach outwards. They were mobile, utilising the wide range of resources that existed in the forests and streams across Te Urewera. From their settlements in the heart of Te Urewera they became established at Heruiwi in the south and Tahora in the east. The division of Ngati Rakei who had gone to Waiohau had by this time taken the name Ngati Haka. Another hapu to emerge following this move was Patuheuheu.⁷⁴ They became Ngati Haka Patuheuheu in recognition of the close relations between them. This hapu, Robert Pouwhare told us, was of Tuhoe origins but retained a distinct identity. Mr Pouwhare described how they became a people who acted as a 'buffer' between iwi:

Na, ko Ngati Haka/Patuheuheu he iwi noho rohe i waenganui i nga iwi. Ko Ngati Awa ki te raki, ko Te Arawa ki te uru, ko Ngati Manawa me Ngati Whare ki te tonga, ko Ngati Kahungunu ki te rawhiti, ko Ngai Tuhoe ki te tuawhenua. Katoa enei iwi e taukumekume ana, e pakanga ana kia ratau tonu.⁷⁵

69. Ibid, pp 62–63; Elsdon Best, 'Te Rehu-o-Tainui', *Journal of the Polynesian Society*, vol 6, 1897, p 46 (Stephen Oliver, 'Ruatoki Block Report' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A6), p 18)

70. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 50

71. Ibid, p 57

72. Ibid, p 54

73. Ibid, pp 54–55

74. Kruger, summary of evidence concerning 'Ruatahuna' (doc D28), p 24

75. Robert Pouwhare, brief of evidence, 14 March 2004 (doc C15), p 8

Ngati Haka Patuheuheu are a people who exist in the midst of many peoples. To the north is Ngati Awa, to the west is Te Arawa, to the south is Ngati Manawa and Ngati Whare, to the east is Ngati Kahungunu, and in the heartland is Tuhoe. All of these peoples have struggled – they have fought – with each other for many generations.⁷⁶

Ngati Haka Patuheuheu, we were told, were the guardians of a western gateway into Te Urewera.⁷⁷

2.2.2.4 *Te tokotoru a Kokamutu: the consolidation of Tuhoe*

The late eighteenth and early nineteenth centuries were an important time for the consolidation of alliances within Tuhoe. These political moves were key to the defence of Tuhoe's main settlement area: Ruatahuna. From all over Te Urewera, Tuhoe hapu moved to Ruatahuna. This migration, which the Tuawhenua researchers date at 1820 or 1821, was part of the consolidation of Tuhoe so that its campaigns against other tribes on the many fronts of Te Urewera could be best managed:

The hapu of Ruatahuna and Maungapohatu were facing conflict with neighbouring tribes, the threat of invasion of their territories and the transgression of their mana motuhake. The leaders of the Tuawhenua [the region centred on Ruatahuna and Maungapohatu] now called on the might of the Tuhoe people throughout the Urewera to assist them in campaigns against Ngati Kahungunu, Ngati Pukeko in the Whirinaki region, and Te Arawa.⁷⁸

For Tuhoe, these events cemented those bonds of kinship – both pakaokao and taketake – that had formed from the time of Te Arohana.

Rangatira of various hapu – such as Te Umariki, Uhia, Te Whatupe, Te Kurapa, and Ruru – acted to unite the hapu. Ngati Rongo, a Ruatoki hapu who moved to Ohaua-o-te-rangi in this period, played a particularly important role, led by their chiefs Te Purewa and Tamahore. Te Tokotoru a Kokamutu (the three sons of Kokamutu) – Te Purewa, Tamahore, and Tumatawhero – were all renowned warriors, but it was Te Purewa who stood out for his leadership in this period, and his skills in alliance-building and peacemaking.⁷⁹

The conflict which was the context for Tuhoe consolidation began initially against peoples close to home: Ngati Manawa, Ngati Whare, and Ngati Pukeko to the west; Ngati Awa, Ngati Pukeko, and three hapu of Ngai Turanga origin (related to Tuhoe) to the north; and Ngati Ruapani to the south-east. Tuhoe also had to repel attempted invasions from afar: not from Ngapuhi as might be expected, who did not attack Tuhoe in their three incursions into the region, but rather from a succession of taua from Te Arawa, Ngati Raukawa and Ngati Maniapoto, and Ngati Tuwharetoa.

76. Tribunal translation

77. Pouwhare, introduction (doc B10), p14

78. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p95

79. *Ibid*, pp 94–97

2.2.2.4.1 TUHOE IN THE TE WHAITI DISTRICT

According to Tuhoe tradition, it was in Te Whaiti that large-scale, ongoing conflict first erupted, and Tuhoe began to draw on their collective strength. In the early years of the nineteenth century, Ngati Manawa and Ngati Whare had been involved in battles against Ngati Pukeko, who had moved to Te Whaiti intent on occupying the land.⁸⁰ In an attempt to inflict a signal blow, Ngati Pukeko enlisted the support of Tuhoe. Together at Okarea Pa, they defeated Ngati Whare and Ngati Manawa.

Ngati Pukeko were left in occupation of Te Whaiti until they decided to attack Ngati Tawhaki at Te Hika Pa (in Te Weraiti to the west of Ruatahuna). Thus, they embarked on an invasion of Ruatahuna and killed the chief Te Rangikawhetiu.⁸¹ In retaliation, and to remove the potential for future attacks, Tuhoe decided to force Ngati Pukeko from Te Whaiti. The taua that marched on Ngati Pukeko included leaders that 'represented virtually all the hapu of Ruatahuna and Maungapohatu.'⁸² Having defeated Ngati Pukeko and driven them from Te Whaiti, they made the decision to occupy the area. According to the Tuawhenua report, this was a 'major occupation of Te Whaiti district by the Ruatahuna hapu and chiefs.'⁸³ It was a settlement, we were told, by right of conquest.⁸⁴

But a full-scale occupation did not last long. Increasing conflict on other fronts, notably with Ngati Kahungunu to the south, required Tuhoe to pool their strength. As a compromise, they left chiefly women behind who married 'at Te Whaiti to hold those lands.'⁸⁵ We discuss Ngati Whare traditions relating to this period below.

2.2.2.4.2 TUHOE DEFENCE AGAINST EXTERNAL THREATS

The attempted invasion of Ruatahuna by Ngati Pukeko was followed by others. Te Arawa were the first iwi from outside the region to make their presence felt in Tuhoe's heartland. Shortly after the expulsion of Ngati Pukeko from Te Whaiti, Ngati Pukeko enlisted the support of Tuhourangi and Ngati Rangitihī.⁸⁶ After an exchange of raids, Te Arawa resolved to attack Tuhoe in their main settlement – Ruatahuna. They besieged Tuhoe at Te Tahora Pa, but Tuhoe repelled the attack. Led by key rangatira – including Uhia, Tangohou, Te Purewa, and Tamahore – Tuhoe mounted an attack against Te Arawa at Pukekaikahu, near Lake Rewerhakaitu, and defeated them, killing the Ngati Rangitihī rangatira Tionga.

80. Ibid, p 90. Best records Ngati Pukeko's move to Te Whaiti at about 1812.

81. The first was by Whakatohea, not long before: Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 86.

82. Ibid, p 93

83. Ibid

84. Ibid, p 94

85. Ibid

86. Tuhoe had previously killed a Ngati Rangitihī man in an attack in the Tarawera region; Ngati Pukeko's approach offered Te Arawa an opportunity to exact utu: Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 100.

Subsequently, Te Arawa went to Ruatahuna and made peace.⁸⁷ But the relationship between Maungapohatu and Ruatahuna was strained when the hapu Tamakaimoana refused to acknowledge this peace.⁸⁸ According to the Tuawhenua researchers, this was a significant incident in Tuhoe political history. Until that time, Ruatahuna and Maungapohatu had generally worked together. On this occasion, however, the leaders on each side stood firm. The Ruatahuna chiefs were determined to ensure that their peacemaking prevailed. Finding that Tamakaimoana intended to pursue Te Arawa and attack them, Ruatahuna sent a messenger to warn Te Arawa – who lay in wait for Tamakaimoana and inflicted a severe defeat on them. Tuhoe, under Te Purewa's authority, travelled once again to Pukekaikahu to negotiate a more enduring tatau pounamu with Te Arawa.⁸⁹ Despite this contest between Ruatahuna and Maungapohatu, we were told that 'their chiefs still continued to co-operate on matters concerning the whole tribe'. Tribal cohesion did not mean the loss of hapu independence; they were still able to exercise their own mana.⁹⁰

The Te Arawa incursion was followed soon afterwards by the arrival of a Ngati Raukawa and Ngati Maniapoto taua seeking revenge for the killing of two kinsmen. After the taua captured Te Tahora Pa at Ruatahuna, Tuhoe gathered up their collective forces and defeated the invaders. Te Purewa engaged in an 'epic duel' with the leader of the taua, Peehi Tukorehu, which ended when neither could defeat the other. Subsequently, it was Te Purewa who made peace with Ngati Maniapoto, who later called on Tuhoe to assist them against their enemies. According to the Tuawhenua researchers, this was another significant event in Tuhoe's history: they were now considered to be a feared fighting iwi who could be called upon for assistance. Ngati Maniapoto was to draw on this alliance again in 1864 to strengthen its defence against Crown invasion.⁹¹

Conflict with Ngati Raukawa and Ngati Maniapoto was quickly followed by confrontation with Tuwharetoa, who joined with Ngati Whare against Tuhoe, and marched on Ruatahuna. After initial fighting, Te Purewa led a pursuit of the force, and Te Umariki led an expedition against Tuwharetoa which culminated in a battle at Orona (Lake Taupo). These hostilities were followed by a enduring peace (a tatau pounamu) made with Herea Te Heuheu Tukino 1 at Opepe, in which Te Purewa took a crucial role.⁹²

Tuhoe had also faced the possibility of attacks by a succession of Ngapuhi taua that swept through Te Moana a Toi. As we have already noted in this chapter,

87. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 100–102. See also the section below on Ngati Rangitihi.

88. Ibid, pp 102–103

89. Ibid, pp 100–104

90. Kruger, summary of evidence concerning 'Ruatahuna' (doc D28), p 20

91. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 104–105; Hirini Melbourne, 'Te Purewa', *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.dnz.govt.nz>, last modified 22 June 2007

92. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 124. Opepe was later the site of an attack by Te Kooti on a group of soldiers.

Tuhoe were not attacked by Ngapuhi. Tuhoe were affected indirectly, however, because Ngati Awa and Ngati Pukeko had to retreat up the Ohinemataroa and Tauranga Rivers. The event of greatest significance involving Ngapuhi and Tuhoe in this period was not an act of war, but rather a peace sealed between the two iwi at Ruatahuna and Maungapohatu. This followed a journey made by Te Maitaranui (of Tuhoe and Ngati Awa) to the Bay of Islands to seek the assistance of the Ngapuhi rangatira Pomare against their enemies – most notably Ngati Kahungunu.⁹³

This conflict against iwi from distant regions largely served to consolidate the internal alliances between Tuhoe leaders. Apart from the instance when Tamakaimoana acted on their own against Te Arawa, Tuhoe leaders worked in concert to protect their homelands. Te Purewa in particular played an important role in facilitating agreement between chiefs, leading both on the battlefield and in the conclusion of peace.

2.2.2.4.3 TUHOE AT LAKE WAIKAREMOANA

Another front in this ongoing conflict was at Lake Waikaremoana. As in other areas, Tuhoe leaders called on their collective strength – and on tribal allies – this time to defeat Ngati Ruapani and Ngati Kahungunu. According to the traditions, Tuhoe had already been engaged in battles with Ngati Kahungunu when they were attacked by Ngati Ruapani. As we have seen, it was at this time that they withdrew their fighting forces from Te Whaiti in order to coordinate their efforts. They turned their attention to defeating Ngati Ruapani and Ngati Kahungunu.

Much earlier, Tuhoe had established ancestral connections to the Waikaremoana region through intermarriage. One of two key marriages was that between Te Uoro of Nga Potiki and Te Amohanga, the daughter of Ngati Ruapani chief Pukehore. They lived at Waikaremoana, but their descendants brought important strands of whakapapa to the hapu Te Urewera. The daughter of Te Uoro and Te Amohanga, Turaki-a-rauru, returned to Ruatahuna, where she married Te Arohana. Thus, Tama Nikora explained, the marriage of Te Uoro and Te Amohanga is ‘much celebrated in Te Urewera.’⁹⁴ Mihikitekapua was a descendant of the marriage (see the sidebar on pages 94 and 95).⁹⁵

A second important marriage was that of Wairaumoana and Manunui-taraki of Nga Potiki. Wairaumoana descended from Ruapani and Mahu-tapoa-nui of Te Tini o Toi, known in all Waikaremoana traditions as the discoverer of the lake. It is through this marriage that Tuhoe locate their ancestral origins to Waikaremoana, and through these lines of descent that traditions about the formation of the lake passed. According to these traditions, Mahu’s daughter, Haumapuhia, disobeyed him when he asked his children to fetch water. As punishment, she was drowned and turned into a taniwha. In her struggles to find an outlet to the sea

93. Ibid, pp139–140; Miles, *Te Urewera* (doc A11), p29; Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p36

94. Tama Nikora, ‘Waikaremoana’, report, 2004 (doc H25), pp 6–7, 65, 71

95. William Rangiuia (Pou) Temara, brief of evidence, 2004 (doc H19), p 2

she upturned the hills. Her thrashing about led to the formation of the various bays, inlets, and features of the present lake, and agitated its waters – hence its name Waikaremoana (the sea of rippling waters).⁹⁶

The descendants of Wairauamoana and Manunui became the hapu Ngati Manunui. Though located primarily at Ruatahuna, Ngati Manunui were closely related to Ngati Ruapani.⁹⁷ These two marriages represented an important development for Tuhoe; they established whakapapa links to the earliest people of the region, and important relationships with Ngati Ruapani. Although there was some early conflict between the two peoples, their relationship remained largely peaceful over a prolonged period.⁹⁸ When fighting did break out in the early nineteenth century, it happened in the context of the wider conflict that engulfed the region.

In Tuhoe tradition, by the time Ngati Ruapani attacked them at the lake around the year 1822 or 1823, they had already been involved in fighting against Ngati Hinganga (whom they called Ngati Kotore), a Kahungunu hapu, at Te Papuni (see the sidebar on page 49). Tama Nikora explained that there were many encounters between different groups that took place in the same period – both at Te Papuni and Waikaremoana, as well as on the coast.⁹⁹ Te Purewa was once again a key leader in these campaigns, which lasted some five years.¹⁰⁰ Mr Nikora explained the significance of this: ‘it was not just another episode in the ‘ebb and flow’ of the conflicts at Waikare . . . but one which eventually involved many or most Tuhoe hapu and many allies.’¹⁰¹ Tuhoe histories record that their rights to the lake and the Waikaremoana region lie primarily in take raupatu. To Tuhoe, conquest occurred through victory against both Ngati Ruapani and Ngati Kahungunu.

The first hostilities with Ngati Kotore began as a result of a succession of insults and killings. The initial event was the killing of Mahia, the son of Mihikitekapua, by Te Whakatohea at Te Papuni. When Ngati Kotore broke the rahui there imposed by Mihikitekapua, sustained fighting at Te Papuni was the result (see the sidebar on pages 94 and 95). Tuhoe subsequently engaged in battles against Ngati Kotore and other Ngati Kahungunu kin (who were called on for assistance). In the traditions, Tuhoe suffered at least one severe defeat at Maungapohatu, but also succeeded in turning Ngati Kotore off Te Papuni.¹⁰²

It was Ngati Ruapani’s killing of two Tuhoe chiefs, Te Umuariki and Kokotangiao, and their studied insult of Tipihau I, that brought Tuhoe to Waikaremoana in force. Tuhoe defeated Ngati Ruapani at Pukehuia and Whakaari Pa. By this time, a number of Tuhoe people were living at the lake – including people from the hapu Ngai Te Riu, Te Urewera, and Warahoe. At least a year had passed when Ngati Ruapani attacked their settlement at Tikitiki. The fighting men were away

96. Temara, brief of evidence (doc H19), pp 4–5

97. Best, *Tuhoe*, vol 1, p 226

98. Nikora, ‘Waikaremoana’ (doc H25), p 8

99. *Ibid*, p 10

100. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 110; Nikora, ‘Waikaremoana’ (doc H25), p 10

101. Nikora, ‘Waikaremoana’ (doc H25), p 10

102. *Ibid*, pp 12–15, 21–26

Ngati Kotore

The name 'Ngati Kotore' was used by some witnesses in our inquiry to refer to the people living at Te Papuni in the Tahora district. Ngati Kahungunu kaumatua Richard Niania explained that Ngati Kahungunu interests at Te Papuni are sourced to Ngati Hinganga (we have noted above the variant spellings of this hapu name). 'Ngati Kotore' was one of several names for Ngati Hinganga. Other names included Ngati Poroara and Ngai Te Wahanga.¹ Tuhoe kaumatua Tama Nikora agreed that Ngati Hinganga lived at Te Papuni until the outbreak of fighting in the district towards the end of the second decade of the nineteenth century, although Tuhoe, as he said, 'were inclined to call the people who lived there Ngati Kotore'. From Mr Nikora's analysis of the minutes of the Urewera commissions at the turn of the twentieth century, he added: 'the hapu names of Ngati Kotore, Ngati Poroara and Ngai Te Wahanga were used by witnesses when referring to Ngati Hinganga at Te Papuni.'²

1. Richard Niania, brief of evidence, 22 November 2004 (doc 138), p 59

2. Tama Nikora, 'Waikaremoana', report, 2004 (doc H25), p 12

at this time and many women and children who were at Te Ana o Tikitiki were killed, and their bodies thrown in the lake – an event that came to be known as Te Waikotero.¹⁰³ Through these acts 'the flames of war were ignited.'¹⁰⁴ Te Ana o Tikitiki in particular has remained a dark memory to Tuhoe.

Tuhoe speakers emphasised to us that victory in the battles that followed gave Tuhoe mana over Waikaremoana and surrounding lands. Those Ngati Ruapani groups living at the lake who had shown themselves to be enemies were defeated. But Tuhoe's victory, they said, also came with the support of those Ngati Ruapani who were already aligned with them – a relationship that had been established through intermarriage.¹⁰⁵ Rangi Mataamua outlined the Tuhoe view of these conflicts and their aftermath. He acknowledged that Tuhoe and Ngati Ruapani had whakapapa connections, especially through the tipuna Pukehore. But he said that 'following Tuhoe's conquest of Ngati Ruapani, those Ngati Ruapani who were allowed to live were absorbed by Tuhoe.'¹⁰⁶ Wharehuia Milroy added that there was intermarriage before and after the conflict. 'Those of Ruapani who had

103. Ibid, pp 15–21; Rangi Mataamua, brief of evidence, 2004 (doc H21), pp 9–12; Best, *Tuhoe*, vol 1, pp 499–504

104. Tamati Kruger, transcript of simultaneous English translation of oral evidence, Waimako Marae, Tuai (doc H72(a)), p 2

105. Nikora, 'Waikaremoana' (doc H25), pp 15–21

106. Mataamua, brief of evidence (doc H21), p 8

intermarried with Tuhoe were allowed to remain and were not driven away but were cared for and their descendants have dual descent.¹⁰⁷ The descendants of these marriages remain at the lake today. They identify Tuhoe as their iwi, but acknowledge their Ngati Ruapani heritage as well.¹⁰⁸

Resolution of the conflict with Ngati Ruapani was not the end of Tuhoe battles in the region. Conflict continued with Ngati Kahungunu until a tatau pounamu was negotiated, which has been dated at 1828.¹⁰⁹ In Tuhoe oral tradition, the tatau pounamu was set at Kuhatarewa and Turi-o-Kahu: two maunga that were married as symbols of the peace between the iwi,¹¹⁰ and the peace allowed Tuhoe to settle the lake and to hold it undisturbed.¹¹¹ Tama Nikora stated that, as a consequence of this conflict, their southern boundary was at Mangapapa, some way down the Waikaretaheke River.¹¹²

2.2.2.4.4 TUHOE IN THE NORTHERN VALLEYS

As at Waikaremoana and Ruatahuna, the conflict that occurred in the fertile alluvial plains in the northern areas of Te Urewera also served to strengthen alliances within Tuhoe. In these areas, Tuhoe leaders faced threats not only from Ngati Awa and Ngati Pukeko but also from three hapu of Ngai Turanga origins to whom they were closely related: Ngati Raka, Ngai Takiri, and Ngati Kareke.

These hapu, which emerged from the descendants of Nukutere and Te Koata, were resident primarily in the Opouriao Valley, but had close kin associations with the hapu at Ruatoki and Waimana. Milroy and Melbourne note that ‘the three were all of the same people as other subtribes of Tuhoe through their ancestral origins from Toi, Hape and Turanga Pikitoi. Before they assumed their given names of Ngati Kareke, Ngati Raka and Ngai Takiri, they were part of Ngai Turanga.’¹¹³ Matthew Te Pou, a kaumatua of Waimana, discussed the identity of Ngati Raka in particular. He described them as a semi-independent hapu, but added: ‘We are of Tuhoe.’¹¹⁴

Thus, when Ngati Raka and Ngai Takiri joined Ngati Awa in a retaliatory attack against Ngati Rongo at Ohae Pa,¹¹⁵ the emerging Tuhoe alliance faced an internal threat. Instead of splintering the alliance, however, it was strengthened. Following

107. James Te Wharehuia Milroy, brief of evidence (English), 15 October 2004 (doc H51(a)), p 6

108. Lorna Taylor, brief of evidence, 18 October 2004 (doc H17), p 2; Rangimarie Rose Pere, brief of evidence (English), 18 October 2004 (doc H41(a)), p 3; Rose Lackner, brief of evidence, 18 October 2004 (doc H42), p 2; Mataamua, brief of evidence (doc H21), p 2; Paringamai o Te Tau Winitana, brief of evidence, no date (doc H24), p 3

109. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 118

110. Ibid, p 144; Nikora, ‘Waikaremoana’ (doc H25), pp 26–30

111. Nikora, ‘Waikaremoana’ (doc H25), p 30

112. Ibid, pp 37, 43

113. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 26

114. Matthew John Te Pou, oral evidence, Waimana hearing, 10 December 2003

115. A Ngati Awa man, Takarehe, had married Mahuru of Ngati Rongo and had gone to live with her people at Ruatoki. He was killed in a dispute with a Ngati Rongo man. In retaliation, Ngati Awa led an attack on Tuhoe at Ohae Pa: Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), pp 32–33.

the successful defence of Ohae Pa, Te Purewa called on Tamakaimoana and Ngai Tama to defeat Ngati Raka and drive them from their settlements in Opouriao.¹¹⁶ A series of battles ensued, with each side attacking settlements of the other, but with no decisive victory. With conflict escalating in the west and the south, Tuhoe, as we have seen, withdrew to Ruatahuna in order to coordinate efforts on all fronts.¹¹⁷

After the final Ngapuhi taua had passed through the region, Te Purewa called on Tamakaimoana to inflict a final defeat upon the three hapu.¹¹⁸ According to Tuhoe tradition, they were driven away in a number of battles. The most critical of these occurred at Te Pou o Urutake in the Waimana Valley. Ngati Raka fled to Ohiwa, Waiotaha, and Waimana, though later they made peace with Tuhoe and returned to Waimana to live. A number of Tuhoe hapu lived on Opouriao lands, while Ngai Te Kapo remained to the north at Te Hurepo.¹¹⁹

Although Tuhoe's victory at Te Pou o Urutake signalled the end of conflict with the three related (Ngai Turanga) hapu, peace still had to be made with Ngati Pukeko and Ngati Awa. Te Purewa played a major role in these negotiations, and peace was concluded with Ngati Pukeko at Te Awahou.¹²⁰ Peace between Tuhoe and Ngati Awa was eventually settled when chiefs of the two iwi established a tatau pounamu at the maunga known as Ohui, 15 kilometres south of Te Teko. (We discuss this tatau pounamu below.) These acts of peace brought to an end a period of hostilities which had lasted close to 15 years.

2.2.2.4.5 THE CONSOLIDATION OF TUHOE – CONCLUSIONS

In two respects, this period of upheaval in the early nineteenth century was crucial in Tuhoe history, despite the significant drain it represented on Tuhoe resources, particularly in the loss of fighting men.

First, as we have seen, the conflict served to complete the consolidation of Tuhoe as an iwi. This was an outcome which had been foreshadowed generations before. Tuhoe histories stress the importance of the emergence of strong leadership at Ruatahuna over long periods of 'relative stability'. Ruatahuna was settled by a number of hapu; the outcome was 'the crossing and development of whakapapa, of traditions and knowledge, and of tikanga and expectations.'¹²¹ This was the basis of a shared culture, and a strong sense of identity.

The early nineteenth century saw many related hapu unite over a number of years, both in mounting a succession of attacks and in the defence of their rohe. They became a 'strong, cohesive political and military unit.'¹²² Te Purewa, heir to a tradition of forceful leadership, was critical to this consolidation, both in war and as a peacemaker. In the wake of this development, new Tuhoe leaders such as

116. Ibid, p 33

117. Ibid, pp 33–34

118. Ibid, p 34

119. Ibid, pp 34–35

120. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 113

121. Ibid, p 153

122. Ibid, p 150

EKI ana ahau, ko te nuinga o wenei pakanga, kare he pakanga hai hao whenua, engari hai pupuri Mana Tangata, Mana whenua.’

IAM telling you that the reason for these quarrels was not to land grab, it was because of the retention of mana of the people and mana of the land.’

Tamati Kruger¹

1. Tamati Kruger, claimant transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44), pt 2, p 19; Tamati Kruger, claimant translation of transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44(a)), p 22, p 12

Tamaikoha would emerge, who had strong connections with all the main Tuhoe settlements of Te Urewera.¹²³

Secondly, in Tuhoe traditions the conflict resulted in a significantly expanded rohe. Tuhoe state that what drove them in these conflicts was not the expansion of territory for its own sake. As they have outlined to us (and we will address this further in the final section of this chapter), their mana motuhake was vital to all aspects of their well-being. To protect it, they were sometimes on the defensive; at other times they sought expansion. Thus, as the Tuawhenua researchers put it:

From occupying mainly the areas of Ruatahuna and Maungapohatu, down the river valleys to parts of Ruatoki and Waimana, the Tuhoe tribe now held mana whenua throughout the Urewera. They had taken over Te Whaiti, Ruatoki and Opouriao, Waimana and Ohiwa, Waiotahi, Te Papuni, and Waikaremoana. They had also occupied Te Houhi. In these areas, they had fought and conquered or dispersed many tribes, including Ngati Whare, Ngati Manawa, Ngati Pukeko, Ngati Kotore, Ngati Ruapani, Ngati Raka, Te Kareke and Ngai Takiri . . . this was a massive increase in area for Tuhoe mana whenua, which occurred over a fairly short period of time.¹²⁴

This is a Tuhoe account of their history. Other iwi – Ngati Whare and Ngati Manawa in Te Whaiti, and Ngati Ruapani and Ngati Kahungunu in the Waikaremoana region – have their own histories, and we address these shortly.

The events of this period underline the central importance of Ruatahuna and Maungapohatu in Tuhoe history. Mr Te Pou stressed the significance of these ancient inland centres in his evidence: ‘In a metaphoric sense, Maungapohatu and

123. See Kirituia Tumarae and Maraea Te Ratauhina Te Pou, brief of evidence, 11 December 2003 (doc B28)

124. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 151

Ruatahuna assumed prominence as the flagstaff. It was the flagstaff where Tuhoe retreated to in times of dire need, they would retreat there to gather their strength, more importantly to combine their forces to protect the essence of their world.¹²⁵ This is a constant theme of this story from the origins of Nga Potiki right through to the emergence of a new generation of Tuhoe leaders in the 1830s and 1840s. We will say more about the forces which shaped this history in section 2.3.

2.2.3 Nga iwi o te hauauru – peoples settling from the west

The western side of Te Urewera is home to peoples closely related to Tuhoe through some lines of their whakapapa but who also claim a range of different origins. Where the Whirinaki joins the Rangitaiki River are Ngati Manawa. Upstream in the Whirinaki Valley are Ngati Whare. To the south, the land in the Heruiwi district was settled by these peoples and Ngati Hineuru. To the north is Matahina, or Pokohu as it is known to the Te Arawa iwi, Ngati Rangitihī. To the west of these areas is the Kaingaroa Plain – a significant resource for all peoples of the region.

2.2.3.1 Ngati Whare

*E ai ki na korero purakau, pakiwaitara, moteatea
He kupu wairua i kapea mai no te ao kohatu
Na nga waewae kau tipuna i takina ki roto
Hai pupuri ake i te mauri tapu ki te hau kainga
Ko Te Whaiti-nui-a-Toi whenua kite
Me okioki koutou e hika ma
Ki te mate, ki te po rangatira
Taku kuru pounamu kua riro e¹²⁶*

Ngati Whare gave evidence of their tribal origins. Their ancestral lands are located in the Te Whaiti region, where the Whirinaki River flows from its headwaters in Te Urewera. In Ngati Whare oral tradition, the Whirinaki River was formed following the permanent separation of the parent-mountains – Tuwatawata and Moerangi – from their three children, the maunga Tikorangi, Maungataniwha, and Mapouriki. The Whirinaki River (Whirinaki-a-Tane) is named because of its origins in the Great Forest of Tane; its children and grandchildren are the streams and tributaries. Ngati Whare kaumatua Jack Ohlson told us that these streams ‘represent the tears of Tuwatawata and Moerangi who weep for their children.’¹²⁷

For Ngati Whare, the Whirinaki Valley is and has always been known as Te Whaiti-nui-a-Toi – the Great Canyon of Toi. Toi, as we have discussed, is a significant ancestor in the history of Ngati Whare. Toi’s discovery of the Te Whaiti region established his mana there for generations to come. As Wiri explained, there are

125. Matthew John Te Pou, oral evidence, Waimana hearing, 10 December 2003

126. Jack Tapui Ohlson, brief of evidence, September 2004 (doc G30), p 2

127. Ohlson, brief of evidence (doc G30), p 5

many traditions associated with Toi, not only among the people of Te Moana a Toi but also throughout New Zealand.¹²⁸ After arriving at the coast, Toi travelled inland, discovering the great canyon. Robert Wiri noted that, because of this discovery, Toi is known as the ‘founding father’ of Ngati Whare.¹²⁹ Jack Ohlson stated that the proper name of Te Whaiti-nui-a-Toi is Te Whaititanga-o-te-awaawa-nui-a-Toi – the Narrowing of the Great River of Toi – a reference to the part of the Whirinaki River near Minginui.¹³⁰ However, as Wiri said, the name Te Whaiti ‘is now applied to the whole of the Whirinaki valley’.¹³¹

Toi’s descendants in the west of Te Urewera came to be known as Te Tini o Te Marangaranga. Te Marangaranga maintained the rights to the land established by Toi.¹³² For a number of generations they occupied the land, until the tipuna of Ngati Whare arrived in the region.¹³³

The eponymous ancestor of Ngati Whare – Wharepakau – descended from Toi, as did Te Marangaranga, but through different lines.¹³⁴ Like his nephew Tangiharuru, Wharepakau was also of Te Arawa and Tainui descent. Both were born in Kawhia and journeyed across the island with their people. They stayed at the Hauraki Gulf for a time with their kin Ngati Maru, and progressively travelled south, then to Tauranga moana (Oruamatua), then east across Te Moana a Toi. When they made the decision to follow the Rangitaiki River inland, a local man warned them of Te Marangaranga, who held sway over the land. Wharepakau uttered in response: ‘Tena te kotiti moe roa a Tangiharuru kai te haere atu i konei!’ (‘Beware of the military strategies of Tangiharuru which will commence from here!’)¹³⁵ At Whakapau Korero, a hill near Matata, the two chiefs made the decision to defeat Te Marangaranga. The hill was named for the exhaustive discussion that led to this decision.

In Ngati Whare tradition, victory was achieved through a number of battles, notably at Te Rourou Pa at the foot of Tawhiuau Mountain (near the modern township of Murupara).¹³⁶ After Tangiharuru had killed Haeana, the paramount chief of Te Marangaranga, Wharepakau and his people travelled up the Whirinaki River. There, they took a number of pa, defeating the remnants of Te Marangaranga, and killing Haeana’s son, Rangihaua. These episodes entrenched the mana of Wharepakau among his people and secured his legacy for future generations. The naming of the tipuna whare at Murumurunga marae after Wharepakau and his father, Taotao-ki-te-kapua, illustrates (in the words of Mr Ohlson and Anaru Te

128. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), pp 47–50

129. *Ibid*, p 47

130. Ohlson, brief of evidence (doc G30), pp 5–6

131. Robert Wiri, ‘Ngati Whare Mana Whenua’, summary of ‘Lands of Te Whaiti-Nui-a-Toi’, August 2004 (doc G7), p 5

132. *Ibid*, p 6

133. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), p 51

134. Wiri, ‘Ngati Whare Mana Whenua’ (doc G7), pp 7, 51–52

135. *Ibid*, pp 52–53

136. *Ibid*, pp 55–56

Amo) the ‘ascendancy’ of those Ngati Whare tipuna. The wharekai is named for Wharepakau’s wife, Te Atataua.¹³⁷

Ngati Whare rights at Te Whaiti, in their tradition, were established by Toi’s discovery of the region, by their descent from Toi through Taotao-ki-te-kapua, and by the conquest of Te Marangaranga by Wharepakau, followed by his permanent occupation and that of his descendants to the present day. Hence the first lines of the Ngati Whare pepeha (tribal saying):

*Ko Toi te matua,
ko Taotao-ki-te-kapua te tipuna,
ko Wharepakau te tangata, te tangata, te tangata.*

*Toi is the founding father,
Taotao-ki-te-kapua is the ancestor,
Wharepakau is the man.*¹³⁸

But the importance of Wharepakau’s conquest, as we understand it, has always been central to Ngati Whare. As Mihaka Herewini said in 1998, ‘Na te ringa kaha i riro ai nga whenua nei i a Wharepakau.’ (‘It was through right of conquest that Wharepakau acquired these lands.’)¹³⁹ Wharepakau and Tangiharuru took the mantle of the ancestral right from Te Marangaranga. According to Wiri, Te Marangaranga became ‘a distant echo.’¹⁴⁰

The descendants of Wharepakau formed hapu of their own. Wiri points out that four hapu emerged from the union of Te Wharau and Ketekura. Te Wharau was the mokopuna of Taketake – a significant rangatira in his own time who was the mokopuna of Wharepakau. From this marriage came the hapu Ngati Tuahiwi (who also trace their descent from Tuhoe), Ngati Kohiwi, Ngati Karaha, and Ngai Te Au. Three further hapu are identified as Ngati Whare. Ngati Mahanga are descended from Wharepakau’s sister Hana, and represent an important connection to Ngati Manawa.¹⁴¹ Ngati Hamua ki Te Whaiti and Warahoe ki Te Whaiti each have their origins in Ngati Awa; both have a history of mobility. Ngati Hamua also whakapapa to the ancient people Te Hapuoneone and have connections to Tuhoe (they moved to Taupo and later to Maungapohatu). Their final move was to Te Whaiti-nui-a-Toi, where they became ‘incorporated with Ngati Whare.’¹⁴² Warahoe (who

137. Anaru Te Amo and Jack Ohlson, brief of evidence, September 2004 (doc G31), p 3. There had been two earlier wharepuni at Murumurunga. The second was destroyed by fire in the early years of the twentieth century; the present house was opened in 1930.

138. Ohlson, brief of evidence (doc G30), p 4

139. Mihaka Herewini, 3 July 1998, Waikotikoti Marae, Minginui (Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), p 56)

140. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), p 52

141. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), pp 93–96; Anaru Te Amo, brief of evidence, September 2004 (doc G34), p 2

142. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), p 94

also migrated to Taupo, then Ruatahuna) are stated by Wiri to have dominant lines of Tuhoe descent but, having moved to Te Whaiti-nui-a-Toi, he said, they became a hapu of Ngati Whare, living under their mana.¹⁴³

Over successive generations, Ngati Whare established pa and kainga in Te Whaiti-nui-a-Toi. Wiri lists a total of 15 pa that were built in pre-European times.¹⁴⁴ Half a dozen more were established in 'post-European' times.¹⁴⁵ These included Ahikereru, Te Pahou, Whataroa, and Te Harema. In the nineteenth century, Ngati Whare's main place of settlement was at Ahikereru. Ngati Whare, as we noted above, view the impact of the conflict of the early nineteenth century on their rights at Te Whaiti differently from Tuhoe. They do not accept that they were conquered by Tuhoe in battles which involved the taking of utu (revenge) rather than the taking of land. Defeat, as they see it, was not followed by Tuhoe occupation.¹⁴⁶ Nor do they accept Best's statement that, after the expulsion of Ngati Pukeko from Te Whaiti by a Tuhoe force, 'Tuhoe found themselves the sole occupants of Te Whaiti and Whirinaki'.¹⁴⁷ According to Wiri, Best's claim 'prejudicially favours' the evidence of Paetini Wi Tapeka of Tuhoe.¹⁴⁸ Ngati Whare did eventually return to Te Whaiti, he stated. In a further fight with Tuhoe, those who were related to Tuhoe were spared, and (after being cared for in Ruatahuna) were 'sent back to Te Whaiti to live'. The reconciliation was sealed by a marriage.¹⁴⁹ As we have seen, Tuhoe later refused to attack Ngati Whare because of the number of children of Tuhoe descent that were (by that time) at Te Whaiti-nui-a-Toi. Subsequently, according to Ngati Whare histories, 'Tuhoe withdrew from Te Whaiti-nui-a-Toi and left Ngati Whare to maintain their *ahi-ka* or their burning fires over the land'.¹⁵⁰

Ngati Whare, as Richard Boast and Robert Wiri both outlined, have maintained this position in various judicial forums since the time of the first Urewera commissions. In 1901, for instance, Ngati Whare protested against the commission's decision that Tuhoe were the 'permanent occupiers' of the Te-Whaiti-nui-a-Toi block, stating that Ngati Whare cultivations, food-gathering places, and burial places were all located on that land.¹⁵¹ In 1907, Raimona Heretaunga stated: 'It was not a conquest which established ownership over this land'.¹⁵² Hiwawa Whatanui also stated in 1907: 'I have never seen Tuhoe living here but Paerau came here for a short time and then returned [to Ruatahuna]. I only saw Paitini here once or twice'.¹⁵³

143. Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), pp 93–96

144. Ibid, pp 109–112

145. Ibid, pp 112–115

146. Ibid, p 75

147. Ibid, p 81

148. Ibid

149. Ibid, pp 84–85

150. Ibid, p 87

151. Richard Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi: A History' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A27), p 29

152. Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p 81

153. Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p 87

Unknown (ATL, PA COLL-8066-09-28)

Elsdon Best and His Work



Elsdon Best was born in 1856. After a few years as a public servant in Wellington and a farm labourer in Poverty Bay, Best joined the Taranaki armed constabulary. His brother-in-law, Walter Gudgeon, an officer in the constabulary, helped him secure a place in a native contingent of the colonial militia. At this time, Best began to study Maori history and culture. He was encouraged in this by Gudgeon and fellow Taranaki settlers Percy Smith and Edward Tregear. In 1881, he took part in the raid on Parihaka. After leaving the militia, he spent three years working in the United States and five years running a sawmill near Waikanae with his brother Walter.

In 1891, Percy Smith invited Best to help found the Polynesian Society. Best wrote articles for the society's journal, interviewing kaumatua. When conflicts

over surveys arose in Te Urewera, Smith, a senior Lands and Survey official, proposed that Best be sent as a mediator with the road building team. Best's official roles included paymaster, storeman, and the gathering of information about pre-European Maori society. In 1898, his mentor Percy Smith became Chairman of the Urewera Commission, established under the Urewera District Native Reserve Act 1896 to investigate titles in the district. Smith appointed Best secretary for the Commission, a position that gave him an opportunity to record much evidence on tribal history and tradition.

In 1903, Best married Adelaide Wylie, a Murupara schoolteacher. They lived at Ruatoki from 1904 to 1910 while Best was employed by the Department of Public Health as a Maori health inspector. During this time he wrote the major work *Tuhoe*, although it was not published until 1925. In 1910, Best was appointed to a position at the Dominion Museum, which he held for 16 years, producing 11 publications on aspects of pre-European Maori social life and material culture.¹ In 1922, he was elected president of the Polynesian Society. Best died in Wellington in 1931.

The significance of Best's work on Tuhoe and Te Urewera has often been disputed, and differing views are held as to its value. Such views, not surprisingly, were aired at our hearings. In considering Best's work, we should be mindful first of the importance of the knowledge passed to him by Te Urewera kaumatua. In the first edition of *Tuhoe* (1925), Best acknowledges in his mihi: Tutakangahau of Nga Potiki; Paitini Tapeka of Ngati Maru; Tamarau Waiari of Ngati Koura; Rewi Rangiamio of Ngati Manawa; Hamiora Pio of Ngati Awa, and Himiona Tikitu of Nga Maihi; as well as others who had shared their knowledge with him. We note the willingness of those kaumatua to talk to him, which perhaps reflects a fear that traditions would be lost, and certainly an assessment that Best was to be trusted. We note Best's own dedication to recording that knowledge. He provided detailed accounts of encounters between hapu and iwi as provided by the kaumatua he worked with, and of the dynamics which shaped them; explanations of whakapapa and of crucial marriages and relationships; and accounts of the origins of placenames and whakatauaki.

There is a general view, however, that those kaumatua to whom Best was closest were Tuhoe, and that this is reflected in the histories and traditions he has recorded in his book. Other Te Urewera iwi are very conscious of this. Robert Wiri, in his critique of Best's work, stated that one of the problems with it is:

that it attempted to present an integrated tribal history of Te Urewera that can be described as Tuhoecentric. Furthermore, in presenting a Tuhoecentric history of Te Urewera the identity of other tribes in the area, such as Ngati Whare of Te Whaiti-nui-a-Toi, became buried and disguised as a history of Tuhoe.²

1. Jeffrey Sissons, 'Elsdon Best', DNZB, <http://www.dnzb.govt.nz>, updated 22 June 2007

2. Dr Robert Wiri, 'The Lands of Te Whaiti-Nui-a-Toi: The Ngati Whare Mana Whenua Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000) (doc A29), p 40

Richard Boast added that Best's account of relationships between Tuhoe, Ngati Whare, and Ngati Manawa is 'very dependent on Tuhoe evidence and completely ignores countervailing evidence given by Ngati Whare and Ngati Manawa themselves'.³

We must acknowledge the context in which Best published the histories given to him. He addressed *Tuhoe* to a European audience – though, as Jeffrey Sissons said, he may not have expected his audience to be greatly interested in much of the detail – and he thus tried to communicate with that audience in various ways. For instance, he inserted his own comments – often cynical or humorous – on Tuhoe traditions. He described, for example, Tuhoe's killing of two people of Ngati Awa as 'two little matters' to avenge, and added: 'Ngati-Awa flung their blood-red banner to the breeze, or would have done so, doubtless, had they possessed such an article.' One of the killings described – that of Takarehe, who was killed and then eaten by his wife's relations after he had struck her, was 'a striking lesson anent [about] the striking of women, but also shows plainly to what uses a son-in-law may be put'.⁴

Best also gave his own conclusions on the significance of the traditions and histories he presented, which reflected what we might call the worldview of late nineteenth- to early twentieth-century ethnologists as they struggled to produce a cohesive chronological account of the early Maori settlement of New Zealand from the many tribal traditions and whakapapa they collected. Such conclusions often sound very outdated today. And Best sometimes indulged in passages of romantic prose designed to engage the interest of his Pakeha readers. Thus, he introduced the early history of the Waikaremoana district in this way:

We will fare eastward against the rising sun for a space, and camp awhile by the shores of the Sea of the Rippling Waters. That we may know these clans of neolithic man that have made their homes around the picturesque Star Lake, and have woven many myths and weird tales of folk-lore anent its forest-clad cliffs and the deep waters that lie beneath.⁵

It is passages like these which have tended to discredit Best's work today. Certainly, his writing, because of the factors we have outlined, seems an odd mixture. But it is important not to lose sight of the key basis of his work: the histories and traditions as they were passed on by the kaumatua of that time.

Differing views of Best's works today (which are also held among Tuhoe themselves) may reflect reactions to these various elements in those works.

3. Richard Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi: A History' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A27), p 10

4. Elsdon Best, *Tuhoe: The Children of the Mist – A Sketch of the Origin, History, Myths, and Beliefs of the Tuhoe Tribe of the Maori of New Zealand; with Some Account of Other Early Tribes of the Bay of Plenty District*, 2nd ed, 2 vols (Wellington: AH & AW Reed, 1972–73), vol 1, pp 322–323

5. *Ibid*, p 187

Ngati Whare do not accept that they were conquered by Tuhoe. Nor do they accept that they ceded the mana of the land to any other group. They maintain that even though they were defeated and driven off the land at various times by Ngati Pukeko and Tuhoe, these iwi never followed up victory with sustained occupation. Hence, as they see it, the mana remains with them.

2.2.3.2 Ngati Manawa

*Ko te oranga o te tangata ko te whenua
Ko te oranga o te whenua ko te toto*

*The sustenance of man is the land
The sustenance of the land is blood*¹⁵⁴

Ngati Manawa trace their descent from the ancestor Tangiharuru. Tangiharuru – like his uncle Wharepakau – descended from Tainui and Te Arawa, and from Toi.¹⁵⁵ After a quarrel with relatives at Wharepungu in Waikato (where he was living), Tangiharuru journeyed with Wharepakau and other whanaunga across the country, staying at Hauraki (where he is said to have ‘achieved a reputation akin to Kahungunu’), then moving to Tauranga Moana and Matata, before arriving in the Rangitaiki region.¹⁵⁶ The name ‘Ngati Manawa’, according to kaumatua Henry Tawhai Bird, came from four tipuna who preceded Tangiharuru – Manawatu, Manawarere, Manawaoho and Manawakotokoto.¹⁵⁷ The name ‘Ngati Manawa’ was first used to identify the people on their arrival at Te Moana a Toi, before their move to their homelands in the west of Te Urewera.

In Ngati Manawa tradition, Tangiharuru’s mana derives from his feat in leading his people, in difficult circumstances, across the country to new lands. Kaumatua Wiremu Bird described the significance of Tangiharuru and Wharepakau’s discussion at Whakapau Korero: ‘according to Ngati Manawa history [the hill] is named after the strength of Tangiharuru to motivate his group to go forth in search of good land.’¹⁵⁸ Merata Kawharu explained in her report for Ngati Manawa that Tangiharuru ‘was not only a noted warrior, but also an explorer who was eager to find a suitable environment in which to live.’¹⁵⁹ As we have seen, it was at Whakapau Korero that Tangiharuru and Wharepakau decided to go up the Rangitaiki to defeat the original inhabitants of the region, Te Marangaranga.

Like Ngati Whare, Ngati Manawa emphasise their defeat of Te Marangaranga in establishing their rights in the region. Wiremu Bird listed 10 battles fought with them.¹⁶⁰ Peraniko Te Hura of Ngati Manawa underlined the significance of

154. Wiremu Bird, brief of evidence, 11 August 2004 (doc F33), pp 3, 10

155. Kawharu and Wiri, ‘Mana Whenua’ (doc C11), pp 15–16, 23

156. Ibid, p 24; Wiremu Bird, brief of evidence, 11 August 2004 (doc F33), pp 14–15

157. Kawharu and Wiri, ‘Mana Whenua’ (doc C11), p 24

158. Bird, brief of evidence (doc F33), p 15

159. Kawharu and Wiri, ‘Mana Whenua’ (doc C11), p 23

160. Bird, brief of evidence (doc F33), pp 15–16

the conquest before the Native Land Court in 1878: ‘The land was Marangaranga’s who was defeated and driven away by Tangiharuru who then took possession. All marks on it are his and his descendants have occupied it to the present day.’¹⁶¹ This was echoed by Wiremu Bird, who told us that from the time of the conquest of Te Marangaranga by Tangiharuru and Wharepakau ‘the fires of occupation of Ngati Manawa and Ngati Whare have continuously burned on this land’ (‘Mai i ena wa ki enei ra kei te ka tonu te ahikaroa o Ngati Manawa me Ngati Whare ki enei whenua’).¹⁶²

Unlike other iwi – who give a strong emphasis to early peoples – Ngati Manawa do not consider Te Marangaranga tipuna to be significant within their whakapapa. Kawharu records that in Ngati Manawa tradition, as given by Pem Bird, Te Marangaranga were not completely ‘wiped out as a people’. ‘Rather, their rights and authority in lands were taken, but survivors either fled or remained and intermarried with the conquerors.’¹⁶³ But Ngati Manawa do not derive their ancestral rights to the land through Te Marangaranga. Like Ngati Whare, Ngati Manawa whakapapa to Toi through a different line.¹⁶⁴

Wiremu Bird explained that, having defeated Te Marangaranga, the two iwi then divided their interests in the land they had acquired: ‘to the east of the Whirinaki was allocated to Wharepakau; and to the west of the Whirinaki was allocated to Tangiharuru.’¹⁶⁵ In the wake of this division, Ngati Manawa and Ngati Whare negotiated the access and use of resources with each other. Although conflict erupted on occasion, Ngati Manawa and Ngati Whare maintained strong relationships with each other.

Ngati Manawa developed kinship links with other peoples of the region, in addition to those with Ngati Whare. Wiremu Bird drew two crucial links to our attention as he opened his evidence at Rangatahi marae: ‘Apa-Hapai-Taketake te Tipuna whare, Te herenga ki Te Arawa’ (‘Apa-Hapai-Taketake is the ancestral house and genealogical link to Te Arawa’).¹⁶⁶ Apa-Hapai-Taketake was descended from Atuamatua, a well-known Te Arawa ancestor. Apa-Hapai-Taketake lived several generations before Tangiharuru.¹⁶⁷ The second link to which he drew our attention was Tangiharuru, who was descended from Te Arawa ancestors, including Tamatekapua and Houmaitawhiti. And three of his wives – Kuranui, Kuraroa, and Kuraiti – were Te Arawa.¹⁶⁸ These were the sisters of Takapumanuka, who gifted them as wives to Tangiharuru following the decision he and Wharepakau took at Matata to secure the land at Rangitaiki.¹⁶⁹ The Ngati Manawa rangatira

161. Peraniko Te Hura, Opotiki Native Land Court, minute book 1, 3 September 1878, fol 193 (Kawharu and Wiri, ‘Mana Whenua’ (doc C11), pp 25–26)

162. Bird, brief of evidence (doc F33), pp 8, 16

163. Merata Kawharu, brief of evidence, 30 July 2004 (doc F10), p 7

164. *Ibid*, p 23

165. Bird, brief of evidence (doc F33), p 16

166. *Ibid*, pp 3, 10

167. Kawharu and Wiri, ‘Mana Whenua’ (doc C11), pp 17–18

168. *Ibid*, p 56

169. Bird, brief of evidence (doc F33), pp 11, 15

Peraniko Te Hura also traced his descent to Tamatekapua through Tarawhai and Rangitihī.¹⁷⁰

Ngati Manawa had strong links with Ngati Hineuru, through Tangiharuru and Apa-Hapai-Taketake, tipuna of Ngati Apa, the descent group ancestral to Ngati Hineuru. And they had links with Tuhoe and with Ngati Awa. Over time, the descendants of Tangiharuru formed hapu; Kawharu states that in the nineteenth century there were eight.¹⁷¹ Ngati Hui, Ngati Tokowaru, and Ngati Koro were the descendants of Tangiharuru and his senior wife Takuatē. From his marriage with Kuranui came the hapu Ngati Kauae, Ngati Hape, and Ngati Marakoko. Ngati Mahanga were the descendants of Mahanga, son of Tangiharuru and Kuraiti; as we have already seen in this chapter, they settled at Te Whaiti, establishing strong kin associations with Ngati Whare.¹⁷² Kawharu argued that Ngati Manawa exercised rights over a large region in the west of Te Urewera. Te Whaiti was their main area of settlement, as it was for Ngati Whare.¹⁷³ But their rohe included Kaingaroa, Heruiwi, Whirinaki, Pohokura, and Kuhawaea.¹⁷⁴

Ngati Manawa, like other iwi of the region, were embroiled in the conflicts of the early nineteenth century. They fought against Ngati Apa and Tuhoe, Ngati Pukeko, Ngati Rangitihī, and Te Arawa. But Ngati Manawa maintain that, while they were defeated on occasion, the rights they held were never extinguished. Ngati Manawa histories are recorded in Kawharu's report.¹⁷⁵ She says that they 'repulsed Ngati Pukeko from their attempts to acquire mana whenua in the Te Whaiti area.' Similarly, they were 'successful in eliminating any attempt by Te Arawa to acquire mana whenua' in their territory.¹⁷⁶ In cross-examination, Dr Kawharu said that there were 'numerous statements' in the Native Land Court 'strongly denying they were driven away by Tuhoe.' While Ngati Manawa admitted defeat by Tuhoe, they were able to regather themselves.¹⁷⁷ Ngati Manawa returned to the land on their own terms, they state, where they remained.

2.2.3.3 Ngati Hineuru

Ngati Hineuru settled on the edges of Te Urewera, particularly in the area to the south-west of Lake Waikaremoana around what would later become the Napier to Taupo road. They are an iwi who have developed in relatively recent times: the ancestor from whom they take their name, Hineuru, lived in the early nineteenth century. They are, nevertheless, a distinct iwi.¹⁷⁸ According to kaumatua Kori Hill, 'Ngati Hineuru's identity was never lost. . . . Ngati Hineuru still retain their mana

170. Kawharu and Wiri, 'Mana Whenua' (doc C11), p 70

171. *Ibid*, pp 53–62

172. *Ibid*

173. Kawharu, brief of evidence (doc F10), p 10

174. *Ibid*, pp 8–10

175. Kawharu and Wiri, 'Mana Whenua' (doc C11), see esp pp 44–53

176. Kawharu, brief of evidence (doc F10), p 11

177. Merata Kawharu, under cross-examination by counsel for Wai 36 Tuhoe, Rangitahi Marae, Murupara, 17 August 2004 (transcript 4.9, p 7)

178. Counsel for Ngati Hineuru, closing submissions, 30 May 2005 (doc N18), p 4

and rangatiratanga until this day.¹⁷⁹ As with other peoples of the region, their tipuna migrated to Te Urewera from far away.

Ngati Hineuru emerged out of an earlier descent group known as Ngati Apa. The ancestor of Ngati Apa, as we have said, was Apa-Hapai-Taketake, who lived at the foot of Putauaki. He is variously described as a son of Tia, or of Maka – both Te Arawa waka.¹⁸⁰

Kori Hill explained to us their history from the time of Apa-Hapai-Taketake. Frequent clashes with Ngati Awa and Ngati Tuwharetoa ki Kawerau forced the descendants of Apa to abandon the Putauaki region. From Putauaki, Ngati Apa migrated to Rotoaira south of Taupo. After some time, they became embroiled in conflict with the local peoples, and Ngati Apa trekked away from there in three divisions. One division migrated down the Rangitikei River; one returned east and settled among Ngati Manawa at Te Whaiti and Whirinaki; and the third division went to Runanga, on what became the Napier to Taupo road.¹⁸¹

It was from within this third group that Ngati Hineuru developed as a distinct people. Hineuru was the daughter of Tukuha and lived about 14 generations after Apa-Hapai-Taketake.¹⁸² The death of Tukuha at the hands of Ngati Rangitiki led to the increasing conflict between Tuhoe and Te Arawa described earlier in this chapter. On discovering the fate of Tukuha, Ngati Apa recruited Tuhoe's support, which culminated in the battle at Pukekaikahu.

Throughout this time, Hineuru's people maintained their place at Runanga. From Runanga, they also moved east to establish further pa and kainga in the region, primarily at Pohokura and Tarawera (not to be confused with Tarawera at Rotorua). According to Kori Hill:

Na te nohonoho o Ngati Apa i enei pa kainga ka whanau mai te karanga-tanga hapu a Ngati Hineuru.¹⁸³

When Ngati Apa settled on these places a new hapu emerged called Ngati Hineuru.¹⁸⁴

Ngati Hineuru consider their rohe to be marked by a series of rivers in the vicinity of what is now the Napier to Taupo road.¹⁸⁵ The northernmost of these is the Te Hoe River, located in what has come to be known as the Heruiwi and

179. Kori Hill, simultaneous translation of evidence as read by Te Whetu Tupuwai, 17 September 2005, Murumurunga Marae, Te Whaiti

180. Best, *Tuhoe*, vol 1, pp 151–153; DM Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 472

181. Kori Hill, brief of evidence, 6 September 2004 (doc G11), pp 3–4; Rere Puna, brief of evidence, 6 September 2004 (doc G10), pp 4–5

182. Hill, brief of evidence (doc G11), p 4

183. Ibid

184. Kori Hill, simultaneous translation of evidence as read by Te Whetu Tupuwai, 17 September 2005, Murumurunga Marae, Te Whaiti

185. Puna, brief of evidence (doc G10), p 4

Heruiwi 4 blocks. According to Ngati Hineuru kuia Gladys Campbell, Hineuru left her two sons to occupy the land at Heruiwi. Her eldest son, Rangihurutini, was buried there.¹⁸⁶

Ngati Hineuru's connections to the land in the Heruiwi region were strengthened by their ongoing kin links with Ngati Manawa. This bond stems from their shared descent from Apa-Hapai-Taketake, and from Hineuru's marriage to a Ngati Manawa man. Their son, Tokowaru, became an important figure in Ngati Manawa history. Ngati Manawa are not the only iwi with whom Ngati Hineuru share close relationships. They have come to share connections with Tuhoe, Ngati Kahungunu, and Tuwharetoa. They have been and are, however, separate from all these groups.¹⁸⁷ Rere Puna told us that he regards Tuhoe as Ngati Hineuru's 'closest relatives'.¹⁸⁸

Ngati Hineuru's lands to the south of Heruiwi, outside the Urewera inquiry district, were taken by the Crown in the Mohaka–Waikare confiscation. Despite the confiscation, Ngati Hineuru have maintained their presence on the land, particularly at their primary marae, Te Haroto.

2.2.3.4 Ngati Rangitihī

*Rangitihī upoko whakahirahira
No Rangitihī te upoko i takaia ki te akatea
Ehara na te aitanga-a-Tiki*

*Rangitihī the proud and hard headed one
whose head was bound with akatea.
Well! He is a descendant of Tiki.*¹⁸⁹

The people of Ngati Rangitihī have their origins in the Te Arawa waka. Ngati Rangitihī spokesman David Potter told us of the origins of that waka and of his people's descent from its captain, Tamatekapua.¹⁹⁰ Rangitihī, the eponymous ancestor of the iwi, was one of many descendants of Tamatekapua and of others aboard the waka who became the founders of the Te Arawa people. He lived about four generations after Tamatekapua and had eight children – all of whom became eponymous ancestors of later hapu. They are collectively known as Nga pu manawa e waru – the eight beating hearts of Rangitihī. Ngati Rangitihī trace their descent from Rangitihī's son, Rangiaohia, and his three children.¹⁹¹

This tribe's main place of occupation in the generations after Rangitihī was between Lake Tarawera and coastal Te Moana a Toi. Rangitihī was born at Maketu.

186. Gladys Campbell, brief of evidence, 8 September 2004 (doc G25), pp 2–3

187. Counsel for Ngati Hineuru, closing submissions (doc N18), p 4

188. Puna, brief of evidence (doc G10), p 7

189. Ngati Rangitihī pepeha (David Potter, brief of evidence, 26 March 2004 (doc C41), p 7)

190. Potter, brief of evidence (doc C41), p 7

191. Ibid, pp 7–8

Rangiaohia moved to Tarawera (in the Rotorua district). When Rangitihī died, his bones were placed in a cave at the summit of Ruawahia – one of the two peaks of Mt Tarawera.¹⁹² This provided the descendants of Rangitihī with an ongoing ancestral connection to the land. They continued to reside there until the 1886 Tarawera eruption forced them to evacuate. Subsequently, Matata became their primary place of residence.

Before the Tarawera eruption, most of Ngati Rangitihī's kainga and pa were located at either Tarawera or Matata. But Ngati Rangitihī's rohe extended well beyond these places. Mr Potter told us that Ngati Rangitihī have always considered their eastern boundary to be the Rangitaiki River, running approximately 55 kilometres inland. It stretches from Otamarakau to Lake Rotoehu, across Lake Rotorua to Lake Tarawera, south to Maungakakamea (Rainbow Mountain), and east to include Pokohu and parts of what have become the Matahina and Putauaki blocks, following a line along the course of the Rangitaiki River to the coast. He concluded, 'Our rohe has never changed throughout our history.'¹⁹³ Well-established walking tracks connected the various settlements – particularly those between the coast and inland – and provided ready access to resource areas.¹⁹⁴

Within this rohe, Ngati Rangitihī have had long-standing connections with the Matahina region, which they also called Pokohu. Mr Potter cited a list of 17 place names at Pokohu, collated from a manuscript of Pitara Takawheta, dated 10 June 1881.¹⁹⁵ He explained to us, however, that the area Ngati Rangitihī refer to as Matahina 'appears to be more narrow than for other iwi', in fact covering only part of the region known as Pokohu.¹⁹⁶ This explains, he said, why some may assume that Rangitihī are trying to claim land with which they have no connection. Further confusion arose from the naming of blocks in the 1870s and 1880s, when the Pokohu block had its name changed to Matahina, with 'Pokohu' then used for a neighbouring block. In Mr Potter's view, it is not always clear precisely what land is being referred to by other iwi when they use these various names.¹⁹⁷

In terms of relationships with the peoples of Te Urewera, Ngati Rangitihī have close kin links with Ngati Manawa. Andre Paterson and David Potter both described how their whakapapa links them to this neighbouring iwi.¹⁹⁸ In particular, Mr Paterson explained his connection to Tionga: 'My direct connection to Ngati Manawa is through our Ngati Rangitihī chief Tionga who was killed in the battle of Pukekaikahu . . . Mahora was Ngati Manawa and the mother of Tionga.'¹⁹⁹

Ngati Rangitihī state that they maintained their ahi ka in Te Urewera into the nineteenth century. This was despite defeat at the hands of Tuhoe at Pukekaikahu

192. Ibid, p 8

193. Ibid, p 13

194. Ibid, p 16

195. Ibid, p 31, see also app 1

196. Ibid, pp 30–31

197. Potter, brief of evidence (doc c41), p 31

198. Andre Paterson, brief of evidence, 26 March 2004 (doc c38), pp 2–4; Potter, brief of evidence (doc c41), pp 11–12

199. Paterson, brief of evidence (doc c38), p 4

in the early 1800s, which Ngati Rangitihī acknowledge as their greatest defeat.²⁰⁰ Mr Potter described the battle as a ‘well-known and somewhat provoked attempt to expel us from the area.’²⁰¹ As we have seen, Ngati Rangitihī had attempted to invade Ruatahuna. Peace was later achieved with the tatau pounamu at Pukekaikahu.

2.2.4 Nga iwi o te Tai Rawhiti – peoples settling from the east

The Waikaremoana region, with its forested ranges and lakes, was and is of great importance to many Te Urewera peoples. Here, peoples from various waka traditions met: Horouta and Takitimu (Te Tai Rawhiti) from one side, and Mataatua waka (Te Moana a Toi) from the other. In this section, we explain how the region was settled from the east. We begin with Ngati Ruapani, who descended primarily from the Horouta waka, and then turn to Ngati Kahungunu, who draw their origins from Takitimu. Waikaremoana is a region rich in names associated with tipuna. It has also been the location of well-remembered conflicts. Reverberations of tensions from traditional times were evident in our hearings. But these tensions have also, to a large extent, been resolved over time through intermarriage; few if any locals now are not closely related. Most can whakapapa to tipuna who were enemies in their time; they have multiple lines of descent. This is an area where many people are taharua, the offspring of marriages designed to link key lineages in such a way that the descendants have ‘dual citizenship’, and they have long been able to make choices as to their primary affiliation.

Other Horouta peoples also settled on the eastern fringe of Te Urewera, the area known today as Tahora. As well as forming the eastern edge of Tuhoe’s rohe, these were lands that formed the northern part of Ngati Kahungunu’s rohe and the western border of iwi who settled nearer the coast at Turanganui-a-Kiwa. Of these latter peoples, two came to settle in the Tahora region. They are Te Aitanga a Mahaki and Te Whanau a Kai, and they draw their whakapapa primarily from the Horouta waka, and the tipuna Paoa and Kiwa.

2.2.4.1 Ngati Ruapani

kati ra kua maku nga rekereke i nga wai karekare o tenei moana

*it is enough that my heels are made wet by the rippling waters of this sea*²⁰²

Ngati Ruapani trace their descent from the primary leader of the Horouta waka, Pawa (also given as Paoa), which made its final landfall at Turanganui.

Ngati Ruapani tradition, as related to us by kaumatua Desmond Renata, states that Ruapani was born several generations after Pawa at Whangara, and raised at Turanganui by his grandparents. His grandfather Tahunga-ehe-nui-a-tara was

200. Potter, brief of evidence (doc C41), p10

201. Ibid, p14

202. Ngati Ruapani whakatauki (Desmond Renata, brief of evidence, 15 October 2004 (doc H49), p2)

a tohunga.²⁰³ Ruapani's grandfather was present at wananga held at Awarua in Rarotonga, at which high-born chiefs and tohunga marked out Ruapani's future role while he was still in his mother's womb. He was to become the bearer of a kura (headdress) of great spiritual power.

At Whangara, Ruapani's grandfather brought together a group of rangatira who would 'follow the call of the tuatara'. (The tuatara symbolised the age and importance of the headdress, and, we understand, the wisdom and knowledge that comes with great age.) This group was known as 'Te Tira Whakaaraa-a-Tahunga'. Their purpose was to demarcate and establish the realm of Ruapani by naming places for ancestors and for events during the journey. They began in the western ranges of the East Coast, crossing land named initially by Pawa on his journey from Ohiwa to Turanganui. A cut in Ruapani's foot led Tahunga to give the name to the river known as Motu (cut) and the place known as Matawai (tears). Moving to the south, Ruapani's dissatisfaction with water from a spring gave the name Waimeha (distasteful).²⁰⁴ His gesture of discarding the water gave the name to the entire region – Tahora (to throw out). Further places were named as the party travelled south. On reaching the southern shores of Lake Waikaremoana, Ruapani named the place Onepoto, as it reminded him of a beach at Turanganui. Other places and features in the region named at this time include Panekire, Te Pukekohu, Waikaretaheke, and Waikareiti.²⁰⁵

At Waikaremoana, the party was met by Mahu-tapoa-nui: the discoverer of the Waikaremoana region and father of Haumapuhia. The tribal traditions of Ngati Ruapani at the lake, like those of other iwi, begin with its formation and the story of the fate of Haumapuhia. These traditions explain the importance of Mahu and his family, who were descended from Toi, and who are described as the discoverers and very first occupants of the land.²⁰⁶

Ruapani's encounter with Mahu and his people was therefore a significant moment in the history of the lake. Although Ruapani was but a youth, Mahu immediately acknowledged his mana, and recognised his spiritual powers. Agreement was reached that the next generation on each side would marry. To Ngati Ruapani, the lake became his simply when he dipped his foot in it. As Ruapani said to Mahu: 'Kati ra kua maku nga rekereke i nga wai karekare o teni moana' ('it is enough that my heels are made wet by the rippling waters of this sea').²⁰⁷

Mr Renata stated that Mahu told his people of this saying soon afterwards, commenting on Ruapani's mistake in calling the lake a sea. But Mahu's hara (sin) in drawing attention to this mistake weighed on him, and to avoid retribution he decided to leave the area and went to the Bay of Plenty. He sent a messenger

203. Renata, brief of evidence (doc H49), paras 2, 5.1

204. Commonly known as Waimaha.

205. Renata, brief of evidence (doc H49), paras 8.1–8.16

206. Robert Wiri, 'Myths, Realities, and the Determination of Mana Whenua in the Waikaremoana District' (MA thesis, Auckland University, 1994) (doc A35), p 75; Dr Rapata Wiri, brief of evidence, 19 October 2004 (doc H52), p 2

207. Renata, brief of evidence (doc H49), para 8.23

to Ruapani acknowledging his saying, and stating that his people would still like ‘moana’ to be part of the lake’s name. Thus, Mahu conceded the lake to Ruapani.²⁰⁸

While all Ngati Ruapani see Mahu as the initial discoverer of the Waikaremoana region, few believe that the group known as Ngai Tauira should be accorded the same status. These people are known in some traditions as earlier inhabitants of the lake and the upper Wairoa region.²⁰⁹ Mr Renata said that there was ‘definitely no “Tauira” here before the coming of the Horouta waka nor was there any 150 years after its landing.’²¹⁰

One line of descent from Ruapani was crucial in establishing links with the descendants of the famed leader Kahungunu. This was primarily through Ruapani’s son Pukaru, who married Hinemanuhiri – the granddaughter of the famed leader. This was one of many marriages between the descendants of Ruapani and Kahungunu.²¹¹ This union produced children who would be of lasting significance to Ngati Kahungunu, including the first-born, Tamaterangi, and his siblings Makoro and Hinganga.

One of the most significant events of this generation was Tamaterangi’s defeat of Makoro on the northern side of the lake, on the track to Maungapohatu. Mr Renata told us that Tamaterangi and Makoro were merely children at the time, therefore little weight should be given to Tamaterangi’s ‘conquest.’²¹² Certainly, however, Makoro, Tamaterangi, and Hinganga were all significant leaders in their own right; both Tamaterangi and Hinganga, along with Hinemanuhiri, became eponymous ancestors of Ngati Kahungunu hapu. For Ngati Ruapani, Makoro remains an important tipuna, after whom a number of places in the Waikaremoana region are named.²¹³ Ngati Ruapani people also whakapapa to Ruapani through Hinganga.²¹⁴

The descendants of Ruapani entrenched their place at the lake over many generations. Particularly important was Pukehore, who was said to have set up pou rahui (boundary markers) in his lifetime, demarcating his territory.²¹⁵ It was in the time of Pukehore that the first marriages between Tuhoe and Ngati Ruapani occurred. As we have seen, his daughter married Te Uoro of Nga Potiki. According to Robert Wiri, ‘Through this marriage the genealogical connections between Ngati Ruapani and Tuhoe became stronger.’²¹⁶ Many Ngati Ruapani claimants before us also acknowledged their affiliations to Tuhoe.²¹⁷

208. Renata, brief of evidence (doc H49), paras 8.17–8.33; Wiri, brief of evidence (doc H52), pp 2–3

209. Wiri, ‘Myths’ (doc A35), pp 82–87

210. Renata, brief of evidence (doc H49), para 11.2

211. Wiri, brief of evidence (doc H52), p 3

212. Renata, brief of evidence (doc H49), para 15.4

213. *Ibid*, para 9.15

214. Nina Buxton, brief of evidence, 11 October 2004 (doc H54), p 2

215. Wiri, brief of evidence (doc H52), p 5

216. *Ibid*

217. Buxton, brief of evidence (doc H54), p 2; Rangimarie Paku, brief of evidence, 11 October 2004 (doc H56), p 2; Neuton Lambert, brief of evidence, 11 October 2004 (doc H57), p 2; Nicki Kirikiri, brief of evidence, 11 October 2004 (doc H59), p 2

Another important tipuna was Pakatoe, who was descended from two daughters of Ruapani – Ruatapuwhahine and Ruatapunui.²¹⁸ His older brother, Kahupaka, fathered two significant leaders for Ngati Ruapani: Tuai (also given as Tuwai) and his sister Hinewaho.²¹⁹ Both are well known in the traditions of Waikaremoana.²²⁰

Neuton Lambert discussed the significance of Tuai in his evidence. Tuai established his rohe primarily through repelling attacks from the south, and particularly those from Ngati Kahungunu. Mr Lambert told us of many places that were named in the time of Tuai following battles with Ngati Kahungunu, including Ngamoko, Whakaihu, Ahikumara, and Te Kuha. Like Pukehore, Tuai is also said to have set up pou rahui.²²¹ Mr Lambert said of these ‘boundary lines’: ‘Some were laid down by Pukehore; and reinforced by Tuai. Some of the names came out directly from battles between Tuai and Ngati Kahungunu.’²²² Tuai is also ‘a very important tipuna’, Mr Lambert told us, ‘because of the strategic marriages of his children and mokopuna into Nga Potiki.’²²³

The tipuna Hinekura, whom Wiri told us was the great-granddaughter of Ruapani, is another significant tipuna for Ngati Ruapani. Her descendants Ngati Hinekura came to occupy the kainga Te Kuha, with its meeting house Te-Poho-o-Hinekura.²²⁴

Over generations, Ngati Ruapani established settlements around the shores of Waikaremoana. Mr Renata told us that pa constructed by Ngati Ruapani families included Whakaari (to make known), Ma-tuahu (a place of worship), and Te Maara-a-te-atua (the gifts of the land from God).²²⁵

Ngati Ruapani speakers told us that by the time of the early nineteenth century they had a clearly demarcated presence in the Waikaremoana region. At that time, as we have seen, conflict broke out there, as elsewhere in Te Urewera. Ngati Ruapani’s close links with Tuhoe at Ruatahuna, and with Ngati Kahungunu peoples to the south, would shape both their role in the conflict, and subsequent confusion and dispute about that role.

Although a number of reasons have been given for the conflict at Waikaremoana, the killing of Te Umariki and Kokotangiao of Tuhoe at Hopuruahine (on the northern shore of the lake) is usually singled out. Tuhoe, as we have seen, state that it was Ngati Ruapani who killed these men; and it was Ngati Ruapani who bore the brunt of the reprisals that followed, particularly after Tuhoe women and children had been killed at Te Ana o Tikitiki. Robert Wiri, however, in evidence that became disputed in our hearings, characterised the conflict that followed as

218. Wiri, brief of evidence (doc H52), p 4

219. Wiri says that Tuwai’s name is retained in the township of Tuai in the Waikaretaheke Valley; if wrongly spelt and pronounced: Wiri, brief of evidence (doc H52), p 5.

220. Ibid

221. Ibid, pp 5–6

222. Lambert, brief of evidence (doc H57), pp 3–4

223. Ibid, p 4

224. Wiri, brief of evidence (doc H52), p 14

225. Renata, brief of evidence (doc H49), para 13.5

between Tuhoe and Ngati Ruapani on one side and Ngati Kahungunu peoples on the other. Ngati Kahungunu were in fact allied with other Ngati Ruapani people, he argued, which was what confused Elsdon Best (who stated that Ngati Ruapani began the conflict). Wiri argued that it was Ngati Hinganga who were the perpetrators of the killings at Tikitiki.²²⁶ Though disputed, Wiri's evidence nevertheless represented the view of Wai 144 Ngati Ruapani claimants, and was supported in cross-examination by their spokesperson, Vernon Winitana.²²⁷

Wiri's interpretation relies in part on the testimony of Te Wao Ihimaera, given before the Urewera commission in 1906. Ihimaera identified himself as being of Ngati Ruapani, but also gave his affiliations to other peoples, including Tuhoe. In the context of refuting the 'conquest' of the lake by Tuhoe, and also distinguishing his people from Ngati Kahungunu, he said that the two Tuhoe men had been killed by Ngati Hinganga. He also stated that the children of Ngati Ruapani chief Riwai Te Koro had been killed at Te Ana o Tikitiki. On learning of their deaths, Te Koro called on his Tuhoe allies to defeat those who had killed them. Describing the 'conquest' that followed, Ihimaera spoke of two groups, both of which he called Ngati Ruapani: the first had been allied with Tuhoe, the second was allied with Ngati Kahungunu. The first group – his people – were the victors; the second group were driven away.²²⁸

After the conflict, Wiri said, 'several Tuhoe hapu began to occupy Waikaremoana with Ngati Ruapani.'²²⁹ In his evidence and under cross-examination, Wiri vehemently denied that Ngati Ruapani were conquered by Tuhoe. He maintained that Ngati Ruapani were an iwi in their own right, but with close connections to both Tuhoe and Ngati Kahungunu.²³⁰

Mr Renata suggested that the extent of intermarriage between Tuhoe and Ruapani (who themselves had kin links to Kahungunu peoples) at the time of the conflict was such that there could hardly be a 'conquest' as that term is normally understood. In cross-examination, he disagreed with the statement that Tuhoe had conquered Waikaremoana and absorbed Ngati Ruapani: 'How can Tuhoe conquer themselves? . . . How can they hit the part on their head that belongs to Ruapani.'²³¹

Thus, those people whose primary affiliation is with Ngati Ruapani consider themselves, both in the past and now, an iwi in their own right.²³² However, the people were at pains to point out their wide-ranging affiliations, as expressed so

226. Best, *Tuhoe*, vol 1, pp 499–508; Wiri, brief of evidence (doc H52), p 7

227. Vernon Winitana, under cross-examination by counsel for Wai 36 Tuhoe, Waimako Marae, Tuai, 22 October 2004 (transcript 4.11, p 214)

228. Barclay minute book, fols 44–45, 64–65 (Wiri, brief of evidence (doc H52), p 8)

229. Wiri, brief of evidence (doc H52), p 10

230. Ibid; Robert Wiri, under cross-examination by counsel for Wai 36 Tuhoe, Waimako Marae, Tuai, 19 October 2004 (transcript 4.11, p 78)

231. Desmond Renata, under cross-examination by counsel for Ngai Tamaterangi, Waimako Marae, Tuai, 20 October 2004 (transcript 4.11, p 151)

232. Counsel for Wai 945 and 1033 Ngati Ruapani, closing submissions, 30 May 2005 (doc N13), p 2; counsel for Wai 144 Ngati Ruapani, closing submissions, 3 June 2005 (doc N19), p 4

eloquently by Mr Renata. They accepted that there were Tuhoe in occupation at the lake after the conflict of the early nineteenth century, but maintained that Ngati Ruapani remained in occupation also and kept their own authority and identity.

2.2.4.2 Ngati Kahungunu

He ao te rangi ka uhia huru huru te manu karere.

*Even the sky has to be dressed – birds cannot fly without feathers.*²³³

The people of Ngati Kahungunu who relate to our inquiry district have developed over many generations within their broader rohe that spans a large portion of the North Island's lower eastern seaboard. The northern part of this rohe includes the regions of the upper Wairoa River, Lake Waikaremoana, and Tahora.

Ngati Kahungunu ancestors came to Aotearoa on the Takitimu waka. Richard Niania told us of the spiritual importance of the arrival of Takitimu in Aotearoa: 'Takitimu was without a doubt the waka, which brought the mauri of these people to these lands, and symbolises the point of no return.'²³⁴ Their voyage was to bring the 'sacred knowledge of Hawaiki to Aotearoa' – their 'institutions, customs and rituals.'²³⁵

The commander of Takitimu was Tamatea-Arikinui. He had a son, Tamatea-Pokaiwhenua, who in turn fathered Kahungunu. Kahungunu was the favourite child of Tamatea-Pokaiwhenua. He was a wanderer, staying at different places around the North Island for a few years at a time.²³⁶ In Ngati Kahungunu traditions, Kahungunu was famed not as a warrior but as a provider. His ability to provide resulted in many marriages across the land.

A key marriage of Kahungunu was with Rongomaiwahine of the Kurahaupo people. Their daughter, Hinemanuhiri, and her children would be of lasting importance in the history of upper Wairoa. Hinemanuhiri married Pukaru, son of Ruapani. Thus, two significant lines of descent from Horouta and Takitimu became fused. Tamaterangi was the eldest son of Hinemanuhiri and Pukaru; he was tuakana (eldest brother) to Makoro and Hinganga and Pupuni. Pareroa (also given as Pareora) was the only daughter of the marriage. Collectively, their descendants have long known them as Te Tokorima a Hinemanuhiri (the five children of Hinemanuhiri).²³⁷ The descendants of Te Tokorima formed important hapu of the region, notably Ngati Hinemanuhiri, Ngai Tamaterangi, and Ngati Hinganga. It was through these peoples that Ngati Kahungunu become established in the upper Wairoa and Waikaremoana regions.

233. Ngai Tamaterangi whakatauaki (Charles Te Arani Kapene, brief of evidence, 29 November 2004 (doc 126), para 6.5)

234. Richard Niania, brief of evidence, 22 November 2004 (doc 138), p7

235. Ibid, p8

236. John Hikawera Mitchell, *Takitimu* (Wellington: AH & AW Reed, 1972), p73

237. Charles Te Arani Kapene, brief of evidence, 29 November 2004 (doc 126), para 6.2; Mitchell, *Takitimu*, p100. They were also known as Te Aitanga a Hinemanuhiri.

Ngati Kahungunu traditions, like those of other iwi, recount the role of Mahu and Haumapuhia in the formation of Lake Waikaremoana. Ngai Tamaterangi rangatira Charles Cotter related to us the essence of traditions passed down to him:

The story about how Lake Waikaremoana was formed was told to me when I was young by our old people. They told me that Haumapuhia was sent to go and get some water by her father. Her father became enraged and pushed her into the water to drown her. Whilst she was swimming around and struggling for her life that is how the lake, I am told, was formed.²³⁸

Heiariki Governor gave another version of this tradition,²³⁹ and explained further how Ngai Tamaterangi whakapapa to Mahu through Ruapani.²⁴⁰ As we have seen, Ruapani established his authority at the lake upon his arrival, which was cemented by intermarriage with Mahu's people.

But it is primarily the ascendancy of the children of Hinemanuhiri to which Ngati Kahungunu ascribe their place at the lake and its surrounds. Most traditions emphasise the importance of Te Tokorima a Hinemanuhiri in the history of this region, and the establishment of their rights there. According to some traditions, they supplanted an earlier people, Ngai Taurira, after Tamaterangi's son – Rakaihakeke – was insulted by Mutu, son of Taurira. Ngai Taurira suffered a major defeat at the hands of Tamaterangi in two battles. Many of the survivors subsequently left the district. Lillian Tahuri told us that Ngai Taurira were 'the original inhabitants' of the area: 'There was a battle in Frasertown with Ngai Taurira [sic] and Ngati Kahungunu, Tamaterangi, Hinemanuhiri people and the battle was won by Ngati Kahungunu. Some of the descendants still live in this district.'²⁴¹ Ms Tahuri gave evidence of her descent from Ngai Taurira on her mother's side.²⁴²

According to JH Mitchell, Tamaterangi and his people emerged from the conflict with 'complete control over the land on both sides of the Wairoa River.'²⁴³ As we have seen, however, some claimants dispute whether Ngai Taurira were the original inhabitants of this area.

238. Charles Manahi Cotter, brief of evidence, no date (doc 125), p 13

239. 'In the beginning there was no lake. All that existed was a well. The first person there was Mahu also known as Mahutapoanui. Mahu had a daughter Haumapuhia. She was the youngest child. One day she refused to fetch water from the well despite being asked several times. Her father became enraged. When she did go her father Mahu followed her to the well and pushed her in and held her head down. In her struggle to break free the lake was formed. The following morning when the sun came out she turned to stone.' See Heiariki Hazel Governor, brief of evidence, 29 November 2004 (doc 128), para 7.2.

240. Governor, brief of evidence (doc 128), para 7.3

241. Lillian Tahuri, under cross-examination by counsel for Nga Rauru o Nga Potiki, Rangiahua Marae, Frasertown, 28 November 2004 (transcript 4.12, p 31)

242. Lillian Tahuri, brief of evidence, 29 November 2004 (doc 131), para 1

243. Mitchell, *Takitimu*, p 104

Charles Kapene described the mana that Tamaterangi held as tuakana to his brothers and sisters.²⁴⁴ This, he said, is acknowledged in a famous Ngai Tamaterangi whakatauaki: ‘He ao te rangi ka uhia huru huru te manu karere.’ (‘Even the sky has to be dressed – birds can not fly without feathers.’)²⁴⁵ Mr Kapene explained that, when asked to offer karakia before a battle, Tamaterangi ‘quoted this whakatauaki to his brother Makoro’. Makoro then handed over his cloak to his older brother (and also offered his wife). This confirmed Tamaterangi’s mana over his younger siblings.²⁴⁶

Tei Ruawai Hema also explained this whakatauaki in evidence. ‘One of the stories told to me is of Makoro asking for Tamaterangi’s help to lead a war party.’²⁴⁷ His response was to recite the whakatauaki. ‘This story tells of Makoro giving his cloak to Tamaterangi and tells Ngai Tamaterangi of the need to be fully prepared before they go anywhere.’²⁴⁸ Thus, the broader purpose of the whakatauaki is to alert the descendants of Te Tokorima a Hinemanuhiri to the importance of vigilance. The whakatauaki is displayed at the entrance way of Rangiahua Marae.²⁴⁹

In some Ngai Tamaterangi traditions, Tamaterangi’s defeat of his brothers, and in particular Makoro, allowed him to dictate the division of Waikaremoana lands. Tei Ruawai Hema also discussed this tradition, explaining that Tamaterangi gained his ascendancy by defeating Makoro. ‘Tamaterangi and his brother Makoro fought amongst each other and with each other against their enemies. Tamaterangi eventually defeated Makoro and took his land.’²⁵⁰

There are Ngati Kahungunu traditions, however, in which Makoro is remembered as providing ancestral rights to Waikaremoana lands. Richard Niania, for instance, gave this Ngati Kahungunu perspective: ‘One of the platforms of Kahungunu’s claim for inclusion in the Waikaremoana Block was based on descent from Makoro.’²⁵¹ In cross-examination, Niania accepted that Ngai Tamaterangi sees Tamaterangi’s defeat of Makoro as extinguishing the younger brother’s claim.²⁵²

Thus, the events surrounding Te Tokorima a Hinemanuhiri are important in Ngati Kahungunu traditions for establishing their place at the lake. Te Tokorima are also remembered, as described to us, for setting the ‘boundary’ between Tuhoe and Ngati Kahungunu. A number of Ngati Kahungunu speakers told us that their northern boundary is the Huiarau range. Charles Cotter, for example, told us that Tamaterangi lived ‘in and around Lake Waikaremoana and he was responsible

244. Kapene, brief of evidence (doc 126), para 6.5

245. Ibid

246. Ibid

247. Tei Ruawai Hema, brief of evidence, 29 November 2004 (doc 127), para 5.4

248. Ibid, para 5.5

249. Governor, brief of evidence (doc 128), paras 5.1–5.2

250. Hema, brief of evidence (doc 127), para 5.3

251. Niania, brief of evidence (doc 138), p 56

252. Richard Niania, under cross-examination by counsel for Nga Rauru o Nga Potiki, Rangiahua Marae, Frasertown, 2 December 2004 (transcript 4.12, p 202)

for setting our boundary at the Huiarau Range.²⁵³ Tei Ruawai Hema said that this boundary was set down in the time of Te Tokorima:

One of the markers or signposts was put down by Tamaterangi's brother Makoro and is known as Ure o Makoro. Ure o Makoro is located past the Hopuruahine bridge and just before the summit of the Huiarau Range. This marker or signpost is also known to some as Taita a Makoro.²⁵⁴

Mr Hema acknowledged that Tuhoe dispute that Makoro erected a post at that place.²⁵⁵

Charles Kapene also spoke of the historical 'boundary' between his people and Tuhoe: 'I have always known and have been told by the old people that our boundary with Tuhoe is at the Huiarau.'²⁵⁶ As an example of this, Mr Kapene described how Tamaterangi 'chased some invading Tuhoe over the Huiarau Range and told them to stay there as that was their side of the Huiarau.'²⁵⁷ But Mr Kapene also referred to the strong reciprocal relationship between Tuhoe and Ngai Tamaterangi, evident in the practice of calling the other group first to kai when acting as hosts: 'I was told this by the Ngai Tamaterangi kaumatua and this is something that we still practise today.'²⁵⁸

Other Ngati Kahungunu traditions include Maungapohatu as one of their boundary markers. Richard Niania gave evidence that Ngati Hinganga today 'relate that their ancestor came to the upper Ruakituri river district before his parents and uncle were forced to leave Turanga.' Following his migration, according to the traditions, Hinganga named places in and around Maungapohatu such as Paharakeke (to the east of Maungapohatu). This, according to Niania, was why Ngati Hinganga featured 'so prominently in the Tahora and Waipaoa lands.'²⁵⁹ It was said that Hinganga, who had travelled on foot to Maungapohatu, had named Paharakeke after his pa at Wairoa, and had laid down a boundary as he went between Manuoha and Paharakeke 'by means of his own mana strength and bravery.'²⁶⁰

The tangata whenua evidence we received shows that Ngati Kahungunu clearly still place great importance on the acts of Te Tokorima a Hinemanuhiri as establishing their rights in the Waikaremoana region. Over time, the descendants of Te Tokorima consolidated as hapu of Ngati Kahungunu. Ngai Tamaterangi

253. Charles Manahi Cotter, brief of evidence in support of Wai 506 and Wai 481, 11 December 2003 (doc 125(a)), para 10.4

254. Hema, brief of evidence (doc 127), para 6.1–6.2

255. Tei Ruawai Hema, under cross-examination by counsel for Wai 36 Tuhoe, Rangiahua Marae, Frasertown, 28 November 2004 (transcript 4.12, p 25)

256. Kapene, brief of evidence (doc 126), para 7.1

257. Ibid, para 7.3

258. Ibid, para 8.1

259. Niania, brief of evidence (doc 138), para 5.2

260. Eria Raukura, speaking before the Urewera commission (Jonathan Easthope, 'A History of the Maungapohatu and Turanga Blocks as Defined by the First Urewera Commission' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A23), pp 73–74)

established themselves primarily along the Waiau River in the upper Wairoa. Charles Kapene told us that ‘a number of Ngai Tamaterangi pa sites were situated along the river banks’ of the Waiau.²⁶¹ Mr Cotter added that on the northern side of Waikaremoana there was a pa called Pukehuia. ‘Pukehuia is a significant whanau name of Ngai Tamaterangi.’²⁶² The sacred maunga for many Ngai Tamaterangi is Titirangi, which overlooks Rangiahua marae.²⁶³ Others see Tukurangi, situated in the land block that bears its name, as their sacred maunga.²⁶⁴ Charles Cotter stated that Ngai Tamaterangi ‘has and continues to operate independently from other hapū.’²⁶⁵

Ngati Hinganga featured prominently in Te Papuni, Waipaoa, and Tahora regions. Hinganga’s descendant Pourangahua, who lived at Te Papuni and was married to Hinewhe of Tuhoe, was said to have maintained an aloofness from Tuhoe and Ngati Kahungunu quarrels, and to have been accorded respect by both iwi. His descendants had remained on the land after hostilities with Tuhoe in the early 1820s.²⁶⁶

Ngati Kahungunu, as we understand it, attributed that fighting to murders: Tamihana Huata spoke of a murder committed by Ngati Kahungunu, when fighting commenced ‘about the land’; while Wi Pere spoke of ‘isolated murders’ committed by Tuhoe at Te Papuni and Waikaremoana, which triggered Ngati Kahungunu attacks in revenge.²⁶⁷ Tuhoe attacks in that period were characterised as ‘stealthy’, and insignificant. They did not succeed in extinguishing Kahungunu fires on the land.²⁶⁸

Kaumata Te Ariki Mei spoke to us of the tatau pounamu which ended the conflict of the early nineteenth century with Tuhoe. He told us that its purpose was ‘to extinguish the fires of war between Tuhoe and Ngati Kahungunu’, and this was the path that Tuhoe pursued. Mr Mei said that ‘according to the stories this was . . . the symbolic union of the mountains.’ Speaking in the context of a long-standing dispute between Tuhoe and Ngati Kahungunu over the location of a boundary between them, Mr Mei discussed the tatau pounamu in reference to the problem of ‘drawing lines’ between the iwi.²⁶⁹ His evidence was that both sides, in relating traditions about the conflict of the early nineteenth century, speak of victories but

261. Kapene, brief of evidence (doc 126), para 1.13

262. Cotter, brief of evidence (doc 125), p 13

263. Governor, brief of evidence (doc 128), para 6.1

264. Hema, brief of evidence (doc 127), para 2.1

265. Cotter, brief of evidence (doc 125), p 6

266. Mitchell, *Takitimu*, p 155; Easthope, ‘History of the Maungapohatu and Turanga Blocks’ (doc A23), pp 73–75, 81

267. Grant Young and Dr Michael Belgrave, ‘The Urewera Inquiry District and Ngati Kahungunu: Customary Rights and the Waikaremoana Lands’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A129), pp 44–45, 123–124

268. Cathy Marr, ‘Customary Impacts on Customary Interests in Land in the Waikaremoana Region in the Nineteenth and Early Twentieth Century’ (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A52), pp 183–184

269. Te Ariki Mei, under cross-examination by Crown counsel, Rangiahua Marae, Frasertown, 2 December 2004 (transcript 4.12, p 165)

not defeats. The point, he said, is that neither was able to ‘exterminate’ the other; nor, he implied, would either have wished this. He focused in his evidence on the links between the iwi: ‘the whanaungatanga between us’. The process of intermarriage had begun long ago and was still continuing today.²⁷⁰ He readily acknowledged that Tuhoe can whakapapa into Waikaremoana.²⁷¹

We refer to the issue of boundaries further in the final section of this chapter. The broader issue, however, is the impact on tribal land rights, and debates about those rights, of Crown actions – notably the military conflict of the mid- to late 1860s and early 1870s, and the establishment of the Native Land Court and various Urewera commissions. We address these actions and their impacts in later chapters of our report.

2.2.4.3 *Te Aitanga a Mahaki*

*Hoki mai, e tama, ki te riu kainga.
Ka tuwhera Turanga-nui o Kiwa,
Ko Pawa tena, ko Tui, ko Tau, ko Maia;
Ka waiho hei pakiaka hangai mo tama.*

*Come back, O son, to the values of home.
Wide open is Turanga-nui of Kiwa,
(The people are) of Pawa, Tui, Tau and Maia;
They are your very roots, O son.*²⁷²

Te Aitanga a Mahaki are one of many groups to trace their descent from the Horouta waka. The tipuna Paoa and Kiwa are particularly important in their whakapapa. The Horouta waka initially arrived in Aotearoa at Ahuahua (Great Mercury Island), then continued on and ran aground at Ohiwa Harbour. From there, Paoa went overland exploring with a group from the waka. Another voyager, Kiwa, repaired the waka and continued around the East Coast, eventually landing at the bay that became known as Turanganui-a-Kiwa – the great standing place of Kiwa. Paoa, meanwhile, had travelled across to the Turanga region, leaving his mark on the landscape as he went.²⁷³

But other waka are important too. Merata Kawharu, in her report on the origins of Te Aitanga a Mahaki, noted Mataatua, Te Arawa, Aratauhwaiti, Nukutere, Tutarakauika, Kurahaupo, and Takitimu as waka that form part of their tradition.²⁷⁴ Takitimu, and the tipuna Tamatea-Arikinui and Maia, were of especial

270. Te Ariki Mei, under cross-examination by Crown counsel, Rangiahua Marae, Frasertown, 2 December 2004 (transcript 4.12, p 166)

271. Ibid, p 165

272. Te Aitanga a Mahaki waiata oriori (lullaby) (Merata Kawharu, ‘Te Mana Whenua o te Aitanga a Mahaki’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000) (doc A78), pp 48–50)

273. Kawharu, ‘Te Mana Whenua’ (doc A78), pp 10–20

274. Ibid, pp 34–39, 47

significance. As we have seen, Takitimu came to Turanganui a number of generations after the arrival of the Horouta waka, where the newcomers met and inter-married with older peoples.

The descendants of these peoples formed all the major iwi of the Turanga region. Two in particular – Ruapani and Kahungunu – were important in entrenching the mana of the Horouta and Takitimu peoples at Turanga. Ruapani descended from Paoa and Kiwa; Kahungunu descended from Tamatea-Arikinui. Sir Apirana Ngata described how these two great lines came to be intertwined:

The blood of Paoa, captain of the Horouta canoe, intermingled with that of Kiwa, a great navigator who came from Hawaiki in the Takitimu canoe. The resulting progeny, Ruapani, was the great ancestor of Turanga from whom most of the lands in that district are derived. By the marriage of his daughter Ruaruhanga to Kahungunu another great line from the crew of the Takitimu canoe was linked with that from Horouta.²⁷⁵

As we have seen, Ruapani further entrenched the position of his people in the Turanga region and inland towards Waikaremoana. It was through this line of descent that Mahaki, the eponymous ancestor of Te Aitanga a Mahaki, was born.

Mahaki was a notable warrior, achieving significant successes for his people in his lifetime. But as the Tribunal noted in its *Turanga Tangata Turanga Whenua* report, Mahaki's place among his descendants as a prominent ancestor was secured by a series of key marriages: 'If there is a wider theme it is that Mahaki's male descendants sought out women of rank to marry, generating powerful rights for their offspring in the process.'²⁷⁶ The descendants of Mahaki followed the precedent set by those of Ruapani.

In Mahaki's lifetime, the 'supreme authority' at Turanga, as Merata Kawharu explained, was held by Ruapani. But his marriage to Hinetauparau, descended from Ruapani and Kahungunu, began the line of key marriages. Te Kani Te Ua has said that 'When Mahaki married Hinetauparau, the descendant of Ruapani, he married into the principal family who had authority over people and land.'²⁷⁷ In Te Aitanga a Mahaki traditions, a major battle – in which Mahaki was involved – split the descendants of Ruapani at Turanganui; a further battle saw Mahaki and his people emerge as victors.²⁷⁸ Traditions relate that battles between the descendants of Mahaki and Ngati Kahungunu followed, with the Waipaoa River emerging as an approximate boundary between the two groups. Conflict with Ngati Maru, a Horouta descent-group living on the Te Houpapua flats, in the Tahora region, saw Mahaki's descendants again emerge victorious.²⁷⁹ Over time, these descendants

275. Apirana Ngata, *Raurunui a Toi Lectures and Ngati Kahungunu Origins* (Wellington: Victoria University Press, 1972), p 15; Kawharu, 'Te Mana Whenua' (doc A78), p 57

276. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 23

277. Te Kani Te Ua (Kawharu, 'Te Mana Whenua' (doc A78), p 92)

278. Kawharu, 'Te Mana Whenua' (doc A78), pp 113–116

279. *Ibid*, pp 118–124

took on the name Te Aitanga a Mahaki. Kawharu says that it is ‘an identity that arose out of conquest’.²⁸⁰

The descendants of Mahaki came to form hapu in their own right. Most of these hapu congregated in the Turanga region. They include Te Whanau a Taupara, Ngati Wahia, Ngariki, Te Whanau a Kai, Te Whanau a Iwi, Ngati Whakauaki, Ngai Tamatea, and Ngai Tuketenui.²⁸¹ For Te Aitanga a Mahaki, all these peoples came together under the broader tribal name of Mahaki. Merata Kawharu has said that the name Mahaki was maintained over 300 years or more because of his marriages and his descendants’ defence of their rohe against external and internal threats.²⁸²

We are most concerned, however, with the Mahaki claim of interests in Te Urewera. Kawharu argued that, following their victory over Ngati Maru, the descendants of Mahaki secured their place at Tahora through the marriage of Kaikoreauneui to two Ngati Maru sisters – Whareana and Te Haaki.²⁸³ She suggested that in later times Tahora became the site of battles between Tuhoe and Te Aitanga a Mahaki, who, along with Ngati Kahungunu groups, exercised rights in the region.²⁸⁴

2.2.4.4 Te Whanau a Kai

Ko Te Whanau a Kai panapana maro.

*Fighting without the thought of retreating.*²⁸⁵

Te Whanau a Kai trace their origins to a number of hapu who lived within various parts of their rohe: Ngati Hine, Ngati Maru, and Ngati Rua, whose founding ancestors were closely related.²⁸⁶ In particular, they emphasise their descent from the marriage of the sisters Te Haaki and Whareana of Ngati Maru, to Kaikoreauneui, son of Te Ranginui a Ihu, and a grandson of Mahaki.²⁸⁷ They take their name from Kaikoreauneui. Kaumatua David Hawea explained to us that Kaikoreauneui and his descendants did not inherit their lands through their descent from Mahaki. Kaikoreauneui was given no land on the death of his father, unlike his elder brothers. Literally, his name means ‘I am Kai with nothing.’ Mr Hawea explained this as ‘Kaikore – meaning without food or landless – au nei meaning that’s me.’²⁸⁸ Te Haaki and Whareana gained their land rights in the Turanga district through

280. Kawharu, ‘Te Mana Whenua’ (doc A78), p 116

281. Ibid, pp 128–144

282. Merata Kawharu, under cross-examination by counsel for Te Whanau a Kai, Mangatu Incorporation Offices, Gisborne, December 2001 (Wai 814 ROI, transcript 4.8, pp 16–17)

283. Kawharu, ‘Te Mana Whenua’ (doc A78), pp 123–124

284. Ibid, pp 170–171

285. Te Whanau a Kai whakatauki (David Hawea, brief of evidence, 24 November 2004 (doc 137), p 22)

286. Hawea, brief of evidence (doc 137), p 5

287. Ibid, p 4

288. Ibid, p 5

Tupurupuru, who inherited the mana of Ruapani.²⁸⁹ Today, Te Whanau a Kai identify themselves as a tribal group separate from Te Aitanga a Mahaki.

Mr Hawea explained that Te Whanau a Kai is an ‘umbrella name’ for people belonging to a number of hapu in the region. Many of these people can whakapapa to other iwi of the Turanga region.²⁹⁰ These ‘component parts’ – peoples who make up Te Whanau a Kai – who were most prominent at Tahora were Ngati Hine, Ngati Maru, and Ngati Rua. Mr Hawea said that these three hapu lived peacefully for a number of generations on land set apart by Tui, an ancient ancestor; there is no record in Te Whanau a Kai oral tradition of fighting between them.²⁹¹ The traditional lands of Te Whanau a Kai, we were told, include the Te Wera and Koranga parts of what became Tahora 2 block.²⁹²

Te Whanau a Kai also have close relationships with other iwi in the Turanga region. These relationships have been formed over time through intermarriage and the exercise of rights to shared areas. They include Rongowhakaata, located to the south-east, and Te Aitanga a Mahaki to the north-east.²⁹³ Te Whanau a Kai have also had close associations with Tuhoe. This was later symbolised, as Mr Hawea explained, in a gift of land near Ngatapa for a marae. Eria Raukura built the first house there in 1918. Land was also gifted for a marae to those Kahungunu and Tuhoe working the land within some parts of Te Whanau a Kai’s rohe.²⁹⁴

2.2.5 Summary

Our discussion of Te Whanau a Kai ends this brief survey of tribal histories. Iwi presented those histories to us at our hearings, mainly through the oral evidence of kaumatua. We were told of the significance of the earliest peoples – Te Tini o Toi, Nga Potiki, and Te Hapuoneone – peoples who came from the earth and whose ancestors are still remembered in the whakapapa and traditions of the people today. We were also told of the waka migrations, and the arrival of ancestors from Hawaiki. Over time, these ancient and more recent descent-groups fought, intermarried, and formed the hapu and iwi who are now claimants before this Tribunal.

As the iwi recounted their whakapapa, the kinship links within and between tribes, we were made aware of the strong ties that bind all the peoples of Te Urewera. They are closely related to one another and, though there has been conflict and fighting between them, they are all linked through marriage and shared ancestry. Some are taharua, the offspring of strategic alliances which create especially close bonds between iwi. Those bonds are strong between Tuhoe and Ngati Ruapani, Tuhoe and Ngati Whare, and Ngati Whare and Ngati Manawa, among others.

289. Ibid, pp 5–6

290. Ibid, p 2

291. Ibid, p 5

292. Ibid, p 3

293. Ibid, p 2

294. Ibid, pp 3–4; counsel for Te Whanau a Kai, opening submissions, 29 November 2004 (doc 143), p 3

In the centre of Te Urewera, the descendants of Nga Potiki and the Mataatua waka combined over time to form the iwi, Tuhoe. Hapu occupation came to be based on four main centres – Ruatahuna, Maungapohatu, Ruatoki, and Waimana; the hapu acted in concert where necessary or appropriate, but otherwise retained their autonomy. Although not all its hapu trace direct descent from Tuhoe-Potiki, the eponymous ancestor, they are united by lateral descent lines, and formed a common identity and purpose. This was especially so, we were told, during the conflict and upheavals of the early nineteenth century, which saw the final consolidation of the iwi.

Closely related to Tuhoe, the descendants of Wharepakau and Tangiharuru – Ngati Whare and Ngati Manawa – settled at Te Whaiti. There, they were joined by other hapu who forged kinship bonds and, over time, became part of those iwi. In the south and west of Te Urewera, Ngati Hineuru and Ngati Rangitihi had a presence. In the east, the descendants of Ruapani settled at Lake Waikaremoana, where there were also hapu of Ngati Kahungunu, an iwi whose broader rohe encompassed much of the eastern seaboard. Horouta-descended iwi also claimed interests in the east, in the Tahora lands – Te Aitanga a Mahaki and Te Whanau a Kai.

All these groups told us of their rohe, their whakapapa, and their histories of conflict and alliance. They explained the philosophies and laws that underpinned their relations with one another, their claims to land and resources, and their exercise of authority. We turn next to consider some of that evidence in more detail.

2.3 MANA: THE EXERCISE OF AUTHORITY – THE PROTECTION OF PEOPLE, LAND, AND RESOURCES

We turn here to consider the values and beliefs that drove those who shaped Te Urewera history. What norms and laws underlay the way authority was exercised in their communities, the way land and resources were protected, and the way relations with other hapu and iwi were conducted?

Only if we attempt some answers to these questions will we be able to comprehend Te Urewera reactions to the operation of new institutions of government and law, particularly land and environment law. This is not to say we assume that Crown policies were the only force for change in Maori society. The arrival of westerners with pervasive belief systems, economic goals, and political goals inevitably brought change. So also did internal developments within Te Urewera itself. Indeed, the history of its peoples is testament to the dynamism, vigour, and constant change which characterised their world.

But our concern in this report is with the impact of Crown policies and laws on the autonomy, the resources, and the way of life of the peoples of Te Urewera. We cannot assess that in a vacuum. Those policies were visited on – or negotiated with – the leaders of a complex society in which every aspect of life was organised and regulated in accordance with values and customs, with tikanga developed over generations. In Te Urewera, those values and customs were clung to tenaciously; their guardians were rangatira, key leaders in the communities. Sometimes, of course, rangatira broke the rules; their mana was evident in the very fact that they

could do so without repercussions. Our discussion focuses on how rangatira exercised authority on behalf of their hapu, and protected their lands and resources, in accordance with tikanga.

We do not attempt any detailed account of the beliefs and the tikanga of the peoples of Te Urewera; they themselves have long protected their integrity, and we would be quite unable to do justice to them in this report. We are mindful also of Tamati Kruger's caution that custom cannot simply be learned or understood without being central to how one lives. He referred to a karakia of Ngai Tuhoe for those taken to the house of learning, and to part of the ceremony at which they are anointed:

Uplift o friend your basket to that sacred place of the house of learning and there swallow your food down, swallow it right down to land at the abdomen, the seat of emotions, the never ending thoughts which illuminate the inner soul and lights up the outer body. The sneeze is the vitality of life itself to switch on the lights to the new world.

Knowledge, he said, must not be left on the tongue but swallowed right down to reside in the stomach; then those who are its students become examples of that teaching.²⁹⁵

Despite the constraints of this inquiry – an alien forum for discussions of this kind – the claimants spoke to us about Maori philosophies and knowledge systems, and the values and beliefs they embody. Clearly, they did not think we could assess their claims against the Crown unless we understood what kind of society theirs was, and is; what were the drivers of its laws and its politics. Foremost among those drivers – or underlying values – was mana, and we turn now to discuss its importance. The claimants spoke to us about mana in different contexts and in different ways. The discussion that follows focuses first on Tuhoe evidence about the significance to them of mana and mana motuhake. We understand that this reflects, among other things, the importance to Tuhoe of ensuring that we understood the roots of their 'constitutional claim'. (We discuss this claim, up to 1865, in chapter 3.) In particular, we received evidence, in successive hearings, from Mr Kruger.

2.3.1 Mana motuhake: Tuhoe authority, identity, and values

Central to Tuhoe discussions of mana is mana motuhake. In the Treaty of Waitangi, as we shall see in chapter 3, the Crown promised to respect and protect the tino rangatiratanga and – for Tuhoe – the mana motuhake of the tribes. Here, we explain what it was that the Crown had promised to protect.

Mana motuhake was presented to us as akin to a charter of Tuhoe rights. The explanations we were given reminded us – to give a much-quoted Western equivalent – of the spirit of the statement in the American Declaration of Independence

²⁹⁵ Tamati Kruger, claimant translation of transcript of oral evidence, Murumurunga Marae, Te Whaiti, 16 September 2004 (doc G48(a)), p 2

of ‘self-evident truths’, and its assumptions of the incontrovertible values of liberty and equality. Throughout history, many societies have lived by values they hold ‘self-evident’ and crucial to their own identity. For Tuhoe, mana motuhake has connotations of ‘unique power and authority, freedom, liberty, nationhood, self determination, independence’. It is inseparable from Tuhoetanga (see the sidebar opposite).²⁹⁶ We cannot pass over the significance of mana motuhake because it is what makes Tuhoe who they are.

In Mr Kruger’s evidence concerning Tuhoe philosophy and Tuhoe history, mana motuhake was the enduring theme. We understood that the significance of mana motuhake to Tuhoe is illuminated in the crucial decision Tuhoe-Potiki himself made when he found that he was at odds with his tuakana (elder brother) Ueimua over his right to clear land for a cultivation. At that point, we were told, Tuhoe came to an understanding of himself. He considered the choices open to him: staying at Owhakatoro (Ruatoki) and living under the authority of his brother Ueimua as ‘a person of low status’; moving away from his homeland to try and establish himself in a far-off place; or staying where he was and removing his brother’s authority from him. His decision was for the last of these:

Koinei te wehi o te Mana Motuhake o Tuhoe notemea he mea takiri mai, he mea tango mai a i o Ueimua. Na te hohonu o te hiahia o tenei tangata o Tuhoe ki te Mana Motuhake, ae, ka patua e ia tona tuakana. . . . Koira te ahua o te tangata nei . . .²⁹⁷

This is the ugly part of mana motuhake of Tuhoe because it was stripped. It was taken off Ueimua. This man Tuhoe deeply wanted mana motuhake and yes, he did kill his older brother . . . This is the personality of this man . . .²⁹⁸

Only in this way could Tuhoe secure mana motuhake for himself and his heirs. In that, he succeeded.²⁹⁹ But, above all, Tuhoe-Potiki’s resolve would forever characterise the iwi and its hapu:

Tera ahuatanga i a Tuhoe tangata ka hunaia e te toto ki roto i nga tangata o Tuhoe katoa, kai roto i a ratau tera ahuatanga te hiahia ki tenei mea ki te Mana Motuhake. Kare matau e hiahia ka tohuotohuhia matau e tetahi atu.

That trait is in Tuhoe the man. It is generated in all of Tuhoe; all of them. It is in them, they have this craving for this thing mana motuhake. We do not like it if an outsider tells us what to do.³⁰⁰

296. Tamati Kruger, claimant translation of transcript of oral evidence, Murumurunga Marae, Te Whaiti, 16 September 2004 (doc G48(a)), p 6; counsel for Nga Rauru o Nga Potiki, glossary of key terms to closing submissions, 13 June 2005 (doc N14(b)), p 7

297. Tamati Kruger, claimant transcript of oral evidence, Taurarau Marae, Ruatoki, 17 January 2005 (doc J48), pt 1, pp 23–24

298. Kruger, claimant translation (doc J48(a)), pt 1, pp 15–16

299. Kruger, brief of evidence (doc J29(b)), para 7.8

300. Kruger, claimant translation (doc J48(a)), pt 1, p 16

The Meaning of Mana Motuhake to Tuhoē

Ko toku Tuhoetanga, ko toku Mana Motuhake no tua, no nehe, no okioki, no whakapapa.

'Ko toku Tuhoetanga, ko toku Mana Motuhake, kare e kitea e koe i roto i te tangata kotahi:

'Kare e kitea e te whanau takitahi. Kare e mau ana ki tetahi kaumatua kotahi. Kare a kitea koe i roto i te hapu kotahi, tetahi taniwha kotahi, i tetahi tipua kotahi.

'Ko toku Mana Motuhake, kare e kitea koe i runga i tetahi marae kotahi. Kare a rangona koe i te wahi kotahi, i tetahi Maunga kotahi. Kare i roto noa i te Awa o Ohinemataroa, kare mai te waka o Mataatua noaiho.

'Kare toku Mana Motuhake e taipu ana i roto i tetahi tikanga kotahi. Kare hoki toku Tuhoetanga e kitea e koe i roto i te whakatipuranga kotahi. Kare e kitea e koe toku Mana Motuhake i roto i te Atua takitahi.

'Engari ko toku Tuhoetanga, toku Mana Motuhake kai roto i te whakapapa o wenei mea me era atu mea katoa, onamata, inamata, anamata. . . .

'He nui ake i a au toku Mana Motuhake, toku Tuhoetanga. He nui atu i a matou e pai nei to matau Tuhoetanga, to matau Mana Motuhake.

'Taonga huna na te toto kua ngaro i te kupu engari e marama ana o matau ngakau.'

My Tuhoē identity is my mana motuhake, it is from beyond, from ancient, it is from the beginning, and it stems from my genealogy.

'My Tuhoē identity is my mana motuhake. You will not find it just in one person.

'You will not see it in a family of individuals. It is not held by one elder. You will not see it in a subtribe of one, or in any one creature, or in any one guardian spirit.

'My mana motuhake will never be seen on one marae. You will not hear it in one place, or on any one mountain. It does not reside in the Ohinemataroa River; it is not only from the canoe Mataatua.

'My mana motuhake is not wrapped up in one Tuhoē tradition. You will also never find my Tuhoē identity in one gathering of family. You will not find my mana motuhake in one God.

'However my Tuhoē uniqueness, my mana motuhake is interwoven in all these things and from ancient times, present times and time still to come.'

Tamati Kruger¹

1. Tamati Kruger, claimant transcript of oral evidence, Tuarau Marae, Ruatoki, 17 January 2005 (doc J48), pt 1, pp 2–4; Tamati Kruger, claimant translation of transcript of oral evidence, 17 January 2005, Tuarau Marae, Ruatoki (doc J48(a)), pt 1, p 2

Tuhoe the iwi ‘inherited [his] obsession with independence and sovereignty.’³⁰¹ It is why they might sometimes seem not to have acted in their own best interests by, for instance, ignoring well-meant suggestions from outsiders; or why they have often been suspicious of that other power, kawatanga. Their history can only be understood as embodying this yearning, and this determination to secure their own destiny. The achievement of mana, we were told, is driven by mauri, the ‘guiding light within man . . . the spirit that exhilarates’. This mauri – this ‘internal drive’ – is likened to a ‘purposefulness, a design, a will to fulfil’ that can generate ‘wilfulness and zeal, and at times, obsession.’³⁰²

Mana motuhake, Mr Kruger stated, underlies Maori philosophy. It is a value which has deep roots, and which, for Tuhoe, may be found in the creation stories. It is evident, he explained, in the role of Tane when he forced Rangi (the sky) and Papatuanuku (the earth) apart, after they had trapped their children by clinging together. In the darkness which they were so anxious to escape, Tane’s brothers bickered: ‘He [Tane] was the only child of Rangi and Papa who listened to what was being said. He was the only one who had the potential and the judgement to fulfil it, he carried out those wishes he heard. He then separated Rangi and Papa.’³⁰³

In the act of separation of Rangi and Papa, Tuhoe see the achievement of mana motuhake:

Ka puta te tangata ki te Whai Ao ki te Ao Marama. Koina te whakapapa o te Mana Motuhake.³⁰⁴

Then mankind was liberated into the light and physical world. That is the genealogy of absolute authority.³⁰⁵

Subsequently, Tane was gifted the name Tane-nui-a-rangi. He was chosen to fetch the baskets of knowledge from the heavens and went to Tikitiki-o-rangi, where a ceremony was held ‘to place on Tane resolution, steadfastness and devotion.’³⁰⁶ He returned with the knowledge from the heavens, and houses of learning, each named, were erected throughout the Maori world. There were houses at both Maungapohatu and Ruatoki: ‘The sole purpose perhaps was the joining of Gods and philosophy to mankind.’³⁰⁷ Tuhoe lore and history, we were told, were not ‘just from yesterday’, and would remain long after our hearings; ‘these talks [korero] will still be here, our dreams will still be here.’³⁰⁸ And, as with

301. Kruger, brief of evidence (doc 129(b)), para 7.5

302. Tamati Kruger, brief of evidence, 6 September 2004 (doc G12(a)), pp 5–6

303. Kruger, claimant translation (doc G48(a)), p 6

304. Tamati Kruger, claimant transcript of oral evidence, Murumurunga Marae, Te Whaiti, 16 September 2004 (doc G48), p 8

305. Kruger, claimant translation (doc G48(a)), p 6

306. Tamati Kruger, claimant translation of transcript of oral evidence, Tauarau Marae, Ruatoki, 21 January 2005 (doc K34(a)), p 5

307. *Ibid*, p 6

308. *Ibid*

the separation of Rangī and Papa, obtaining the knowledge brought light to the world:

So this is this house standing here, Tane-nui-a-rangi. It is his Mana Motuhake, it was him that perforated the dark and forced the illumination of the world. According to Hohepa Kereopa of Nga Maihi, this is the sign of the power of Gods, this is the sign of authority of the land, and this is the sign of supremacy of man.³⁰⁹

Mr Kruger spoke to us on several occasions about the origins of traditions and custom in Maori philosophy, sourced in knowledge from the realm of the gods. He stressed that those who practise custom must understand why they do so; because that has always been the key to the survival of custom. Iwi identity depends on the survival of custom and belief. We cite the example he gave of the importance of understanding the roots and the significance of custom in the traditions of the gods, rather than simply going through the motions. He chose the hongi (see the sidebar over). If the genealogy of this custom were lost, he warned, it would become a custom of no consequence. If the genealogy of the belief as to the creation of the ancestor Hine-ahu-one were to be misplaced, the belief itself would disappear.³¹⁰

Similarly with tikanga. Tikanga, he said, 'is the way we conduct our lives consistent with our beliefs, with our philosophical baselines, as they manifest themselves in our behaviours, our relationships, our way of life.'³¹¹ The practice of tikanga must, in his view, be grounded in an understanding of the philosophy that underlies it, or it will be no more than 'random activity'. It may exist at a waka or iwi level, certainly it is practised at the hapu level (where differences are often evident). Above all, tikanga is very practical: 'its vitality is maintained by practising what we believe, and by continually endeavouring to practise our own way of doing things.'³¹²

This, Mr Kruger explained, is also an expression of mana motuhake: maintaining 'the continuity and consistency of our philosophies through the practical expression of our tikanga.'³¹³ It was and is central to maintaining identity, and liberty; over generations, leading rangatira have devoted themselves to protection of Tuhoe philosophies. That, he stated, was the prime responsibility because the alternative was to lose one's tradition and customs – which became vulnerable if they were not actively protected. And, if tradition and customs were lost, with them would go Tuhoe identity.³¹⁴

This commitment to actively protect their own identity, we were told, also explains aspects of Tuhoe history. It was why, from Tuhoe's perspective, their mana 'had to be visible' at Te Whaiti, at Murupara, at Waikaremoana, and at Ohiwa:

309. Ibid, p 7

310. Kruger, claimant translation (doc G48(a)), p 4

311. Kruger, brief of evidence (English) (doc G12(a)), p 2

312. Ibid, pp 2-3

313. Ibid, p 4

314. Kruger, claimant translation (doc G48(a)), p 5

Understanding the Meaning of Custom: The Hongi as an Example

‘WHEN Maori meet they press noses, that is a custom. Where did this custom come from? What is the genealogy of this custom?

‘Our ancestor Tane decided to seek human genes, he committed to finding the female. He then fashioned man from earth. Whilst he was doing this, his family appeared. They questioned and asked what he was doing.

‘Whiro – his eldest brother – arrived. Because of his jealousy, Whiro gifted evil to man, and that is us, mans weariness, lethargy, that is our make up. Whiro contributed this.

‘We come to Tu, Tu gifted vitality and that is why some of us are warriors and brave, and do not have any fear whatsoever.

‘We come to Rongo who gifted calm. That is why mankind indoctrinates fostering and looking after others.

‘Others gifted so and so parts, and then man was completed. It was then Tane who gifted the breath of life via the nose of Hine – the earth formed maiden. It was then that woman sneezed. She is the first mortal human. He name is Hine-ahu-one.

‘So when we met, we all press noses. That is to remind us that we are all human. Our ancestor Hine-ahu-one was given the breath to her nostril.’

Tamati Kruger¹

1. Tamati Kruger, claimant translation of transcript of oral evidence, Murumurunga Marae, Te Whaiti, 16 September 2004 (doc G48(a)), p 4

Tuhoe Commitment to the Right to Determine their Own Beliefs

‘EAi ki nga korero a nga tipuna: I hangaia ai a tatau tikanga kia kore rawa ai tatau e noho i raro i nga tikanga a tetahi atu.’

‘WE establish our customary practices and hereditary rights so we may never have to live in servitude in another people’s system.’

Te Whenuanui Te Kurapa¹

1. Te Whenuanui Te Kurapa, kupu whakataki (doc E31), p 3

they were driven by the determination ‘to protect their ability to dream their own dreams rather than being forced to live the dreams of others.’³¹⁵

2.3.2 Authority and customary law in Te Urewera

We have referred above to the importance of understanding the norms and laws which operated in Te Urewera society, if we are to understand hapu and iwi responses to Government laws and institutions when they took effect in Te Urewera. Rangatira exercised their authority in accordance with customary law, and with the principles and values it reflected. In particular we refer here to mana, whanaungatanga, and utu. We discuss these values further below.

2.3.2.1 Rangatira

The key responsibility of rangatira was to ensure the well-being and the future of their hapu. This meant protecting – in fact, shaping – tradition and customs: deciding which ‘political, military and social practices’ were acceptable or desirable, and which were not.³¹⁶ It meant protecting land and resources on which the community depended. It included protecting the mana of the hapu by responding to offences committed, and leading taua. It meant securing marriages which would ensure supportive alliances, or allow ready access to resources not available at home. It involved protecting knowledge which the hapu considered crucial to its mana. Obligations had also to be created in various ways, whether by assisting allies or whanaunga when called upon, or making valued gifts. And obligations had to be met when they had been incurred in the past. Protecting the well-being and future of the hapu might also be interpreted to mean expansion beyond lands already held. Or, in some circumstances, it might mean recognising the dangers of continuing conflict, and working to achieve a lasting peace.

The relationship between the hapu community and their rangatira – in Te Urewera as elsewhere in Maori society – is at the heart of the exercise of authority. Rangatira were mandated to make decisions on behalf of the hapu so as best to protect its interests. Advice and support was always available to them; indeed, it was expected that leaders would not act without it. If they did not take care to carry the community with them, they faced the sanction of the withdrawal of support. John Rangihau of Tuhoe emphasised many years ago, in a discussion with members of the Waitangi Tribunal hearing the Orakei claim, the importance of recognition by the people for those who were to take on ‘the mantle of rangatira’. Noble descent and strong leadership ability were indispensable – but so too was confirmation by the people. As he put it, ‘rangatira was people bestowed.’³¹⁷ The authority embodied in the concept of rangatira is also the authority of the people.

315. Kruger, brief of evidence (doc G12(a)), p7

316. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p77

317. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p187

Whenua Tuku (Gifted Land): The Creation and Maintenance of Obligations

A gift of land made in acknowledgment of assistance received or because the land had become tapu when chiefly blood was spilt there might create or strengthen relationships. Whakarotu of Nga Potiki, whose husband Tahakianina of Ngati Tawhaki was killed by Ngati Manawa, sought assistance from Te Arohana of Te Urewera hapu to avenge his death. When he and his ally Tutonga were successful, she made a generous gift of lands to them at Opuhou. Tutonga in turn allowed the gift to go to Te Arohana, who moved to occupy the Ruatahuna lands – and the result was a ‘powerful and lasting bond between the hapu of Te Urewera and Ngati Tawhaki.’¹

1. Tuawhenua Research Team, ‘Ruatahuna: Te Manawa o te Ika’ (English), 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003–04), vol 1 (doc B4(a)), pp49–50

Two of many instances of the exercise of mana struck us from Tuhoe’s evidence. They were widely separated in time; but both illustrate the nature of rangatira leadership. The first, from the early nineteenth century, shows that a rangatira such as Paora Kingi I might exercise his mana in making bold decisions, and carry the hapu, even the tribe and tribal allies, with him (see the sidebar opposite). The second comes from the evidence of Rongonui Tahi for the Ruatahuna claimants. He was talking of the mid-twentieth century, when circumstances had changed and recourse to war parties was no longer possible in settling disputes. But, as he spoke of the rangatira Pakitu Wharekiri as the last of the old generation, he evoked the kind of exercise of mana which was evident also in histories of an earlier period. Pakitu Wharekiri, he said, ‘was the last rangatira to really enforce a form of traditional social control as part of our self-governance.’³¹⁸ His mana extended beyond his own hapu, throughout the whole valley of Ruatahuna. ‘For Maori traditional matters such as whakapapa, muru, taumau and disputes he had the last say.’³¹⁹ He attended the whare maire (where tribal leaders were groomed) with others of his generation, learning the rituals needed for maintaining the welfare of whanau and hapu. But Pakitu, though he was the rangatira, ‘was not running matters from the front, as a director of operations.’ Rather, he stepped in when the people could not solve their own problems. Thus, Mr Tahi underlined the judiciousness with which Pakitu Wharekiri’s role was exercised.³²⁰

318. Rongonui Tahi, notes in English of evidence, 22 June 2004 (doc E26), p2

319. Ibid

320. Ibid, pp2–3

The Mana of Paora Kingi II: His Decision for Peace

A remarkable account exists demonstrating the exercise of mana by the rangatira Paora Kingi I, mokopuna of Te Umuariki. Kingi's decision against vengeance for his grandfather's death is well remembered. Te Umuariki was killed during fighting with Te Aitanga a Mahaki and Rongowhakaata.¹ Only about a quarter of the party returned home alive to Ruatahuna in the wake of both this and a second fight. One 'quick strike' in retaliation against the Turanga people was made at once. But a much larger expedition was planned under the leadership of Paora Kingi I and Te Whenuanui I, son of Te Umuariki. A very large canoe, named Te Totara o Huiarau, was made at Waimana, and many men gathered there to haul it from the forest to the river. Most were Tuhoe, but parties from a number of other iwi joined too, including Ngati Awa, Te Whakatohea, Ngai Tai, Te Whanau a Apanui, Ngati Hineuru, Ngati Whare, and Ngati Manawa. The canoe was taken down the river to Whakatane. Then, when all were assembled, Paora Kingi addressed them: 'Kua whakatu e tatau te ope mo te utu, kua taraia te waka taua kua kawea ki te moana. Ki taku whakaro kua ea te mate o Te Umuariki me marere ka hoki ki o tatau kainga.'² ('As we have organised our expedition of vengeance, made our war canoe, and brought it to the ocean, I am thinking that the death of Te Umuariki is avenged. We will now disperse and return to our homes.'³)

In other words, Pou Temara explained: 'the uniting of the tribes of Matatua was seen as redress enough.'⁴ The decision may, as Best suggests, have been a strategic one at a time when Tuhoe had been fighting on many fronts, but the role of a chief was to make such assessments and to ensure the hapu or iwi were not overexposed. Though some objected to his course of action, Paora Kingi's word was sufficient, and the war party disbanded. He and Te Whenuanui went to the east coast and made peace with the people there. The name of the tatau pounamu which ended the fighting with the east coast people was 'Te Here o Te Whetu, Te Here o Te Marama.'⁵ Kingi's commitment to peace was expressed again on his death bed, when he uttered the famous words 'Kia tawharautia a Matatua' (Let Matatua be sheltered).⁶

1. Tuawhenua Research Team, 'Ruatahuna: Te Manawa o te Ika' (English), 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003–04), vol 1 (doc B4(a)), p 126 fn 176; Merata Kawharu, 'Te Mana Whenua o te Aitanga a Mahaki' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000) (doc A78), p 170

2. Tuawhenua Research Team, 'Ruatahuna: Te Manawa o te Ika' (Maori), 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003–04), vol 1 (doc B4), p 112

3. Tuawhenua Research Team, 'Ruatahuna' (English) (doc B4(a)), p 129

4. Ibid

5. Ibid, pp 128–129

6. Ibid, p 129

2.3.2.2 Mana

Mana may be understood in different ways; it has different characteristics. It should not be understood, we were told, as having a single meaning. We have already considered the importance to Tuhoē of mana motuhake. They spoke also, however, of mana tangata, mana whenua, and mana atua, and explained them to us in these terms:

‘Mana tangata means political power. Mana whenua is economic power. Now a rangatira can be given either mana whenua or mana tangata or both. I think if you’re given both that’s a measure of your mana and mauri – mana whenua, mana tangata . . .’

. . . *mana atua* refers to the ‘right of authority gifted or inherited or bestowed upon them by supernatural means.’ Thus a person gains mana atua when they are anointed as prophet or leader by a spirit that presents to them through a dream or vision.³²¹

We refer also to the explanations of mana given to us in Ngati Whare’s mana whenua report by Robert Wiri. Mana, he emphasised, is inherited. Its sources lie in both te mana wairua (the domain of spiritual authority) and te mana tangata (the domain of human authority). Whakapapa demonstrate links between the spiritual and the human realms.³²² ‘For the Maori people of Te Whaiti, the spiritual connection to the past is an integral part of their cultural identity and their social construction of reality, hence the expression te mana wairua, the spiritual prestige, or the spiritual authority.’³²³ The importance of spiritual prestige is evident in whakapapa, which record descent from spiritual beings known as patupaiarehe and turehu. There are names in whakapapa which ‘do not refer to real people and which are known as *tipua* and *turehu*.’³²⁴ Such korero whakapapa concern te kauwae runga (the upper jawbone), the celestial realm of Ngati Whare’s history. Kaumatua Jack Ohlson explained why such tipuna were included in the whakapapa in these words: ‘Kia mana ai wo ratau whakapapa’ (‘In order to imbue their genealogies with prestige’).³²⁵

The spiritual domain, we understand, also encompasses te kauwae raro (the lower jawbone), the realm of human beings. This is because it is the realm of ancestors such as the great Toi – Toi of many names – whose feats are recorded in korero tipuna (ancestor stories). Such tipuna may be imbued with supernatural powers.³²⁶

Inherited mana is also important in the ‘domain of human authority’ – that of the ancestors who fought to maintain their mana tangata (human prestige) and their mana whenua. Mana tangata, we were told, refers to:

321. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 80

322. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), p 45

323. Ibid

324. Ibid, p 46

325. Wiri, ‘Ngati Whare Mana Whenua’ (doc G7), p 5

326. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), pp 46–47

Tuhoe Explanations of Mana

Mana whenua; mana tangata

Mana whenua is:

the right of a person . . . by consensus, to represent the interest of people in the land whether that is whanau, hapu or iwi. Mana whenua means that they are given the authority to speak about how that land and its resources will be used, utilised, accessed, whatever . . . stored. Now that means economic power . . .¹

Mana tangata is:

where, by consensus and by other criteria . . . a person is appointed in trust of a group of people . . . Mana tangata really is like that political power. People say 'Ko koe hei mangai mo tatou, ko koe hei arahi i a tatou. (You are a spokesperson for us, you can lead us) . . .' It's not as if ka ki atu au, 'A kei a koe (It is up to you)', and you go on your merry way and never consult us again. Engari [But] you don't represent your own opinion you represent our opinion . . . So that's what mana tangata is, it's political power by virtue of consensus opinion either by a whanau, a hapu and iwi even a waka. A waka can appoint someone as their mangai. That mana can be temporary or . . . as long as they perform their duties to the satisfaction of the group. That's the rule. Not, forever and ever, amen. Ka he ana kua kite koe kua taea e te hapu te tango mai i te tangata (When a mistake is made, you will see that the hapu is able to remove that person) . . .²

Mana whenua, 'inevitably flows' from mana tangata. 'Like Mauri and Mana, Mana Whenua and Mana Tangata cannot be separated. Well not from a Tuhoe perspective anyway.'³

Mana atua

Uhia is famed in Tuhoe history for his mana atua, and his leadership of Tuhoe to victories through his 'incisive military tactics'. This mana atua came to Uhia through the atua, Te Rehu o Tainui. With Uhia as the medium, Te Rehu-o-Tainui guided Tuhoe in war against tribes such as Whakatohea, Te Kareke, Te Arawa, and Ngati Tuwharetoa. The evolution of Te Rehu-o-Tainui as an atua began with a still-born

1. Tamati Kruger, 1 8/2/2002 (Tuawhenua Research Team, 'Ruatahuna: Te Manawa o te Ika' (English), 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003-04), vol 1 (doc B4(a)), p 79)

2. Ibid, p 80

3. Tamati Kruger, brief of evidence, 6 September 2004 (doc G12(a)), p 8

child named Hopemotu, whose wairua became an atua, adopting the form of a moko-kakariki. 'This type of lizard was considered to be particularly tapu and thus the mana of the atua was considerably enhanced. The particular endowment provided by the moko-kakariki was the power to "destroy man". Thus, "te atua mo te riri" was formed.' Uhia became the medium of the atua. Subsequently, Uhia guided Tuhoe in battle in accordance with kite (prophecy) presented to him as he slept; explaining those kite to the taua. It is thought Uhia must have died by 1832.⁴

4. Tuawhenua Research Team, 'Ruatahuna' (English), pp 129–130, 134

the mana which an individual or tribal group has inherited from their forbears and the recognition of that mana tangata by other groups. Mana tangata also recognises and validates the overlapping kin rights possessed by different hapu and iwi over certain lands.³²⁷

Clearly, Ngati Whare explain mana tangata in terms which differ from that of Tuhoe. In the history of Te Whaiti-nui-a-Toi, Ngati Whare, Tuhoe, and Ngati Manawa, though they are closely related, each guard their mana tangata, inherited from their ancestors.³²⁸

2.3.2.3 Utu

Utu is a much misunderstood term. It concerned the maintenance of 'harmony and balance, and of mana',³²⁹ and it can thus be applied in various contexts. Where killings or murder were involved, for instance, balance was restored through the taking of life in return. We have seen the importance of the taking of utu throughout the histories we referred to earlier in this chapter. The Tuawhenua report refers to Whakarotu, the injured widow of Tahakianina of Ngati Rakei, 'seeking revenge' ('ka huri a Whakarotuki te kimi utu') in such circumstances.³³⁰ Challenges to mana, or insults, were never overlooked; they required strong responses.

We understand why this was so. In Te Urewera, as elsewhere in the Maori world, the protection of the tapu persons of chiefs was vital, as was the protection of their authority. The effective exercise of authority was crucial to the well-being of the hapu, even its survival. Law – though unwritten – laid down appropriate procedures and penalties for attacks, insults which demeaned a chief, blatant trespass on the resources of others, and killings or murders. Such penalties were well

327. Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p 67

328. Ibid

329. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 26

330. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 43, 47

understood, and those who committed hostile acts, or who uttered curses (whether they were deliberate or might simply be interpreted that way), were aware of what response they might expect. Taua exacted utu; and since responsibility for offences was collective, the penalties might be visited on a whole community.

A confrontation between two rangatira might well have ramifications for the hapu of both. A hapu which failed to respond decisively to challenge, in fact, would simply invite further assaults, and imperil its own survival. Sometimes an insult, or a defeat, was recorded in the name of a new-born child, or a new name taken by an adult, to ensure its memory was kept alive until payment could be exacted. Young and Belgrave suggest that, where 'two powerful tribal groups' were involved (they refer specifically to Tuhoe and Ngati Kahungunu at Waikaremoana), utu was 'a reciprocal and competing relationship based not just on warfare or slights but also on competitive hospitality and mutual economic relationships'.³³¹ The search for utu, in other words, was a broad one. Where each tribe regarded the other as a 'clearly defined enemy', conflict was driven both by their past, and by the nature of their ongoing relationship. In such circumstances, one tribe could not 'conquer' another, they say, because it was never over: utu was about 'finding equilibrium in a relationship', and the balance constantly tipped one way or the other.³³²

There were, however, established mechanisms for making peace – when both parties felt able to take that step – which provided for the restoration of balance in relationships so that neighbouring iwi could live with one another. Notable peace agreements, called tatau pounamu, were negotiated in the early nineteenth century. Professor Pou Temara spoke of the tatau pounamu between Tuhoe and Ngati Kahungunu (which we have referred to in an earlier section of this chapter) and the beginning of moves towards peace. The essential elements of a tatau pounamu, he said, were clear:

Firstly a tatau pounamu could never be a unilateral declaration. There had to be discussions by the tribes themselves who were involved in the conflict to consider their willingness to 'bury the hatchet'. Emissaries visited to try to negotiate a settlement and a tatau pounamu between the parties. With that achieved then the meeting between the chiefs of both Tribes took place, where the tatau pounamu was publicly and ceremoniously proclaimed, followed by celebrations.³³³

In this tatau pounamu, two maunga – Kuha-Tarewa, 'symbolically a female', and Turi-o-Kahu, a male – were 'joined together in marriage by the peace-making so that the peace would be long lasting'. A human marriage was also arranged, with Hipara Puhirua of Ngati Kahungunu 'offering his daughter Hine-ki-runga to Tuhoe'.³³⁴

331. Young and Belgrave, 'Customary Rights' (doc A129), pp 17, 21

332. Ibid, pp 17, 21

333. Temara, brief of evidence (doc H19), p 13

334. Ibid

The Peacemaking Marriage and Leadership of a Wahine Rangatira

Mihikitekapua is famous for her waiata not only within Tuhoe but beyond. Her waiata were often sung during our hearings. Her remarkable life illustrates both her commitment to a marriage arranged to secure peace in the wake of hostilities and her famous determination to secure revenge a number of years later on those who defied the rahui she had imposed following the killing of her son.

Mihikitekapua was the daughter of Te Aihurangi of Te Urewera and Tamakaimoana. Pou Temara stated that she was given as a pakuha (given in marriage) to Hikawai of Ngati Kotore (Ngati Hinganga) to make a lasting peace between Tamakaimoana and Ngati Kotore. They had five children; the oldest was Mahia who, it was intended, would become the leader of both Tamakaimoana and Ngati Hinganga.

But Mahia was killed leading Ngati Hinganga in battle about 1819. This was a huge blow to Ngati Kotore and to Tuhoe. Ngati Kotore moved to Maungapohatu, and Mihikitekapua imposed a rahui on Te Papuni which forbade the growing and taking of food there. But Ngati Kotore, yearning to go home, returned after only a short time, and took food from the bush, the rivers and the lakes. At this point, Mihikitekapua, in her anger, gathered Tamakaimoana and Tuhoe from Ruatahuna and Te Whaiti to seek revenge from Ngati Hinganga for breaching the tapu she had imposed. Though Ngai Tuhoe considered the circumstances in which her own marriage had been made, they gave in to her determination. In the conflict which followed, Pou Temara said that Te Papuni was overrun by Tuhoe, and Mihikitekapua's

The importance of restoring balance is also evident in the fact that provision was made in such peacemaking ceremonies for the widows of those killed to be able to vent their anger 'as part of the healing process'.³³⁵ Thus, when a tatau pounamu was negotiated between Ngati Awa and Tuhoe (around 1834), the Tuhoe chiefs who responded to Ngati Awa moves for peace were greeted at Te Kupenga Pa by Ngati Awa widows:

These women greeted Tuhoe with a whakatea or manawawera, a song admonishing those who had made them widows. This was accompanied by much fierce denunciation, gesticulation and pukana. This public rebuke was not only expected but also accepted by Tuhoe. Afterwards Ngati Awa and Tuhoe joined together in a prolonged tangi.³³⁶

335. Temara, brief of evidence (doc H19), p 14

336. Nikora, 'Tuhoe and the Rangitaiki' (doc C30), p 23

husband Hikawai was killed. Further prolonged conflict followed, and it was in this period that Mihikitekapua emerged as a composer. Her most famous waiata is Taku Rakau.¹ Pou Temara said:

Mihikitekapua . . . left many legacies in the history of Tuhoe that are kept very much alive today through her famous waiata. But what impresses us most is that as a woman, her leadership and mana tangata operated in [different] ways . . . She took her role in the peacemaking between Tuhoe and the people of Te Papuni through her marriage to Hikawai, and understood her responsibilities to maintain that peace over time as she prepared her son for leadership of both Tamakaimoana and the tribes of Te Papuni. When Mahia was killed, she exercised her rangatira-tanga in placing a Rahui on the lands of Te Papuni. When the enthusiasm of Tuhoe for the long, and costly campaign flagged, she knew just how to lift that fighting spirit to take the wars to their conclusion. She was acknowledged as a rangatira in her being settled at Waikaremoana to uphold the mana of Tuhoe in that area. And her skill as a composer, recording key histories of Tuhoe, secured her reputation now as ‘the greatest composer of Tuhoe and Matatua peoples.’²

1. William Rangiaua (Pou) Temara, brief of evidence, 2004 (doc H19), pp 2–3

2. Tuawhenua Research Team, ‘Ruatahuna: Te Manawa o te Ika’ (English), 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003–04), vol 1 (doc B4(a)), pp 115–118)

This was the beginning of the peace discussions.³³⁷

Tatau pounamu marked lasting peace, remembered by the tribes involved to the present day. No person, Tuhoe kaumatua stated, could breach a tatau pounamu. In the words of Wharehuia Milroy, ‘Ko te kupu a te tangata kia rite ki te kakano pounamu e kore e rereke te ahua ahakoa e hia te roa.’³³⁸ (‘A person’s word is likened to the grains seen running through greenstone whose character is unable to be changed by the passage of time.’³³⁹)

2.3.2.4 Whanaungatanga: kinship bonds

‘The fundamental purpose of Maori law’, it has been said, ‘was to maintain appropriate relationships of people to their environment, their history and each other.’³⁴⁰

337. Ibid

338. James Te Wharehuia Milroy, brief of evidence (Maori), 15 October 2004 (doc H51), p 12

339. Milroy, brief of evidence (doc H51(a)), p 11

340. Waitangi Tribunal, *Muriwhenua Land Report*, p 21

Matemateaone: Tuhoe Kinship

Matemateaone has been described as a living philosophy. One of its crucial elements is kinship, human relationships. Tamaroa Nikora said that matemateaone is ‘essentially a feeling of genuine relationship and behaviour between people, place and property that engenders and demonstrates “whanaungatanga” – a sense of relatedness, commonality, and group belonging’.

Wharehuia Milroy explained:

As we understand it, [matemateaone] is a dynamic associated with the manner in which we Tuhoe organise ourselves socially, culturally, politically, and spiritually. They are our ideals as an iwi, moral dictates that say how we are to behave. Matemateaone grows from within the group, knowing and getting to know each other. The physical cues such as trees, mountains, rivers and kainga etc are all factors that activate matemateaone. Everyone of Tuhoe should share a subtle code of knowledge that goes to make up matemateaone.¹

1. Ngahuia Te Awekotuku and Linda Waimarie Nikora, ‘Nga Taonga o Te Urewera’, August 2003 (doc B6), pp 22–23

Kinship bonds had always been crucial in ‘determining action’ and in ‘establishing rights and status’.³⁴¹

We refer here to some of the ways in which relationships were built and maintained because, in the period that concerns us in this report, the nature of those relationships so often affected political decision-making, rights to land and resources, and Maori handling of matters affecting their rights in various new forums: the Native Land Court (see chapter 8); the Urewera commissions (see chapter 9); and the consolidation commission (see chapter 10). The basis of relationships lay (and lies) in whakapapa, in intermarriage (and reciprocal visits celebrating marriages, or other important social occasions), and in economic interaction during shared food gathering, gift exchange, and trade.

Tuhoe speakers drew our attention to the immense importance attached to whanaungatanga within their iwi, including a shared identity with (and knowledge of) the land and places of Tuhoe, and shared codes of behaviour. They spoke of matemateaone – ‘a yearning for your own kind’ – in the same breath as Tuhoetanga and mana motuhake.³⁴²

341. Waitangi Tribunal, *Muriwhenua Land Report*, p 26

342. See, for instance, Kruger, brief of evidence (doc J29(b)), para 2.5.

2.3.2.4.1 THE IMPORTANCE OF STRATEGIC MARRIAGES

Key to these bonds of whanaungatanga within Te Urewera communities was the history of strategic marriages or, as it has sometimes been described, the management of whakapapa. We were told that in some cases marriages might be arranged internally to strengthen a hapu. Ngati Tawhaki dominance at Ruatahuna (from Tarapounamu to Hanamahihi) in the generations after Mataatua settlement was based on their ‘holding knowledge and expertise’ and protecting that knowledge by ‘selective marriage across their own lines of whakapapa’: ‘kare i tawhitiwhiti te haere ki te tiki hoa tane, hoa wahine ranei. Engari i kaha te taumau ki reira. Ka tiro ana koe ki nga mohiotanga mo te raranga mo te whakairo a mo era mea mo nga karakia me etahi mea.’³⁴³ This was a hapu which produced the principal tohunga from the whare maire at Hanamahihi and which was expert in the arts. The pattern of marriages they chose was designed to ensure that the ‘mana of certain bodies of knowledge remained firmly within Ngati Tawhaki’.³⁴⁴

Sometimes, marriages were designed to cement rights for conquering groups by creating whakapapa links to the ancestors of defeated peoples (with both sides remaining on the land). In her evidence for Te Aitanga a Mahaki, Merata Kawharu gave several examples.³⁴⁵ We referred earlier, in section 2.2, to the marriage of two Ngati Maru sisters, Whareana and Te Haaki, to the Mahaki rangatira Kaikoreaunei. By this means, Kawharu argued, Te Aitanga a Mahaki settled on the lands of the defeated Ngati Maru, who ‘maintained a precarious independence’.³⁴⁶ (We discussed the very different significance which Te Whanau a Kai attach to these marriages in section 2.2.)

More generally, political marriages were designed to extend or cement links with other hapu or iwi. Ngati Tawhaki, for instance, formed close links and alliances with Tamakaimoana and – more particularly – with Te Urewera. The descendants of Ngati Whare and some of Ngati Manawa began to live together at Te Whaiti-nui-a-Toi because of their close whakapapa ties, and because of a series of arranged marriages.³⁴⁷ We note also the marriages made by Tamahore and Te Purewa, the sons of Tihi and Kokamutu, who had links to many hapu of Tuhoe – Nga Potiki, Te Urewera, Ngati Huri/Tamakaimoana, and Ngati Rongo. In the early part of their lives, the family lived along the Whakatane River at the settlements of Nga Mahanga and Kamihi. Tamahore married three sisters and had many children. Te Purewa had five wives. As adults, Tamahore and Te Purewa were living in the Ruatahuna region, probably (we were told) in the wake of the migration of Ruatoki hapu there in 1820 or 1821. We note the wide-ranging links that these chiefs were able to call on at a time when Tuhoe were about to become embroiled in conflict with Ngati Kahungunu, Ngati Pukeko, and Te Arawa.³⁴⁸

343. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 157

344. Ibid

345. Kawharu, ‘Te Mana Whenua’ (doc A78), p 189

346. Ibid, p 123

347. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), p 70

348. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 95

Such marriages could of course lead to disputes, or, in some cases, deeply divergent views as to their political significance, the kinds of rights and status that flowed from them, and their significance for cultural identity. This is evident, for instance, as we have noted, at Te Whaiti. Tuhoe claimant Hiraina Hona, who argued the basis of Tuhoe rights there, stated that marriages among her own forebears were intended, as she put it, to consolidate ‘*Tuhoe motuhake Tuhoe mana whenua* throughout Te Urewera’ (emphasis in original).³⁴⁹ She pointed to ‘key political marriages between my Tuhoe whanui [which] gave Ngati Whare and Ngati Manawa a permanency of life in Te Urewera within the stronghold domain of Tuhoe.’³⁵⁰ In particular, she referred to her own chiefly forebear Rangiaukume, a kawai rangatira (high born chief), and the mana rangatira inherent in her lines of descent. Rangiaukume (the sister of Tutakangahau) was married to Tamehana Peti, whose descent was from Te Marangaranga, Ngati Hamua ki Te Whaiti, and Te Karaha, in order to consolidate Tuhoe interests in Te Whaiti-nui-a-Toi.³⁵¹ Another such marriage was made between Kuoro and Te Tuhi Wikiriwhi, son of a Ngati Manawa chief, with the same aims.³⁵²

Mr Kruger’s evidence, as we have seen, reiterated the purpose of Tuhoe in planting families at Te Whaiti who ‘carried the desires and the dreams of Tuhoe’, who symbolised their presence, their mana tangata and thus, he emphasised, their mana whenua.³⁵³

Ngati Whare made it clear that they did not see the significance of those marriages in the same way. They acknowledge the close relationships between Ngati Whare, Tuhoe, and Ngati Manawa, and the basis of their mana tangata (inherited mana) in their dual lines of descent from Wharepakau and Nga Potiki-Ngai Tuhoe. But, in terms of mana whenua, they emphasise their descent from Wharepakau’s son Te Manako and the derivation of their rights to land solely from Wharepakau through that line.³⁵⁴ Dr Wiri also stated that the history of Te Whaiti-nui-a-Toi must be understood through the lens of whakapapa connections and whanaungatanga. Whakapapa is ‘inclusive of others, that are related to you, rather than being exclusive.’³⁵⁵ All three iwi – Tuhoe, Ngati Manawa, and Ngati Whare – must be acknowledged.³⁵⁶

Anaru Te Amo explained his many lines of descent to different tipuna in ways that connected him to the hapu of the region. Among other things, his evidence showed us the connections between Ngati Whare, Ngati Manawa, and Tuhoe. For example, Te Amo explained how one line of descent showed that the mana tangata

349. Hiraina Ngatima Hona, brief of evidence, 6 September 2004 (doc G44), p 10

350. Ibid

351. Ibid, p 16

352. Ibid, p 19

353. Kruger, brief of evidence (doc G12(a)), pp 7–8

354. Te Amo, brief of evidence (doc G34), pp 3–4

355. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), p 67

356. Ibid, p 101

of the Ngai Tuahiwi hapu is derived from Wharepakau and Potiki-Tuhoe.³⁵⁷ Similarly, Ngati Mahanga share strong links with both Ngati Whare and Ngati Manawa. Mahanga was the son of Tangiharuru, but his people came to settle in Te Whaiti-nui-a-Toi very early in their history, intermarrying with the descendants of Wharepakau.³⁵⁸ Mr Te Amo said that the people of Ngati Mahanga ‘possess bilateral rights’ that come from both Ngati Whare and Ngati Manawa through their respective eponymous ancestors.³⁵⁹ This evidence spoke strongly of kin links shared by the people of the region.

These kinds of links were created deliberately through marriages. One purpose of such marriages would seem to have been to prevent open conflict, as iwi on both sides soon had a shared interest in the children they produced. Hiraina Hona related the Tuhoe account of an invitation issued to Tuhoe chiefs by Koura of Ngati Rongo to assist him to ‘destroy’ Ngati Whare, after his relative Te Tawhi was killed by Ngati Awa, and his matu or fat was given to (and defiled by) Ngati Whare.³⁶⁰ Te Au ki Hingarae responded for the chiefs of Ruatahuna and Maungapohatu, saying:

E pai ana to kupu, mehemea kaore te pa ti, te pa harakeke, kua tipu ki roto o Te Whaiti. He maunga tiketike ka taea e au: he tangata tiketike e kore e taea. – (It would be well, had not the pa ti and pa harakeke grown up at Te Whaiti. I can scale a lofty mountain, but I cannot disregard important persons).³⁶¹

As Ms Hona explained it, Te Au ki Hingarae meant that Ngati Whare and Ngati Manawa had become so intertwined with Tuhoe through marriage, such an attack could not be made.³⁶² And the fighting force went home.³⁶³

If intermarriage had the purpose of strengthening whakapapa links and extending whanaungatanga, children might also be given to their whanaunga in other communities to raise – a custom which has continued into the lifetimes of those who gave evidence. Two sisters who gave evidence before us at Te Waimana, Kirituia Tumarae and Maraera Te Pou, are direct descendants of Tamaikoha. They were brought up at Ruatahuna and at Te Waimana respectively, underlining the bonds between these two communities, and also within Te Urewera.³⁶⁴ As Rongonui Tahi told us, the purpose of the custom was ‘to establish and maintain kinship ties to the people and the lands.’³⁶⁵

357. Te Amo, brief of evidence (doc G34), p 4

358. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), p 70

359. Te Amo, brief of evidence (doc G34), p 5

360. Hona, brief of evidence (doc G44), p 20; see also Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 149

361. Best, *Tuhoe*, vol 1, p 465 (Hona, brief of evidence (doc G44), pp 20–21)

362. Ms Hona says that Tuhoe were ‘growing children at Te Whaiti likened to the Cordyline known as *ti para*’: Hona, brief of evidence (doc G44), p 21.

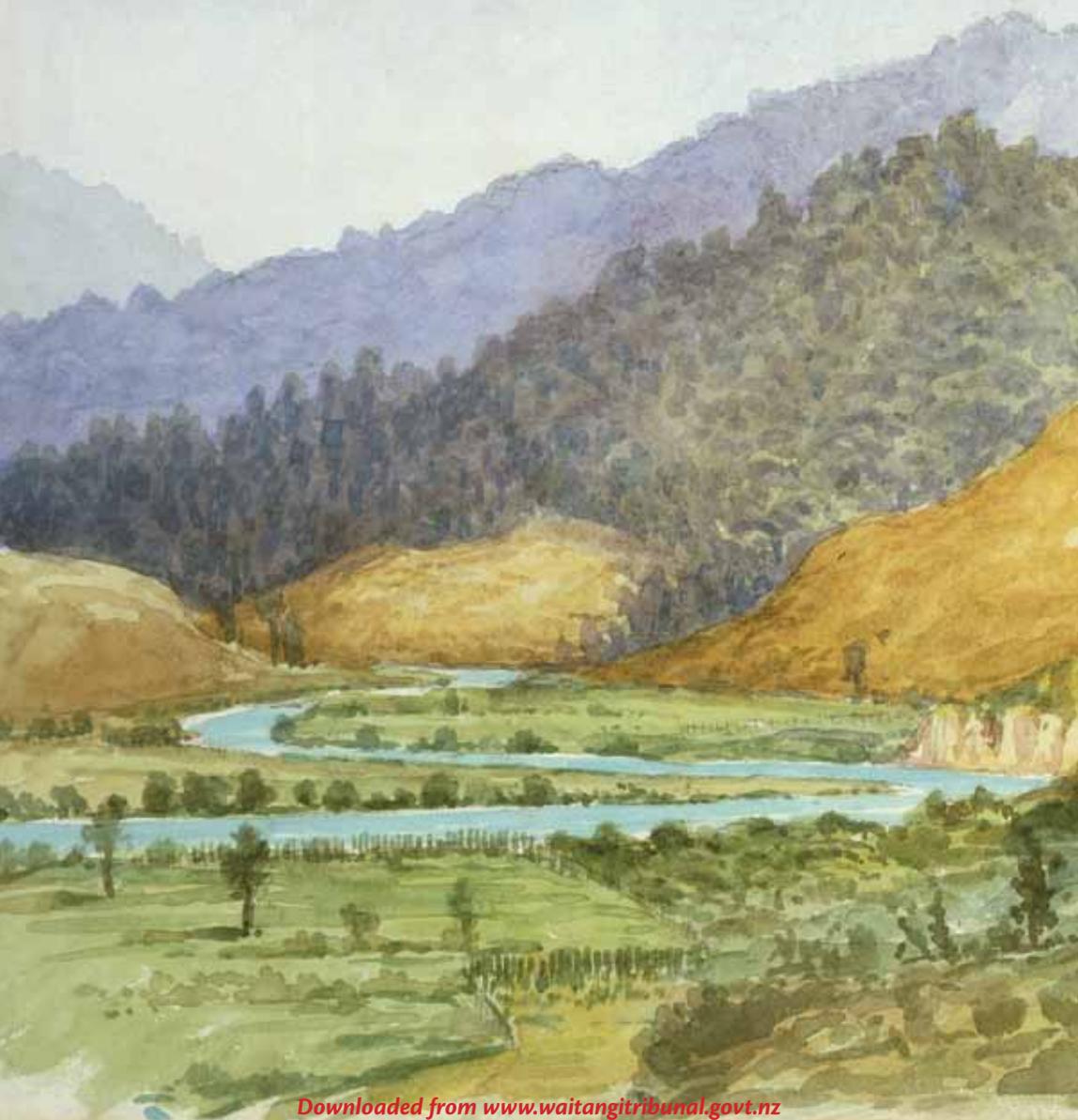
363. Hona, brief of evidence (doc G44), p 21

364. Tumarae and Te Pou, brief of evidence (doc B28), p 9

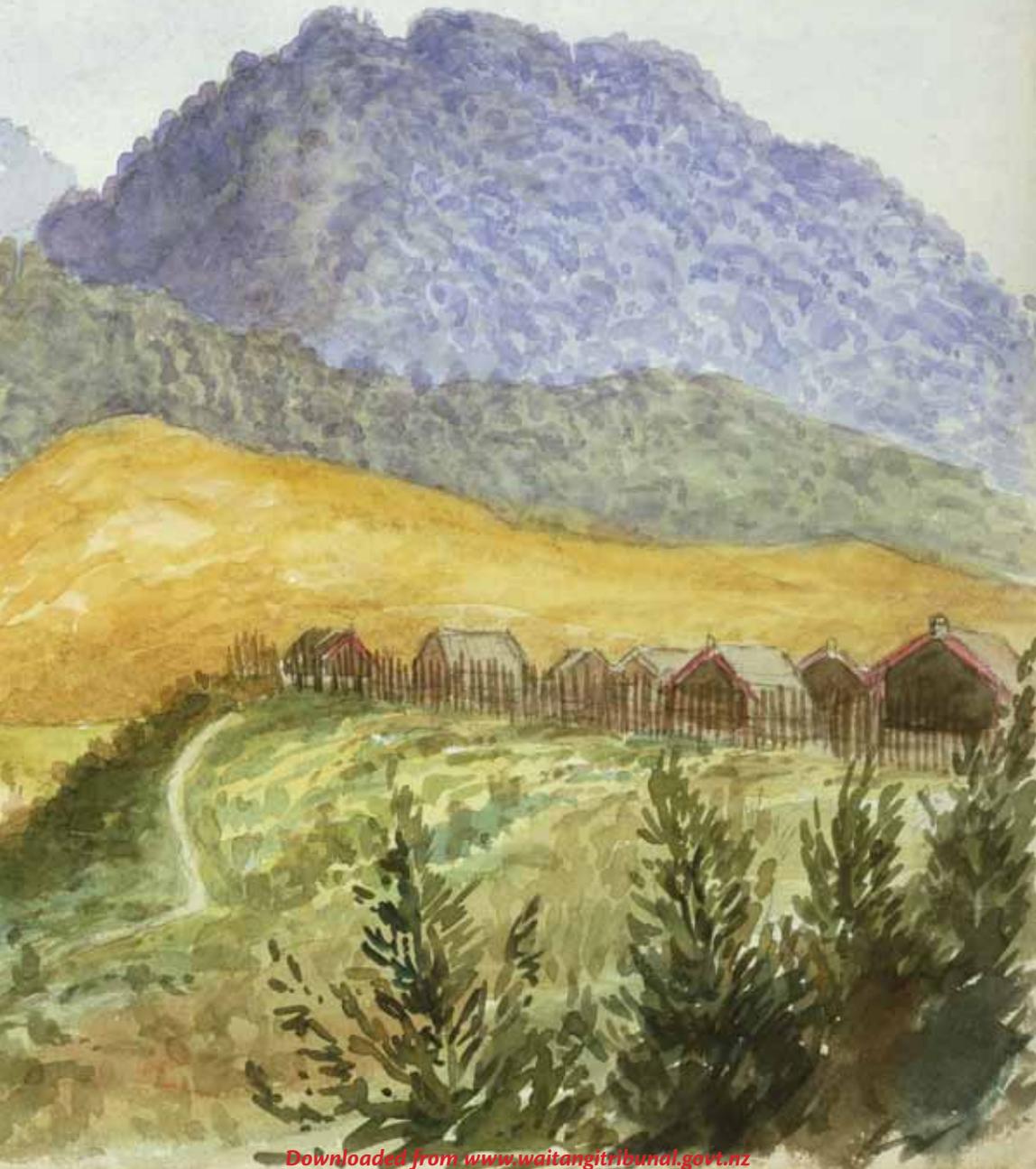
365. Tahi, summary of evidence (doc D23), pp 2–3

Looking up Whirinaki valley showing Te Whaiti Pa in the middle ground, 1891. New looking up the through the valley.

The Whirinaki Valley, with Te Whaiti Pa in the middle ground, 1891. Most of the valley was covered with native forest. Its trees, including totara, miro, rimu, kahikatea, and tawa, were highly prized for their timber, and the forest was an important source of food, medicine, and other resources.



the right hand side and the Whimaki River flowing



2.3.2.4.2 SOCIAL AND ECONOMIC EXCHANGES

Relationships within and across iwi were constantly reinforced in the course of journeys undertaken to attend births, marriages, and tangi, or in search of alliance or trade. There were two equally important sides to this: the making of the journey (laden with gifts); and the hosting of the travellers.

In the histories before us, there was constant reference to visits made and occasions shared, and to the importance of manaakitanga (hospitality and caring for people). Everywhere, the purpose of gathering and preserving food went beyond meeting everyday needs, to the manaakitanga of manuhiri (visitors), and the upholding of the mana of the hapu. The Tuawhenua researchers referred to a pepeha, 'Tuhoe moumou kai, moumou taonga, moumou tangata ki te Po', which emphasised Tuhoe's fame for generosity with food and 'things of value', as well as for their fighting prowess.³⁶⁶ Hohepa Kereopa stressed that prized foods such as kereru and kiore, into whose preparation such effort went, were for manuhiri. The local people might have a meal of fresh birds when the birds first came into season; then they turned to the work of preserving the rest of the catch.³⁶⁷ Manuhiri, after all, arrived in tribal areas in anticipation of the foods for which each iwi was renowned. Ngati Manawa, Hapimana Albert Higgins said, is famous for its tuna (eels):

this reputation is expressed to us when we travel to other tribal groups. It is also important when other groups visit Ngati Manawa; and there is an expectation that we will manaaki those groups by providing our tuna for them to eat. In this way it is important to the mana of Ngati Manawa.³⁶⁸

The tribe's identity 'is closely linked to our relationship with the tuna, our rivers, and our natural resources'.³⁶⁹ This had been the case for generations. So renowned were Ngati Manawa for their tuna that a battle was once fought when some Ngati Manawa visitors offended a chief who thought that they had not brought him any. This was considered a significant insult.³⁷⁰

David Potter of Ngati Rangitahi referred to the close relationship of Ngati Rangitahi with Ngati Manawa, and the 'many stories . . . told of the exchanges between groups to build relationships, including feasts'.³⁷¹ And Gladys Campbell of Ngati Hineuru gave an interesting account, which, although from her own childhood, is reminiscent of the kind of visiting that we understand had gone on over generations – even if the mode of transport had changed:

My grandfather's brother, George Utiera . . . spoke of another of his brothers, Petera (Nanny Pat) and his wife Nanny Keiha who used to travel by horse and cart and make

366. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 171

367. Hohepa Kereopa, oral evidence, 26 November 2003

368. Hapimana Albert Higgins, brief of evidence, 11 August 2004 (doc F31), para 2.3

369. *Ibid*, para 2.1

370. *Ibid*, para 2.5

371. Potter, brief of evidence (doc C41), p 11

a pilgrimage from Te Haroto to Torere. They did this every five years or so and on the way there and back they visited every whanau group and passed on all the whanau news. They would also be loaded up with food stored in four-gallon tins full of preserved meat, birds and titi etc, that they left at each stop they made. These trips would take about two months and the information they brought back was all about what the whanau were doing, the land issues, court sittings as well as the whanau gossip.³⁷²

Strong economic networks also developed in Te Urewera, as elsewhere among iwi. Hapu might take proactive steps to increase the range of their economic resources or contacts; while economic exchanges also facilitated the formation or strengthening of relationships. Ngati Manawa, for example, traded their tuna with Tuhoe for kereru, and with coastal iwi for sea fish. This regional trade was very important and has lasted into modern times, where resources are not too depleted for it to survive.³⁷³

Some relationships reflected recognition by coastal and inland iwi of the importance of providing access to the sea for inland tribes. David Potter stated that Ngati Rangitahi had 'an agreement with Tuwharetoa which goes back centuries which allowed them access to the sea through our rohe.'³⁷⁴

Tuhoe, the Tuawhenua researchers stated, had rights to live at the coast and to gather foods from coastal areas from a quite early period. Some Ruatahuna chiefs had kainga as bases where they lived for periods of the year. In the case of some families, this was because of direct whakapapa linkages or marriages with coastal people. In addition, Ruatahuna hapu established themselves at places like Whirinaki and Te Houhi so they could take advantage of trading and travelling routes that tapped more distant regions: Heretaunga, Taupo, Waikato, Rotorua.³⁷⁵ We were given evidence of Tuhoe trade for stone for making implements – an example of a resource in which they were 'quite deficient'. They obtained their stone from Waikato and from the East Coast, and their obsidian from Tuhua, where they made expeditions.³⁷⁶ They also secured pounamu by trade. In one recorded exchange, around 1820, Ngati Tawhaki chiefs secured a greenstone weapon named Tara-mahiti and a slab of unworked greenstone called Te Opi from Te Heuheu, ariki of Ngati Tuwharetoa, who took great quantities of huahua (preserved birds) in return. Preserved birds were a crucial trading resource for the peoples of heartland Te Urewera and remained important when Western goods were sought from iwi with ready access to them (including Ngati Awa at Whakatane, and the Turanga people) in the early decades of the nineteenth century.³⁷⁷

Thus, philosophy and law underlay the Maori way of life in Te Urewera. For Tuhoe, the central concept was (and is) mana motuhake. It is a philosophy but also a burning inner drive, to be absolutely and totally independent of outside

372. Campbell, brief of evidence (doc G25), p 2

373. Higgins, brief of evidence (doc F31), para 2.4

374. Potter, brief of evidence (doc C41), p13

375. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 76–77

376. Ibid, p 171

377. Ibid, pp 171–172

authority, so as to protect the people and their way of life. The task of leading the people and protecting mana motuhake was entrusted to rangatira, men and women of chiefly descent who also had proven leadership skills and were confirmed and supported by their communities. Mana tangata and mana whenua were terms which, within that philosophy and law, expressed the political and economic power of those communities. Mana atua and mana wairua expressed the power derived from spiritual sources. But it was not all about power. Whakapapa underlined the relationships between kin, which were carefully preserved and extended by strategic marriages, by trade and alliances, by gifts and – above all – by the knowledge of kinship bonds (whanaungatanga). Sometimes by war or raids, sometimes by gifts or marriages, sometimes by tatau pounamu and peace-making, the hapu and iwi of Te Urewera lived in balance with one another. This was a lively and dynamic situation – utu, the final reaching of harmony and full balance, could never quite be reached.

2.3.3 The exercise of mana whenua: protecting land, resources, and rights

We turn now to consider mana whenua – in broad terms, the exercise of authority over land – more closely. Speakers from all iwi who gave evidence referred to the exercise of their mana whenua. All therefore sought not only to identify their customary lands but to assist us in our consideration of the issues before us. These include the engagement of hapu and iwi with the various bodies established by the Crown to determine their land rights; the impacts of introduced title systems and Crown policies on their relationships with land, forests, and waterways, and with one another; and the impact of introduced environment law affecting their control of such activities as birding, fishing, and eeling. Part of the Nga Rauru o Nga Potiki claim, for example, lies in their submission that the peoples of Te Urewera ‘draw their distinct identities from the ebb and flow of the interconnected rivers and waterways that are embedded in Te Urewera.’ What effect, the claimants ask, have Crown policies had on their relationships with these waterways?³⁷⁸

To all communities in Te Urewera – as elsewhere in Te Ika a Maui – protection of the land, forests, rivers, and lakes on which they depended was crucial. Over time, they developed ways of protecting both the resources of the land and waters, and their rights to them, and of passing their knowledge on to the generations that followed. And, as this collective cultural knowledge was developed and passed on, it became crucial to hapu identity.

Such knowledge evolved in the context of:

- ▶ Maori relationships with the natural world, based on fundamental beliefs of kinship with all living things;
- ▶ the need to protect and conserve resources, and for specialised techniques for taking and preserving birds and eels, for harvesting forest foods and plants;
- ▶ the need to protect rights in an environment where forest and waterways resources were scattered, so that family groups, in some cases hapu, were

378. Counsel for Nga Rauru o Nga Potiki, opening submissions, 16 August 2004 (doc F37), para 8

constantly on the move to harvest or take foods in season; and a society in which knowledge was transmitted orally from one generation to the next.

In light of this, we first consider Maori relationships with the natural world of Te Urewera – the spiritual relationships which were a closed book to most nineteenth-century settlers – and then turn to the nature of rights as the people explained them, and the knowledge systems developed to protect their rights and resources.

2.3.3.1 *Maori relationships with the natural world of Te Urewera*

Maori relate to the natural world by whakapapa and ancestry:

Based on their conception of the creation, all things in the universe, animate or inanimate, have their own genealogy, genealogies that were popularly remembered in detail. These each go back to Papatuanuku, the mother earth, through her offspring gods. Accordingly, for Maori the works of nature – the animals, plants, rivers, mountains and lakes – are either kin, ancestors, primeval parents, according to the case, with each requiring the same respect as one would accord a fellow human being.³⁷⁹

We were told, in the Ngati Whare mana whenua report, of a whakapapa ‘peculiar to the Mataatua tribes and Ngati Whare’ which explains their version of the creation story. According to Pahiri Matekuare, a Ngati Whare kaumatua, the ‘evolution of the universe is divided into a genealogical sequence that conveys the notion of the growth of plants, nature and of the cosmos.’³⁸⁰ It thus shows, as Robert Wiri pointed out, the intimate connection of Maori with the natural and spiritual worlds, linked in a very direct way by whakapapa and ancestry.³⁸¹

The peoples of Te Urewera also told us of the whakapapa and ancestry of the natural features of their homelands, which are taonga to them. Ancestral identifications with the mountains, with rivers, and with the lakes of Te Urewera were evident in the korero of many who spoke at our hearings. Jack Ohlson of Ngati Whare spoke of the marriage of the mountains Tuwatawata and Moerangi. From them sprang the mountains of the Te Whaiti district: Maungataniwha to the south, Mapouriki to the east, Otohi and Tikorangi to the west, and also Titokorangi, Rangiahua, and Tawhiuau. These male mountains are ‘pou rahui’ – ‘sacred landmarks of Te Whaiti-nui-a-Toi.’³⁸² The rivers also are sacred. As he explained it:

Ka huri ki te awa tapu o Ngati Whare, ko Whirinaki. Koinei a Whirinake-a-Tane na te mea i timata mai i te Wao-nui-a-Tane. Na, i whanau mai ko nga puna wai me nga puna korere, a ko nga awaawa koinei nga tamariki me nga mokopuna a Whirinaki. Ka mene katoa nga awa ki Te Whaiti-nui-a-Toi, ki te riu. Koinei nga roimata, e tangi ana a Tuwatawata a Moerangi ki wa raua tamariki kai tenei taha o te awa e noho ana,

379. Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), p 38

380. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), p 43

381. Ibid

382. Ohlson, brief of evidence (doc G30), p 4

Ki o matau koroua kuia he mauri to nga mea katoa, he mana ahua ake to nga mea katoa.

To our old people everything had a life force that made it unique and everything had as much divine right to exist as they did.

Rangimarie Rose Pere¹

1. Rangimarie Rose Pere, brief of evidence (Maori), 18 October 2004 (doc H41), p 5; Rangimarie Rose Pere, brief of evidence (English), 18 October 2004 (doc H41(a)), p 5

EHOKI ana nga whakaaro ki to tatou Whaea o te motu, ki a Papatuanuku. Ko ia to tatou whenua, ko ia to tatou Turangawaewae. Piripono tonu o tatou wairua ki te whenua, piripono tonu o tatou aroha ki te whenua. I te whanautanga o te tangata, i paiheretia te Mauri, te Mana o tona Iho ki te whenua, ki a Papatuanuku, kia mau tonu ai tona Rangatiratanga.

MY thoughts return to our mother of the island, to Papatuanuku, she is our land, she is our place to stand. Our spirits are as one with the land, our love is as one with the land. When a person is born the essence, the authority and his connections are made with the land (with Papatuanuku) so that his own authority will be permanent.

Ani Te Whatanga Hare¹

1. Ani Te Whatanga Hare, brief of evidence, 8 December 2003 (doc B27), p 9; simultaneous translation of oral evidence of Ani Hare, 11 December 2003, Tataiahape Marae, Waimana

a Tikorangi, a Maungataniwha a Mapouriki, he tane katoa. Ka moemoe ratau i nga maunga wahine i te awa o Okahu ka puta ko Otamapotiki, ko Pokapoka, ko Tapiri, ko Tiritiri, ko Kopuatato heke atu ki te awa o Mangawiri puta atu ki Te Putakotare. Koinei nga pou rahui o Te Whaiti-nui-a-Toi. He roimata katoa hoki nga awa nei e tangi ana ki wa raua tamariki.

I turn to the sacred river of Ngati Whare, Whirinaki. This river is known as Whirinaki-a-Tane because it originates from the Great Forest of Tane. It gave birth to the various streams and tributaries, and these streams are the children and

The Creation Whakapapa (as Given by Ngati Whare)

This whakapapa represents the evolution of the universe and the natural world.

<i>Te Pu</i>	The Root Cause
<i>Te Weu</i>	The Rootlets
<i>Te More</i>	The Taproot
<i>Te Aka</i>	The Vine
<i>Te Rea</i>	The Vegetation
<i>Te Wao-nui</i>	The Great Forest
<i>Te Kune</i>	The Growth
<i>Te Whe</i>	The Caterpillar
<i>Te Kore</i>	The Void of Nothingness
<i>Te Po</i>	
<i>Ranginui = Papatuanuku</i>	
<i>Te Ao Marama</i>	
<i>Tane = Kurawaka</i>	
<i>Hineahuone</i>	
<i>Hineahuarangi</i>	
<i>Hinetitama (also known as Hine-nui-te-po)</i> ¹	

1. Dr Robert Wiri, 'The Lands of Te Whaiti-Nui-a-Toi: The Ngati Whare Mana Whenua Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000) (doc A29), p 44

grandchildren of Whirinaki. All of the streams congregate at The Great Canyon of Toi, in the valley. These represent the tears of Tuwatawata and Moerangi who weep for their children who are living on this side of the river, namely, Tikorangi, Maungataniwha and Mapouriki, they are all males. They married the female mountains up the Okahu river and begat Otamapotiki, Pokapoka, Tapiri, Kopuatoto descending down to the Mangawiri river and out to Putakotare. These are the sacred landmarks of Te Whaiti-nui-a Toi. These rivers represent the tears of Tuwatawata and Moerangi who weep for their children.³⁸³

At Ruatoki, Hakeke McGarvey spoke of the Ohinemataroa River:

He uri katoa matau o Tuhoe no Hine-mata-roa o Nga Potiki. No reira mai te take tipuna, tae mai ki a matau nei, me to matau noho tuturu, hapai hoki to matau kaitiakitanga.

383. Ohlson, brief of evidence (doc G30), p 5

All of us of Tuhoe are descendants of Hine-mata-roa of Nga Potiki. Our ancestral claim is from this source to ourselves, and to our continuing occupation and trusteeship.

All of Tuhoe can whakapapa to our tupuna, Hinemataroa and the river belongs to all of Tuhoe.³⁸⁴

Mr McGarvey explained the significance of the river, Ohinemataroa, as a focal point of Tuhoe whakapapa, uniting many lines of descent: ‘This whakapapa has many branches by which it can be said that all of us of Tuhoe are descendants of Ohinemataroa.’³⁸⁵

Huka Williams also spoke of the kinship association of Tuhoe with the river through genealogy: ‘Ko Ruatoki me nga hapu kei te awahi i nga tahuna o Ohinemataroa, e pono ratou ki te ihi [o] te awa, ki te mauri o te awa, he awa atawhai, he awa whangai i te wairua, hinengaro, tinana o te tangata, o te hapu, o te Iwi.’ Hence, the saying:

Ko Ohinemataroa

Ko te wai te toto o te whenua

Ko te whenua te toto o te tangata.

Ohinemataroa

The water is the blood of the land

*The land is the blood of the people.*³⁸⁶

Ms Williams spoke of the mauri (life force) of the river, emanating from Wainui, the atua of the waters, and Tangaroa, atua of the foods within the water. The river nourishes the bodies and spirits of the people, who are intimately related to it through their genealogy. Ms Williams also described the river’s spiritual guardians, the taniwha – some of whom are well known, some having been forgotten – and each of whom have their own place in the river. ‘When you speak of the river,’ she said, ‘you must also speak of its demigods and the guardians, its residents within . . . the taniwha.’ The origin of taniwha is in tipua, a person who on their death, was transformed.³⁸⁷ After giving the names of the taniwha, their locations, and their genealogy, Ms Williams concluded:

And so this is our link through blood, through genealogy, through mana, through the hapu, to our river, Ohinemataroa. We cannot separate the man from the river, the blood of the land; [or] the person from the land, the blood of the people. It was through this that we were able to develop matters so that strangers could not come in to tamper with the mana motuhake of Ohinemataroa. And it was she, who, of the people, would be able to access the resources in the river. And so we turn to ask her for assistance so that the hapu and whanau can access fish . . .³⁸⁸

384. Hakeke Jack McGarvey, brief of evidence, January 2005 (doc J33), pp 1–2

385. Ibid, p 3

386. Huka Williams, brief of evidence, 10 January 2005 (doc J13), p 2

387. Huka Williams, simultaneous translation of oral evidence, 20 January 2005, Tuarau Marae, Ruatoki

388. Ibid

Mr McGarvey spoke too of the taniwha:

E toru na taniwha o tenei awa – ko Waerore, ko Tauke, ko Marie. He tipuna katoa enei no matau.

There are three taniwha in this river – Waerore, Tauke and Marie. These are also all our ancestors.³⁸⁹

The particular appearance of the taniwha Waerore, a guardian (kaitiaki) of children at the river, was described to us:

Ko Waerore te kaitiaki i a matau tamariki i te awa. Takoto ai ia i te papa o te waahi hopua o te awa, ka titiro whakarunga ki te ao e rere atu ra. Ina hoki te nunui o ona kanohi nui ake i te mahunga tangata.

Waerore is a guardian of our children when they are at the river. She lies on the bed at the deep part of the river, and looks upwards to watch the world go by. She has very very large eyes, larger than the head of a man.³⁹⁰

Hohepa Kereopa also underlined the ancestral connections between the rivers and the sea, describing how Tuhoe's ancestral rivers took them all the way to the coast, 'to that other ancestor of ours, to Tangaroa and his families of fish, food etc.'³⁹¹

We were told of other kaitiaki (guardian spirits placed by the gods) too. Stokes, Milroy, and Melbourne referred to places where the mauri (life force) of the forest is located:

Sometimes it is a stone at the base or among the roots of a tree. Sometimes it is the tree itself. Sometimes it takes bird form . . . All these wahi tapu, sacred places, had not only spiritual but also human guardians, kai tiaki, a role that was passed down through particular family lines.³⁹²

Mr Ohlson spoke of the tipua Hinenuarangi, kaitiaki (protector) of Ngati Whare. Her home is a cave near Te Whaiti-nui-a-Toi, a famous part of the Whirinaki River where it becomes very narrow. He cited Pahiri Matekuare (speaking in 1998):

At Te Whaiti-nui-a-Toi there is a cave here which belongs to this elderly woman Hinenuarangi. According to some stories she is a woman and human like us, but she is really a celestial being . . . when she flies it is a sign that a chief within the Ngati Whare

389. McGarvey, brief of evidence (doc 133), p 2

390. Ibid

391. Hohepa Kereopa, simultaneous translation of oral evidence, 26 November 2003, Tataiahape Marae, Waimana

392. Evelyn Stokes, J Wharehuia Milroy, and Hirini Melbourne, *Te Urewera Nga Iwi Te Whenua Te Ngahere: People, Land and Forests of Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111), p 22



Robert Pouwhare

Hohepa Kereopa of Tuhoë giving evidence at Waimana

district has died, she may be seen flying around the river, she is a shag and the bird is completely white. The name of her cave is The Sheltering Palm of Hineruarangi and is over there, not here but just below there (referring to a place in the canyon of Te Whaiti-nui-a-Toi).³⁹³

Charles Cotter told us of a number of kaitiaki within the rohe of Ngai Tamaterangi ki Ngati Kahungunu, whom he referred to as whanau kaitiaki, each of whom had a particular role. Thus, the ruru (morepork) is protective of Ngai Tamaterangi, and the 'Taia Neke' appears at times when food was short, to assist with providing food.³⁹⁴ Ngati Manawa told us that at Te Putakotare, where a burial ground of Ngati Koro hapu is located, the guardian of the area is Ngarangihangu.³⁹⁵

Lake Waikaremoana is also the home of a guardian spirit, as we have seen above. Dr Rangimarie Pere spoke of Haumapuhia in these words:

*'Waikaremoana whanaunga kore ki runga,
'Kaore hoki i te roimata te pehia kei aku kamo,*

393. Ohlson, brief of evidence (doc G30), pp 6–7

394. Cotter, brief of evidence (doc I25(a)), p 25

395. Te Runanga o Ngati Manawa, 'Site visit booklet', 16 August 2004 (doc F38), p 6

*‘Me he Wai utuutu kite Wha-ngaro-manga e,
‘Ko Haumapuhia te Tuoro e ngunguru, i raro ra e – a.’*

I hokari nga ringa me nga waewae a Haumapuhia, katahi ka pokare nga wai, koia i kiia tona ingoa ko Waikaremoana.³⁹⁶

*‘The sea of rippling waters that is beholden to no one is above,
‘The tears well up in my eyes and I am unable to suppress them,
‘Like a reservoir of water at Te Wha-ngaro-manga,
‘Haumapuhia is the guardian spirit murmuring below.’*

Haumapuhia stretched out her arms and legs, and the waters were agitated and disturbed, that is why the name Waikaremoana was given, the sea of rippling waters.³⁹⁷

As well as having spiritual and ancestral connections to the great natural features, the mountains, rivers, and lakes, such connections could also be found with small or particular places and with individual trees or creatures. Throughout Te Urewera, great importance is attached to the spiritual powers of certain trees: ‘Within the forest were tipua trees with special powers, sometimes supernatural.’³⁹⁸ At Ruatahuna, as far back as the time of the arrival of the Mataatua waka, Taneatua in his travels inland up the Whakatane River came upon a hinau tree at Te Kohuru (near Ohaua-te-rangi), where he chanted a karakia: ‘Ko whakakairihia ahau, ko whakato tamariki ahau.’ (‘Through sacred ceremony, I will cause children to be conceived.’)³⁹⁹ The tree was named Te Iho-o-Kataka. Wharekiri Biddle explained the significance of the tree over the generations to many couples who, though they might long have been barren, were yet able to conceive a child through the powers of that tree.⁴⁰⁰

At Ruatoki, two trees grew at Owihakatoro, one named Whangai Manuhiri and the other Te Whanau a Kuramihirangi. The second tree represented shelter for the offspring of the ancestor Kuramihirangi. The first, Whangai Manuhiri, symbolised the fertility of the area, ‘the bounty available down the generations’; the area is known as a foodstore, a long-term provider for the people. It was a place where waka were constructed, where tools and equipment were fashioned, where weaving was carried on, and where medicines were found. And people would go to the tree to revitalise their mauri.⁴⁰¹

Thus, the spiritual and the social and the economic significance of places and resources were woven together. And they were not available to all but were

396. Pere, brief of evidence (Maori) (doc H41), p 6

397. Pere, brief of evidence (English) (doc H41(a)), p 6

398. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 22. The authors note that the word ‘tipua’ was often ‘misinterpreted and translated as ‘demon’ or monster’.

399. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 36

400. *Ibid*

401. Te Puna Rangahau o Anamata, ‘Ruatoki: “Te Whenua i Puritia, Te Whenua i Tawhia”’ (research report, Whakatane: Te Puna Rangahau o Anamata, 2005) (doc J29(a)), p 63

particular to hapu or iwi. We turn next to the nature of the rights which bound particular people to particular places, entitling them to draw physical, cultural, and spiritual sustenance from the whenua.

2.3.3.2 *Protecting the land, its resources, and the rights to them: how rights were established and maintained*

In Te Urewera society, as in any society, norms and rules provided certainty for everyone as to the nature of their rights, how others would recognise them, and what constituted trespass. Thus, everyday use of resources on which people depended would not lead to constant conflict. Tuhoe told us that most conflict between hapu was not about resources, but was rooted in disputes about mana, which indicates to us that the rules they had established for resource use were working. The Tuawhenua researchers explained that many hapu lived together in the Ruatahuna district:

Maintaining this overlapping pattern of occupation without conflict required complex regulation through social and political laws. The linkages on which this co-occupation depended involved whakapapa, gifts and *matemateaone* – an intense bonding across the hapu of Ruatahuna based on a deep affection.⁴⁰²

Prized resources could, of course, still occasion fighting. The Tuawhenua researchers gave us examples of ‘poaching’ of kiwi, sometimes resulting in deadly retaliation.⁴⁰³ Within a hapu, rangatira were entrusted with protection of rights by ensuring that resources were shared among whanau, were used sustainably, in accordance with tikanga, and were used also to enhance the mana of hapu, as on important occasions.

In section 2.2, we have shown that the origins of rights lay in ancestral relationships with the land, in discovery, sometimes in conquest (often combined with ancestral rights) and always with long-established ‘occupation’. The bases of such rights were described to us as take tipuna (ancestral rights), take kite hou (discovery), and take ringa kaha or take raupatu (conquest).⁴⁰⁴ In all cases, the claimants said, occupation – ahi ka or ahi ka roa – was crucial.

Desmond Renata, in his evidence for Ngati Ruapani, gave a personal account of how he rekindled his fires (ahi ka) after a long absence from home:

I was born beside the Waikaretaheke river, on a piece of land called ‘Pou-a-te-Tiria’ in the land block called ‘Te-Hei-o-Tahoka’. One of my Kuia Hinekura Te Haunui cut my tangaengae, tied my pito and buried my placenta beside a macrocarpa sapling that was growing beside the river.

402. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p177

403. Ibid, pp12–13, 62–63

404. These take were described by many witnesses: see, for example: Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33); Kawharu and Wiri, ‘Te Mana Whenua o Ngati Manawa’ (doc C11); Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29).

In the first week when my wife Erina and I moved home I took her down to the place where I was born. I lit a fire beside the tree where fifty six years previous my Kuia Hinekura Te Haunui planted my placenta.

It was an emotional time for me, I did not tell my wife what I was doing, so she asked out of curiosity as to why a fire because we had nothing to cook on it, and it was a warm summers day. I explained to her a while after I had stood there looking at the fire and the symbolic meaning it held for me.

Eventually I was able to speak without tears and told her my 'Ahi-ka' burns again. I told her that the heat and the ash of the fire is to tell Papatuanuku and all that live upon her that I am home. The smoke rising into the atmosphere, is to tell birds and all things with wings that fly, and to Ranganui I have returned; 'toku herenga ki te rangi – ki te whenua' (my standing place between the sky and the earth).⁴⁰⁵

Tamati Kruger, speaking for Tuhoe, spoke of the source of rights in these words:

E whai ana i runga i te mana tipuna, i te mana whenua, i te ahi ka roa, i te ahi tahu-tahu, i te ahi mataotao.

It follows the authority that comes from ancestors, from the land, from different forms of occupation – permanent fires, temporary fires, and fires cooled-off.⁴⁰⁶

In his further explanation of these forms of occupation, he began with 'te ahi ka roa – the long-burning fires': 'The explanation of this concept lies in the fact that when the fires of the home people are burning, their political and economic authority cannot be overtaken by another.'⁴⁰⁷ Ahi mataotao referred not to extinguished fires, he noted, but simply to 'cooled-off' fires, which might yet be reignited. Between these concepts sat 'ahi tahutahu' (temporary fires), referring to land which was travelled over and where fires burnt for a short time, or as needed. 'The power gained from te ahi tahutahu is not as great as the authority of the ahi ka roa.' Mr Kruger cited Matahina, Ohiwa, and Waikaremoana as places of ahi tahutahu.⁴⁰⁸

In all these cases, what distinguishes the nature of the rights is the kind of inherited political and economic authority – mana tangata and mana whenua – the home people are able to exercise:

- ▶ where it is long-established, their rights cannot be overturned;
- ▶ where it has not been exercised for some generations, the rights have cooled; and
- ▶ where it is exercised alongside that of others in 'common land', the rights are jointly exercised, whether for fowling, cultivation, or fishing.⁴⁰⁹

405. Desmond Renata, brief of evidence, 22 November 2004 (doc 124), p 4

406. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 175, 176

407. Ibid, p 176

408. Ibid

409. Ibid

In the final instance, where rights are exercised in common, Mr Kruger commented: ‘These are the concepts of the roharohai.’⁴¹⁰ (We discuss roharohai further below.)

Where mana whenua was most firmly established, it seems to have been focused in a particular hapu or community; but the authority of hapu was not necessarily restricted to one area. Examples of such authority we were given at Ruatahuna included the following: Ngati Kuri held Te Waiiti; Ngai Tumatawhero and Ngati Manunui held Parahaki; Ngati Tawhaki held Tarapounamu to Matawhero; Ngati Rongo and Ngati Rakei held Ohaua; and Ngati Ha held Te Ranga-a-Ruanuku.⁴¹¹

Elsewhere at Ruatahuna, mana whenua might be less clearly defined. Ngati Tawhaki, for instance, also held lands alongside Ngai Te Riu and other hapu in a number of districts: at Tahuaroa, and along the Mangaorongo stream. Where hapu lived together, either sharing a district or with settlements scattered in each other’s districts, authority and relationships were managed carefully so as to enable ‘co-occupation.’⁴¹² And rights might be exercised even further afield. Ruatahuna hapu, we were told, also occupied other parts of Te Urewera through the early nineteenth century (Te Whaiti, Te Houhi, Ruatoki, Waimana, Te Papuni, Waikaremoana).⁴¹³ This meant both that more people had access to a wider range of resources, and that occupation in such areas, and a growing network of relationships, created a more complex pattern of rights.

At the other end of the spectrum was whenua roharohai: this term was applied, for instance, to Kaingaroa. Poai Raymond Burne stated:

he whenua Roha Rohai a Kaingaroa. I nohia haeretia e nga hapu maha, ka noho, ka haere, ka noho, ka haere. Koiana te whakamarama o tena kupu.⁴¹⁴

the land of Kaingaroa was land open to all. Many hapu resided in this area, they would stay for a time and then move on. That is the meaning of the word, ‘Roharohai.’⁴¹⁵

Hiraina Hona stated that Kaingaroa was ‘a seasonal settlement’, through which Tuhoe could pass ‘safely and confidently’; there was no need to seek permission from anyone. Frontier lands like Kaingaroa were often shared, as were their resources. ‘The level of authority would normally fluctuate between your fortunes or misfortunes.’⁴¹⁶

What underlies the development of roharohai? As we understand it, it was a way of managing distribution of rights in areas where the needs of many groups might be accommodated as seasonal foods were taken. There was shared recognition that in such areas, maintaining exclusive rights was less important than

410. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p176

411. Ibid, p177

412. Ibid

413. Ibid, pp177–178

414. Poai Raymond Nelson Burne, brief of evidence, 6 September 2004 (doc G18), p5

415. Poai Raymond Nelson Burne, oral evidence, Te Whaiti, 16 September 2004

416. Hona, brief of evidence (doc G44), pp9–10

ensuring all had access to the resources, and keeping relationships and alliances warm.

In this broad context of the nature of authority exercised over land, the question of boundaries must be considered. This has long been a contested issue in any discussion of customary Maori land rights, and it is in our inquiry too. Did hapu or iwi establish or seek to establish exclusive rights with certain borders; and if so, were there customary ways of understanding and marking boundaries between hapu or iwi? Did tatau pounamu mark boundaries, and thus a solemn and lasting agreement about the extent of the tribal rights of the parties, which both were bound to honour in the future? Did the processes of the Native Land Court and of land surveying do violence to customary rights, introducing inflexible boundaries where there had been none before, so that layered and overlapping whanau, hapu, and iwi rights could no longer be recognised?

A generally held view put before us was that fixed boundary lines were a product of the land courts and the individualisation of Maori land. Young and Belgrave, who construed the Ngati Kahungunu–Tuhoe relationship as one of long-standing enmity, suggested that the two iwi would never be able to reach agreement on lands such as those at Waikaremoana, which might be described as ‘classic debatable land’.⁴¹⁷ Maori who later gave boundaries in court or commission hearings were doing what was asked of them – and thus greatly simplified the situation in Maori custom. A boundary was not a dividing line which could be cut in the ground, but was rather a ‘negotiated space’. Sometimes the ‘debate’ between the iwi took the form of military conflict; but following conflict there were periods when rights were renegotiated, and boundaries discussed. ‘Boundaries were a way of keeping those in conflict apart . . . Layers of different boundaries were established over time as subsequent generations fought, made peace and settled the land.’⁴¹⁸

Ngati Whare, according to Anaru Te Amo, ‘did not operate on a system of fixed iwi and hapu boundaries.’⁴¹⁹ Mr Ohlson, as we have seen, spoke of the mountains of Te Whaiti-nui-a-Toi as ‘sacred landmarks’ (‘pou rahui’). The rivers also are sacred landmarks.⁴²⁰ Robert Wiri gave evidence that there were no definite boundary lines at Te Whaiti – boundaries were seen as exclusive, whereas for Ngati Whare it was important to be inclusive of neighbouring tribes. Pou rahui, as he explained them, marked territory claimed for resources but not within exclusive lines.⁴²¹ The various hapu had ‘areas of interest’, according to Mr Te Amo; but the rights of hapu and whanau to travel through, gather resources from, and cultivate or occupy lands were sourced in whakapapa and on social and political relationships between the various groups.⁴²² Thus, the exercise of rights to particular resources might change over time, as circumstances changed, but the kind of factors on which those rights depended did not.

417. Young and Belgrave, ‘Customary Rights’ (doc A129), pp 20–21

418. *Ibid*, p 22

419. Te Amo, brief of evidence (doc G34), p 10

420. Ohlson, brief of evidence (doc G30), pp 4–5

421. Wiri, ‘Lands of Te Whaiti-Nui-a-Toi’ (doc A29), pp 100–102

422. Te Amo, brief of evidence (doc G34), pp 10–11

Wiremu Bird of Ngati Manawa referred to ‘Te Rohe Potae o Ngati Manawa’ (‘The boundaries of Ngati Manawa’), and then outlined the ‘pou rahui’ of the iwi (the traditional boundary markers) as follows:

From Tawhiuau we travel in a westerly direction to Ohui; From there we turn to the west towards Kakaramea; From there to the south to Ngapuketurua; Extend there to the east to Maungataniwha; And continue further to Tarapounamu; Turning back to the south to the sacred mountain of Ngati Manawa, Tawhiuau.⁴²³

These mountains were markers, in other words, with which Ngati Manawa identified as broadly encompassing their rohe. In his evidence about the tipuna whare Apa-Hapai-Taketake, he drew attention to particular boundary markers depicted on the rafters – the kahikatea Hinamoki, the trees Motumako and Heruiwi, and Matangi a Hewa, a marker in Whirinaki.⁴²⁴

Tama Nikora of Tuhoe addressed the issue of boundaries in the context of the significance of tatau pounamu (the peacemakings between iwi to which we referred above). He stated that both the Ohui peace (between Tuhoe and Ngati Awa) and the Kahutarewa peace (between Tuhoe and Ngati Kahungunu) saw boundaries laid down.⁴²⁵ During the peace with Ngati Kahungunu (which we have referred to above), the boundary was laid down at a hill called Kahutarewa (a female) and a hill called Te Turi-o-Kahu (male), two hills near the Waikare-taheke River. But Mr Nikora did not see this as a ‘simple boundary line in the surveying sense.’⁴²⁶ He implied that perceived problems with the term ‘boundary’ arise from seeing it in a colonial context, as a measured line between land blocks. But, as he put it, ‘Land, and land-markers, had enormous significance to Maori and the placing of a tatau pounamu in a certain place or the marrying of certain mountains was meant to have not only symbolic significance but also significance on the ground.’⁴²⁷ The two mountains were such landmarks; and whether there was exact geographical placement was not the issue.⁴²⁸

We note the alternative view of Ngati Awa, put to us by Professor Hirini Moko Mead, that Ohui was not a boundary marker between Ngati Awa and Tuhoe.⁴²⁹ Rather, ‘once the peace was negotiated each side selected a feature of the landscape as a symbol of the agreement. This was not uncommon and the symbols, usually maunga, were then regarded as marriage partners.’⁴³⁰ The maunga were ‘a reminder to all that a tatau pounamu is in place and that a symbolic “marriage”

423. Bird, brief of evidence (doc F33), pp 2, 9

424. Ibid, pp 12, 13

425. On the peace with Ngati Awa, see Nikora, ‘Tuhoe and the Rangitaiki’ (doc C30), p 24.

426. Tamaroa Raymond Nikora, answers to questions of clarification by the Crown in respect of his report ‘Waikaremoana’ and the associated statement of evidence, 30 March 2005 (doc H26(a)), p 1

427. Ibid, p 2

428. Ibid, p 1

429. Hirini Moko Mead, brief of evidence, no date (doc L23), pp 5–6

430. Ibid, p 5



Kaumatua Tamaroa Nikora of Tuhoe, co-claimant with Te Wharehuia Milroy for the Wai 36 Tuhoe claim and a former chair of the Tuhoe Waikaremoana Maori Trust Board. Mr Nikora gave evidence at a number of our hearings on Tuhoe history and customary interests.

has been consecrated, made tapu and therefore must be upheld.⁴³¹ Professor Mead argued that contemporary evidence did not support the view that Ohui was referred to at the time as a boundary marker.

We consider this issue further in later chapters relating to the Native Land Court and the Urewera commission.

2.3.3.3 *Protecting the land, its resources, and rights to them: knowledge bases*

As we have discussed, the peoples of Te Urewera sought to protect the land and its waters, their resources, and the well-being and the mana of their hapu. These concerns were the basis for the development of bodies of collective knowledge which we might characterise as:

- ▶ knowledge of histories and placenames, whakapapa, waiata; and
- ▶ knowledge relating to the effective harvest of resources, and their conservation in accordance with tikanga.

431. Ibid

2.3.3.3.1 KNOWLEDGE OF HISTORIES AND PLACENAMES, WHAKAPAPA, WAIATA

In an oral society, knowledge was not stored in libraries or on disks, but in the collective memory of the hapu and in the land itself and the histories that were recorded there. Knowledge of places and place names marked connections between the people and the land. Knowledge of whakapapa, crucial for identity, was also important where rights might be passed on (with the consensus of the hapu) through either or both parents, or other whanaunga.

For our purposes, a study of knowledge of this kind can assist with (for instance) understanding the extent of rights exercised by iwi in contested areas such as the lands confiscated by the Crown in 1866 (see chapter 4), or the Waikaremoana lands that were later known as the ‘four southern blocks’ (see chapter 6). Milroy and Melbourne, for example, described Tuhoe ‘schools of learning’, such as the 1971 school when ‘Kupai McGarvey gave younger Tuhoe tribal members an explanation of the boundary names and urged them to retain these until the issue of Puketi and Opouriao [in the confiscated lands] had been resolved’.⁴³²

In Te Urewera, as in every tribal region, places were named to record important events, or everyday experiences of tipuna. They recorded the presence of the hapu and the exercise of rights in the past. ‘The environment was fully sign-posted for ease of travel and access, and as a record of history.’⁴³³ Names were important markers of identity and shared memory; they also denoted associations that were important in sourcing and protecting rights; and they were triggers for stories about tipuna as people moved about within the rohe. Dr Rangimarie Pere, for example, gave evidence of a myriad of names around the shores of Lake Waikaremoana. This was testament to the long human past at Waikaremoana and Waikareiti and to the forging of associations with every part of the lake shores and its islands.⁴³⁴ Neuton Lambert, in his evidence for Ngati Ruapani, added that some of the place names told the history of battles in the area.⁴³⁵

In Ruatahuna, we were told, placenames record the names of the original Nga Potiki peoples, as well as those given by Hawaiiki ancestors; one group of names did not simply supersede another. This underlines the importance to Ruatahuna people of their descent from Potiki I.⁴³⁶ Among Nga Potiki names are Opuhou (a stream behind the marae now known as Mataatua) named after the important tipuna Puhou, and Te Peke-a-Tumariu, a high peak in the Huiarau range named for Tumariu (Ngati Rakei).⁴³⁷

The arrival of the Mataatua tipuna is marked, for instance, in names associated with Taneatua, the tohunga wairua of the waka, who carried its mauri inland, placing it at different points.⁴³⁸ The Tuawhenua researchers explained how Tawhaki’s arrival at Ruatahuna also led to a series of new names for places and landmarks

432. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 130

433. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 73

434. Pere, brief of evidence (doc H41(a)), paras 19–27, 30

435. Lambert, brief of evidence (doc H57), pp 3–4

436. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 74–75

437. *Ibid*, pp 7, 15

438. *Ibid*, pp 35–36

associated with his actions, each of which contributes to a narrative supporting mana whenua:

He [Tawhaki] goes up the Manaohou stream to the Kaitawa ridge and finds pigeons dead in a toromiro tree. He claims the pigeons by covering them with his cloak. Thus the tree became known as Tapui-kakahu. Tawhaki carries on to a nearby village and sends people there to collect his pigeons. They are retrieved and cooked for him to eat. He carries on, climbs a small hill where he chips a tawa tree with his stone adze, named Matawhero, thus giving that place the name of Te Toki a Tawhaki or Matawhero. Then he hears of the kakapo at Te Whakatangata in the Parahaki district. He goes to try and obtain some. The Parahaki lands are occupied by Tumatawhero and his people of Nga Potiki. They flee into the bush as Tawhaki advances. He takes seven kakapo and returns to Matawhero, all in one stretch ('ka ranga-tahitia e ia te whenua roa'). Thus, a place at Matawhero is named Te Ranga-a-Tawhaki.⁴³⁹

Stokes, Milroy, and Melbourne quoted evidence given to the Urewera commission about Ruatoki names to illustrate the point that 'every landmark and locality was known and named and had some association with human activity':

Tanemoeahi gave the name Te Wairere (a fall over stones). He also gave the name Tapuwaharuru, Okohao is a newly settled place. Tamahine Mataroa gave the name but it was properly called by Waerore. 'Mehemea ko nga hua o Tamahine a Hine Mataroa' = 'They are similar to the produce of Hine Mataroa. As he was journeying by the stream he caught a duck (whio); hence the name Maunga = caught, whio = whio . . . Hinaenaena was named after a woman. She went out fishing. While she was engaged in fishing, she became exhausted and breathed very hard. Hence the name 'Hine = girl or woman; naenaena – hard breathing.' Te Tarata was formerly called Te Rawa. Waikereao is covered with kekereao trees. Waikirikiri was a kumara or sweet potato plantation. Tane-huiarau said that Waikirikiri would be flooded and covered with sand; hence the name (wai = water; kirikiri = sand) Waikirikiri.⁴⁴⁰

Trees were named too. Best records that because of the enormous importance of miro trees to Maori, 'every tree of this species is well known by the subtribes on whose land it stands, and most such trees are known by distinct names, as also are any trees of other species – kahikatea, matai, rata etc – that were much resorted to by birds.'⁴⁴¹ The process of naming trees continued in the nineteenth century, as new trees grew and each generation placed its mark on the land. A tree was named 'Hatana', for example, a transliteration of 'Satan'.⁴⁴²

439. Ibid, p 46

440. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), pp 24, 26

441. Elsdon Best, *Maori Forest Lore: Being some Account of Native Forest Lore and Woodcraft, as also of Many Myths, Rites, Customs and Superstitions Connected with the Flora and Fauna of the Tuhoë or Ure-wera District* (Wellington: Government Printer, 1907), p 229 (Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 26)

442. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 24

Knowledge of waiata was – and is – also important in preserving this kind of knowledge, as Hue Rangi explained to us at Ruatoki. Waiata tawhito (ancient songs) are ‘statements expressing links to the land and the mana of a person over the land.’ The ancient waiata are ‘signs and symbols of the occupation of the people and the way they lived at that time’. Among those Mr Rangi explained to us were patere – ‘the type of Tuhoe waiata that defines its territories, its mountains, and locates pa sites and chiefs.’⁴⁴³

A recent patere composed for the younger generation was explained to us by Hoori Te Uatuku. Its purpose was the same as that of older patere, to preserve (in this case) the names of pa surrounding the Ruatoki and Opouriao Valleys: ‘These sites are a vital link for our children to their past, which also link them to their future as a retention of their language and traditions through song . . . these songs are used as a medium of preserving our oral history.’⁴⁴⁴ (See the sidebar on pages 122 to 124.)

Mr Te Uatuku noted in his evidence that the composer was sitting on the peak of Tairahia, and from there gave a three-dimensional view: ‘he is able to move freely – likened to the action of a movie camera.’⁴⁴⁵ The detailed explanations Mr Te Uatuku gave of the patere are testament to the way histories are preserved in the land – and in waiata – through names given and remembered. Every line speaks of tipuna and their links with the places or pa referred to. The name of the famous taiaha Whaitiripapa (line 10) prompts an explanation of circumstances in which its Ngati Rongo owner Mano-hunuku wielded it (a confrontation with a Ngati Awa chief), and the resulting change of the name of the land below the pa.⁴⁴⁶ And many other examples might be given.

The recording of wahi tapu is of especial importance. It is vital for the well-being of the hapu that these sites be remembered and protected. Desmond Renata explained how his kuia taught him the wahi tapu sites of Ngati Ruapani.⁴⁴⁷ Although he may not be able to control the ones on conservation land, he knows where they are.⁴⁴⁸ These sites connect the people to their ancestors:

When a wahi tapu is removed, it is like a grieving takes place in the people. They have a sense of loss because they have lost a connection to the spiritual nature of that place. It’s like a sense of being disconnected from a spiritual source, as though something has been cut off from them. This is what causes the grieving.⁴⁴⁹

The importance of wahi tapu, and of protecting the knowledge of them, was underlined in the evidence of Hohepa Kereopa. He told us that when some of his

443. Te Hue Rangi, simultaneous translation of oral evidence, 21 January 2005, Taurau Marae, Ruatoki

444. Hoori Te Uatuku, brief of evidence (English), 10 January 2005 (doc J16(a)), para 4

445. *Ibid*, para 5

446. *Ibid*, para 11

447. Renata, brief of evidence (doc 124), p 2

448. *Ibid*, p 6

449. *Ibid*, p 7



Apa-Hapai-Taketake, the tipuna whare at Rangitahi Marae, Murupara. The korero of Wiremu Bird of Ngati Manawa underlined the importance of the ancestors carved inside and outside the whare for recording and remembering Ngati Manawa whakapapa, histories, and connections with their land, mountains, and rivers.

relations sought knowledge of rongoa from him, he took them instead to their 'sacred sites': 'that is the strong medicine' for them, he said.⁴⁵⁰

Hapu and tribal histories have long been recorded also in tipuna whare, in the heart of the community. Wiremu Bird, of Ngati Manawa, focused his evidence to us on the whare Apa-Hapai-Taketake. As his korero moved from the tekoteko, the koruru, and the ama of the whare to the ancestors carved inside the house, the rafters and pou, Mr Bird traced the whakapapa and history of Ngati Manawa, their relationship with Te Arawa, their links with the realm of the gods, with the land, the mountains, and rivers.⁴⁵¹ His evidence – like other evidence about tipuna whare we received formally and informally – underlined the importance of the whare in remembering histories and passing them to the next generation. And there can be no clearer statement of identity.

We are also reminded that when Te Wharehuia Milroy and Hirini Melbourne wrote their Tuhoe claims report to the Waitangi Tribunal, they chose the image of a whare whakairo entitled 'Te Roi o te Whenua' for presentation of the claim.

450. Hohepa Kereopa, simultaneous translation of oral evidence, 26 November 2003, Tataiahape Marae, Waimana

451. Bird, brief of evidence (doc F33), pp 2–6, 9–14

Ka Tau Kai te Whare

E noho ana ahau
Ka hoki whakamuri nga mahara
He uru ki aku kamo
He wai e matura ana
Ka maioha atu ra
Ki nga watawata e tu ra

Titaha iho te titiro maui
Ko nga Toto-o-Whakahou
Kei runga ko Te Tahuhu-o-Hao-ki-taha
Heke iho ki Ohae ko Whaitiripapa
Titiro whakarunga ki Parekohe
Ka ranga tonu ki Te Tapapa-o-Hinenaenae
Ko Te Okiwa e oi nei i taku kiri

Whakawhiti ki Kawekawe te anga o te Pu mata kahu
Ka rehe ki Hui-te-rangi-ora ko te puta o Rongokarae
Whai tonu ki te remuremu
Ki Hau-ka-pua ko Patumaunga
Kei tua ko Te Ahi-manawa-o-Tuhoe
Hoki ake ki Kohipi ki Omawake ko te huinga kauika

Whakaangi atu ki Te Tawhero ki Te Poroa
Ko Tatahoata hutia ake ki uta ra
Kei mua ko Te roroku ki Otere
Whakawhiti ana mai ki Puketi te heteri o Te Urewera

Kai atu aku kamo ki Ohine-te-raraku
Tu mai ra koe te korero o te toa
Hoki ake ki Te Hurepo ko Ngai-te-kapo ko Tititangiao

Hoki ko muri mai ki Otarahioi
Ko Kapowhetu ko Paharehare
Kei raro ra ko Te Urukahika wawara o te toki
Ki Hatupere ko te matura o te hinu

Titiro whakarunga ko Waikakariki
Ko Hinekura ki Te Kotuku ko Te Purewa
Ka eke ra ki Taiarahia
Ka haramai tenei, ka tau kai te whare.

Salutations at the Meeting House

I sit here and ponder
My thoughts return to ancient times
Tears well up in my eyes
They flow unending
I greet affectionately
Those out flung forts stand majestically there

I glance side ways to my left
Therein stands the spilt blood of Whakahou fort
At the brow is the ridgepole of Haokitaha
Descend to Ohae fort there is the spear Whaitiripapa
Look upwards to Parekohe hill
Gently I breeze to the pursuit of Ohinenaena
There is the piercing breath of Okiwa

Cross-over to Kawekawe to the burial caves of plumed feathered chiefs
A short stride to Hu-te-rangi-ora fort where Rongokarae decamped
Follow the setting sun, the pathway
To Haukapua fort there is Patumaunga the chief
Over the hill is the umbilical cord of Tuhoe.
Come back to the incident of Kohipi to fort Omawake the place of genocide

Approach stealthily Te Tawhero, Te Poroa forts
There is fort Tatahoata, which was hauled back to the Hinterlands
Immediately to the front is the cold hearthstone of fort Otere
Cross back over to Puketi fort
The sentry of Urewera

My eyes seek out Ohine-te-raraku ravine
O'Rise oh valiant warrior – onward
Come back to Te Hurepo fort, there is the clan of Ngai Te Kapo
There is Tititangiao hill

Retreat further to Otarahoi hill
There is Kapowhetu, there is Paharehare fort
At its base is the echoing adze
To Hatupere lagoon, where game is abundant

Look upward to Waikakariki fort
There is Hinekura the matriarch, to Te Kotuku

There is also Te Purewa who beckons to me
 I finally ascend Tairarahia
 I am greeted and salutations are recited at the meeting house.¹

1. Hoori Te Uatuku, brief of evidence (Maori), 10 January 2005 (doc J16), para 2; Hoori Te Uatuku, brief of evidence (English), 10 January 2005 (doc J16(a)), para 6

They identified each section of the report in turn with part of the structural forms of the whare. Their hope was that the Crown might thus 'listen in a new way to understand the thought processes and language that have arisen from the particular background and experiences of Ngai Tuhoē'.⁴⁵² Thus, a tipuna whare communicates in its own way with those who enter it, who have learned to understand what it is telling them.

Finally, there is the knowledge of whakapapa. As Robert Wiri put to us in his evidence for Ngati Whare, whakapapa is genealogy, the layering of kin ties between individuals and groups, which connects ancestors and descendants, and connects the gods with all living things.⁴⁵³ It is a unifying force, as Hakeke McGarvey explained in his description of how all the 'many branches' of Tuhoē whakapapa to Ohinemataroa, the tipuna and the river.⁴⁵⁴ In making such connections, as the Tuawhenua researchers told us, the Ruatahuna people emphasise both vertical lines ('heritage directly back' to chiefly ancestors) and lateral lines ('linkages across hapu and whanau').⁴⁵⁵ The knowledge of these linkages is carefully preserved and transmitted to succeeding generations. Without that knowledge, connections are lost and rights (which arise from membership of a kin group and from relationships with other groups) grow cold. We heard many examples of how whakapapa is recorded, both orally and in writing, with tribal guardians who ensure its preservation and transmission to the appropriate people or on appropriate occasions.⁴⁵⁶

Whakapapa, as Ngati Manawa researchers put it, 'provides a continuum between generations (ie narrator and his/her ancestors) and thus a basis for upholding rights of land trusteeship'.⁴⁵⁷ It also provides an important record of tribal alliances as well as whanau relationships.⁴⁵⁸ Names repeated from generation to generation recall key events in tribal history. As we shall see in chapter 3, Paora

452. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 8

453. Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p 8

454. McGarvey, brief of evidence (doc J33), p 3

455. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 54

456. See, for example, Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29); Garry Clapperton, brief of evidence for Te Whanau a Kai, no date (doc A84).

457. Kawharu and Wiri, 'Mana Whenua' (doc C11), p 26

458. Ibid, p 53

Kingi I was named after the offer of the Maori kingship to him in the 1850s. Three of his sons (and his grandson) were named Paora Kingi.⁴⁵⁹ His name calls to mind this occasion, as well as his famous whakatauaiki: 'Kia tawharautia a Matatua' ('Let Matatua be sheltered').⁴⁶⁰ Also important in this respect are tribal pepeha, which all claimant groups gave, and which we have recorded in the earlier sections of this chapter.

2.3.3.2 KNOWLEDGE RELATING TO THE EFFECTIVE HARVEST OF RESOURCES, AND THEIR CONSERVATION IN ACCORDANCE WITH TIKANGA

The exercise of rights involved above all specialised knowledge of how to hunt and gather the range of foods available, and how to meet the obligations that in Maori society went with such rights: respect for the birds and eels that were such an important source of food, and responsibility for conserving both the species and their environment so that successive generations might rely on them. Tamati Kruger told us that in exercising these rights, the people were giving expression to their mana motuhake:

I am very pleased if somebody was to ask what was the purpose of those talks those people who stood up to talk about the period they were growing up, the foods they extracted from the bush, from the river, they were talking about growing food. If a man was to ask what [was] the purpose of those talks to our meeting, my reply will be, 'that is the face of Mana Motuhake. That is its face.' That is its awakening in the morning, knowing that you have the mana. It belongs to your family, it belongs to your sub-tribe, it belongs to your tribe. You don't have to go somewhere to beg to ask for permission to pick food from a place, if you are allowed to get medicine from the bush.⁴⁶¹

It was put to us that the traditional knowledge base of a 'highly sophisticated forest and fresh-water fisheries culture' as developed by Te Urewera Maori has survived to the present day. Where appropriate, we have drawn on stories by witnesses at our hearings which speak to their passion about such knowledge.⁴⁶² It included, we observe: knowledge of the best locations for birding, eeling, insects, fungi, and plants used for food; knowledge of the seasonal calendar; knowledge of how to prepare equipment and baits; knowledge of the habits of eels, birds, and how to read conditions to ensure a catch; and knowledge of appropriate karakia (prayers) to keep faith with the gods. It included too the knowledge of how best to transmit such information and understanding to the next generation (choosing those younger people who would respond best, teaching them, and building their confidence so that they might become good – even renowned – fishermen or fowlers).

459. Judith Binney, 'Encircled Lands, Part 1: A History of the Urewera from European Contact Until 1878' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A12), p 64

460. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 129

461. Kruger, claimant translation (doc D44(a)), pt 1, p 1

462. Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p 128

Charles Kapene explained some of the traditional hunting methods of Ngai Tamaterangi. The old people used to 'light fires on the Pohaturua maunga and attract titi or mutton birds. The smoke drew the mutton birds down and provided Ngai Tamaterangi with a source of food at certain times of the year.'⁴⁶³

Jack Ohlson spoke of the importance of hunting and gathering to Ngati Whare:

Ko te kupu e ki a nei ko te takina nekeneke, he hekenga tena o nga whanau me nga hapu mai i tetahi wahanga o te ngahere, ki te tetahi atu, kia kohi kai . . . I timata mai ratau i Tuwatawata, i Minginui ka haramai ki Te Apu ki Rautahi ki Tauwharekopua. Kua nekeneke haere ki te kimi kainga i raro o Titokorangi, Wekanui me Rangiahua, i muri mai ka heke haere ratau ki Ngaputahi. I noho hapu ratau ka noho i te taha o nga awa nei ko Whirinaki, Mangamate me Otuwairua.

The term takina nekeneke refers to a migration of whanau and hapu groups to certain parts of the forest in order to hunt and gather food resources . . . They began at Tuwatawata and went on to Minginui and then continued towards Te Apu, Rautahi and Tauwharekopua. They then moved around (the area) looking for dwelling places below Titokorangi, Wekanui and Rangiahua. After this they descended towards Ngaputahi. They dwelled together in clans and occupied areas beside the rivers like Whirinaki, Mangamate and Otuwairua.⁴⁶⁴

The people did not stay long at any one place, but moved on if food was not plentiful.

Ngati Manawa groups, likewise, moved in a regular pattern from one location to another, gathering fern root at one place, cultivating at another, catching some species of birds where they came to eat hinau berries, and others (ground birds) such as kiwi, weka, and kakapo.⁴⁶⁵

Mr Ohlson described the catching of brown parrots (kaka), from careful observation of bird droppings, or finding fallen or rotten trees where parrots and tui (koko) and other birds might dig to make a nest or to find grubs. The many trees whose nectar the birds fed on were named. Mr Ohlson spoke of his elders cultivating the kiore (native rat) – a small rat which 'tasted like chicken' – at Tarapounamu, feeding the rats with chewed tawa berries and mashed hinau berries 'so that they would come back'. They were caught in rat traps made from supplejack.⁴⁶⁶ Best adds that the traps (tawhiti kiore or tahei) resembled croquet hoops and were about six inches high; the traps were placed on ara kiore, rat paths formed by the kiore when travelling to their feeding grounds at night. The kiore were lured by berries and caught in a rope noose in the centre of the trap, attached to a spring device.⁴⁶⁷

463. Kapene, brief of evidence (doc 126), para 4.2

464. Ohlson, brief of evidence (doc G30), para 4

465. Kawharu and Wiri, 'Mana Whenua' (doc C11), p 40

466. Ohlson, brief of evidence (doc G30), para 7; see also Jack Tapui Ohlson, second brief of evidence, September 2004 (doc G36), para 8

467. Best, *Tuhoe*, vol 1, p 368 (Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p140)

The life cycle of the tuna, which Mr Ohlson described, was well known. Hapimana Higgins gave us some understanding of the care and experience required to set a hinaki (eel trap) successfully; this, he said, 'is probably the most-time-consuming part of eeling because you could sit there and look at the water for ages until you are confident and sure that this is the place where tuna would be'.⁴⁶⁸ He spoke of the skill and knowledge of an old gentleman, Maurice Toetoe's father, who, though blind, could still 'read the water'. On one occasion, a small group went with him to the mouth of the Horomanga, and the speaker was guided by the koroua into the deeper water with a 'very ragged looking hinaki' that seemed decades old. We note that on this occasion the old man chose one from among the group to set this hinaki (and that Mr Higgins, as he mentioned, continued to draw on what he learned for many years):

He told me where to put it, where to drive the peg in, and every time he looked at it he got me to move it. It was so important that the hinaki was sitting exactly right. I was standing in the water. I was about five feet tall at the time and the water was about four feet high. It was quite uncomfortable . . .⁴⁶⁹

On this occasion, the bait was scorched possum. In the morning, the group emptied all their other hinaki and 'got a few tuna'. But the old, carefully set hinaki was a different story: 'The old man . . . told me to loosen the peg and very carefully lifted it up quietly to the bank . . . I have never seen a hinaki so full. This hinaki was bulging. I'd say there would probably have been about 60, maybe more eels. We only took about 30'.⁴⁷⁰

The respect and affection in which eels were held in the region was evident in the importance attached to the departure of eels on their migration to the ocean to spawn. Rangipo in the Kaingaroa area, we were told, is a significant place for Ngati Manawa because it was the departing place of eels; hence the saying 'Rangipo te wehenga o te tuna' ('Rangipo the place of departure of the eels').⁴⁷¹ The whole iwi gathered in March to farewell the tuna with appropriate karakia.⁴⁷² Karakia were also recited, Wiremu McAuley told the Te Ika Whenua Rivers Tribunal, whenever one set out to fish or eel, 'in anticipation of receiving bounty from the river and in thanksgiving for your catch'.⁴⁷³

One of the key aspects of the knowledge base with respect to eeling and birding was the seasonal calendar. Mr Ohlson spoke of the care with which Ngati Whare tupuna observed the signs that indicated when the bird-hunting and eeling seasons should begin:

468. Higgins, brief of evidence (doc F31), para 3.21

469. Ibid, para 3.36

470. Ibid

471. Kawharu and Wiri, 'Mana Whenua' (doc C11), p 39

472. Ibid; Te Runanga o Ngati Manawa, 'Site Visit Booklet' (doc F38), p 8

473. Waitangi Tribunal, *Te Ika Whenua Rivers Report* (Wellington: Legislation Direct, 1998), p 13

They observed the trees and the birds as signs of the seasonal calendars . . . There were many . . . signs that they observed such as the arrival of migratory birds such as the long-tailed cuckoo and the shining cuckoo. When those two birds land here their voices may be heard loud and clear and that is a sign that it is the season for hunting the brown parrot and that the eels are fat. When the rata tree blossoms this is also a sign that the food of the forest is ready.⁴⁷⁴

Ngati Manawa told us of Tieke, the site of a white miro tree whose ripened berries signalled the start of the kereru season.⁴⁷⁵ And Tamati Kruger gave the name of a totara tree, Whakapoi, used as an indicator for the start of the bird-snaring season.⁴⁷⁶

With the exercise of rights came responsibilities to ensure the protection of resources. Mr Ohlson referred to a whakatauaiki:

He whenua pua, ko te puawai o te kai. He whenua puehu, ka kore tatau e kaha ki te tiaki i wenei whenua, ana ka puehu.

The land which is frequented by birds, this refers to the abundance of the food resources. The land which turns to dust, if we are not careful in conserving our land, the result will be that it will turn to dust.⁴⁷⁷

Meriana Taputu, in her evidence for Ngati Whare, described this conserving of the forest as kaitiakitanga: ‘What was taught to me is that you only take what you need and always be respectful of what the forest has to offer – we are the kaitiaki (guardians).’⁴⁷⁸

As we have seen, Hakeke McGarvey spoke of Tuhoe’s kaitiakitanga (trusteeship) of the Ohinemataroa River. For Tuhoe, the role of caring for and protecting the land, the waters, and their resources was paramount. As Hohepa Kereopa put it,

You have all heard the words spoken today: I am Te Urewera, Te Urewera, and my task in this world is to care for Te Urewera, and all aspects pertaining to us all today . . . as a guardian. Who on earth said I [would] be a chief over my ancestor Papatuanuku? Who said I would be in control of the traditions of my ancestors? But the thing for me is to care for Papatuanuku . . .⁴⁷⁹

For all the peoples of Te Urewera, acts of caring and protection had a spiritual dimension. It was not merely a matter of protecting the physical environment and its lifeforms. Their mauri had to be cared for and conserved also, for the survival and well-being of all. Poai Raymond Burne told us:

474. Ohlson, brief of evidence (doc G30), pp 12–13

475. Te Runanga o Ngati Manawa, ‘Site Visit Booklet’ (doc F38), p 10

476. Kruger, brief of evidence (doc J29(b)), para 7.2

477. Ohlson, brief of evidence (doc G30), p 12

478. Meriana Taputu, brief of evidence, September 2004 (doc G28), p 4

479. Hohepa Kereopa, oral evidence (simultaneous interpretation), Tataiahape Marae, Te Waimana, 26 November 2003

My thoughts reach back in time when my koroua was responsible for protecting the forest. They had a deep understanding pertaining to the rituals before cutting trees; the spiritual aspects, the genealogy so that we would find sustenance, the children of Papatuanuku.⁴⁸⁰

This protection was embodied in tikanga. In the accounts before us, there were many references to tikanga involved in the taking of birds, which were treasured foods. People were selected for the purpose, Rehita Taputu told us:

My ancestors would know the times of year that the foods of the birds were ready and therefore where to put the troughs for catching the birds. The troughs would be hung up, the nooses attached and then they were filled with water. On other trees the long spears (tao) would be hung up. Some in front, others to the sides and behind. You were then ready for spearing birds landing from any direction. The number of birds obtained was controlled carefully.⁴⁸¹

Best cites the importance of whare mata, houses where equipment needed for fowling and fishing were made and stored. He noted one still in use at Maungapohatu at the end of the nineteenth century, where he recorded Tutakangahau making a selection of snaring perches for kaka. Tamarau Waiari told him that such whare mata were under tapu while the work proceeded; only after the tapu was lifted could the men return home to their families. The snares were then set on various trees. The tohunga said further karakia when the first birds were taken and cooked in a special hangi, after which other people might eat the catch.⁴⁸² Robert Wiri recorded that Tutakangahau, whose health was then failing, decided to allow Best to observe the sacred rituals of the bird-hunting season; the first Pakeha ever to be so permitted.⁴⁸³ Such knowledge was clearly protected from those who might have little understanding of its significance.

Kereru, we were told, were a spiritual bird, considered tapu. This tradition, which appears unique to Te Urewera in our experience, was explained by Hohepa Kereopa, Jack Ohlson, and Robert Wiri.⁴⁸⁴ Certain tikanga could only be fulfilled by women in the hunting of kereru. Te Mauniko Epararaima, a kuia of Te Kuha Pa of Waikaremoana, described the role of women to lift the tapu of the kereru:

I haere matau nga mea wahine ki te puihi ki te patu manu (kereru), ko nga manu tuatahi, me ki e rua tekau pea, ka tunua katoahia taua rua tekau manu. Na ka maoa ngā manu e hia ke nga mea wahine he manu tonu ma te mea kotahi. Hai muri rano katahi ano ka whakaahia nga tane kia kai. He tapu te tane ki te kai i nga manu ma te tuatahi mai o roto i te puihi. Ma te wahine rano e whakatuwhera.

480. Poai Raymond Nelson Burne, oral evidence, 16 September 2004

481. Taputu, summary of evidence (doc G28), pp3-4

482. Best, *Forest Lore of the Maori*, pp146-149

483. Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p 26

484. Hohepa Kereopa, oral evidence given at Waimana, 26 November 2003; Ohlson, brief of evidence (doc G30), p 8; Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p135

We women also went to the bush to hunt birds (wood-pigeon), the first catch of birds [for the season], let's say there were perhaps twenty, those twenty birds were all cooked immediately. When those birds were cooked the women were given a bird each to eat. Only after the women had finished eating were the men permitted to eat. Because of the sanctity (of the wood-pigeon) men were prohibited from eating the first birds that were caught in the bush. It was the role of the women to clear the way.⁴⁸⁵

Among Ngati Whare also, only women were permitted to eat the first catch.⁴⁸⁶ Jack Ohlson added that kereru were regarded as a form of medicine for Ngati Whare women, especially when the women were pregnant. 'If they ate kereru while they were hapu [pregnant], they'd have no troubles giving birth.'⁴⁸⁷

Thus, the tapu of the kereru was respected. And the birds were also protected by rahui. Mr Ohlson stated that when Ngati Whare had finished bird hunting they placed rahui (prohibitions) on their hunting grounds lest they get depleted. This was done by the tohunga so that food resources would be conserved.⁴⁸⁸ As we mentioned above, he referred to a whakatauaki that warned of dire consequences if this was not done. Dr Wiri explained:

there is a proverb that is unique to Te Whaiti-nui-a-Toi that states, 'He whenua pua, he whenua puehu' – 'The forest which is frequented by birds, the forest which will turn to dust' . . . The second half of this proverb: 'he whenua puehu' refers to the fact that if the food resources of the forest are not cared for, the land will turn to dust and will be rendered useless to the people who rely on that particular forest. Therefore inherent in this proverb is a Maori notion of conservation, known as *rahui*, which was practised for centuries before the arrival of the Pakeha.⁴⁸⁹

Similar care was taken with gathering plants used for medicines. Rehita Taputu indicated that those involved in this important task also observed tapu:

First of all there was karakia, and those on the expedition to gather medicines would not partake of food. For some medicines, you only pick the leaves on which the sun shines. You also have regard for the fact that it has both male and female elements. Some medicines you have to dig up as they are under the soil.⁴⁹⁰

In sum, we heard evidence about a complex body of knowledge required to make this forest economy and society work. It reflected Maori philosophies

485. Te Mauniko Eparaima, interview by Television New Zealand, 19 October 1987 (Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p135)

486. Ohlson, brief of evidence (doc G30), p 8

487. Ohlson, second brief of evidence (doc G36), para 13

488. Ohlson, brief of evidence (doc G30), p8; see also Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p163

489. Wiri, 'Lands of Te Whaiti-Nui-a-Toi' (doc A29), p128

490. Taputu, summary of evidence (doc G38), para 10

– understandings of the relationships between people and the natural world, respect for the mauri of all things. Careful decision-making was crucial to the taking and processing of every resource: the direction of those most skilled to take birds, for instance, while others assisted in plucking, and making of huahua. Certain people, also, were the appropriate ones to gather rongoa and perform healing.

Rongonui Tahi, though speaking of custom in the mid-twentieth century, nevertheless, as we have seen, evoked the authority of a rangatira of an earlier age when he spoke of Pakitu Wharekiri of Ruatahuna. Pakitu, he said, would organise the harvesting of birds ‘by deciding on the purpose, selecting the people, and setting the limits for the catch . . . he controlled and monitored the land and resource use for the people.’⁴⁹¹ His own training and experience of the bird population and their environment, his knowledge of people with the appropriate skills, his planning for major occasions, and the recognition by others of his right to exercise authority for the well-being of the community were thus all important.

Mana whenua (authority over the land – or, as Tuhoe explained it, economic power) depended on various factors:

- ▶ the knowledge accumulated over generations of the movements and habits of birds, kiore, tuna, and other species which were so important in the economy, and of the most effective methods of their capture; and
- ▶ the exercise of authority by rangatira to ensure successful takes of available resources in season, through organisation at whanau and hapu level, and through setting of rahui to protect resources.

As the role of Pakitu Wharekiri in the mid-twentieth century indicates, there has been continuity over generations in principles underlying the exercise of mana whenua. We are not talking of customs that belong in the distant past. Introduced technology may have brought some changes. Guns, for example, may have replaced pigeon snares. But (at a conscious or unconscious level) these social and cultural practices still operate, as was evident in our hearings. Tensions between iwi over the significance of tatau pounamu and the existence of tribal boundaries were still evident. Holders of specialist knowledge told us stories of the transmission of that knowledge in their own lifetime. The importance of the histories enshrined in the tipuna whare, and of waiata recording the history of the people and the land, were constantly underlined to us – and not only in formally presented evidence. They are an ever-present reality in Te Urewera.

What is clear is that the constant reinforcement of specialised knowledge about resources, of histories, of placenames, and of waiata, reinforced also a shared sense of community, and strong ties between the hapu and their land and waters.

2.4 WHAKAMUTUNGA – CONCLUSION

In this chapter, we have explored some of the traditions, waiata, whakatauaki, and philosophies that underlie the distinct identities, culture, and histories of the

491. Tahi, notes in English (doc E26), p 2

peoples of Te Urewera. We have seen how the district came to be populated by hapu and iwi, some springing directly from Papatuanuku, others arriving more recently from Hawaiki. These broad descent-groups interacted with one another, sometimes fighting, sometimes allying and intermarrying, until Te Urewera was peopled with the iwi and hapu of today, who laid claims before this Tribunal. Those claims relate in part to the Crown's failure to respect and protect their authority – their tino rangatiratanga and mana motuhake – and their relationships with the land, the rivers, the mountains, and the many taonga of the natural world of Te Urewera. In order to place those claims in the right context, we have recorded some small part of what the claimants told us of their history, their values, their tikanga, and their ways of relating to – and managing – the world in which they lived, and of which they were part. We will return to many of these histories and philosophies in later chapters, where we engage in detail with how Crown actions have impacted on the peoples of Te Urewera.

CHAPTER 3

TE TONO TURE TIKANGA A TUHOE – THE TREATY AND THE TUHOE CONSTITUTIONAL CLAIM, 1840–65

3.1 INTRODUCTION

Our task under the Treaty of Waitangi Act 1975 is to inquire into claims made by Maori individuals or groups alleging prejudice caused by Crown acts, omissions, policy, or legislation inconsistent with the principles of the Treaty of Waitangi.¹ The Treaty principles are thus prescribed by statute as the measure to be applied by the Waitangi Tribunal to Crown conduct towards Maori. This reflects the Treaty's status as a fundamental document in New Zealand's constitutional arrangements.² If this Tribunal finds that the Crown has breached Treaty principles and that prejudice to claimants has resulted, we can recommend that the Crown take remedial action to compensate for or to remove the prejudice.³

In this inquiry, the Wai 1039 Tuhoe claimants questioned the source and nature of the Crown's authority in relation to iwi, such as theirs, which did not sign the Treaty. No other Tuhoe group disagreed with the central premise of the Wai 1039 claim: that Tuhoe have not ceded sovereignty to the Crown, either by the Treaty or otherwise. The Wai 1039 claimants refer to their claim as the 'constitutional claim'. It raises fundamental questions about the relationship between the Crown and Tuhoe in 1840, and ever since. Logically, our analysis of that relationship – its foundation and its nature over time – must precede our Treaty-based analyses of the many instances of Crown conduct that are the subject of claims in this inquiry.

In this report, we deal with the claims largely in chronological order. The next chapter deals with claims concerning land confiscation in the eastern Bay of Plenty in 1866. Chapter 5 examines the military conflict in Te Urewera associated with Te Kooti in the late 1860s through to 1871. In chapter 3, we confine ourselves to analysing the 'constitutional claim' in relation to the Crown's conduct in the period from 1840 to 1865. In the next two chapters, it will be seen that our view of

1. Treaty of Waitangi Act 1975, s 6(1). The full range of laws and behaviours for which the Crown is responsible under the Treaty of Waitangi Act is set out in section 6(1)(a)–(d). Included is any ordinance or Act passed in New Zealand on or after 6 February 1840; any regulation, order, proclamation, notice, or other statutory instrument made, issued, or given in that time; any policy or practice adopted, or proposed to be adopted, by or on behalf of the Crown; and any act done or omitted on or after 6 February 1840, or proposed to be done or omitted, by or on behalf of the Crown.

2. For an analysis of the different approaches to the Treaty of Waitangi taken by Parliament, the executive government, and the judiciary, see Matthew SR Palmer, *The Treaty of Waitangi in New Zealand's Constitutional Law* (Wellington: Victoria University Press, 2008).

3. Treaty of Waitangi Act 1975, s 6(3)

the ‘constitutional claim’ in the years up to 1865 also holds true for the period to 1871. Later chapters of the report, particularly those dealing with Te Whitu Tekau and the Urewera District Native Reserve, will include our analysis of the claim’s significance for events after 1871, but we can foreshadow our approach here.

From the evidence, we consider that Tuhoe did not begin to recognise the Crown’s sphere of operation in relation to themselves until the last three decades of the nineteenth century, and then only incrementally. Seeds of that recognition are to be found in the circumstances surrounding the termination of hostilities, the formation and policies of Te Whitu Tekau, and the arrival of the Native Land Court. But not until the end of the nineteenth century, with the circumstances surrounding the creation of the Urewera District Native Reserve, can it fairly be said that the Crown and Tuhoe formally acknowledged each other’s authority. This is not to say that Tuhoe have at any time shared the Crown’s view of the extent of its own authority: manifestly they have not. Nor are they alone in contesting the meaning of the Crown’s sovereignty/kawanatanga and, particularly, how it should be tempered by the tino rangatiratanga retained by Maori generally and by the mana motuhake retained by Tuhoe. In their respective languages, the concepts of ‘sovereignty’ on the one hand, and ‘tino rangatiratanga’ or ‘mana motuhake’ on the other, connote absolute authority, and so cannot co-exist in different people or institutions. Thus, striking a practical balance between the Crown’s authority and the authority of a particular iwi or other Maori group must be a matter for negotiation, conducted in the spirit of cooperation and tailored to the circumstances.

Our discussion of the ‘constitutional claim’ begins with an overview of the extent of interaction between the Crown and the peoples of Te Urewera in the period from 1840 until the mid-1860s. We then consider what the Treaty meant for Tuhoe in 1840 and through to 1865. That analysis prepares the way for our assessment, in the next two chapters, of the Crown’s conduct in the eastern Bay of Plenty confiscation and the subsequent military conflict in Te Urewera. In those and later chapters, we introduce and apply the principles of the Treaty by which we assess the Crown’s conduct.

3.2 THE ‘CONSTITUTIONAL CLAIM’ ISSUES, 1840–65

It is the challenge to the myth that has been promulgated which maintains that Maori gave away their rights to govern ourselves, and that we in effect gave permission for colonial dispossession to occur in our land which is at the heart of the constitutional claim . . .⁴

The Wai 1039 claim was brought by Tamati Kruger with the support of the taumata of Nga Rauru o Nga Potiki.⁵ The first two issues it raises for our consideration are:

4. Counsel for Nga Rauru o nga Potiki, introduction to opening submissions, 22 November 2003 (paper 2.416(a)), para 1.10

5. Nga Rauru o Nga Potiki, statement of claim, March 2003 (claim 1.2.18, SOC 18), para 1



Tamati Kruger of Tuhoe, who brought the Wai 1039 'constitutional claim' with the support of the taumata of Nga Rauru o Nga Potiki. Mr Kruger, who gave extensive evidence on Tuhoe matauranga and tikanga at the hearings, became Tuhoe chief negotiator for the iwi's Treaty settlement and subsequently became chairman of Tuhoe Te Uru Taumatua.

- ▶ In 1840, was the nature of the relationship between the Crown and Tuhoe affected by the fact that Tuhoe did not sign the Treaty of Waitangi and, if so, how?
- ▶ After 1840, did the nature of the relationship between the Crown and Tuhoe change in any way and, if so, why and how?

As noted, in this chapter we confine our consideration of the second issue to the period preceding the confiscation of 1866. In the next section, we outline what we call the 'key facts' involved in the parties' submissions on the matters at issue. We then summarise the parties' positions before presenting the Tribunal's analysis of, and its conclusions on, the issues.

3.3 KEY FACTS

Tuhoe did not sign the Treaty of Waitangi. Since the Treaty was not taken to Te Urewera, the claimants' tipuna were not given the opportunity to decide whether to join with the Crown in the social enterprise it envisaged. They did not have the chance to discuss what might be meant by article 1, which says that the Maori signatories cede to the Crown 'kawanatanga' (in the Maori text) or 'sovereignty' (in the English text). They did not have the chance to discuss how that cession

of authority to the Crown could be compatible with article 2 of the Treaty, which promises the rangatira, hapu, and all the people that they will retain their 'tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa'. In the Treaty's English version, that promise is said to be of 'the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties'.⁶ The English text is not a translation of the Maori text, however, and does not convey clearly the meaning of tino rangatiratanga. In Professor Hugh Kawharu's translation of the Maori text of the Treaty into English, article 2 states that the Queen of England 'arranges [and] agrees to the Chiefs to the subtribes to people all of New Zealand the unqualified exercise of their chieftainship over their lands over their villages and over their treasures all'.⁷

Despite the fact that Tuhoe and other iwi did not sign the Treaty of Waitangi, in May 1840 the Crown proclaimed its sovereignty over the North Island of New Zealand on the basis of cession, relying on the fact that numerous North Island chiefs had signed it.⁸ After the proclamation of sovereignty, the Crown made no attempt to contact the peoples of Te Urewera or to establish a relationship with them. They did not become part of the colonial state. Nonetheless, they were part of a wider cultural and economic world, traded with coastal settlements, and shared concerns with other iwi about the impact of colonisation. Tuhoe attended the 1856 hui at Pukawa, at which iwi joined in symbolic union to protect their lands, but they did not give their adherence to the Kingitanga (established in 1858).

In 1860, after the outbreak of war in Taranaki, the Crown invited rangatira from all around New Zealand to attend a conference at Kohimarama. The Government's intention was to have the Treaty and kawanatanga affirmed and supported by all iwi. From the evidence available to us, Urewera leaders were not invited to the conference. Instead, the peoples of Te Urewera remained fully independent of any Crown authority at that time. No magistrate or official visited the district until 1862, when Charles Hunter Brown toured there. He offered the tribes a relationship with the Government and the opportunity to participate in its 'new institutions' (State runanga). The leaders of Te Urewera expressed cautious agreement, but the Crown did not take the matter further. No further visits or approaches were made.

In 1863, the Crown invaded the Waikato. In January the following year, after an approach from Rewi Maniapoto, the peoples of Te Urewera debated whether or not to send assistance, but they could not reach agreement. Ngati Whare, Ngati Haka Patuheuheu, and some Tuhoe (especially the Ruatahuna community) decided to send a fighting force – in particular, to attempt to contain the war in the

6. The English and Maori versions of the Treaty are set out in the first schedule to the Treaty of Waitangi Act 1975.

7. Ian Hugh Kawharu, ed, *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* (Auckland: Oxford University Press, 1989), app, pp 319–320

8. There were two proclamations of 21 May 1840. The other related to the Middle (South) Island and to Stewart Island, over which sovereignty was proclaimed by right of Captain Cook's 'discovery' and the assertion of territorial sovereignty. The British Government gazetted the May proclamations in October 1840: see Palmer, *Treaty of Waitangi*, pp 55–56.

Waikato. This force formed part of the defence of Orakau Pa in March and April 1864 but was defeated with significant loss of life. A small force from Ruatoki and Waimana also went to the assistance of their kin against Te Arawa in late April, after which the Urewera peoples took no further part in the war. From then on, the Crown kept what it called a 'wary eye' on Te Urewera, neither advancing the war in that direction nor sending emissaries to negotiate peace. By the beginning of 1865, Te Urewera (at least within its own 'borders') remained fully independent of the Crown. Mutual suspicion and hostility were entrenched by the beginning of 1865.

3.4 THE ESSENCE OF THE DIFFERENCE BETWEEN THE PARTIES

The essence of the Tuhoe claimants' position is captured in these six points:

- ▶ The hapu have never ceded sovereignty to the Crown, whether by the Treaty of Waitangi or otherwise.
- ▶ The means by which the Crown claims to have obtained sovereignty over these hapu (the proclamation of sovereignty based on cession) is flawed, legally and morally.
- ▶ The hapu therefore retain their tino rangatiratanga and te mana motuhake o Tuhoe.⁹
- ▶ The Crown's interpretation of the 'sovereignty' it possesses is inconsistent with the promise in the Treaty's Maori text that Maori will retain 'te tino rangatiratanga o o ratou wenua, o ratou kainga me o ratou taonga katoa'.
- ▶ The Waitangi Tribunal's interpretation of Treaty principles has supported the Crown's interpretation of its sovereignty and so is inconsistent with the Maori text of the Treaty.
- ▶ The Maori text of the Treaty, properly interpreted, describes a relationship between the Crown and Maori that the claimants aspire to achieve and that respects their tino rangatiratanga and te mana motuhake o Tuhoe.¹⁰

Building on the first three points, the claimants submit that, because their tipuna did not sign the Treaty, it took effect in Te Urewera only as a unilateral set of promises made by the Crown to Maori. They say there is nothing about the circumstances of the Treaty's signing, the proclamation of sovereignty, or the gazetting of the 21 May 1840 proclamations that imposed on them obligations to the Crown. Any other conclusion, they say, would be treating English law as superior to Maori law for the self-serving purpose of legitimating the fiction that the peoples of Te Urewera ceded sovereignty to the Crown.

The claimants also contend that at no time since 1840 have they recognised the Crown's claimed sovereignty, let alone ceded it to the Crown. This supports their submission that, in Te Urewera, the Treaty of Waitangi has remained a unilateral set of promises made by the Crown. The result, they say, is that Tuhoe do not owe Treaty-based obligations to the Crown. Instead, their relationship with the Crown,

9. See the discussions of these terms in chapter 2.

10. Nga Rauru o Nga Potiki, statement of claim (claim 1.2.18, sOC 18), pp 2–14

KUA roa ahau e noho ana i tou marae, to te karauna. Kua kite ahau i tou whare, kua roa au e ako ana, e kite ana, i au tikanga, i au mahi. Ko au atu hoki ko te kotahi rautau ahau i aianeī, e titiro ana ki a koe ki te karauna. Ae, he roa tou marae, te marae o te karauna. Engari ko te roa, nga kaihoru. Koina i roa ai, na te kaihoru. Engari tino popoto to pae-tapu. Ko te roa o to pae-tapu he nui noa iho mou. Ko koe ano, ko koe anahe ka ahei ki te noho i to pae-korero, notemea ko ingoa o to pae-korero ko 'Matapiko'. Ko te kawa o tou marae ko 'Tai-whawhati-rua', anei naka, he kawa ke i te ao, he kawa ke i te po. I etahi wa, ka tika a he, i etahi wa ka he a tika. Kia mau ai hoki to mana, kia mau ai to mana. Ko te reo o tou marae, he reo whakarotu, he whakarotu wairua, ara, he reo whakamoe i te wairua, he reo hatepe, he he nga korero. Ko te whare o te karauna, ae, he whare paikea, te whare o te karauna, ara atu te nui, ara atu te roa, ara atu te papai. Kii tonu i te whakaairo moni. Engari ko te tara-itī a to whare, he nui ake i te tara-nui notemea kua waiho e koe te wahi nui mou, a, ko te wahi itī mo nga manuhiri, kia kikini ai, kia kopapa ai te noho a o manuhiri. Ko to whare, he whare whiri i te manako, he whare pokai i te kaha, he whare here i te kanohi. Ko nga kai o tou marae, he kai titongitongi kaki noa iho. E kore e makona te tangata. Kare i pera i te kai a te ringa ake.

'... Kua hiahia ahau i aianeī ki te wehe atu mai te marae o te karauna. E hiahia ana ahau ki te poroporoaki ki a koe, kua hoki ahau ki toku marae, ki toku kainga, a ki te kainga o te ahi. Kia marama a roto i a au i aianeī, a, kua tiaho ki waho ko toku Tuhoetanga me toku Mana Motuhake.'

IHAVE been sitting at your marae of the crown for a long time. I have seen your house, I have been learning for a long time, observing your rules, your work. For 100 years I have observed you, the crown. Yes your marae is long, the marae of the government. However gluttony has been lengthy. But your sacred pew is very short. The length of your sacred pew is only long enough for you. Just for you and you alone. One is not allowed to sit on your pew of speeches because the name of your pew of speeches is 'selfish'. The custom of your marae is the tide that breaks twice... there is a custom in the morning and a custom at night. Other times you get it right and also wrong. Other times you get it wrong and also right, which enables you to hold onto your mana. The manner of your dialogue on your marae is oppressive, it burdens the spirit; it is a language which makes the spirit apathetic. It is a language which severs discussion and it tells lies. The house of the crown is a whale house, as big and as long; it has all the modern conventions. It is full of dollar signs. However the host's privilege is wider than the guest's privilege, because you have commandeered the greater place for yourself and the narrower place for your guest, so they may feel the pinch and cramp. Your house is a house which obscures vision, a house which is controlling, a house that blinds man. The foods in your marae are those which nibble at the throat. A person will never be full. Unlike food that was grown by hand.

‘... I now want to depart from the marae of the crown. I want to say farewell to you, I am going back to my home, to the home of the fires. I am now enlightened; from the inside there is also a glow on the outside, my Tuhoe identity and my mana motuhake.’

Tamati Kruger¹

1. Tamati Kruger, Maungapohatu hearing, 21 February 2005 (doc N14, pp 46–48)

and the obligations that are owed as a result of it, originate in their own laws and customs.¹¹ The claimants want this to be acknowledged so that, when they deal with the Crown in future, including negotiating the settlement of their historical claims, the Crown cannot dictate their terms of engagement but must respect the claimants’ right to engage as equals and on their own terms. The claimants believe this kind of engagement was envisaged all along by Te Tiriti, the Maori text of the Treaty of Waitangi. They consider, however, that current interpretations of the Treaty’s principles unduly favour the Crown by accepting the Crown’s view of its sovereignty, which renders meaningless the claimants’ tino rangatiratanga or mana motuhake.¹²

In response to this claim, the Crown relies on the fundamental legal principle that Crown sovereignty extends over all of New Zealand. It pointed to the Court of Appeal’s acceptance that the Crown’s sovereignty was authoritatively established when, on the basis of the two 1840 proclamations, the acquisition of New Zealand was gazetted on 2 October 1840.¹³ It also submits that, despite the Treaty’s absence in Te Urewera, the Crown’s honourable intentions towards all Maori are evident from the circumstances that produced the Treaty and from the efforts made to obtain Maori agreement to its terms. It is said that those matters show that the Crown intended to undertake Treaty obligations to all Maori as part of the process of securing a legitimate and moral foundation for British sovereignty.¹⁴ As a result, the Crown accepts that the benefit of the promises it made in the Treaty of Waitangi extends to all Maori, whether or not they signed the Treaty. But it roundly rejects the claimants’ submission that they are not subject to any

11. Counsel for Nga Rauru o Nga Potiki, closing submissions, 3 June 2005 (doc N14), pp 30–36; counsel for Nga Rauru o Nga Potiki, submissions by way of reply, 8 July 2005 (doc N33), pp 7–12

12. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 28–30, 33–48

13. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at p 671 per Richardson J, p 690 per Somers J (Crown counsel, closing submissions, June 2005 (doc N20), introduction and overview, p 7)

14. Crown counsel, closing submissions (doc N20), introduction and overview, p 8

reciprocal Treaty obligations to the Crown, describing that position as a challenge to the Crown's legitimacy and a denial of the Tribunal's jurisdiction.¹⁵

3.5 TRIBUNAL ANALYSIS

In 1840, was the nature of the relationship between the Crown and Tuhoe affected by the fact that Tuhoe did not sign the Treaty of Waitangi and, if so, how?

Between 1840 and 1865, did the nature of the relationship between the Crown and Tuhoe change in any way and, if so, why and how?

SUMMARY ANSWER: We accept the claimants' contention that for the period 1840 to 1865 Tuhoe were not bound by the Treaty and did not owe Treaty duties to the Crown. Due to the failure of the Crown's emissaries to bring the Treaty to Te Urewera in 1840, the claimants' tipuna were not offered the chance to debate the terms of the Treaty or a relationship with the Crown, or to come to a decision on the matter. By British law, the Crown's sovereignty over the whole of New Zealand rested on its proclamations of May 1840, as gazetted in October 1840. In political terms, however, life continued unaltered in Te Urewera after October 1840. The Treaty took effect for the claimants' tipuna only as a unilateral set of promises made to them by the Crown.

That situation did not change between 1840 and 1865. The Government did not attempt to assert any authority in Te Urewera until 1866, when it confiscated a sizeable portion of land in the district. Nor did it attempt to enter into a relationship with the peoples of Te Urewera, or to obtain their consent to its authority. The only exception was resident magistrate Hunter Brown's tour of the district in 1862, in which he offered a relationship with the Government on the basis of partnership institutions – State runanga in which Maori authorities would work with magistrates and civil commissioners. His offer received a cautious but positive response from Urewera leaders, but the Crown did not follow this up with any action. The situation was unchanged by 1864, when a small contingent from Te Urewera joined Rewi Maniapoto to fight the Crown at Orakau, the last battle of the Waikato war. The majority of Urewera communities did not participate in this action, so a relationship (based on institutions of Maori self-government) could still have been established after the end of the war. The Government, however, did not attempt to communicate with Te Urewera leaders between 1864 and 1866, when it confiscated part of their land. At that time, the Treaty still applied as a unilateral set of undertakings by the Crown, but Tuhoe had not entered into a relationship with the Crown, did not recognise its authority, and owed it no reciprocal duties.

3.5.1 Introduction

The Crown and claimants agree that the Crown's promises in the Treaty of Waitangi are made to all Maori. Since 1840, the Crown has owed obligations to the claimants under the Treaty, despite the fact that they did not sign it. What is

15. Crown counsel, closing submissions (doc N20), introduction and overview, p 8

disputed is whether the claimants have become bound by the Treaty either in 1840 or since. If they have, then the claimants will be bound by the Treaty's essential bargain – the cession by Maori of kawanatanga/sovereignty to the Crown in return for the retention by Maori of their tino rangatiratanga. In this chapter, we examine the situation up to the mid-1860s. We begin with the position in New Zealand law.

3.5.2 The law and its detractors

New Zealand law regards the Crown's sovereignty over the North Island of New Zealand as having been ceded by Maori in the Treaty of Waitangi. In the 1987 *Lands* case, His Honour Justice Richardson stated:

It now seems widely accepted as a matter of colonial law and international law that those proclamations approved by the Crown and the gazetting of the acquisition of New Zealand by the Crown in the *London Gazette* on 2 October 1840 authoritatively established Crown sovereignty over New Zealand.¹⁶

The result is that the law regards the Treaty's fundamental bargain concerning kawanatanga/sovereignty and tino rangatiratanga as applying to the claimants, despite the fact they did not sign the Treaty. This position was not unanimously supported, however, in the earliest days of New Zealand's colonial rule. Claimant witness Professor Jane Kelsey adverted to a contrary view given in an 1842 opinion by New Zealand's first Attorney-General, William Swainson, in response to a request from acting Governor Willoughby Shortland.¹⁷ Swainson's view had been sought as to whether all Maori were British subjects and amenable to the introduced British law. The Government had assumed this to be the case. That assumption was questioned, however, in the wake of a dispute between Ngai Te Rangi of Tauranga and Ngati Whakaue at Maketu, the latter of whom had refused to sign the Treaty and so might resist any Government intervention in the situation.

Swainson noted that many chiefs in various districts had refused to sign the Treaty and that others in the many important districts that had not been visited had had no opportunity to do so. He quoted from the British Government's instructions to Governor William Hobson that there was no intention to govern New Zealand 'unless the free and intelligent consent of the natives shall first be obtained'. The key passage in his opinion reads:

Now, sovereignty can only be obtained by cession, by conquest, or by usurpation . . .

As regards the aborigines, our title to the sovereignty over the whole of New Zealand appears to be incomplete; Great Britain has already and repeatedly disclaimed all rights to seize upon it; she has not gained it by conquest; she has acquired by treaty the sovereignty over a portion of it only. Under these circumstances, and after a review of the history of British colonization in this country, I think it would be

16. *New Zealand Maori Council v Attorney-General*, p 671

17. Professor Kelsey's oral reference (counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 31–32)

inconsistent alike with every principle of justice, and every profession of the British Government, 'to govern any part of New Zealand as a part of the dominion of Great Britain' until 'the intelligent consent of the natives shall be first obtained', and that those only who have acknowledged the Queen's authority, either by becoming parties to the treaty or otherwise, can be considered British subjects, and amenable to British law.¹⁸

Swainson in fact had no doubts about the ultimate benefit to Maori of the establishment of British sovereignty over the whole country, but he pointed to the fact that the British were in no position to impose sovereignty by force. In any case, he considered that the Government should proceed by 'the employment of persuasion, the influence of example, and the general spirit of civilisation among neighbouring tribes', so that those who had not yet signed 'will gradually submit themselves to the operation of British laws'.¹⁹ In short, Swainson considered that the Government must enter into a relationship with non-signatories, so that they would come to appreciate the benefits of the Queen's government.²⁰

Shortland rejected Swainson's opinion as to the law.²¹ The Secretary of State for the Colonies, Lord Stanley, agreed. He dismissed Swainson's view out of hand, saying it was neither necessary nor convenient to discuss with him the justice or policy of the course that the Queen had been advised to pursue. That course was to consider that everyone who inhabited the territories that were defined as being 'within the commissions for the Government of New Zealand' must be 'to all intents and purposes within the dominions of the British Crown'.²²

Swainson had assumed there was a practical difficulty arising from the fundamental principle that all Maori were British subjects: namely, that they must then be liable to all the penalties, and amenable to all the tribunals, of English law. Lord Stanley considered this was not the case. He said there was no apparent reason why Maori could not be exempt from English law and its courts for matters affecting only Maori 'relations and their dealings with each other'. In such matters:

The native law might be maintained, and the native customs tolerated . . . I know not why the native New Zealanders might not be permitted to live among themselves according to their national laws or usages, as is the case with the aboriginal races in other British colonies.²³

18. Swainson to Shortland, 27 December 1842, encl in Shortland despatch to Lord Stanley, 31 December 1842, BPP, 1844, vol 9 [556], pp 470-471 (IUP, vol 2)

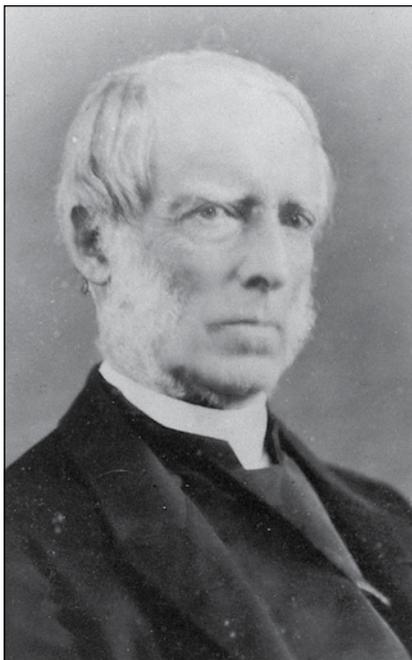
19. Swainson, 'Extract Minute of Executive Council', 29 December 1842, BPP, 1844, vol 9 [556], p 463 (IUP, vol 2)

20. Ibid; Swainson to Shortland, 27 December 1842, BPP, 1844, vol 9 [556], pp 470-471 (IUP, vol 2)

21. Shortland to Stanley, 31 December 1842, BPP, 1844, vol 9 [556], p 457 (IUP, vol 2)

22. Stanley to officer administering the Government, 21 June 1843, BPP, 1844, vol 9 [556], p 475 (IUP, vol 2)

23. Ibid



Former chief justice of New Zealand, Sir William Martin. In 1865, Martin stated that in his view Maori who had not signed the Treaty of Waitangi remained independent of Crown governance. The Crown rejected this position at the outset, in light of its declaration of sovereignty over New Zealand in 1840.

Lord Stanley thus envisaged that, whether or not they had signed the Treaty, Maori groups could be self-governing within the body politic of New Zealand.

More than 20 years later, in 1865, New Zealand's first chief justice, William Martin, by then retired, gave his view that Maori groups who did not sign the Treaty remained independent of the Crown and its Government in New Zealand. Martin wrote:

It is now admitted that a large portion of the Native population has never intelligently, or at all, assented to our dominion, and therefore remains where Captain Hobson found it. Such portions of the population are still what the terms of our first national transaction with them admitted them to be, and what (as I showed on a former occasion) the Natives of North America have been uniformly recognized as being, that is to say – small communities entitled to the possessions of their own soil, and to the management of their own internal affairs. This is for them an unsafe position, for they are subject to the risk of a war with their strong neighbour; for both it is an undesirable one. But it is their position at present.²⁴

24. W Martin to Native Minister, 23 December 1865, AJHR, 1866, A-1, p70. The reference to the 'first national transaction' is to the 1835 Declaration of Independence, which was accepted by the British Government as marking the independent sovereignty of the New Zealand tribes, and the 'strong neighbour' comment refers to the New Zealand Government.

Martin's and Swainson's views did not gain Government acceptance at the time, and remain at odds with the law's recognition that Crown sovereignty has existed over all New Zealand since 1840. There are no exceptions recognised for areas in which Maori did not sign the Treaty (for whatever reason) or for areas in which the Maori signatories did not intend to cede 'sovereignty', in the sense that has since been enforced by the Crown. That is because New Zealand law regards Crown assertions of sovereignty as unassailable: if the Crown states that it has obtained sovereignty – as it did by gazetting the May 1840 proclamations – that statement cannot be questioned in any court. Therefore, no court can look at any complaint that there were flaws in the Crown's claims to have obtained sovereignty over the entire North Island by cession.

The result in terms of the law is that, because sovereignty over the North Island was proclaimed as having been ceded by Maori in the Treaty of Waitangi, all Maori of that island, without exception, are regarded as having made that cession. And so the law regards the peoples of Te Urewera who did not sign the Treaty as being in the same position as if they had signed it, and thereby ceded governance authority to the Crown in return for its Treaty promises. On the law's analysis, the Treaty took effect between the Crown and all North Island Maori as a reciprocal set of undertakings. This was the essence of the Crown's response to the 'constitutional claim'.

Plainly, the law on this matter employs a device to give moral legitimacy to circumstances whose legitimacy is not fully supported by the facts. In the Court of Appeal decision relied on by the Crown, Justice Richardson drew attention to this phenomenon by recounting that, judging by the number of signatories, North Island Maori adherence to the Treaty 'was by no means universal – some chiefs refused to sign, others were not reached'.²⁵ The judge went on to note that the Treaty was the means through which the Crown 'sought legitimacy from the indigenous people for its acquisition of sovereignty'.²⁶

Those apparently diluted judicial endorsements of the Treaty as the basis of the Crown's sovereignty have prompted one commentator to write:

It is hard to escape the conclusion that the Crown and the Crown alone authorized the sovereignty and acquired the government. It was the proclamations, and crucially, the gazetting that registered the royal will. The Treaty was at best a means of adding 'legitimacy' – that is the agreement of the people – to that acquisition.²⁷

A number of legal commentators are far more direct in their criticisms of the foundations for the law's recognition of Crown sovereignty. Professor FM Brookfield describes the Crown's acquisition of sovereignty as literally revolutionary (a seizure of power) in two respects: what it took was far more than the

25. *New Zealand Maori Council v Attorney-General*, p 671

26. *Ibid*, p 673

27. Andrew Sharp, *Justice and the Maori: The Philosophy and Practice of Maori Claims in New Zealand since the 1970s*, 2nd ed (Auckland: Oxford University Press, 1997), p 276

signatories gave and the non-signatories gave nothing at all.²⁸ Brookfield considers, however, that the Treaty has become 'a constitutional standard, against which the conduct of the Crown towards Maori and the Maori claims to rights against the Crown are to be assessed.'²⁹ In part, he attributes the legitimising of the original seizure of sovereignty to the passing of time and the non-signatories' acquiescence in the dominant constitutional framework. In part, he attributes it to the benefits that colonisation has brought to Maori.³⁰

In their evidence, Moana Jackson and Professor Jane Kelsey argued that the Treaty has not become a standard for the claimants' conduct towards the Crown. They contend that the claimants have never recognised the sovereignty that the Crown claims for itself and have never stopped asserting their *mana motuhake*, which, they say, is the standard by which the claimants' conduct towards the Crown, and all others, must be assessed. Their view does not depend on the fact that the claimants did not sign the Treaty. Jackson stated that, even if the claimants had signed, they would still be entitled to exercise their authority and rights unencumbered, because the Maori text of the Treaty 'reaffirms their *tino rangatiratanga* as a construct of power limitable only by *Nga Hapu o Tuhoe*'.³¹ *Tino rangatiratanga*, he explains, is 'the Maori cultural version of the absolute power encapsulated in the original French concept of sovereignty. It has always been institutionally different but never anything less than the absolute political authority that every culture develops to govern itself.'³²

3.5.3 Is the Tribunal's inquiry constrained by the law's position on sovereignty?

The next question is whether the legal validity of the Crown's proclamations of sovereignty precludes the Waitangi Tribunal from recognising the fact that the claimants' *tipuna* did not sign the Treaty and so did not actually cede anything to the Crown. In our view, if we were to ignore the reality behind the May 1840 proclamations, we would be unable to exercise responsibly our statutory jurisdiction. The Treaty of Waitangi Act makes plain that our task is to apply Treaty principles, not legal principles. It is well established that the Tribunal can find lawful Crown conduct to be inconsistent with Treaty principle. That outcome would not be possible if the Tribunal was unable to examine Crown acts or omissions simply because they were lawful.

Moreover, the Treaty of Waitangi Act states that, in performing its tasks, the Waitangi Tribunal has exclusive authority to determine 'the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them' (section 5(2)). Nothing in that wording compels the Tribunal to adopt the law's view of the Treaty's 'effect'. Indeed, the contrary outcome is suggested by the fact that the Tribunal has *exclusive* authority to determine the

28. FM Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* (Auckland: Auckland University Press, 1999), pp 104–105

29. *Ibid*, p 105

30. *Ibid*, p 204

31. Moana Jackson, brief of evidence, 10 January 2005 (doc J28), para 10

32. *Ibid*, para 55

Treaty's meaning and effect, and by the silence of section 5(2) on what matters the Tribunal should look to when deciding issues raised by the difference between the two texts of the Treaty. In our view, when the 'effect' of the Treaty for non-signatories is in issue, the actual circumstances of their dealings with the Crown are of paramount importance, not the law's gloss on those circumstances.

Further, in the early period of colonisation, the Crown was aware that non-signatories might react unfavourably to Crown interventions or initiatives, as is evidenced by Shortland's request for Attorney-General Swainson's opinion in 1842. Crown counsel, before us, also submitted that in the post-Treaty period the Crown's awareness of differing Maori attitudes to the Treaty inspired it to move 'with considerable caution before seeking to increase the substantive exercise of Crown authority in districts outside the main Pakeha settlements'.³³ We conclude, therefore, that, while the Crown undertook Treaty obligations to all Maori, the meaning and effect of the Treaty for Maori varied according to whether or not their rangatira had signed it.

And so we turn to the next questions: what, for the peoples of Te Urewera, was the meaning and effect of the Treaty of Waitangi in 1840? And has that situation changed in the years since?

3.5.4 The Treaty and Tuhoe in 1840

In February 1840, Governor Hobson intended to tour New Zealand, taking the Treaty to iwi for discussion and assent. However, he suffered a stroke in early March and had to commission Captain William Symonds and several British missionaries to go in his stead. Hobson reported that the 'districts in which these gentlemen were requested to act comprise the whole of the Northern Island with the exception of the northern extremity called Kaitaia'.³⁴ At that point, the Government consisted of a handful of officials, later supplemented by Major Thomas Bunbury (who was instructed to secure the adherence of the Bay of Plenty and South Island chiefs). In May, on his way to the South Island, Bunbury stopped at Tauranga, where he failed to obtain any signatures. Local warfare also prevented him from going to Rotorua with the Treaty. James Stack, the junior missionary at Tauranga, made a copy of the Treaty (as authorised by Bunbury), and sent it inland to the resident missionaries for discussion with Rotorua and Taupo chiefs. In the absence of Alfred Brown, the senior missionary, Stack was unable to leave the Tauranga station himself to seek the assent of other Bay of Plenty tribes. He took advantage of the arrival of a former Church Missionary Society employee, James Fedarb, who was engaged in coastal trade. Stack made a further copy of the Treaty (on which he forged Hobson's signature) and sent it with Fedarb, with covering letters to the mission's Maori teachers at Opotiki, and instructions to 'do what they could in obtaining signatures of chiefs in that quarter'.³⁵

33. Crown counsel, closing submissions (doc N20), introduction and overview, p 8

34. Hobson to Russell (Secretary of State for the Colonies), 25 May 1840, BPP, 1841, vol 17 [311], p15 (IUB, vol 3, p137)

35. Stack to Shortland, 23 May 1840, BPP, 1841, vol 17 [311], p104 (IUB, vol 3, p226)

The distribution of the Treaty for discussion and assent (or refusal) was mainly dependent on either the visit of an official or the circuit of a British missionary. Bunbury's brief visit to Tauranga on his way south was the only official mission to the Bay of Plenty. He had intended to visit Opotiki but decided to continue instead to the South Island.³⁶ The calling of hui and the touring of kainga became the responsibility of the missionaries. In 1840, there was no British missionary resident in Te Urewera, nor was the district part of any regular circuit. A station was in the course of being established at Opotiki, but the Reverend J A Wilson did not set up residence until November 1840. (We will meet his son in chapter 4 in the context of confiscation.) In the meantime, Te Urewera had not been visited by any of the Protestant missionaries, let alone become a part of their circuits.³⁷

In the absence of a resident missionary, the only opportunity for the peoples of Te Urewera to have discussed and made a decision about the Treaty came with Fedarb's coastal trading visits in May and June 1840. The evidence before us is that, as Professor Judith Binney put it, 'this document was never brought to Tuhoe to sign.'³⁸ The Tuawhenua researchers noted the oral evidence of Mr Kruger that the Ruatahuna people 'had not had the opportunity to sign it.'³⁹ Fedarb did not travel inland to

places like Taneatua, Ruatoki, Waimana, or the interior. Don't even mention Ruatahuna, that place is just so far away. If you think about it, there is his job as a trader, he doesn't want to go away from here [Ohiwa] for more than about two weeks to go to Maungapohatu, Ruatahuna to get people. Another thing in that time was that he was warned by some: don't go there, as you will be killed. You won't come back alive from there. Those people are hostile. They don't like Europeans. Remember that the Pakeha had not arrived in Ruatahuna by that time of 1840.⁴⁰

Anita Miles, however, notes that there may have been Urewera groups present at some of the coastal places visited by Fedarb, who arrived at Ohiwa on 25 May, then travelled overland to Opotiki. From there, he journeyed to Whakatane on 31 May and distributed written notices about the Treaty. From Whakatane, Fedarb

36. Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen and Unwin, 1987), pp 74-77

37. Judith Binney, 'Encircled Lands, Part 1: A History of the Urewera from European Contact until 1878' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A12), pp 38-41. There is some uncertainty as to whether J A Wilson made his first visit to Te Urewera in 1839 or 1840, but he was not resident at Opotiki until November 1840. See also Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p 65, and Elsdon Best, *Tuhoe: The Children of the Mist - A Sketch of the Origin, History, Myths, and Beliefs of the Tuhoe Tribe of the Maori of New Zealand; with Some Account of Other Early Tribes of the Bay of Plenty District*, 2nd ed, 2 vols (Wellington: AH & AW Reed, 1972-73), vol 1, pp 561-562.

38. Binney, 'Encircled Lands, Part 1' (doc A12), p 38

39. Tuawhenua Research Team, 'Ruatahuna: Te Manawa o Te Ika, Part 1: A History of the Mana of Ruatahuna from Early Origins to Contact and Conflict with the Crown' (English) (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc B4(a)), p 206

40. *Ibid*, p 207

returned to Ohiwa, then stayed at Waiotahe before going east to Te Kaha and Torere. He returned to Whakatane on 16 June, and departed from there the following day. At the end of the month, he gave his copy of the Treaty to William Colenso for transmission to the Governor.⁴¹

We lack detailed information about Fedarb's meetings during those weeks, although there is agreement among our witnesses that no Tuhoe leaders signed the Treaty (assuming any were present). In all, Fedarb obtained 26 signatures. His Treaty sheet makes it clear that he took no signatures at Ohiwa and his diary confirms that he did not travel inland to Te Urewera.⁴² Miles concludes that Tuhoe may have known of Fedarb's movements and mission but, as they did not sign the Treaty, 'to all intents and purposes, life in the Urewera must have continued as if the Treaty had never been signed'.⁴³

In any case, as Mr Kruger rightly pointed out, the Governor had already proclaimed British sovereignty over the North Island in May, before the outcome of Fedarb's mission was known.⁴⁴ The Crown had not specifically authorised or commissioned anyone to approach the eastern Bay of Plenty tribes, and Bunbury's intended visit to Opotiki had been abandoned. James Stack decided to make an extra copy of the Treaty and send it there, taking advantage of Fedarb's unexpected arrival on 22 May. The Governor and his officials had no detailed knowledge of the regions and tribes of New Zealand, although Hobson believed that the missionaries had covered all the districts. The Governor was ill and had no concerted or coherent strategy to ensure that the Treaty was carried to chiefs in all districts. Hobson, for example, proclaimed sovereignty over the South Island (on the basis of discovery) without knowing the outcome of Bunbury's mission, while in the meantime Bunbury proclaimed sovereignty over the South Island (on the basis of cession).⁴⁵ As we noted above, it was soon clear to the Government that not all districts had been visited and not all iwi had had an opportunity to sign the Treaty. Nonetheless, the British Government confirmed that, in its view, such districts and iwi were under the sovereignty of the Crown.

Fedarb's copy of the Treaty was signed by rangatira as follows: seven at Opotiki on 27–28 May, two at Torere on 11 June, four at Te Kaha on 14 June, one at Torere on the same day, and 12 at Whakatane on 16 June. The signatories have been identified as belonging to Whakatohea, Ngai Tai, Ngati Awa, Ngati Pukeko, Ngai

41. Miles, *Te Urewera* (doc A11), pp 71–72

42. Ibid, p 71. See also Dr Hirini Moko Mead and Jeremy Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa: Ethnography of the Ngati Awa Experience of Raupatu' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1994) (Wai 46 ROI, doc A18) (Miles, *Te Urewera* (doc A11), p 71), and Fedarb's diary for 1840 (James Williamson Fedarb, diary, transcribed by Stephen Williamson, MS-papers-7910-2, Alexander Turnbull Library). For the official report of Fedarb's activities, see Colenso to Hobson, 27 June 1840, BPP, 1841, vol 17 [311], p 105 (IUB, vol 3, p 227).

43. Miles, *Te Urewera* (doc A11), p 72

44. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 207–208

45. Orange, *Treaty of Waitangi*, pp 60–84; see also Hobson to Russell, 25 May 1840, BPP, 1841, vol 17 [311], p 16 (IUB, vol 3, p 138); 'Declaration of Sovereignty over Tavai Poenamoo', 17 June 1840, BPP, 1841, vol 17 [311], p 112 (IUB, vol 3, p 234)

Tamahaua, Ngati Ngahere, Ngati Rua, Te Upokorehe, Te Whanau a te Ehutu, and possibly Te Whanau a Apanui.⁴⁶

Compared with the situation in most other parts of New Zealand, by 1840 the peoples of Te Urewera had little knowledge or experience of the peoples of Great Britain, and vice versa. Even if Fedarb had taken the Treaty to Te Urewera, a great deal of discussion would have been needed before the claimants' tipuna and the Crown's representatives could have understood each other well enough to begin considering the idea of sharing their futures. That did not happen. Nor, in our view, was a trader like Fedarb likely to have been a capable representative of the Crown in that respect. He had not even been briefed by an official and had been selected purely by his chance arrival at Tauranga and his former employment with the Church Missionary Society. We can only guess what kind of explanations he gave. In any case, the peoples of Te Urewera did not sign the Treaty in 1840, nor were they offered the opportunity to make a deliberate and informed decision on the matter.

The Rekohu Tribunal considered the position of certain non-signatories to the Treaty – the Moriori. The issue there was whether Moriori were among the peoples to whom the Crown undertook obligations in the Treaty. The Tribunal concluded that the Treaty was meant to apply to the whole of the indigenous peoples of such parts of New Zealand as might be annexed and, as such, Moriori were included. In words that suggest that the Treaty took effect for non-signatories as a unilateral set of Crown promises, the Tribunal continued:

Nor is anything to be made of the fact that Moriori were not signatories. Certainly, the Colonial Office took the view that the Treaty applied to all, whether they had signed it or not. The Treaty was primarily an honourable pledge on the part of the British to the people of such lands as might in fact be acquired or annexed. The consensual nature of its drafting, and to a large extent its completion, does not prevent its application as a unilateral undertaking where required, as much binding upon the honour of the Crown as a Treaty to which there was full consent.⁴⁷

That analysis supports the claimants' contention that, in 1840, the Treaty took effect for them as a unilateral set of promises made by the Crown. In our view, no other interpretation of the facts of the matter is possible. The claimants' tipuna knew nothing of the Treaty. It could not, in any real sense, take effect to bind them to its terms.

3.5.5 The Treaty and Tuhoe, 1840–65

One of the key questions for the 'constitutional claim' is: After 1840, did the nature of the relationship between the Crown and Tuhoe change in any way and, if so,

46. 'Bay of Plenty Treaty Copy', <http://www.nzhistory.net.nz/media/interactive/bay-of-plenty-treaty-copy>, Ministry for Culture and Heritage, accessed 24 February 2009

47. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 30

why and how? We turn to address that question for the period to the mid-1860s. We begin with an assessment of the Crown's relationship with the peoples of Te Urewera prior to 1862, when the first Government official, Charles Hunter Brown, visited the district. We then consider Hunter Brown's offer to Tuhoe and other iwi to begin a relationship with the Government and to accept its new institutions (State runanga acting in partnership with magistrates and civil commissioners). Having considered the short- and long-term outcomes of his mission, we explore the outbreak of the Waikato war in 1863 and the decisions of the peoples of Te Urewera about their involvement in that war. We also consider the effects of war (and of 25 years of supposed 'isolation') on the relationship between the Crown and Tuhoe by the beginning of 1865.

At the time of the Treaty, Te Urewera was in some ways isolated from coastal areas, but it was still part of a wider Maori world both culturally and economically. The peoples of Te Urewera had complex kin relationships with other tribes and exchanged gifts and resources with neighbouring and more distant groups.⁴⁸ Their sphere of influence and resources extended to Ohiwa Harbour. This soon made them part of the colonial economy. As we will discuss in more detail in chapter 4, there was a growing trade in flax, wheat, and other crops with coastal traders, sometimes through other iwi but sometimes directly with Pakeha. There were traders resident at Waimana and Opouriao. All the witnesses in our inquiry agreed that, regardless of difficulties, Urewera communities were trading in the colonial economy, and some of their people went outside the district for paid employment, including on public works.⁴⁹ In addition, Government policies impacted on prices and the availability of goods. When Hunter Brown visited Te Urewera in 1862, he discovered that grievances about trading practices and prices were a key sticking point at Waimana and Ruatoki, and at coastal settlements. All communities, whether interior or coastal, objected to the ban on arms trading.⁵⁰ 'Let the Governor send us a trader to buy dear and sell cheap,' Hunter Brown was told, 'then indeed for the first time we will believe in his love for us.'⁵¹

Although it was part of a wider world (including the colonial economy), Te Urewera did not become part of the colonial state. The Government made no effort to establish any kind of official contact with local iwi until 1862. Before that, there were resident magistrates in neighbouring regions, but they did not attempt to exercise authority in Te Urewera. Missionaries made regular visits in the 1840s,

48. See, for example, Binney, 'Encircled Lands, Part 1' (doc A12), pp 61–62, 68.

49. Te Wharehuia Milroy and Hirini Melbourne, 'Te Roi o te Whenua: Tuhoe Claims under the Treaty before the Waitangi Tribunal' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1995) (doc A33), pp 38, 80; Miles, *Te Urewera* (doc A11), pp 60–64; Binney, 'Encircled Lands, Part 1' (doc A12), p 55; John Battersby, summary of 'Conflict in the Bay of Plenty and Urewera Districts, 1864–1868', 2005 (doc M2), pp 26–27. Although in his evidence for the Crown Dr Battersby argued that 'Tuhoe involvement in the colonial economy was not significant', he accepted that there was some participation in that economy.

50. 'Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes', June 1862, AJHR, 1862, E-9, p 30

51. Miles, *Te Urewera* (doc A11), p 76

John Kinder, Fletcher Trust



Pukawa, Lake Taupo. Pukawa was the site of an 1856 hui convened by the Tuwharetoa ariki Iwikau Te Heuheu. There was a significant attendance from Te Urewera at this major national event, where Iwi joined in a show of unity at a time when settlers were seen to be gaining increased political power. Tuhoehoe did not join the Kingitanga in 1858, however, and throughout Te Urewera there remained uncertainty during this period about whether to trust the Government to protect Maori lands and authority.

and there was a missionary resident, James Preece, at Ahikereru from 1847 to 1852. Local congregations were largely directed by Maori leaders, especially after Preece's departure in 1852. The acceptance of missionaries, and exposure to Christian values, helped make the peoples of Te Urewera receptive to other social and political changes brought about by the presence of settlers and their Government.⁵²

As part of the wider Maori world, in the 1850s the leaders of Te Urewera were approached about the possibility of establishing a king. Paora Te Au was offered the position in 1854 as the long search for a king was carried from one tribal area to another. He rejected the role, but his name was changed to Paora Kingi to commemorate the occasion.⁵³ Two years later, in 1856, there was a significant attendance from Te Urewera at the major hui in Pukawa summoned by Tuwharetoa ariki Iwikau Te Heuheu.

Binney describes the ceremony at which the iwi joined their sacred mountains to Tongariro. A flagstaff named Tongariro was erected by Tuwharetoa, to which were attached flax ropes representing the mountains of the other iwi – Maungapohatu for Tuhoe and Tawhiuau for Ngati Manawa.⁵⁴ The Tuawhenua researchers accept Binney's interpretation that this symbolised the tribes' fundamental concern for the integrity of their ancestral lands (in the face of Crown purchasing). Tuhoe did not join the Kingitanga when it was established under the mantle of Potatau Te Wherowhero in 1858.⁵⁵ There were, however, varying degrees of sympathy for the Kingitanga and its objectives, and the possibility of joining or supporting it in the future was not ruled out. Binney stresses that Tuhoe, especially Paora Kingi, sought the protection and defence of Mataatua-based kin groups and lands, rather than a wider pan-tribal alliance.⁵⁶ Miles, on the other hand, highlights the degree to which Tuhoe were still deciding whether to support the King when Hunter Brown toured the district in 1862.⁵⁷

Crown efforts to purchase land had not reached Te Urewera by this time, any more than Crown authority was exercised there. Nonetheless, the Taranaki war of 1860 to 1861, the Government's perception of the Kingitanga as a growing threat, and the desire eventually to colonise all districts of the North Island resulted in the first official visit in 1862. In part to provide for Maori self-government, as promised by the colonial state, and in part to isolate and undermine the Kingitanga, the Government was offering its new institutions in Maori districts, including some with which it had had little or no contact. Those institutions consisted largely of village, district, and regional runanga, designed by the State to exercise legal

52. Binney, 'Encircled Lands, Part 1' (doc A12), pp 38–74, esp p 59; Miles, *Te Urewera* (doc A11), pp 65–74

53. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 208; Binney, 'Encircled Lands, Part 1' (doc A12), p 64

54. Binney, 'Encircled Lands, Part 1' (doc A12), pp 63–64

55. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 208

56. Binney, 'Encircled Lands, Part 1' (doc A12), pp 64–65

57. Miles, *Te Urewera* (doc A11), pp 74–77

powers in partnership with magistrates and a civil commissioner.⁵⁸ The Wairoa resident magistrate, Hunter Brown, was sent to Te Urewera to explain and recommend the new institutions, and to find out the ‘political temper of the people.’⁵⁹ Binney suggests that he was also told to ‘assess the potential fighting forces available to the various Urewera chiefs, should they become active in opposition to government policies’, and to ‘assess the possibilities of European settlement in the Urewera.’⁶⁰

Hunter Brown’s mission was preceded by the Kohimarama conference in 1860, to which 250 chiefs from around New Zealand were invited. This important conference was the Governor’s first attempt to consult with iwi on a national basis since the distribution and signing of the Treaty in 1840. One of its purposes, from the Government’s point of view, was to confirm acceptance of the Treaty by those (such as Te Arawa) who had not signed it.⁶¹ As an attempt at political engagement, the circumstances in which it was held told against it: the Kingitanga had already been established and war had already broken out in Taranaki. No Urewera leaders attended the conference.⁶² It seems highly unlikely they were invited (or even thought of), since no official had by then visited the region. A list compiled by the Assistant Native Secretary, T H Smith, did not mention it among the districts ‘least represented’ at the conference.⁶³ The first real Government approach to Te Urewera, therefore, came with Hunter Brown’s mission.

Both Binney and Miles discuss the nature, extent, and findings of Hunter Brown’s report. The resident magistrate found ‘hesitation and doubt’ about the Maori King but ‘in the minds of some a decided hankering to support him.’⁶⁴ There was also some doubt as to how the Government’s law might affect or co-exist with biblical laws. Concerns were expressed about the Taranaki war, the Crown’s purchasing of land in other districts, and the possibility that the new institutions might conceal a threat to tribes’ control of their own affairs. Many Urewera leaders, however, gave a cautious and qualified agreement to the proposed new institutions, although they reserved the right to withdraw that support if their worst suspicions were confirmed. Those suspicions were founded on a deep fear of losing control of their land and affairs: ‘You urge these things on us that we may come under the Queen! Then away goes our land, and we become slaves to the Queen!

58. For more information about the new institutions and the policy decisions about them, see Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 217–243.

59. ‘Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes’, June 1862, AJHR, 1862, E-9, p 26

60. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 63

61. Claudia Orange, ‘The Covenant of Kohimarama: A Ratification of the Treaty of Waitangi’, NZJH, vol 14, no 1 (April 1980), pp 69–78

62. ‘Minutes of Proceedings of the Kohimarama Conference of Native Chiefs’, July–August 1860, AJHR, 1860, E-9, pp 3, 25

63. T H Smith, ‘Report on the Native Conference at Kohimarama’, 27 August 1860, BPP, 1861, vol 41 [2798], p 97 (IUP, vol 12)

64. Miles, *Te Urewera* (doc A11), p 75

The Queen comes coaxing (whakapatipati) us with money that she may get the “mana” of the land.’⁶⁵

Miles notes Hunter Brown’s conclusion: ‘Herein are seen the strength of the opposition to us, and of their adherence to the King; fear for their land, fear for their nationality, fear “lest they should be made slaves to the Queen.”’⁶⁶

Urewera leaders were not prepared to accept the new institutions for the particular communities that Hunter Brown visited without first discussing the matter at a wider tribal hui.⁶⁷ Even so, there was an expressed readiness on the part of some Urewera communities to engage with the Crown and experiment with these State runanga. Counsel for Wai 36 Tuhoe submitted that Tuhoe were decisive in rejecting ‘foreign institutions’ and emphasised the suspicions reported by Hunter Brown, ‘which later transformed into a rejection of such institutions.’⁶⁸ Counsel for the Tuawhenua claimants similarly argued that the Government’s representative received a ‘mixed but predominantly negative response to the runanga scheme.’⁶⁹ We think these submissions underrate the degree of willingness (albeit cautious and qualified) to engage with the Government in 1862. Binney concluded that most – in fact, ‘almost all’ – leaders ‘were prepared to try, with caution, the runanga system of local self-government, in association with an appointed magistrate and a civil commissioner.’⁷⁰ Had this opportunity been followed up, then State-sanctioned Maori self-government could possibly have been negotiated, agreed, and established in Te Urewera in the early 1860s. We accept, however, that in order to obtain consensus within Te Urewera and to overcome the doubts and suspicions that had been expressed, a great deal of hard work would have been required to build on this initial expression of views.

As far as we are aware, there was no Government follow-up between Hunter Brown’s report in 1862 and the February 1864 decision to dispatch a contingent to fight with Ngati Maniapoto against the Crown. Until then, Te Urewera hapu had not committed themselves; the possibility for the Crown to engage was still open. It should be noted, however, that the new institutions were disestablished in 1865. We have no information about why the Government chose not to pursue the opportunity in Te Urewera that Hunter Brown had reported. According to Binney, Governor Grey ‘abandoned the whole idea’ when in 1862 he set up the Native Land Court, which replaced one of the roles assigned to runanga; namely, deciding land titles. But, as she also notes, the wider scheme itself was not abandoned until three years later.⁷¹ Counsel for the Crown accepted that Hunter Brown’s report showed cautious cooperation from the Tuhoe leadership and an interest in the proposed runanga system. Counsel also submitted that his report would have been one of

65. *Ibid*, p 74

66. *Ibid*

67. *Ibid*, p 75; Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 210; ‘Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes’, June 1862, AJHR, 1862, E-9, pp 29–30

68. Counsel for Wai 36 Tuhoe, closing submissions, pt A, overview, 31 May 2005 (doc N8), p 10

69. Counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), p 14

70. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 71, 73

71. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 71



The first claimant hearing, Tataiahape Marae, Te Waimana, November 2003

the ‘critical influences’ in shaping Government policy towards Te Urewera in the early 1860s, but offered no explanation for why it was not acted upon.⁷²

3.5.6 The impact of war

The next major development after Hunter Brown’s mission was the renewal of the Taranaki war in 1863 and the Governor’s invasion of the Waikato. The peoples of Te Urewera were regarded with suspicion, even during the early months of the Waikato war, although they took no part in it at that stage. Dr Vincent O’Malley drew our attention to an October 1863 comment by GS Whitmore, the civil commissioner at Ahuriri, that Urewera Maori were considered hardened rebels and that their lands were being contemplated for confiscation. Although Dr O’Malley knew of no other such statements from that period, he considered this comment significant because of Whitmore’s influential post.⁷³ Such views became more common, however, after the battle of Orakau in 1864.

The Waikato war posed a serious dilemma for the peoples of Te Urewera. Counsel for Ngati Manawa suggested, in closing, that careful, strategic decisions were made with a view to the possible consequences of military invasion and confiscation. He cited the 1913 evidence of Harehare Atarea, who explained that Ngati Manawa invited Rewi Maniapoto to visit them, Ngati Whare, and Ngati Haka Patuheuheu at Tauaroa in January 1864:

72. Crown counsel, closing submissions (doc N20), topic 3, pp 6–7

73. Vincent O’Malley, response to questions of clarification, 11 October 2004 (doc H64), pp 29–30

The chiefs of Ngati Manawa put a proposal to the meeting and it was finally decided that one party should go with the King and one with the Government. Ngati Manawa then presented the King party with two casks of powder and 20 boxes of caps. This was for the purpose [of] creating a breach between the two parties. Te Whaiti block was never confiscated because of my mana. The arrangement was that if Ngati Manawa were defeated Ngati Whare were to get all the land in the district and vice versa.⁷⁴

Counsel argued:

It was an exercise in hedging one's bets, at least at that stage of the conflict; after all, who could say what was going to happen? Although the defeat of the Kingitanga looks inevitable from the hindsight of history, clearly that was not how things seemed at the time. Harehare Atarea is also pointing out that the decisions taken in 1864 saved the Te Whaiti block from being confiscated (given that both Ngati Manawa and Ngati Whare had commingled interests in it).⁷⁵

After this hui, Ngati Whare and Ngati Haka Patuheuheu sent warriors to assist Ngati Maniapoto.⁷⁶ At the same time, Tuhoe were debating whether to commit forces there or keep them at home for self-defence. Binney and the Tuawhenua researchers gave detailed evidence on this point. Mr Kruger emphasised the significance of Tuhoe's haka, chanted in defiance at the battle of Orakau, which depicted the Government and settlers as a wild bull:

He spends his time browsing – his neck outstretched, and all foods borne by the land are devoured by him. The bounty of the land is consumed, even though this animal never asked who was the governor of this land, where from, and if he is able to do these things. This beast never asks. All he ever does is graze. In the end, there remains no sustenance for us, the Maori people.⁷⁷

For the claimants, it seemed that the invasion of Waikato confirmed their worst fears: 'the Crown had many faces but clearly had one objective in this time – the subjugation of the Maori people and the acquisition of their lands.'⁷⁸ This was the key political issue when Tuhoe came together to debate the matter in 1864.

Binney describes how Tuhoe called a hui at Oputao, Ruatahuna, in January or February 1864.⁷⁹ Although Rewi Maniapoto appears to have been present at

74. Counsel for Ngati Manawa, closing submissions, 2 June 2005 (doc N12), p 16

75. Ibid

76. Kathryn Rose, 'A People Dispossessed: Ngati Haka Patuheuheu and the Crown, 1864–1960' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A119), pp 23–25. Rose notes that Atarea's brother was present at Orakau and that he was considered by Atarea to be the only person involved who was 'Ngati Manawa proper'. Otherwise, the contingent was made up of Ngati Whare and Ngati Haka Patuheuheu.

77. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 201

78. Ibid, p 199

79. Binney, 'Encircled Lands, Part 1' (doc A12), p 78

Unknown, *Illustrated London News*, 30 July 1864 (ATL A-134-012)



British troops marching on the pa at Orakau, 1864. Only a small contingent of Tuhoe, Ngati Whare and Ngati Haka Patuheuheu decided to support the Kingitanga during the Waikato conflict. Nevertheless, Te Urewera forces suffered heavy losses during the defence of Orakau.

Tauaroa in January, he did not attend this district-wide hui. As noted, the threat of war and confiscation, of subjugation and loss of land, was a key consideration. Some leaders, however, felt that Tuhoe must abide by the word of Paora Kingi and that Mataatua must shelter its own land and people: ‘Kia tawaharutia a Mataatua.’⁸⁰ Others argued that, if they did not fight in Waikato to contain the war there, the inevitable sequel would be fighting in Te Urewera itself. Kin connections with Rewi Maniapoto were important, as was the ‘pact of equals’, an agreement between Te Purewa of Maungapohatu and Peehi Tukorehu of Ngati Maniapoto. Finally, it was argued that Tuhoe were bound by the 1856 union of maunga at Pukawa: Tuwharetoa was going to support the King, and Tuhoe must therefore do the same. All these arguments were influential but, as the Tuawhenua researchers explained, Tuhoe could not reach a consensus. In the end, the people of Ruatoki and Waimana chose not to go, while small numbers from Ruatahuna and elsewhere were dispatched to Waikato. Te Whenuanui, who had led opposition to assisting in the war in Waikato, changed his mind soon after and set out to support those of his people who had elected to go. The majority of Tuhoe’s fighting forces remained at home.⁸¹

A contingent of Tuhoe, Ngati Whare, and Ngati Haka Patuheuheu were a key component of the defending forces at the siege of Orakau. We do not need to give the details here, but the defenders were defeated and Te Urewera fighters suffered significant losses. As the Tuawhenua researchers explained, Te Whenuanui received an angry and abusive welcome when he returned to Ruatahuna.⁸²

In late April 1864, possibly in response to the defeat and loss of life at Orakau, a contingent of Tuhoe, including Ngai Tama, went to reinforce the Tai Rawhiti expedition at Otamarakau on the coast. Originating on the East Coast, this large multi-tribal expedition assembled initially at Matata at the beginning of 1864 and sought passage through Te Arawa lands on its way to reinforce the Kingitanga in the upper Waikato. Te Arawa, however, refused it permission and raised a large force to block its path. After being defeated by Te Arawa at Rotoiti in early March 1864, the expedition withdrew to attack Maketu, where it was joined by the Tuhoe party. The Crown’s historian, Dr Battersby, emphasised the importance of Urewera involvement with the Tai Rawhiti expedition.⁸³ The claimants’ historians either did not mention it or relied on Elsdon Best’s statement that there were only ‘a few’ Tuhoe involved.⁸⁴ Counsel for the Tuawhenua claimants pointed out that the Ruatahuna peoples had no history of it.⁸⁵ From evidence cited by Best

80. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 212

81. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 77–81; Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 199–201, 211–213, 218

82. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 217–219

83. John Battersby, ‘Conflict in the Bay of Plenty and Urewera Districts, 1864–68’ (commissioned research report, Wellington: Crown Law Office, 2005) (doc B2), p 12

84. Miles, *Te Urewera* (doc A11), p 100; Richard Boast, ‘Ngati Whare and Te Whaiti-Nui-a-Toi: A History’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A27), pp 46–47

85. Counsel for Tuawhenua, closing submissions (doc N9), p 16

and Cowan, relying on Tuhoe informants, it appears that up to 60 people from Ruatoki and Waimana, the communities which (at Oputao) had rejected going to Waikato, sought to assist their kin to pass through the Rotorua district in April 1864. Tamaikoha was one of the leaders of this group, which fought in battles at Maketu and Kaokaoroa but was defeated. Best suggests that Tuhoe subsequently ‘did little’ in the way of further fighting.⁸⁶

The Crown appears to agree with the claimants that the peoples of Te Urewera are not to be considered ‘rebels’ for their involvement in the Waikato war. Counsel for Wai 36 Tuhoe claimants submitted that, ‘While Tuhoe were involved in Orakau and the defence of the Waikato, those actions had been forgiven by the Proclamation of Peace of 2 September 1865.’⁸⁷ Ngati Haka Patuheuheu argued that ‘the involvement of a relatively small number of fighters, and therefore a small number of people from a hapu, at Orakau is no justification for labelling the entire people of Tuhoe, including Ngati Haka Patuheuheu, as “rebels”’.⁸⁸

In its closing submissions, the Crown argued that there was

insufficient evidence to conclude that the Crown had formulated a particular view of Tuhoe as a people, as opposed to the views expressed by various European and government observers in response to particular circumstances or events. The Crown adheres to that view.⁸⁹

Some officials regarded the groups ‘east of Matata’ as hostile, but the Government exercised judgement over what to take seriously, and it took no military action in response to unsubstantiated rumours.⁹⁰ In particular, Crown counsel submitted that there was ‘no mindset or predisposition to view all Urewera hapu as a whole, or even some hapu, as likely to resist authority.’⁹¹ The Government was clearly concerned in the wake of Orakau, but simply ‘watched closely to see what their [the Urewera peoples’] next action might be.’⁹² Having made those submissions, the Crown could not then argue that the Urewera peoples were in rebellion – and, indeed, it made no such allegations regarding their involvement in the Waikato war.⁹³

The Crown and claimants differ, however, in their interpretation of how that war affected the relationship between them. As we have seen, they met first during Hunter Brown’s tour of Te Urewera in 1862, when cautious agreement to the new institutions and the start of a relationship between the Government and Maori was expressed. Nothing happened, however, and they met next on the battlefield

86. Best, *Tuhoe*, p 578; James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 3rd ed, 2 vols (Wellington: Government Printer, 1983), vol 1, pp 417–419

87. Counsel for Wai 36 Tuhoe, closing submissions (doc N8), p 19

88. Counsel for Ngati Haka Patuheuheu, closing submissions, 31 May 2005 (doc N7), p 12

89. Crown counsel, closing submissions (doc N20), introduction, p 6

90. *Ibid*, p 8

91. *Ibid*

92. *Ibid*

93. *Ibid*, pp 3–10

at Orakau and in the central Bay of Plenty. The result, according to the claimants, was a deepening of Crown suspicion and hostility. We referred above to the Tuhoe haka at Orakau, in which the Government and its settlers were depicted as a wild bull. As Mr Kruger explained, this was intended to be insulting, but it also records ‘very specifically the perspective of the Tuhoe people on the Crown and its actions, and the threat it represented to their existence and future.’⁹⁴ In May 1864, a month or so after that battle, Donald McLean wrote of the ‘wild savage state and revengeful feelings’ of ‘the Uriwera’. He did so in support of his case that they were a military threat to the settlers of Napier and elsewhere.⁹⁵ Each side depicted the other as a wild beast.

The use of this kind of language was emotive, but did it come to reflect a fixed and persistent view within the Government? The claimants argued that it did; the Crown argued that it did not.

The claimants’ argument rests on the evidence of Professor Binney and other historians. Counsel for Wai 36 Tuhoe claimants submitted that the Crown was at best ill-informed. Apart from Hunter Brown’s account of his visit, the Crown at the time was dependent on information from other iwi. Taken as a whole, the information available to the Government resulted in ‘negative stereotypes’ about Tuhoe, both before and after Orakau. The perception of ‘the Urewera’ as savage, uncivilised, and dangerous foes in their mountain fastness, hostile to settlers and rebellious against the Crown, was entrenched by 1864. Battersby, for example, cited the Reverend Carl Sylvius Volkner’s report that 300 Tuhoe had fought against the Crown in the central Bay of Plenty. Such misinformation, combined with the Government’s ignorance that the majority of Te Urewera peoples did not support fighting in the Waikato war, reinforced earlier fears and suspicions. This formed the context for the way in which Tuhoe’s support for the Pai Marire faith would be perceived in 1865 and the view of Waikaremoana and Ruatahuna as ‘centres of resistance’ in 1866.⁹⁶

The Crown, however, relied on Battersby’s evidence to argue that a series of reports and comments from individual officials or military officers did not constitute a fixed Government prejudice against Tuhoe. It accepted that there was a ‘generalised impression, prevalent as much among Maori as among Europeans, that Tuhoe were fearsome warriors, and the Urewera terrain was an unfavourable theatre in which to confront them.’⁹⁷ But there was not an equally general view of the Urewera peoples as inevitably hostile and rebellious. Reports of possible attacks on Napier and elsewhere flowed to the Government from officials such as Donald McLean. In response, it maintained a cautious watch and hoped that the situation would quieten down without its interference. Perceptions and reports aside, the Government did not let itself be persuaded to act against Tuhoe. Overall, it knew

94. Tuawhenua Research Team, ‘Ruatahuna, Part 1 (doc B4(a)), p 202

95. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 108

96. Counsel for Wai 36 Tuhoe, closing submissions, pt B, response to statement of issues, 30 May 2005 (doc N8(a)), pp 6–8

97. Crown counsel, closing submissions (doc N20), introduction, p 9

that the iwi had fought at Orakau and so kept a ‘wary eye’ on Te Urewera, but nonetheless it believed that the situation there would not escalate.⁹⁸ That, in the Crown’s view, indicates ‘little evidence of government holding the type of mindset argued for.’⁹⁹

The claimants’ historians noted many negative comments and reports about Te Urewera from officials and military officers.¹⁰⁰ It is difficult to escape the conclusion that there was a widespread prejudice against the inhabitants of the region. Not even peaceful trade could disrupt the notion that Tuhoe were savage and rebellious. In his evidence for Ngati Whare, Richard Boast reported the following comments of Lieutenant Herbert Meade, who met a large trading party on its way home from Napier in January 1865:

In the midst of a vast flat-bottomed valley, we met a long train of Kingites, Uriweras (the most savage tribe), with numbers of heavily-laden packhorses, wending their way from Napier, where they had been making their purchases, to Taupo and the Waikato. Could we have seen the contents of those packs, there is little doubt that many a parcel of gunpowder and lead would we have found. According to custom on these occasions, as Hemi explained, we diverged from the path a hundred yards or more, and halted with a salutation while they passed, which they did in peace.¹⁰¹

We could cite many other examples. Such accounts were based, as counsel for Wai 36 Tuhoe claimants argued, not on knowledge but on the lack of it.

While the Crown notes that the stereotyping of ‘the Ureweras’ as dangerous rebels did not result in military action against them, the claimants note that no efforts were made to meet or to negotiate with them, or to attempt a meaningful peace.¹⁰² Mr Kruger and the Tuawhenua researchers explained that there was a strong factual basis for the idea that Tuhoe were hostile to the Government and settlers.¹⁰³ Tuhoe suspicions of 1862 seemed to have been more than confirmed in 1863 and 1864. If the Government feared and suspected Tuhoe, then that view was reciprocated. Nonetheless, as Binney and the Tuawhenua researchers agree, the Urewera peoples sent forces to Waikato in large part to contain the war there and to keep it away from their own lands. They did not commit the majority of their forces, nor did they take any military action after April 1864.¹⁰⁴ That historical

98. Crown counsel, closing submissions (doc N20), introduction, pp 8–10

99. *Ibid.*, p 9

100. See, for example, Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 35–37, 73–74, 77, 106–109; Miles, *Te Urewera* (doc A11), pp 77–85; and Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 218–219.

101. Herbert Meade, *A Ride through the Disturbed Districts of New Zealand together with Some Account of the South Sea Islands, Being Selections from the Journals and Letters of Lieut the Hon Herbert Meade, RN* (London: John Murray, 1870) (Boast, ‘Ngati Whare and Te Whaiti-Nui-a-Toi’ (doc A27), p 47)

102. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 8

103. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 199–202

104. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 77–84; Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 199–219

reality was not discovered by the Crown at the time. Counsel now accepts that it was in fact the case, although noting that, even so, a significant force was sent to Waikato.¹⁰⁵ Binney argues that Tuhoe sought to contain the war in 1864, not inflame it, and were prepared to fight defensive wars only to protect their lands and autonomy.¹⁰⁶

Given this political situation in Te Urewera, reports such as McLean's take on a new significance. In May 1864, McLean (as the superintendent of Hawke's Bay) wrote to the Government to ask for 600 troops. He argued that the

immediate danger to be apprehended is from the Uriwera tribe of the upper Wairoa who have been actively engaged in hostilities against Her Majesty's forces. This tribe is . . . only two days march from Napier, they occupy a wild and inaccessible part of the country from which they can with impunity make inroads upon the selected districts, the Uriwera have openly avowed their determination to attack Napier and from their wild savage state and revengeful feelings consequent upon losses sustained at Orakau there is every reason to expect they will soon carry this threat into execution.¹⁰⁷

Battersby commented that no military action followed either this request or other such reports and rumours. Rather, the Government's policy was to watch the region carefully and let it settle down on its own.¹⁰⁸ In part, this was because other districts were a more pressing priority. Dr O'Malley notes that Samuel Locke was sent to investigate McLean's report and decided that there was no immediate danger.¹⁰⁹ No official, however, was sent to Te Urewera.

It seems to us that this is a key consequence of the widespread fear and suspicion of 'the Ureweras'. It prevented the Government from trying to engage with them in the crucial months after Orakau. Had Hunter Brown or another official been sent, as in 1862, to test the 'political temper' of Te Urewera, then an accommodation may still have been possible in late 1864 or early 1865. Instead, as Crown counsel submitted, the Government watched and waited, and hoped to avoid military action east of Matata for the meantime. Yet, as we noted above, the reality was that the majority of the Urewera peoples had not supported sending forces to the Waikato. They wanted to protect the lands and autonomy of Mataatua ('Kia tawharautia a Mataatua' / 'Let Mataatua be sheltered'). Blood had been shed but the battle lost, and the surviving warriors returned to a hostile reception. Peace and the beginning of a political relationship between the Crown and the peoples of Te Urewera were still possible, although clearly more difficult prospects than they had been in 1862.

105. Crown counsel, closing submissions (doc N20), introduction, p 7

106. Binney, 'Encircled Lands, Part 1' (doc A12), p 84

107. *Ibid*, p 108

108. Battersby, 'Conflict in the Bay of Plenty' (doc B2), pp 15–19, 155–159; Crown counsel, closing submissions (doc N20), introduction, pp 8–10

109. Vincent O'Malley, 'The Crown and Ngati Ruapani: Confiscation and Land Purchase in the Wairoa–Waikaremoana Area, 1865–1875' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1994) (doc A37), p 16

In our view, an important opportunity was lost. Instead of emissaries from the Crown, it was emissaries from Pai Marire who arrived in Te Urewera in 1865. As we shall see in chapter 4, this led to a further deterioration in the relationship between the Urewera tribes and the Crown. Here, we reiterate that the Crown owed Treaty obligations to the peoples of Te Urewera, yet since the Hunter Brown mission of 1862 it had made no attempt to contact them or to establish a relationship with them. Rather, it watched them with a 'wary eye' while it conducted military operations and confiscations in closer, more coveted districts. In the absence of a relationship, the peoples of Te Urewera came to be perceived as a wild and dangerous 'hill tribe'.¹¹⁰

In 1866, the first assertion of Crown authority inside the Tuhoe rohe took place. The Government confiscated a large district in the eastern Bay of Plenty, part of which included Tuhoe lands. The official sent that year to the Bay of Plenty to negotiate compensation (or a return of land) for non-rebel tribes affected by that confiscation did not even try to meet with Tuhoe. As we shall see in chapter 4, Tuhoe's first experience of a Government institution was therefore its Compensation Court, of which they had little knowledge and in which they were ill prepared to participate. This was the legacy of a quarter-century of virtually no contact between Tuhoe and the Crown.

3.6 SUMMARY

The main points made in this chapter are as follows:

- ▶ The Wai 1039 Tuhoe claimants question the source and nature of the Crown's authority in 1840 and right through to today in relation to iwi, such as themselves, who did not sign the Treaty of Waitangi.
- ▶ The first issues posed for the Tribunal by this 'constitutional claim' relate to the fact that Tuhoe rangatira did not sign the Treaty.
- ▶ The Crown and claimants agree that in 1840 the Crown undertook Treaty obligations to all Maori, whether or not they had signed the Treaty.
- ▶ The Tribunal accepts the claimants' submission that in 1840, because their rangatira did not sign the Treaty and, indeed, were not given the opportunity to do so, Tuhoe did not owe reciprocal Treaty duties to the Crown. Since the claimants' tipuna knew nothing of the Treaty, it could not, in any real sense, take effect to bind them to its terms.
- ▶ Therefore, the Treaty took effect for the claimants' tipuna in 1840 only as a unilateral set of promises made to them by the Crown. Article 2 promised to protect their tino rangatiratanga and, in Tuhoe terms, mana motuhake.
- ▶ The Tribunal accepts further that this situation did not change between 1840 and 1865 because, by the latter date, Tuhoe had not entered a relationship with the Crown and did not recognise its authority.

110. See, for example, Brabant to Under-Secretary, Native Department, 22 March 1876 (Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi' (doc A27), p 85).

- ▶ In the years to 1865, the Crown made only one attempt, in 1862, to establish communication with Tuhoe. Although the proposal of Resident Magistrate Hunter Brown to introduce State runanga was met with a cautiously positive response, the Crown did nothing further to establish a relationship with Tuhoe on mutually acceptable terms.
- ▶ From 1863, there was a deepening of hostility and suspicion between the Crown and Tuhoe. This was due to their lack of relationship, the outbreak of war after the Crown sent its forces to Taranaki and then into Waikato, and the subsequent involvement of two small contingents of Tuhoe in the fighting at Orakau and in the central Bay of Plenty.
- ▶ The Tribunal will examine post-1865 issues for this claim in later chapters.



Robert Pouwhare

Tuhoe bitterness at the 1866 Eastern Bay of Plenty confiscation stemmed from the seizure of much of their best land and their justified belief that this was unfair punishment for the murders of Volkner and Fulloon, in which they were not involved. Tuhoe highlighted this longstanding grievance when the Tribunal and Crown counsel arrived at the historic confiscation line near Ruatoki towards the end of their hearings, on Sunday 16 January 2005. Wero were laid down from every marae on the road to Taurau Marae as the manuhiri made their way there slowly by a cart drawn by Clydesdales for the powhiri, accompanied by rangatahi on horseback.

CHAPTER 4

TE RAUPATU O TUHOE WHENUA – CONFISCATION

The fact that the Crown punished us and confiscated our lands on the basis of deeds committed by one not from Te Urewera has always confused me.

Not only was our land taken, but the most fertile land was taken.

Te Kiato Sonny Biddle¹

4.1 INTRODUCTION

On 17 January 1866, the Crown confiscated a large tract of Maori land in the eastern Bay of Plenty, from Otamarakau in the west to Te Kaha in the east. The confiscation was by Order in Council under the New Zealand Settlements Act 1863, after hostilities in the district during preceding months. In the confiscated district was a substantial area over which Tuhoe exercised rights and authority. Raupatu has had a severe impact on the northern hapu which traditionally occupied this area, and on all Tuhoe, as it has on other affected iwi in the region. The inland confiscation line, which cuts across the Ruatoki and Waimana Valleys, has become an indelible marker of Tuhoe's permanent alienation from their land. The contemporary reality of this line is a great and continuing grievance for Tuhoe.

The Crown made three major concessions on this confiscation:

- ▶ First, the confiscation, in general, was 'a breach of the Treaty, unjust and excessive'.²
- ▶ Secondly, the Crown accepts that it has previously failed to acknowledge the 'wrongful confiscation of Tuhoe land'; that this is a continuing grievance for Tuhoe, and that delay in addressing these confiscation issues 'is a breach of the Treaty'.³
- ▶ Thirdly, after the landing of the East Coast Expeditionary Force (ECEP) in September 1865, 'Ngai Tuhoe as a whole were not in "rebellion"'.⁴

For Tuhoe, these acknowledgements are momentous. For the first time, the Crown has recognised major wrongs done to them.

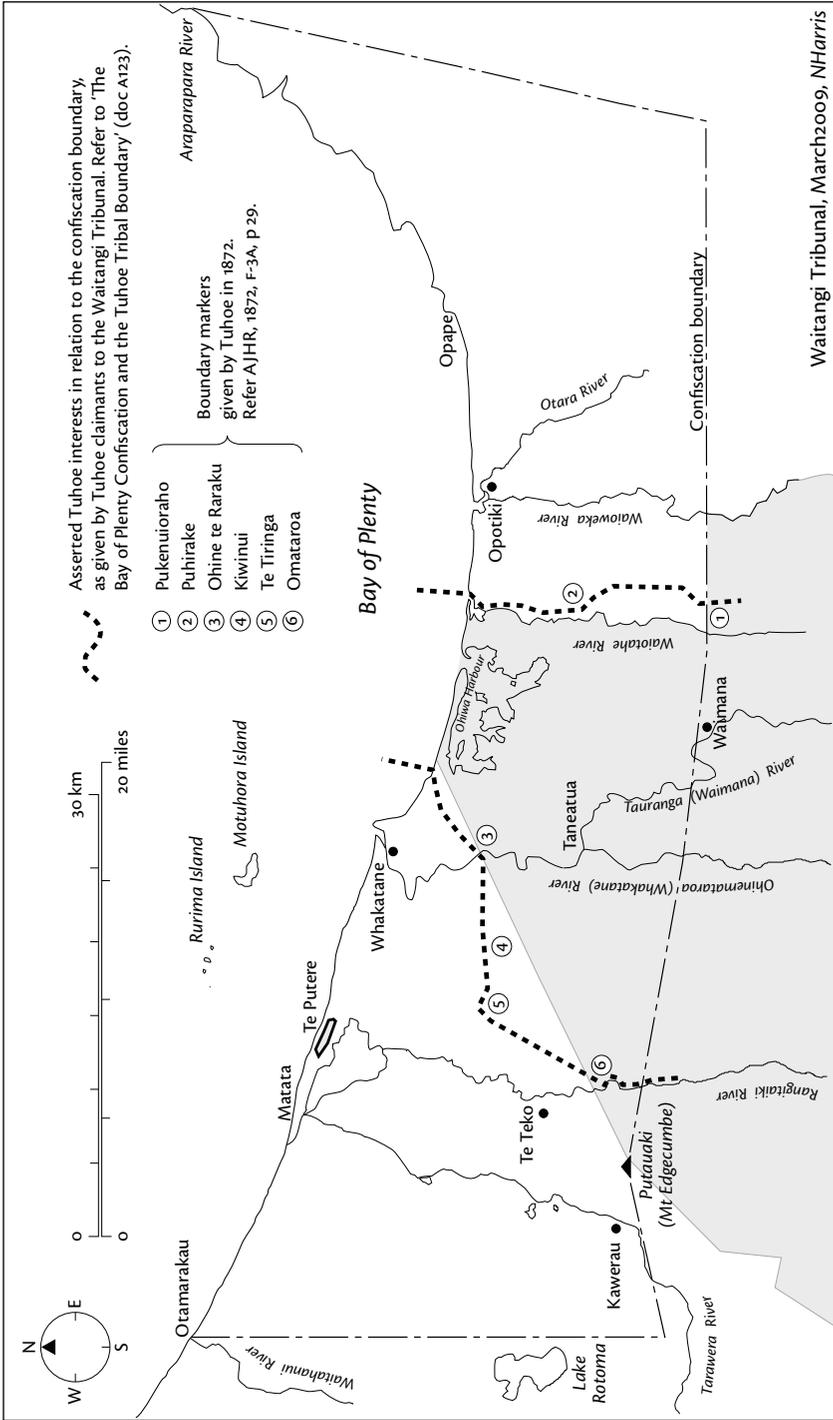
Important issues remain, nevertheless. This chapter addresses those issues: the

1. Te Kiato Sonny Biddle, brief of evidence, no date (doc B25), pp 5, 6

2. Crown counsel, closing submissions, June 2005 (doc N20), topic 3, p 2

3. Ibid, pp 2, 34

4. Ibid, p 5



Waitangi Tribunal, March 2009, NHarris

Map 4.1: Eastern Bay of Plenty confiscation boundary

circumstances in which Tuhoe's lands were included in the confiscation in the first place; the reasons why Tuhoe's rights and interests in the confiscated lands were not recognised at the time, so that they failed to secure the return of their lands or compensation for their taking; and the short- and long-term impacts of confiscation on Tuhoe. We also attempt to quantify Tuhoe's losses.

4.2 ISSUES FOR TRIBUNAL DETERMINATION

The Crown's concessions remove the need for us to examine further the issues that they address. In particular, we do not need to address the question of whether Tuhoe were in rebellion prior to the confiscation. The Crown has conceded, inevitably in our view, that there was no cause to find Tuhoe to have been in rebellion. Though debates surrounding Tuhoe participation in battles at Orakau, Te Tapiri, and Te Teko are of historical interest and importance, our examination of these events is no longer necessary.

The issues before us arise from the eastern Bay of Plenty confiscation, and the nature and extent of the prejudice suffered by Tuhoe as a result. To help assess the prejudice, we have tried to quantify Tuhoe's losses, expressing them in acres and hectares as a proportion of the confiscation area. We do not attempt to define iwi boundaries. The approach we have adopted will, we hope, provide a workable basis for Tuhoe and the Crown to negotiate.

In summary, the four main questions we address in this chapter are:

- ▶ Why and how did the Crown confiscate Tuhoe lands in the eastern Bay of Plenty?
- ▶ Why did Tuhoe fail to secure either the return of land or compensation in land or money?
- ▶ How much Tuhoe land was taken in the eastern Bay of Plenty confiscation?
- ▶ What were the impacts of confiscation on Tuhoe?

At the conclusion of the chapter, we address a claim by the Mokomoko whanau relating to the trial and execution of their tipuna Mokomoko in 1866 and his subsequent pardon by the Crown in 1992. The issue arising in this claim is treated separately because it is not related to Tuhoe claims to confiscated land. The issue is: Should the terms of the pardon granted to Mokomoko in 1992 be revisited and compensation paid to his descendants?

4.3 KEY FACTS

Before the 1866 confiscation of eastern Bay of Plenty lands, the northern hapu of Tuhoe were settled within a region stretching from the Rangitaiki River in the west to the Waioatahe River in the east to Ohiwa Harbour in the north. The area of closest settlement was in the Waimana Valley and the alluvial plain through which the Ohinemataroa (Whakatane) River flows. To the north, especially around Ohiwa, a number of hapu and iwi had for generations exercised rights to land and to the resources of the harbour. The early nineteenth century saw significant conflict that disrupted living patterns in and around Te Urewera. Over a 15-year period, Tuhoe

were involved in conflict that affected their rohe on all sides. Tuhoe concentrated at times at Ruatahuna and Maungapohatu in order to coordinate their efforts on several fronts. In the north, there was fighting against other Bay of Plenty iwi and hapu, especially Ngati Awa and Ngati Pukeko. By the mid-1830s, Tuhoe hapu reoccupied the Waimana, Ruatoki, Opouriao, and Owhakatoro Valleys. Having acquired a number of new crops, such as wheat, corn, and potatoes, they extended the range of their cultivations.

This was the general pattern of occupation in the northern lands when war reached the area in late 1865. Hostilities occurred in the broader context of wars that had engulfed the North Island in the early and mid-1860s. In early 1863, hostilities between the Crown and Maori in Taranaki resumed after more than a year of peace. In July, Governor George Grey ordered imperial forces to invade the Waikato. A series of battles followed in Waikato and Tauranga that stretched into 1864, and thousands of Waikato people withdrew before the troops into the King Country. Some Tuhoe groups participated at the battle of Orakau (31 March to 2 April 1864) in response to Rewi Maniapoto's call for assistance. The leadership, however, was split on the decision; the hapu of Ruatoki and Waimana decided not to go (see chapter 3). A contingent of Tuhoe, Ngati Whare, and Ngati Haka Patuheuheu played an important part in the defence of Orakau, suffering heavy casualties.

In 1862, the spiritual leader Te Ua Haumene developed the peaceful, biblically based doctrines of the Pai Marire faith, which has been described as having 'messianic and millenarian aspects'.⁵ In 1865, Te Ua Haumene sent his emissaries forth to the 'four quarters of the land',⁶ hoping to unite the tribes. In the context of war, his doctrines became misinterpreted and misapplied by some of his emissaries, notably Kereopa Te Rau and Patara Raukatauri.

By mid-1865, the Government was anxious to conclude the wars, which were a source of both grave political difficulty and financial strain. South Island politicians were fed up with the cost of the wars, and in Auckland anxiety about retaining imperial troops had led to a powerful separatist movement. During August and September 1865, the Weld Government developed a package of measures designed to bring the wars to an end. They included:

- ▶ the proclamation of peace of 2 September 1865, which declared the war that had been in progress since 1863 to be at an end and promised immunity for Maori who had taken up arms against the Crown, except for those who had committed certain specified murders;
- ▶ the finalising of confiscations in Waikato and Taranaki under the New Zealand Settlements Act 1863, so that there was no uncertainty about what lands would be taken;
- ▶ separate dealing with certain murders that had taken place in the eastern Bay

5. Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p101

6. Judith Binney, 'Encircled Lands, Part 1: A History of the Urewera from European Contact until 1878' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A12), p 85

of Plenty, the dispatch of two armed forces, and the proclamation of martial law there on 4 September 1865; and

- ▶ the Outlying Districts Police Act 1865, which provided for land confiscation, not to punish rebels but where chiefs and people had failed to assist in the arrest of suspected criminals (such as murderers).

We turn now to the events of importance to Tuhoe before and after the eastern Bay of Plenty confiscation, which was effected under the New Zealand Settlements Act 1863 by Order in Council dated 17 January 1866. The main period of conflict which culminated in the confiscation was to prove crucial for Tuhoe, though they were not directly involved themselves. For this reason, we discuss these events separately from our main text so that readers can refer to them.

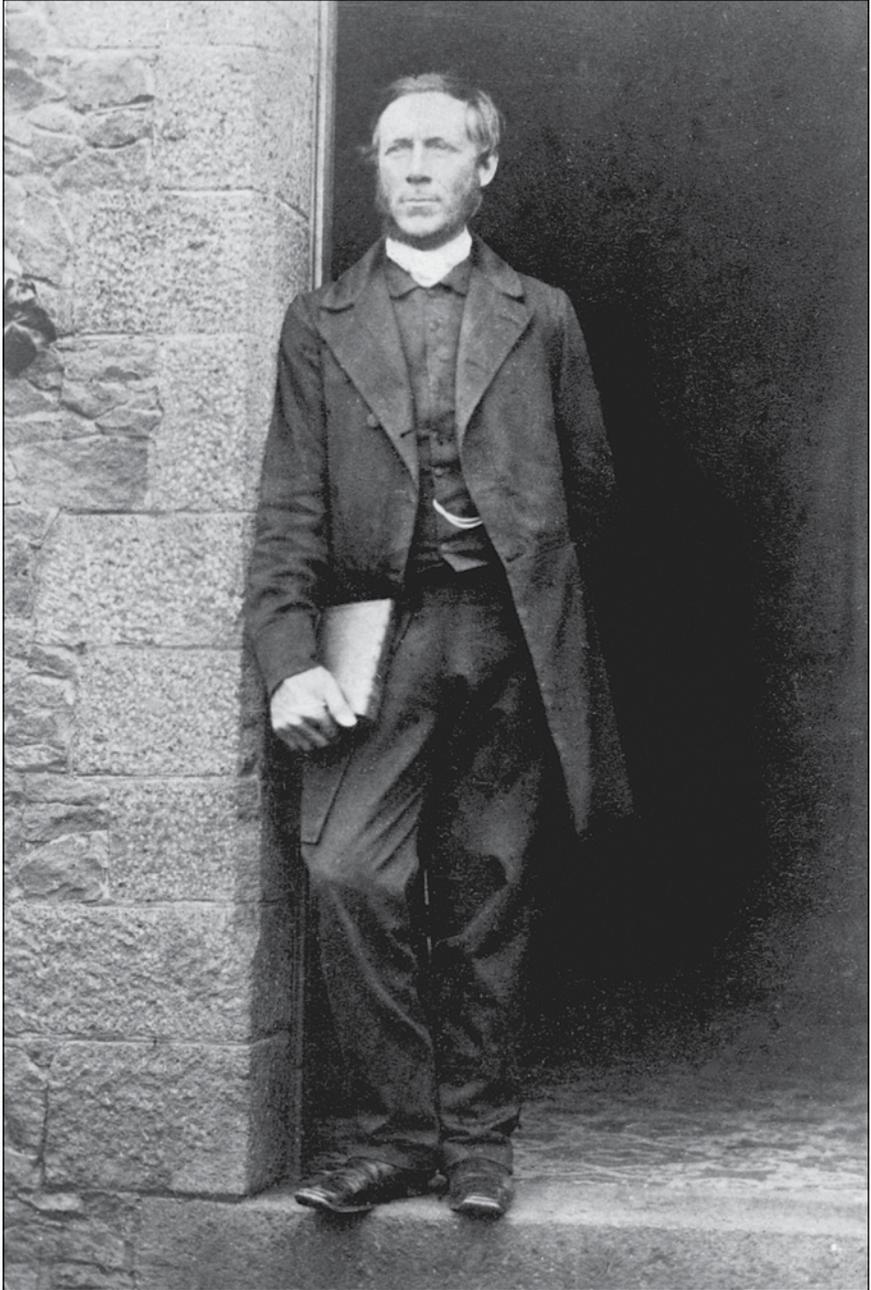
Inevitably, Tuhoe were caught up on the edges of the conflict in the eastern Bay of Plenty. Following the killing of Volkner, Kereopa Te Rau and his party fled to Te Urewera, where many of the people – as elsewhere in the North Island – had adopted Pai Marire teachings. A party comprised of Ngai Tuhoe, Whakatohea, Ngati Whare, and Ngati Haka Patuheuheu then joined Te Rau on a journey to Waikato. As they passed through the west of Te Urewera in early June 1865, there was a confrontation with Ngati Manawa and Ngati Rangitihia at Te Tapiri. However, no Crown forces were involved.

In late 1865 and early 1866, the ECEF moved its search for Kereopa Te Rau to Te Urewera, for he was known to have returned to the area. Under Colonel Lyon, its new commander, the force made a foray up the Waimana Valley to Rakuraku Rehua's pa in February 1866. Lyon concluded later that Rakuraku had misled him about the existence of a track to Maungapohatu where Te Rau and Raukatauri were thought to have been. Overall, there was a period of 'uneasy peace' from January to May 1866.⁷ However, the ECEF commander remained anxious to capture Kereopa Te Rau. Tuhoe leaders were nervous of the ECEF garrisoned in Opotiki, and of its unpredictable forays, and were anxious to assist. Rakuraku was among those who did attempt to capture Te Rau. In April 1866, Lyon was told that Kereopa Te Rau would be delivered to him. Several leading Tuhoe chiefs took the oath of allegiance. In fact Kereopa was not handed over, because the chief Kereru Te Pukenui let him go, but Lyon did not blame the chiefs he had met, whom he described as 'still staunch'.⁸ By mid-1866, the force was reduced to a garrison of 160 men at Opotiki.

In the wake of the January Order in Council, major reallocations of land were made within the confiscated district. In April 1866, John Alexander Wilson was sent to make these reallocations. Wilson negotiated the location of reserves with iwi in the district, including Ngati Awa, Ngati Pukeko, Whakatohea, and Ngai Tai, prior to the sitting of the Compensation Court. In December 1866, Wilson, Ngati Pukeko, and Ngati Awa negotiated an agreement at Rauporoa Pa which would

7. John Battersby, 'Conflict in the Bay of Plenty and Urewera Districts, 1864–68' (commissioned research report, Wellington: Crown Law Office, 2003) (doc B2), p100

8. Lyon to Minister of Colonial Defence, 10 May 1866 (Judith Binney, supporting papers to 'Encircled Lands, Part 1', various dates (doc A12(a)), p 24)



John Kinder (ATL, 1/2-059698-F)

The Reverend Carl Sylvius Volkner, circa 1859. Volkner, a German Lutheran, arrived in Opotiki in 1861 as a Church Missionary Society missionary. His hanging in March 1865 on Kereopa Te Rau's instructions, after he returned from a trip to Auckland, did not prompt an immediate response from a Government preoccupied with war in Taranaki. The response came six months later, after the killing of James Fulloon.

Samual Carnell (ATL, PAZ-0400)



Kereopa Te Rau of Ngati Rangiwewehi, late December 1871. Te Rau arrived in the eastern Bay of Plenty early in 1865. Despite the peaceful teachings of Pai Marire spiritual leader Te Ua Haumene, tensions ran high in the context of war in Taranaki and Waikato. At Opotiki, Te Rau condemned local missionary Reverend Carl Volkner to death as a Government spy, for which he was hanged in January 1872.

War and Confiscation in the Eastern Bay of Plenty

In the eastern Bay of Plenty, war was precipitated by the arrival of Pai Marire missionaries, sent from Taranaki to spread the new faith. In December 1864, two Pai Marire missionaries, Kereopa Te Rau of Ngati Rangiwewehi and Patara Raukauri of Taranaki, arrived at Tauranga. They then moved through the Ngati Awa rohe and on to Opotiki in February 1865. On 2 March 1865, Carl Sylvius Volkner, the local missionary for the Church Missionary Society, was hanged after Kereopa condemned him to death. It was held that he had been spying for the Government. His executioners included Te Rau and local Maori. News of the murder reverberated throughout the colony, not only because Volkner was a missionary but also because of the rituals that accompanied his death. Perhaps surprisingly, there was no immediate response from the Government, though it was at the time preoccupied with military campaigns in Taranaki.

In July 1865, there were further murders, this time at Whakatane. A Pai Marire aukati had been placed on the harbour there, but it was broken by the arrival of the vessel *Kate*. On board the *Kate* was James Te Mautaranui Fulloon, who was of Ngati Awa and Tuhoë descent and had recently been commissioned as a captain in the militia. Fulloon had come to recruit a company of Ngati Awa to counter Pai Marire influence in the Bay of Plenty. He and several others were killed by a party who boarded the ship.

The Fulloon murder did trigger a direct Government response. Military expeditions were sent to apprehend suspects in the murders. The Government introduced into Parliament the Outlying Districts Police Bill in August 1865, intending to use it in the Opotiki district. In other words, it intended to treat the murders of Volkner and Fulloon as crimes, not as rebellion. The new legislation could be invoked when serious crimes had been committed in a district and was designed to allow the Governor to put pressure on the chiefs and people of a district to deliver up suspected criminals who may have taken refuge there. If they did not surrender the suspects, their lands could be confiscated and used to pay for the cost of police action and police garrisons in the district.

On 2 September 1865, the Crown issued a proclamation of peace (which was not gazetted until 5 September) stating that the Waikato and Taranaki wars were at an end. But, while Maori who had fought against the Crown would not be 'prosecuted for [their] offences', this immunity did not extend to men who had committed certain specified murders – including those of Volkner and Fulloon.¹ The proclamation announced that the Government would apprehend the murderers and that any tribes that impeded its attempts to do so would be punished by having part of their land taken. The Outlying Districts Police Act (when passed in October 1865) would provide the mechanism for such takings.

1. 'Proclamation of Peace', 2 September 1865, *New Zealand Gazette*, 1865, no 35, p 267

On 4 September, the Crown proclaimed martial law in the eastern Bay of Plenty,² meaning that prisoners could be tried and summarily executed by court-martial. Thus, it authorised an expeditious process for trying and punishing the murderers of Volkner and Fulloon.

On 8 September, the East Coast Expeditionary Force, a force of over 500 men, began landing at Opotiki and attacked Whakatohea communities in the region in the search for suspects in the murders. By this time, the peace proclamation had not reached the Bay of Plenty. At Opotiki, the fighting took place mostly between the Crown's forces and the various hapu of Whakatohea, ending with what Bryan Gilling describes as the 'major battle' of the period at Te Tarata Pa on 5 October.³ Subsequently, a large number of Whakatohea chiefs surrendered with their people.⁴ To the west, Maketu resident magistrate William Mair raised a force of 500 Te Arawa, which fought Ngati Awa groups on the coastal plains between modern-day Whakatane and Maketu. Ngati Awa evacuated several pa and retreated inland to Te Teko on the banks of the Rangitaiki. In mid-October, the Te Arawa force besieged Ngati Awa at Te Kupenga Pa until they surrendered. Mair wrote afterwards: 'The Ngatiawa are fairly crushed and will never give any more trouble.'⁵

By November 1865, when hostilities in this region ceased, a number of men had been arrested in connection with the murders of Volkner and Fulloon. In November, courts-martial were held to try them, and 28 men were found guilty; all were sentenced to death. Later, the Attorney-General challenged the legality of civilian trials by court-martial, and the prisoners were charged in the Supreme Court in Auckland. In March 1866, four men were convicted of Volkner's murder and sentenced to death.

A large tract of land was confiscated in the Bay of Plenty, but not under the Outlying Districts Police Act. Instead, the New Zealand Settlements Act 1863 was used. On 17 January 1866, an Order in Council confiscated eastern Bay of Plenty lands under the Act.⁶ The order recited the power conferred by the Act to declare a district within which land of any rebellious tribe, or section of that tribe, was situated. No specific instances of rebellion were referred to, but the order stated that the Governor was 'satisfied that certain Native Tribes and sections of Native Tribes' within the district had been engaged in rebellion since 1 January 1863. The 'Bay of Plenty' was declared a 'district' under the Act, and the lands in the district

2. Proclamation declaring martial law in the districts of Opotiki and Whakatane, 4 September 1865, *New Zealand Gazette*, 1865, no 35, pp 267–268

3. Bryan Gilling, 'Te Raupatu o te Whakatohea: The Confiscation of Whakatohea Land, 1865–1866', report, 1994 (doc A53), pp 65, 77–79

4. John Battersby, 'Conflict in the Bay of Plenty and Urewera Districts, 1864–68' (commissioned research report, Wellington: Crown Law Office, 2005) (doc B3), pp 71–72

5. Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 61–62

6. Order in Council, 17 January 1866, *New Zealand Gazette*, 1866, no 3, p 17

were taken for the 'purposes of settlement'. Thus, all the lands inside the district boundary were confiscated. The Settlements Act provided for the Governor to lay out towns and farms to fulfil the terms of contracts made with military settlers. The Government had initially enrolled hundreds of men on the Australian goldfields who were to serve as auxiliaries to the regular forces in the Waikato campaign; they would be given free grants of confiscated land in return for military service, easing the process of colonisation of 'disaffected' areas.

include land on either side of the Whakatane River as far inland as the confiscation boundary. The outcome of the agreement was the settlement of the two iwi on the western bank of the Whakatane River. The Crown secured all the land to the east, except for a few reserves which were granted to Ngati Awa and Ngati Pukeko.

Tuhoe were not involved in the agreement. Wilson had gone to Waimana in November 1866 to talk to Rakuraku Rehua about beginning surveys in the area, but he did not meet with Tuhoe representatives to make arrangements for the allocation to them of land within the district. By December 1866, surveyors had begun cutting the southern confiscation boundary line in the Waimana Valley. Allotments for military settlers were made on the banks of the Nukuhou Stream and on the eastern bank of the Whakatane River.

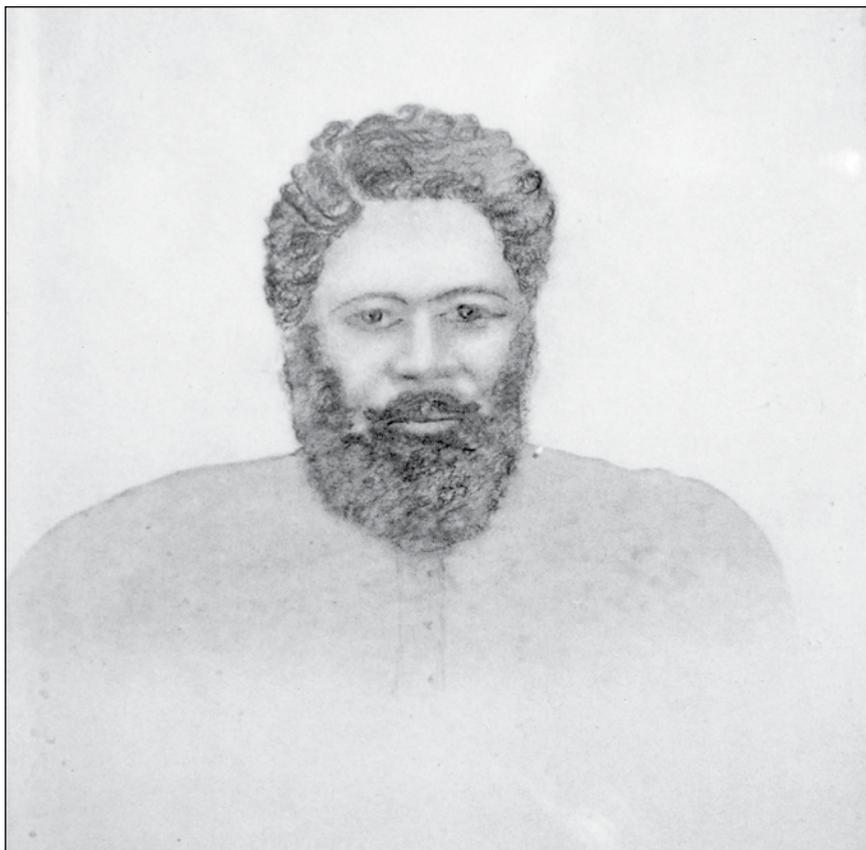
The Compensation Court, provided for by the New Zealand Settlements Act to grant compensation to claimants found not to have been in 'rebellion', began its hearings in March 1867. Tuhoe made three claims to the court – one for Ohiwa and two for Opouriao. All three were dismissed. At the hearings, Wilson – who had now been appointed as the Crown's agent in the Compensation Court – summoned witnesses to give evidence against each of the Tuhoe claims, either by citing instances of rebellion or by casting doubt on their claims to the land. In two of the cases, claims were dismissed without any reasons being given. The Compensation Court awarded thousands of acres of land to other iwi in the district. None went to Tuhoe. Tuhoe leaders Rakuraku and Tamaikoha were later granted small parcels of land within the district, but not as compensation.

Tuhoe gradually came to understand the extent of the confiscation on the ground. Their opposition to the confiscation began to surface by February 1867, when a hui held at Tawhana reported its opposition to the Rauporoa agreement. Following Tamarau Te Makarini's Compensation Court hearing, he and others were taken away and imprisoned at Whakatane without charge and for reasons unknown (see the sidebar on pages 256 and 257). Throughout 1867 and 1868, spasmodic unrest in the region occurred in which Tuhoe leaders and the Crown's garrison forces were involved, although they rarely confronted each other directly. During this time, Tuhoe people moved in and out of the confiscation area, but the main movements were inland: people whose settlements were on confiscated land had to seek homes with relatives behind the line. However, these movements were

Hartley Webster (Museum of New Zealand Te Papa Tongarewa, 0.013185)



Colonel William Lyon. The commander of the East Coast Expeditionary Force that moved the search for Kereopa Te Rau into Te Urewera early in 1866, Lyon was against the destruction of kainga and property to force Tuhoe cooperation, believing that such tactics would unite Te Urewera Maori against the Crown, and be self-defeating.



Judith Binney, original artist unknown (ATL, PACOLL-9928-20-01)

Tuhoe rangatira Rakuraku Rehua. Rehua, whose pa was in the Waimana Valley, was one of the Tuhoe leaders who felt the immediate impacts of the arrival of colonial forces in the eastern Bay of Plenty in the months after the murders of the Reverend Carl Volkner and James Fulloon. He agreed to help find Kereopa Te Rau and did help (though Te Rau was not handed to the East Coast Expeditionary Force commander at the time), and he had to deal with the first survey of the confiscation line and with taking a claim for Ohiwa to the new Compensation Court. After the confiscation, Rehua relocated to Whakarae Pa, near the headwaters of Ohiwa. He accepted Te Kooti's Ringatu faith and joined Te Kooti in his attack on Mohaka. He remained with Te Kooti as late as March 1870.

eclipsed by the arrival in Te Urewera of Te Kooti, to whom Tuhoe gave strong support, and the sustained military conflict with the Crown that followed.

After the wars, Tuhoe began to seek restitution for their confiscated land. The first of many petitions to the Government was made in 1878. Further attempts over many years proved unsuccessful. In particular, Tuhoe received little attention from the Crown's 1927 commission of inquiry into the nineteenth-century confiscations (the Sim commission). In the wake of their failure to secure favourable recommendations from the Sim commission, Tuhoe attempts to bring a deeply felt grievance before the Crown have continued to the present day.

4.4 THE ESSENCE OF THE DIFFERENCE BETWEEN THE PARTIES

While the Crown and claimants agree that confiscation was in breach of the Crown's Treaty obligations, there are some key questions on which the parties did not reach agreement.

4.4.1 Why and how did the Crown confiscate Tuhoe lands in the eastern Bay of Plenty?

The claimants say that the Crown used confiscation to inflict the utmost damage on the Tuhoe people. Counsel for Nga Rauru o Nga Potiki made submissions reflecting the claimants' strongly held belief that the Crown acted knowingly in taking their lands. Raupatu was a 'display of the authority of the Crown', designed to weaken the peoples of Te Urewera economically and to break their autonomy.⁹ The Wai 36 statement of claim similarly alleged that 'The Crown deliberately confiscated the best of Tuhoe's tribal lands at Ohiwa, Ruatoki, Waimana and Opouriao.'¹⁰ In closing submissions, counsel stated, 'The Crown did not consider the confiscation to be wrong, and certainly there is no evidence that it made efforts to exclude Tuhoe land from confiscation.' He concluded that confiscation was used as a 'blunt instrument' to remove the most fertile land from Tuhoe.¹¹

This submission is based in part on the evidence of Professor Judith Binney and on tangata whenua evidence. Binney suggests that confiscation was part of a broader attempt to subjugate the people of Te Urewera – a 'threatening zone of potential Maori autonomy'. To achieve this, the Crown was prepared to use military force and land confiscation.¹² Claimants Sonny Biddle and Te Weeti Tihi expressed the strong belief that the Crown deliberately targeted Tuhoe.¹³ From their perspective, confiscation was merely one way in which to crush their people's autonomy.

Crown counsel, by contrast, submitted that 'the confiscation did not appear at the time to be intended to punish Tuhoe or Urewera hapu.'¹⁴ Counsel acknowledged that Ngai Tuhoe 'as a whole' were not in 'rebellion' in the period and denied that the Crown had 'formulated a particular view of Tuhoe' that led to a clear plan to subjugate them.¹⁵ In other words, not only does the Crown concede that the eastern Bay of Plenty confiscation was 'a breach of the Treaty, unjust and excessive', but it also evidently considers the confiscation of Tuhoe land an unfortunate by-product of its actions. The Crown does not, however, explicitly acknowledge this latter point.¹⁶

9. Counsel for Nga Rauru o Nga Potiki, closing submissions, 3 June 2005 (doc N14), pp 51, 59

10. Wai 36 Tuhoe, amended statement of claim, 16 February 2000 (claim 1.6(a)), p 4

11. Counsel for Wai 36 Tuhoe, closing submissions, pt B, response to statement of issues, 30 May 2005 (doc N8(a)), p 20

12. Binney, 'Encircled Lands, Part 1' (doc A12), p 74

13. Te Weeti Tihi, brief of evidence, 10 January 2005 (doc J17), p 2; Te Kiato Sonny Biddle, brief of evidence, no date (doc B25), p 5

14. Crown counsel, closing submissions (doc N20), topic 3, p 5

15. *Ibid*, pp 5, 6

16. *Ibid*, p 2

Thus, the Crown maintains that the confiscation of Tuhoe lands was unintentional. The claimants, on the other hand, believe that the Crown acted with full knowledge and intent.

4.4.2 Why did Tuhoe fail to secure either the return of land or compensation in land or money?

The Wai 36 Tuhoe claimants submitted that Tuhoe were unfairly treated by the processes set up for arranging compensation or land return. With regard to the Compensation Court, the Crown did not give adequate notice of the deadlines for making claims; William Mair was the judge, but he had undertaken military action against Tuhoe; and Tuhoe claimants had no counsel.¹⁷ Two of the three Tuhoe claims were dismissed on the basis of evidence called by Crown agent Wilson that the claimants were rebels, even though the authorities had previously regarded the claimants as cooperative and when other claims by known rebels were upheld by the court. It was submitted that much of the land claimed by Tuhoe had already been promised by Wilson to the witnesses who gave evidence against them. The claimants also relied on the Tribunal's criticisms in the *Ngati Awa Raupatu Report* of the court's lack of independence from the executive government.¹⁸

Wilson's out-of-court arrangements were illegal, the claimants submitted, again relying on the *Ngati Awa Raupatu Report*.¹⁹ Of particular concern was the Rauporoa agreement, which Wilson arranged with Ngati Pukeko and Ngati Awa. 'Considerable Tuhoe interests' were disposed of by this agreement, without Tuhoe's involvement and without any 'independent inquiry or judicial testing of Wilson's arrangements'.²⁰

The Crown's submissions were confined to explaining the Compensation Court's and Wilson's role, rather than defending the outcome of their processes for Tuhoe.²¹ This was because the issue 'is tied to the Treaty concession in respect of the confiscation'.²² Thus, having conceded that the confiscation of Tuhoe lands was in breach of the Treaty and long overdue for redress, the Crown was not in a position to defend the processes which left Tuhoe with nothing in return for their confiscated lands. No explanation was provided for Wilson's lack of engagement with Tuhoe. It was said that Wilson worked faster than the court and had power to deal with ex-rebels – a power which the court lacked – and that his arrangements were passed through the court.²³ As for the alleged illegality of Wilson's arrangements, the Crown noted that the Attorney-General of the day considered Wilson could deal with land anywhere in the confiscation zone. Further, in 1867, the rules of the Compensation Court had been amended, a new proclamation issued, and

17. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 21

18. *Ibid*, pp 21–22

19. *Ibid*

20. *Ibid*, pp 20–21

21. Crown counsel, closing submissions (doc N20), topic 3, pp 29–33

22. *Ibid*, p 29

23. *Ibid*, p 30

the Confiscated Lands Act enacted to resolve any possible problems with Wilson's authority to act as he did.²⁴

4.4.3 How much land was taken from Tuhoe in the eastern Bay of Plenty confiscation?

When it came to the question of how much land was taken from Tuhoe in the eastern Bay of Plenty confiscation, Wai 36 Tuhoe and Nga Rauru o Nga Potiki approached their submissions in different ways. The Wai 36 Tuhoe claimants submitted evidence from Wharehuia Milroy, Hirini Melbourne, and Tamaroa Nikora in respect of Tuhoe's rohe.²⁵ The area contained in this boundary amounted to 124,300 acres (50,300 hectares). In closings, counsel for Wai 36 Tuhoe urged the Tribunal to find that 'an area of 124,300 acres of land was wrongly confiscated from Tuhoe.'²⁶ In contrast, counsel for Nga Rauru o Nga Potiki suggested that it was preferable not to put a figure on Tuhoe's loss, since the definition of exclusive ownership rights might be a divisive exercise.²⁷

The Crown submitted that it was not in a position to provide any estimate of how much land was confiscated. Counsel suggested that she did not feel confident in venturing an opinion on the extent of Tuhoe's interests. 'The Crown,' she said, 'would appreciate the Tribunal's views on the issue.'²⁸ It is appropriate, therefore, that we make a finding on this matter to assist the Crown and the claimants in negotiations.

4.4.4 What were the impacts of confiscation?

Claimant counsel submitted that confiscation had numerous economic, social, and political impacts. Claimants argued that the confiscated land was of the highest quality, especially important in the context of Tuhoe's overall economy. 'The prejudice arising from the loss of this land is disproportionate to the acreage involved, substantial as that was.'²⁹ As a consequence, confiscation brought 'poverty and starvation' and a 'visible deprivation of possible economic development.'³⁰ Claimants submitted that confiscation had a further economic impact by severing access to Ohiwa Harbour.

The Crown cast doubt on the claimants' view that the land was of the highest quality, stating that there was little direct evidence for land quality.³¹ Counsel further submitted that any assessment of prejudice should take into account the 'suggestion' that Tuhoe economic progress was impeded, both before and after

24. Ibid, p 32

25. JW Milroy, S Melbourne, and TR Nikora, 'The Bay of Plenty Confiscation and the Tuhoe Tribal Boundary' (commissioned research report, Rotorua: Tuhoe-Waikaremoana Maori Trust Board, 1995) (doc A123), pp 1–6

26. Counsel for Wai 36 Tuhoe, closing submissions, pt A, overview, 31 May 2005 (doc N8), p 26

27. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 59

28. Crown counsel, closing submissions (doc N20), topic 3, p 23

29. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 17

30. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 60

31. Crown counsel, closing submissions (doc N20), topic 3, pp 23–24

the wars, by remoteness and a lack of engagement with the colonial economy.³² Counsel accepted that Tuhoe ‘clearly suffered prejudice’, but contended that they were not affected by the raupatu to the same degree as other iwi that had all their land taken.³³ On the matter of Ohiwa Harbour, Crown counsel submitted that Tuhoe rights to the harbour were not completely denied by the raupatu.³⁴

In addition to economic impacts, claimants submitted that the confiscation damaged the social and cultural fabric of their communities. The loss of their northern land confined the Tuhoe population in Ruatoki and Waimana to a smaller area, and this gave rise to increasing tensions as the population grew in the late nineteenth century.³⁵ Confiscation exacerbated tensions with other iwi, particularly because of ‘the Crown’s policy of rewarding those who fought in its kupapa forces with land granted from that which was taken from others.’³⁶ Raupatu had an added political impact by contributing to the deteriorating relationship between Tuhoe and the Crown, resulting in further conflict.³⁷ In terms of the ongoing political impact of confiscation, counsel for Wai 36 Tuhoe asserted that the Crown ‘still holds to the view that Tuhoe were rebels and underplays the impact that confiscation had on Tuhoe.’³⁸ Crown counsel made no submission on the cultural and spiritual effects of confiscation, indicating that such matters would be better addressed by the claimants themselves. As noted above, Crown counsel accepted the previous failure of the Crown to ‘acknowledge the wrongful confiscation of Tuhoe land.’³⁹

4.5 TRIBUNAL ANALYSIS

4.5.1 Why and how did the Crown confiscate Tuhoe lands?

SUMMARY ANSWER: Tuhoe were not the targets of confiscation. They have long believed that confiscation was unfair punishment for the murders of Volkner and Fulloon, in which they were not involved. This belief is understandable for two reasons: first, because even if Tuhoe were not targets, the Crown kept their lands anyway and, secondly, because in later years the Crown repeatedly stated they deserved punishment. In 1866, their lands were caught up in a confiscation aimed at other iwi as a direct result of military actions in the eastern Bay of Plenty in late 1865. On 17 January 1866, when the Order in Council effecting the confiscation was issued, Ministers believed that Ngati Awa and Whakatohea resistance to the ECEF and Mair’s Te Arawa force, sent to arrest suspects in the murders of Volkner and Fulloon, amounted to rebellion, and justified confiscation. The Government was anxious to acquire land for military settlements, and this could be done only

32. Crown counsel, closing submissions (doc N20), topic 3, p 22

33. Ibid

34. Ibid, p 24

35. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 17

36. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 256

37. Ibid

38. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 22

39. Crown counsel, closing submissions (doc N20), topic 3, p 34

under the New Zealand Settlements Act 1863. The Governor in Council interpreted the legislation to mean that an entire district could be declared a 'site for settlement' (although the Act said such sites were to be set apart 'within' a district) and so could be confiscated. The Order in Council of 17 January 1866 declared the Bay of Plenty both a district and a site for settlement.

Even at the time, the dubious legality of its confiscation was evident to the Crown, which issued a further order clarifying that certain areas 'within' the district were set apart as military settlements. It had also made a mistake drafting the boundaries, which had to be corrected on 1 September 1866. From the date of the first Order in Council, however, the whole district was dealt with as if it were Crown land. The Crown's policy of large-scale takings – adopted also in Waikato and Taranaki – gave it control of extensive tracts of land, which assisted policies of pacification. For Tuhoe, the form that confiscation took was crucial to its impact upon them. The Crown's confiscation of all the lands within a large district – rather than 'sites for settlement' as they were needed – and its failure to inquire into the location of the various iwi in the district before it drew the boundaries meant that Tuhoe lands, including their fertile lands in the Waimana and Ruatoki Valleys, were taken all at once and without warning.

4.5.1.1 Introduction

Given the Crown's major concession that the eastern Bay of Plenty confiscation – which included the lands of several iwi – was unjust, excessive, and in breach of the Treaty, two questions of great importance to Tuhoe remain before the Tribunal:

- ▶ Why and how did the Crown confiscate Tuhoe lands in 1866?
- ▶ Why and how did Tuhoe fail to secure either the return of land or compensation?

Tuhoe lands were taken, in our view, because they were swept up in the eastern Bay of Plenty confiscation under the New Zealand Settlements legislation. We consider, first, the Government's decision to use this legislation in the region when it had not initially intended to and, secondly, how the confiscation was effected.

4.5.1.2 Why was the New Zealand settlements legislation used?

In January 1866, the Crown decided to confiscate land in the eastern Bay of Plenty using the New Zealand Settlements Act 1863. This was significant because of what it tells us about the Crown's motives. If the capture of those it suspected of the murders of Volkner and Fulloon was the prime motive, it could have used other legislation. It had available to it the Outlying Districts Police Act 1865, which it had initially intended to use. This Act, passed in October 1865, had been introduced into the House in August. It provided for land to be confiscated from 'Chiefs and other inhabitants' who persistently refused to give up 'the perpetrators or suspected perpetrators' of certain serious crimes.⁴⁰ The money from the sale of such land, according to J E FitzGerald, the Native Minister, was to be spent on 'preserving the peace and in maintaining law and order' in the districts declared under

40. Outlying Districts Police Act 1865, ss 2–4



Hartley Webster (ATL, ½-025260-F)

James Te Mautaranui Fulloon, of Ngati Awa and Tuhoë descent. A captain in the militia, Fulloon arrived in Whakatane by ship in July 1865 to recruit a company of Ngati Awa for the fight against Pai Marire in the Bay of Plenty. Several on board were killed by a boarding party after their vessel broke a Pai Marire aukati placed on the harbour. Fulloon's murder, along with Volkner's, spurred the Government into sending an expeditionary force to the eastern Bay of Plenty in September 1865.

the Act.⁴¹ FitzGerald had stressed at the time that the Act was quite different from the Settlements Act; it was intended not to 'put down Rebellion' but to deal with crime.⁴²

The fact that the Outlying Districts Police Act was not used reflected both the conduct of hostilities in the eastern Bay of Plenty and their outcome, and changes in the political situation. The Act had not been passed until hostilities were well under way in the Whakatane and Opotiki districts (see the sidebar on pages 174

41. JE FitzGerald, 18 August 1865, NZPD, 1864-66, p 324; Outlying Districts Police Act 1865, s7

42. JE FitzGerald, 18 August 1865, NZPD, 1864-66, p 324

to 176). By November 1865, hostilities had ceased, Whakatohea and Ngati Awa offered no further resistance, and a number of suspects in the murders of Volkner and Fulloon had been arrested and tried by court martial. Only Kereopa Te Rau remained at large. There was no need, therefore, for the Government to use the Outlying Districts Police Act to secure tribal cooperation in surrendering alleged criminals. According to Dr Battersby, the Stafford Government had decided by 30 December 1865 that the situation in the eastern Bay of Plenty no longer justified the use of military courts: 'the authority of the law [had been restored] over a considerable portion of the hitherto disturbed districts on the east coast.'⁴³ As we have seen, the courts martial were abandoned after a number of those tried were convicted and sentenced. The Government nullified the proceedings, and the prisoners were sent to Auckland for trial in the Supreme Court.

In political terms, there were further reasons for the Government's decision to use the Settlements Act rather than the Outlying Districts Police Act. In September 1865, the Weld Government had hoped the wars were over – which was why it issued the proclamation of peace and made the 'final' confiscations in Waikato and Taranaki. The wars were expensive and were taking a heavy political toll on the country. Large-scale confiscation, it was hoped, was a means to pacification. But, by the beginning of 1866, the Stafford Government was preoccupied with further pacification on the East Coast, where its forces had defeated Maori adherents of Pai Marire north of Turanga, at Turanga itself, and in upper Wairoa. By January 1866, Stafford had decided to use the Settlements Act both on the East Coast and in the eastern Bay of Plenty.⁴⁴ Confiscation, the sale of confiscated land, and military settlement were uppermost in the Premier's mind. As he put it, 'One thing the Govt is absolutely determined to do – viz – to punish all future outbreaks by taking sufficient lands to pay for the cost of putting them down, and for establishing military settlements to maintain the Queen's authority.'⁴⁵

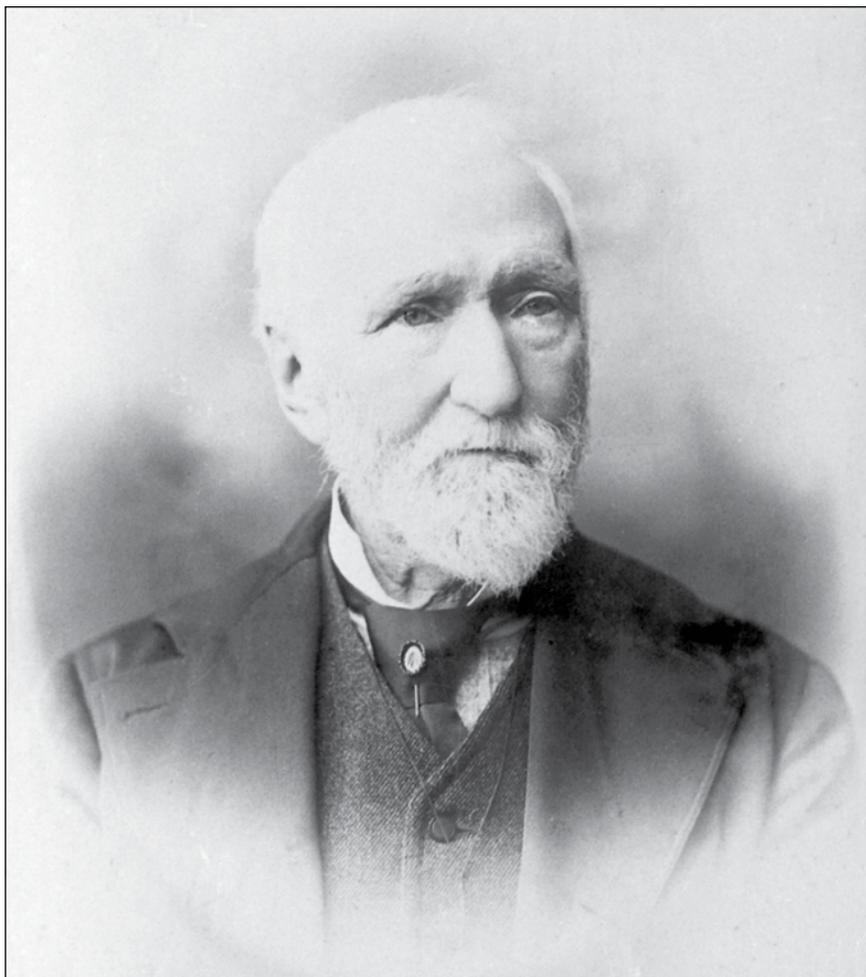
There were thus several reasons for using the Settlements Act. The Crown would secure control of extensive tracts of land and control the resettlement of Maori in such districts on its own terms. Above all, the Act provided for military settlement – the wedge into frontier districts that would spearhead colonial settlement. Confiscation, it was hoped, would hasten the pace of British settlement. As Native Minister James FitzGerald explained to Daniel Pollen, instructing him as the 'special commissioner' for Waikato on 8 September 1865:

In marking out blocks of land for the Natives, it is of course desirable not to abandon to them more than is necessary for their wants, not only because to have them in possession of large tracts of country which they cannot use is no kindness, but because by the speedy sale and settlement of the remainder their own lands will become more

43. Stafford, memorandum, 30 December 1865 (Battersby, 'Conflict in the Bay of Plenty' (doc B2), p80)

44. Ultimately, special legislation was passed to provide for confiscation in the East Coast, a matter which we shall address further in chapter 6.

45. Stafford to McLean, 3 November 1865 (Binney, 'Encircled Lands, Part 1' (doc A12), p 119)



Unknown (A.T.L., General Assembly Library, parliamentary portraits, 35mm-00132-F-F)

Daniel Pollen, circa 1873. The Government appointed Pollen commissioner for the reallocation of confiscated lands to Maori in the Waikato district in 1865. He was subsequently made commissioner for the sale and disposal of confiscated lands in the Bay of Plenty in 1867, succeeding John Wilson.

valuable, and the settlement and occupation of the country will be effected. But the Government feel that the matter of first importance in the permanent pacification of the country is to induce the natives finally to accept the fact that the land is confiscated and to consent to hold what is now returned to them under Crown Grant.⁴⁶

FitzGerald's statements about Maori inability to use large tracts of land reflect long-standing colonial justifications for the acquisition of Maori land which were

46. Fitzgerald to Pollen, 3 September 1865, ACFL 8170, AGG-A1/1, Archives New Zealand, Auckland

barely beneath the surface of confiscation policy. The general government, we note, was on the point of transferring to the Auckland Provincial Government the administration of confiscated lands in the province of Auckland (which at that time included not only Waikato but also the Bay of Plenty). The province would become responsible for the sale and colonisation of the confiscated lands.⁴⁷ The Auckland Provincial Government passed a resolution to accept the administration of confiscated lands on 2 February 1866.⁴⁸ It was understood that the newly confiscated lands in the Bay of Plenty would be included.⁴⁹

4-5.1.3 How and why was such a large area confiscated?

How can we explain the size of the confiscation? We consider first how the powers of the Governor in Council were interpreted under the New Zealand Settlements Act 1863, and the consequent wording of the Order in Council of 17 January 1866, which had crucial implications for Tuhoe.

4-5.1.3.1 THE FORM OF CONFISCATION – THE FIRST ORDER IN COUNCIL

In the Order in Council, the extensive Bay of Plenty district was defined and proclaimed and simultaneously reserved and taken ‘for the purposes of settlement’. Indeed, as we shall see, the boundaries as defined in the schedule were misdescribed, and a correction was issued in a later order. It is clear that the intention of the Governor in Council at the outset was to take the large district – 448,000 acres (181,000 hectares) – which was in fact later taken.⁵⁰

The Crown’s proceedings in the Bay of Plenty reflected its recent practice in other regions – Tauranga, Taranaki, and Waikato. There, too, it simultaneously declared large districts under the Settlements Act and reserved the whole of such districts for the purposes of settlement, despite the requirement in the Act for selecting sites for settlement *within* a district. In such takings, the whole district became a site; thus, a large area was confiscated in one hit. In the Bay of Plenty, the Crown was alerted to the dubious lawfulness of such proceedings at the time (see the sidebar over). The matter remained subject to legal and judicial debate, but the Crown held its line and remained in possession of the whole district.

The Waitangi Tribunal has found that the declaration of an entire district as a ‘site for settlement’ was unlawful because it was ‘outside the statute’s terms.’⁵¹ It

47. It had, however, to meet the general government’s commitments to military settlers as well as pay compensation awarded by the Compensation Court: see *Journals of the House of Representatives*, 26 October 1866, AJHR, 1866, A-2, p 1.

48. Acts and Proceedings of the Auckland Provincial Council, 2 February 1866, sess 19, A-5, p 20

49. Stafford to Whitaker, 18 January 1866, AJHR, 1866, A-2, p 6; Whitaker to Stafford, 19 January 1866, AJHR, 1866, A-2, p 6

50. On 2 February 1866, Andrew Sinclair (chief surveyor of Auckland province) estimated that the district contained 480,000 acres: Acts and Proceedings of the Auckland Provincial Council, 2 February 1866, sess 19, A-5, p 7. The 1873 report on the return of confiscated lands states that the district totalled 440,000 acres. This figure post-dated the abandonment of 57,000 acres in the eastern portion of the district by the Crown: AJHR, 1873, C-4B, pp 5–6.

51. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: Legislation Direct, 1996), pp 128–129

Contemporary Concerns about the Lawfulness of the Confiscation

Doubts were raised by Judge Smith of the Compensation Court about the lawfulness of the Crown's actions in laying out military settlements in the Bay of Plenty anywhere within the declared district. As the Tribunal's *Ngati Awa Raupatu Report* pointed out, the issue arose in the context of the arrangements special commissioner John Alexander Wilson had made for allocating land to military settlers. The question was: Did those allocations take precedence over Maori claims for compensation in land? In Judge Smith's view, the Government could exercise its discretion in allotting land to the settlers only 'if it could be shown that the land had in fact been appropriated for the purpose of military settlement. In his opinion, it was patently clear that the whole of the Bay of Plenty district could not be required for such a purpose.'¹ Thus, 'the Crown was in wrongful possession of the Bay of Plenty'. Wilson sought a court ruling, and Judge Smith then declared that the Government's proceedings at Opotiki (he appears to have meant the broader confiscation district) 'in surveying and allotting the country' were illegal. The Attorney-General

1. Judge Smith, 29 June 1867, IA 1 1867/2771, ANZ-W (cited in Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 85)

considered in detail the collapsing into one stage of the three stages required by sections 2 to 4 of the New Zealand Settlements Act to achieve a taking. According to the Act (see the sidebar on page 190), a district was to be declared within which the land of a tribe in rebellion, 'or any considerable number thereof', was to be taken (section 2); then sites for settlement were to be prescribed (section 3); then the land proposed for settlement would be taken or reserved (section 4). The effect of ignoring these stages was to 'alter fundamentally the Act's objective of taking land in discrete areas for such numbers of settlers as might be sufficient to keep the peace in the district as a whole.'⁵² In its *Ngati Awa Raupatu Report*, the Tribunal noted, following the Taranaki Tribunal, that in the Order in Council of 17 January 1866, the Governor did not follow the steps laid down in the Settlements Act.⁵³

4.5.1.3.2 FIXING THE BOUNDARIES – THE SECOND ORDER IN COUNCIL

The second Order in Council (dated 1 September 1866) took the extensive tract of land intended to have been taken by the first. We have looked carefully at the circumstances in which the second order was issued and are convinced the first order was misdrafted and the second one described the boundaries which had always been intended (see the sidebar on page 191). We note in particular that

52. Waitangi Tribunal, *The Taranaki Report*, p 129

53. Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 65

took the opposite view, stating that the original Order in Council was quite sufficient to take all the land.²

The Government, however, took steps to lay any doubts to rest. The Minister of Colonial Defence, Haultain, met Wilson and Judge Smith at Opotiki, and both he and James Crowe Richmond (in effect, the Native Minister at the time) thought a new order would be prudent.³ It was decided to issue a further Order in Council stating that certain areas within the district were set apart for military settlements under the Act.⁴ On 12 August 1867, the confiscated area between the Waiotaha and Whakatane Rivers was designated available for military settlers.⁵ The new order cited not only sections 3 and 4 of the New Zealand Settlements Act 1863 but also section 16, which provided for the laying out of towns and farms on ‘part of the Land subject to the provisions of this Act’.

2. John Alexander Wilson, memorandum, 25 July 1867, RDB, vol 123, p 47,435; Prendergast to Colonial Secretary, 7 June 1867, RDB, vol 123, p 47,443

3. John Alexander Wilson, memorandum, 25 July 1867, RDB, vol 123, p 47,437; see also James Richmond, minute, 30 July 1867, on Wilson, memorandum, 25 July 1867, RDB, vol 123, p 47,439

4. Judith Binney, ‘Encircled Lands’, 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002), vol 1 (doc A12), p 174

5. Order in Council, 12 August 1867, *New Zealand Gazette*, 1867, no 45, p 336

Whitaker informed the Auckland Provincial Council as early as 30 January 1866 that ‘about 480,000 acres of land’ had been confiscated at Opotiki in the eastern Bay of Plenty.⁵⁴

4.5.1.3.3 DID THE CROWN INTEND TO PUNISH TUHOE IN 1866 ?

There appear to have been several reasons for the decision by the Governor in Council to declare the entire Bay of Plenty confiscation district a site for settlement. First, the Government clearly wished to secure Whakatane and Opotiki and the fertile hinterland – the Waimana and Ruatoki Valleys. It believed (or merely presumed) that these were the lands of Whakatohea and Ngati Awa, whom it wished to punish. Secondly, its policies for the resettlement of Maori on confiscated land – alongside the need to provide land for military settlers and for sale – meant that it had to control a large tract.

In these circumstances, no particular care was taken, as the Tribunal pointed out in its *Ngati Awa Raupatu Report*, to inquire into ‘the approximate location of the “offending” tribes.’ (We note that, had the Crown made inquiries, it could have established from the report of one of its own officials the broad extent of Tuhoë occupation – see the sidebar on page 193.) By section 2 of the New Zealand Settlements Act 1863, the Governor had only to be satisfied that ‘any land’ of ‘any

54. Whitaker, encl 1, 30 January 1866, AJHR, 1866, A-2, pp 6–9

Sections 2, 3, and 4 of the New Zealand Settlements Act 1863

2. Governor in Council may proclaim Districts—Whenever the Governor in Council shall be satisfied that any Native Tribe or Section of a Tribe or any considerable number thereof has since the first day of January 1863 been engaged in rebellion against Her Majesty’s authority it shall be lawful for the Governor in Council to declare that the District within which any land being the property or in the possession of such Tribe or Section or considerable number thereof shall be situate shall be a District within the provisions of the Act and the boundaries of such District in like manner to definite and vary as he shall think fit.

3. Governor in Council may set apart Sites for Settlement— . . . it shall be lawful for the Governor in Council from time to time to set apart within any such District eligible sites for settlements for colonization and the boundaries of such settlements to define and vary.

4. Governor in Council may take Land for such Settlements—For the purposes of such settlements the Governor in Council may from time to time reserve or take any Land within such District and such Land shall be deemed to be Crown Land freed and discharged from all Title Interest or Claim of any person whomsoever as soon as the Governor in Council shall have declared that such Land is required for the purposes of this Act and is subject to the Provisions thereof.

Native Tribe or Section of a Tribe or any considerable number thereof’ in rebellion was within a district before declaring it a district in terms of the Act. But, in the closely settled coastal lands of the eastern Bay of Plenty, the confiscation boundary encompassed the lands of several tribes. Thus, land was included in which Te Arawa had interests, despite the fact that they had fought for the Crown. The Tribunal added that the lands of several Ngati Awa hapu – those around Whakatane, and from there to Ohiwa – were also included in the district, though those hapu had ‘clearly not participated’ in the fighting.⁵⁵

Of most importance is the inclusion in the confiscated lands of an iwi in which, in the Bay of Plenty context, the Government had no interest at the time. As we mentioned above, Tuhoe believe that they were among the specific targets of this confiscation. This has been a source of confusion and distress for the claimants, who know that they played no part in the murder of Volkner or Fulloon.⁵⁶ Indeed,

55. Waitangi Tribunal, *Ngati Awa Raupatu Report*, pp 65–66

56. Biddle, brief of evidence (doc B25), p 5; Te Wharehūia Milroy and Hirini Melbourne, ‘Te Roi o te Whenua: Tuhoe Claims under the Treaty before the Waitangi Tribunal’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 1995) (doc A33), pp 104–108

Original and Corrected Confiscation Boundaries

The schedule of boundaries in the original confiscation order of 17 January 1866 stated that the southern point of the boundary was the confluence of two 'rivers' – Ohiwa and Tauwhare. As soon as Wilson arrived at Ohiwa in April 1866 and made inquiries into the location of these rivers, he understood the error. What was described in the original order was, in his words, a 'geographical myth'.¹ Ohiwa is a harbour, not a river and the Tauwhare was a stream that emptied into the western side of Ohiwa, not the south. Wilson was clearly expecting a more extensive area, including Opotiki and the Ruatoki and Waimana Valleys. Surveyor John Gwynneth enclosed a tracing in a letter to Whitaker which showed the contrast between the boundaries as they should have been, and what they were in the Order in Council. The red line showed the actual boundaries described in the January order; the black line showed the 'intended' boundaries, including Opotiki, described in a plan provided to Gwynneth by the agent for the general government.² The significance of the error was immediately apparent. Over half of the area intended for confiscation in the south and east of the district had been excluded – notably Opotiki, Ruatoki, and Waimana.

Gwynneth urged that the 'error' in the boundaries should be 'at once rectified'. Chief surveyor Andrew Sinclair suggested that Gwynneth's description should be adopted. He also identified a solution to the Crown's difficulty in defining the boundary: a distance due south from the entrance to the harbour was needed. Gwynneth should be asked to estimate by observations 'the length of a line due South from Owhiwa [*sic*] to meet another due East from Mount Edgecombe', which would give 'a very accurate description'.³

This was exactly what was done. The revised order was issued on 1 September 1866 and clarified that the line ran from the summit of Putauaki 'by a straight line in an easterly direction to a point 11 miles due south from the entrance to Ohiwa Harbour; thence by a line running due east for 25 miles'.⁴ The minutes of the Executive Council meeting also record that the change was made because the original boundaries had 'by mistake [been] incorrectly stated'. They were now amended 'so as to include the district intended to be included' in the order of 17 January.⁵ James Prendergast, the Attorney-General, had already given his opinion that there was no reason to prevent the issuing of an Order in Council rectifying the boundaries.⁶

1. Wilson to Whitaker, Opotiki, 1 May 1866, RDB, vol 123, pp 47,462–47,463

2. Gwynneth to Whitaker, Opotiki, 3 May 1866, RDB, vol 123, pp 47,464–47,465

3. A Sinclair, minute, 17 May 1866, RDB, vol 123, p 47,463

4. Order in Council, 1 September 1866, *New Zealand Gazette*, 1866, no 51, pp 347–348

5. Executive Council, minutes, 1 September 1866, EC/1/2, July 1865–February 1866, ANZ-W

6. Prendergast to Colonial Secretary, 7 June 1867, RDB, vol 123, p 47,443

as Tuhoe pointed out in their 1920 petition, they were ultimately responsible for the apprehension of Kereopa Te Rau in 1871.⁵⁷ Kaumatua Sonny Biddle explained: ‘The Crown’s reaction to the death of Volkner and Fulloon was devastating to our people . . . The fact that the Crown punished us and confiscated our lands on the basis of deeds committed by one not from Te Urewera has always confused me.’⁵⁸ This view was shared by Te Weeti Tihi: ‘The thing is, our land got stolen because of deeds done by other people. To me that’s not fair.’⁵⁹

The reason for Tuhoe’s belief that they were deliberately targeted for punishment is not hard to find – the Crown told them so, repeatedly. Witnesses provided many instances, ranging over a long period of time. Binney, for example, quoted from Donald McLean’s speech to Tuhoe leaders at Whakatane in 1875:

Chiefs of the Urewera, you have spoken of confiscated land, and affect to be at a loss why a slice of your land should be taken from you. It was through your unwarrantable action, Te Whenuanui, that your land was confiscated – you had no pretext for taking arms against the Pakeha, they never interfered with you in your country; but there was hardly a single disturbance between the two races that you did not take part in. You were at Waikato, at Te Wairoa, at the different fights in the Bay of Plenty. Can you then greatly complain of your land being confiscated[?] It was done by the Legislature after due warning had been given to the natives. It is in accordance with your own customs. You thought that because the Government did not take up arms at once and invade your country[,] upon the impregnability of which you so much relied, that therefore your conduct would be overlooked. I warned Paerau, when I saw him at Napier, that his country, difficult as it is, would be no protection, but he did not heed me.⁶⁰

Binney points out that McLean’s speech was ‘wrong in almost every aspect.’⁶¹ We note in particular that it referred to matters that had been forgiven by proclamation or that post-dated confiscation. Neither could be logical reasons for confiscation. Yet, Tuhoe received a similar message from courts, officials, Ministers, and commissions of inquiry, from the Compensation Court in 1867 onwards. By the twentieth century, the belief that Tuhoe had been deliberately targeted and punished had come to focus on Volkner and Fulloon, as is made clear by Tuhoe’s petitions on the subject. In 1944, for example, Te Kapo-o-te-rangi Keehi petitioned the Crown about the ‘wrongful confiscation of my people’s lands for the murder of Mautaranui [Fulloon] and the Rev Mr Volkner.’⁶²

57. Te Kapo-o-te-rangi Keehi and 237 others, petition, 4 September 1920 (Tama Nikora, supplementary evidence, 19 December 2003 (doc B11(a)), doc 1)

58. Biddle, brief of evidence (doc B25), p 5

59. Te Weeti Tihi, brief of evidence (doc J17), p 8

60. Donald McLean, 13 March 1875 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 328)

61. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 327

62. Te Kapa-o-te-rangi Keehi and 433 others, petition, 2 August 1944 (Tama Nikora, supplementary evidence, 19 December 2003 (doc B11(a)), doc 12)

A Crown Official's Description of the Boundaries of 'the Urewera' People, 1862

In 1862, the resident magistrate at Wairoa, C Hunter Brown, travelled through the eastern Bay of Plenty in an effort to win support for the Governor's 'new institutions' (see chapter 3). This was the first ever official visit to Tuhoe. In his report, he described the boundaries of 'the Urewera' people that were given to him during his visit:

The Urewera claim the Upper Rangitaiki valley, nearly the whole of the Whakatane valley, the Waikaremoana basin, and part of the Kaingaroa. Starting from the confluence of the Waimana and Whakatane, their boundary runs along the wooded range bounding the Waimana valley to its junction with a high range at the back of Poverty Bay over the Tauhou mountain, includes Papune and Waikare lakes, and joins the boundary of the Taupo Natives on the Kaingaroa plain. Starting again from the Whakatane river westerly, it strikes off to Waiohau on the Rangitaiki, up that river to Taoroa and out on to Kaingaroa.¹

This shows that, at the very least, the Crown possessed information that Tuhoe claimed interests in the land it was confiscating.

1. Charles Hunter Brown, 'Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes', June 1862, AJHR, 1862, E-9, p 26

In our inquiry, however, the Crown and claimant historians agreed that the Government had not specifically intended to include Tuhoe lands in its Orders in Council.⁶³ In other words, the confiscation was not initially directed at Tuhoe, although there was a definite intention to obtain specific lands, including the Waimana and Ruatoki Valleys (see the sidebar on page 191). At issue are the hostilities that took place between 2 September 1865 (when the proclamation of peace was issued) and 17 January 1866. Everything before the proclamation, including participation at Orakau, had been 'forgiven'. From the detailed evidence of Battersby, Binney, Miles, and Gilling, it is evident that the fighting that took place during this period involved the ECEF and Whakatohea in the east, and other Crown military forces and Ngati Awa in the west.⁶⁴ According to Crown counsel,

63. Crown counsel, closing submissions (doc N20), topic 3, p 5; Binney, 'Encircled Lands, Part 1' (doc A12), pp 121–122

64. See Battersby, 'Conflict in the Bay of Plenty' (doc B2); Binney, 'Encircled Lands, Part 1' (doc A12); Miles, *Te Urewera* (doc A11); Bryan Gilling, 'Te Raupatu o te Whakatohea: The Confiscation of Whakatohea Land, 1865–1866' (commissioned research report, Wellington: Treaty of Waitangi Policy Unit, 1994) (doc A53)

Were Tuhoe Involved in the Volkner and Fulloon Murders?

In its closing submissions, the Crown acknowledged:

It is accepted by the parties that Tuhoe were not involved in the killing of Volkner in March 1865 and Fulloon in July 1865.¹ It further acknowledged that Fulloon was closely related to Tuhoe, and that ‘there is evidence of Tuhoe being indignant and aggrieved at his killing.’²

Nonetheless, the Crown also stated twice in its closings that Tuhoe had had a ‘peripheral’ involvement in both killings.³ This myth has proved hard to demolish.

The Crown offered no evidence in support of its suggestion that Tuhoe had been in some small way involved in the murder of their whanaunga, Fulloon.

The evidence for a ‘peripheral’ involvement in the killing of Volkner was the suggestion that Heremita Kahupaea belonged to ‘Patuheuheu, Ngati Awa, and Upokorehe’. This man was a member of the komiti that apparently sentenced Volkner to death.⁴

Professor Judith Binney noted that Kahupaea was considered at the time to belong to Whakatohea. She pointed out that he was the only person who can ‘marginally be associated with the Urewera’. Kahupaea was tried and executed in 1866.⁵

We do not consider that the actions of one man, acting without the involvement of the tribal leaders of Tuhoe, can be seen as participation by the tribe, even in a peripheral way. The time has come to lay this myth to rest. Tuhoe were not involved in the killings of either Volkner or Fulloon.

1. Crown counsel, closing submissions, June 2005 (doc N20), topic 3, p 10

2. Ibid

3. Ibid, introduction and overview, p 12; topic 3, p 2

4. Ibid, topic 3, p 10

5. Judith Binney, ‘Encircled Lands’, 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002), vol 1 (doc A12), p 89

there may have been some ‘peripheral’ Tuhoe involvement, but not so as to make them a target for confiscation.⁶⁵ Rather, the Crown confiscated land believing, as Mair had reported, that Tuhoe were assisting with the search for Kereopa.⁶⁶ We conclude that the Crown made its decision to confiscate eastern Bay of Plenty lands as a result of hostilities with Whakatohea and Ngati Awa.

Binney, in considering the evidence, concluded that the original error in the

65. Crown counsel, closing submissions (doc N20), topic 3, p 5

66. Ibid, pp 13–14; Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), pp 73, 100; Binney, ‘Encircled Lands, Part 1’ (doc A12), p 103

boundaries recited in the Order in Council was a ‘matter of ignorance’ rather than design. The Crown had not intended to include Tuhoe lands on the ground that they were rebels.⁶⁷ This accords with Crown counsel’s submission that, in effecting the confiscation, the Crown had no intention to punish Tuhoe. Whether this was still the case in the months that followed the January order, given the treatment of Tuhoe as the confiscation was implemented on the ground, we discuss in the next section. But it seems clear that the Order in Council of September 1866 was no more than a technical correction of boundaries; no more land was included in them than the Crown had intended in January. On paper, however, and in reality, Tuhoe’s lands were now included, and the district was simultaneously declared a site for settlement (as had been the case in the earlier order). Thus, Tuhoe’s lands were now officially lost to them. Had the Crown followed the statutory prescription and declared sites for settlement within the declared district, Tuhoe’s lands could have been preserved to them simply by being excluded from such sites. (As we shall see, however, fertile Tuhoe lands in the Waimana and Ruatoki Valleys were in fact targeted for military settlement.) But the immediate confiscation of all the land in the district meant this was no longer a possibility.

With hapu and iwi property rights at stake, the Crown was obliged to inquire very carefully into the ownership of lands within any proposed confiscation district. If the Crown did not do so before it proclaimed confiscation boundaries, the onus was on it to be particularly diligent in its subsequent inquiries relating to the return of land or compensation. In the next section, we consider how far it met its obligations.

4.5.1.4 Conclusions

Our conclusions as to why and how the Crown confiscated Tuhoe lands are as follows:

- ▶ Tuhoe were not the targets of confiscation. Their lands were caught up in a confiscation aimed at others.
- ▶ The Crown failed to ascertain which iwi, apart from those it intended to punish, had land within the district.
- ▶ Notwithstanding this failing, all the land within the confiscation district was declared a site for settlement and thus at once became Crown land.
- ▶ In later years, Ministers and officials maintained that Tuhoe lands had been deliberately and justly confiscated.

4.5.2 Why did Tuhoe fail to secure either the return of land or compensation in land or money?

SUMMARY ANSWER: After the confiscation of their lands, only limited forms of redress were available to Tuhoe. In fact, they were not compensated in any way. This is a particularly grievous result because, as the Crown now acknowledges, Tuhoe were not rebels. They should have been eligible for compensation in money, or in land, under the New Zealand Settlements Act 1863. From 1863, the

67. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 121–122

Compensation Court was to assess monetary compensation for Maori who had not taken part in the 'rebellion' that led to the confiscation. In 1865, compensation in land was made available. In addition, land could be returned if the Government abandoned its claim to it. But the Colonial Secretary, or his agent, needed to instigate both those processes. No Crown agent approached Tuhoe to arrange compensation in land.

Tuhoe made only three claims to the Compensation Court, a surprisingly small number, which indicates a lack of awareness of the process. Two claims were dismissed because the Crown's agent in court, John Alexander Wilson, called evidence that the claimants were rebels. That evidence was flawed: the claimants' alleged acts occurred either too early (before the peace proclamation, which pardoned such acts) or too late (after the Order in Council had effected the confiscation) to disqualify them from compensation. The court did not intervene. The third Tuhoe claim was defeated on the evidence Wilson called from traditional rivals of Tuhoe, who challenged the claimants' rights. We might simply deduce that the Crown (wrongly) regarded Tuhoe as rebels and thus ineligible for compensation under the legislation. The more sinister possibility is that the Crown, knowing that Tuhoe were not rebels or being indifferent to that fact, and knowing that Tuhoe had customary rights in the confiscated district, chose not to encourage their claims under the Settlements Act, and actively opposed them in the Compensation Court, because it wanted Tuhoe land for military settlement.

In a further cruel twist, even if Tuhoe were (wrongly) thought to be rebels, they could still have had land returned to them by Crown grant under the Government's pacification policy from late 1865 or under the Confiscated Lands Act 1867. Other Bay of Plenty Maori did. The Government's policy from 1865 was to award 'rebels' land to live on. In Waikato and Taranaki, officials were appointed to arrange these reserves. The peace proclamation promised this, and the instructions issued to the officials confirmed that they were to make arrangements for land for all Maori whose lands had been confiscated. In the Bay of Plenty, Wilson operated as a special commissioner, negotiating with Maori groups, including surrendered rebels, for the return to them of parts of the confiscated land. Some of that was land over which Tuhoe had authority and in which they had long-established rights. There is evidence that Wilson was aware of this. But he did not approach Tuhoe at all. Given that subsequently Wilson, in his other role as conductor of the Crown's case in the Compensation Court, called evidence of Tuhoe rebellion, his unequal treatment of those he regarded as rebels is telling. It further supports the view that Tuhoe's lands were regarded as more important for the Crown's needs than for Tuhoe's.

The final means by which Tuhoe, whether regarded as loyal or rebels, might have had land returned was under the Confiscated Lands Act of 1867. The Act gave the Governor a discretion to award lands to claimants who had been refused compensation by the Compensation Court and to rebels who had subsequently submitted to the Queen's authority. By the time this law was passed, however, Tuhoe's fate was effectively sealed. From a confiscated area of over 400,000 acres, the only awards made to individual Tuhoe totalled just over 142 acres (57 hectares). Thus,

virtually none of Tuhoe's lands was returned, no other lands were granted to them, and they did not obtain any monetary compensation.

4.5.2.1 Introduction

In this section, we ask why Tuhoe were unsuccessful in securing from the Crown any tangible recognition of their rights and interests in the confiscated lands. This seems the more remarkable given that by 1866 the Crown had developed policies which recognised that all Maori who lived in a confiscated district, whether they had fought alongside or against the Crown, or had not fought at all, should be offered land to live on.

4.5.2.2 The development of Crown confiscation policies by 1866

There appear to have been several reasons for the development of Crown confiscation policies by 1866:

- ▶ to assist the process of pacification and to ensure that Maori accepted confiscation as irrevocable;
- ▶ to secure control of the process of relocating Maori on the confiscated land and to ensure that Maori held their land not in customary title but by Crown grant; and
- ▶ to meet the concerns of the British imperial government that confiscation was harsh and careless of Maori welfare.

We have already seen that the Government was anxious to enforce the pacification of North Island regions where there had been hostilities in the period 1860 to 1865. But it also wanted to mollify an imperial government which was increasingly anxious about the confiscation policies. Secretary of State Cardwell, in his major dispatch of April 1864 on the Settlements Act, expressed his concerns about the amount of land proposed to be confiscated, the 'limited' right of compensation, and the fact that such powers were to be 'permanently embodied in the law of New Zealand . . . to form a standing qualification of the treaty of Waitangi'. He cautioned against alienating those who were 'but half our enemies' by 'unlimited' confiscation of property and by processes in which there was no right of appeal. He urged that even 'the most culpable' should be punished without inflicting a 'recurring sense of injury',⁶⁸ the effects of which he described in graphic terms (see the sidebar on page 198).

In response to such concerns, the New Zealand Government attempted to reassure the imperial government that it would provide for Maori whose lands were confiscated. Its control of extensive confiscated districts could be presented as enabling the Government to better meet its obligations to Maori whose lands were taken. As Premier Weld explained in a memorandum to the Governor of 2 September 1865, which accompanied the proposed Orders in Council taking land in Waikato and Taranaki, the Government did not 'aim at expelling any part of the tribes who now occupy, or lately occupied' all the land it proposed to confiscate.

68. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, pp 20–22

Cardwell to Grey on the Risks of Confiscation Policy

‘AND here I must observe, that if in the settlement of the forfeited districts all the land which is capable of remunerative cultivation should be assigned to Colonists, and the original owner, the Maori, be driven back to the forest and morass, the sense of injustice, combined with the pressure of want, would convert the native population into a desperate banditti, taking refuge in the solitudes of the interior from the pursuit of the police or military, and descending, when opportunity might occur, into the cultivated plain to destroy the peaceful fruits of industry.’

Edward Cardwell¹

1. Secretary of State Edward Cardwell to Governor Grey, 26 April 1864, AJHR, 1864, E-2, p 22

The rights of ‘loyal inhabitants’ were to be better protected.⁶⁹ Thus, steps were taken in amending legislation to remove ‘some of the grave objections’ to the 1863 Settlements Act, particularly in its provisions for assigning land to ‘loyal Natives’ and protecting them altogether from confiscation.⁷⁰ The Government would also provide land for those who had fought against the Crown. In fact, said Weld, it had always been the Government’s intention to limit confiscation to such lands ‘as may inflict no undue hardship on the rebels.’⁷¹

FitzGerald, in his instructions to Pollen, thus emphasised the Government’s generosity in making blocks of land available for Maori to live on – a ‘more liberal disposition of land to the Natives’, as he put it, ‘than would on other considerations be desirable’ had the Government not been anxious to secure peace.⁷² But Maori were to have no more than was ‘necessary for their wants.’ FitzGerald placed great emphasis (as far as Waikato was concerned) on the need to inform Maori of the Government’s purpose in making a one-off confiscation and then controlling the return of land to them – namely, to sidestep any disputes about claims. The Government was ‘exceedingly anxious that the interests of the Native owners shall be fully consulted’ and that the owners should understand that the Government was not just taking their land but was anxious to achieve settlement in order to bring peace and prosperity to the entire district.⁷³ The Government’s main concern

69. FA Weld to Governor, memorandum, 2 September 1865, AJHR, 1865, A-1, p 26

70. Ministers, memorandum, 11 August 1865, AJHR, 1865, A-1, p 26

71. Ibid

72. FitzGerald to Pollen, 3 September 1865, ACFL8170, AGG-A1/1, Archives New Zealand, Auckland

73. Ibid

was that Maori accept the reality of confiscation, because this was the key to the ‘permanent pacification of the country’.⁷⁴ The replacement of customary tenure and authority over the land with Crown-derived titles – which the Government had long seen as the key to speedier colonisation – was part of this process:

We wish as far as possible to leave the Natives who have come back and are quietly settled down on the Land at peace, only insisting that they shall take Crown Grants for the land they consent to occupy, and shall clearly understand that they are living under the laws of the Queen.⁷⁵

4.5.2.3 Crown policies to provide land or compensation for Maori in confiscation districts

By the time of the Bay of Plenty confiscation, Crown policies to provide for Maori whose lands had been taken were to be found in a complex array of statutory provisions and other documents. The fundamental distinction made by the Crown was whether those whose lands were taken had or had not been involved in what it was satisfied was the ‘rebellion’ that led to the confiscation.

4.5.2.3.1 CROWN POLICIES FOR MAORI WHO HAD NOT FOUGHT THE CROWN, DEEMED ‘LOYAL’ OR NEUTRAL

Policies to provide compensation to those deemed eligible had been in place since the passing of the New Zealand Settlements Act 1863. The Act established the Compensation Court, which could award monetary compensation to eligible claimants, who had to be able to establish that they had not done any of the acts listed in section 5 of the legislation. Some of those acts, such as ‘levying or making war or carrying arms against Her Majesty’ (section 5(1)), were clearly acts of rebellion according to the law’s definition of that term. Other listed acts, such as neglecting to comply with a proclamation demanding that arms be delivered up (section 5(5)), were more incidental to a rebellion. Speaking generally, however, we may say that those eligible for compensation under the 1863 Act were those who had not been part of the ‘rebellion’ which had led to the confiscation. The Crown generally referred to these people as ‘loyals’ (though Maori individuals or communities covered by this description may also have maintained neutrality in any hostilities).

In 1865, the New Zealand Settlements Amendment and Continuance Act introduced two new options for ‘loyal’ Maori. Neither was within the jurisdiction of the Compensation Court to order – the initiative had to come from the Crown, acting through the Colonial Secretary. The first option was that ‘loyals’ could be granted compensation in land, not just in money (sections 9 add 10). Under section 9, the Colonial Secretary and the claimant could agree that land would be given wholly

74. Ibid

75. Ibid

or partly by way of compensation.⁷⁶ Under section 10, the Colonial Secretary could unilaterally decide, at any time before the Compensation Court gave judgment or made an award, to give a claimant land instead of money.⁷⁷ A further amendment in 1866 empowered the Colonial Secretary to elect to award land instead of money, either before or after the Compensation Court gave judgment or made an award.⁷⁸

The second new option for 'loyals', provided by section 6 of the 1865 Act, was that they could have their land, or part of it, returned if the Crown abandoned its claim to it. The Colonial Secretary had the power to decide to abandon the Crown's claim. The result of such a decision was that the land was not confiscated at all (it was 'excluded from the operation' of the Settlements Act) and so would continue to be owned in customary title.

The Government's intention for 'loyals' was also spelled out in Orders in Council of 2 September 1865 that variously confiscated land in Waikato and Taranaki. No land of loyal Maori would be taken except in so far as it was 'absolutely necessary for the security of the country'.⁷⁹ Finally, the Confiscated Lands Act 1867 gave the Governor power to reserve land from the confiscated lands for people who had not been awarded compensation, or sufficient compensation, by the Compensation Court (section 2).

4.5.2.3.2 CROWN POLICIES FOR MAORI WHO HAD TAKEN UP ARMS AGAINST THE CROWN, DEEMED 'REBELS'

From late 1865, the Government's policy was to pacify those who had fought against it by granting them enough land to live on. For Waikato and Taranaki, this policy was declared in the peace proclamation of 2 September 1865. In the proclamation, the Governor granted immunity (or amnesty, as it was called) to those who had taken up arms against the Crown in those districts, and promised that 'considerable quantities' of the lands already confiscated would be restored to 'those of the Natives who wish to settle down upon their lands, to hold them under Crown grants, and to live under the protection of the law'. The proclamation also stated that commissioners would be sent to those two districts to allocate lands for this purpose.⁸⁰ The Orders in Council of 2 September 1865 confiscating land in Waikato and Taranaki reiterated that 'all rebel inhabitants of the said district who came in . . . and made submission to the Queen' would receive land to hold under Crown grant.

76. Section 9 provides that the land would be 'so granted accordingly out of any land within the same Province' subject to the Act. The Act does not specify how the land would be selected and what, if any role, the Compensation Court might have in that process.

77. In that event, the Compensation Court would determine the amount of land to be awarded and land 'within the Province' subject to the Act, would be granted accordingly. Again, the Act does not specify how the land would be selected and what role the Compensation Court might have in that process.

78. New Zealand Settlements Acts Amendment Act 1866, s3

79. Order in council, 2 September 1865, *New Zealand Gazette*, 1865, no 35, pp 265-266

80. 'Proclamation of Peace', 2 September 1865, *New Zealand Gazette*, 1865, no 35, p 267

The role of the commissioners was not set out in any written law, but officials did operate in Waikato, Taranaki, and Hauraki. The nature of their duties is indicated by letters of instruction sent by the Native Minister to two of the first officials he appointed.⁸¹ To Robert Parris, appointed to act in Taranaki, the Minister wrote that ‘the whole of the Native Population’ of the confiscated district in Taranaki was to be settled on ‘sufficient blocks of land’; to Daniel Pollen, appointed in Waikato, he wrote that those Maori who had already come back to their lands should ‘as far as possible’ be left in peace. In both districts, those awarded land had to be willing to hold their land from the Crown and to live under the laws of the Queen.⁸²

Until the Confiscated Lands Act was passed in 1867, there was no statutory authorisation for the return of land to those whose alleged acts of rebellion had led to the Bay of Plenty confiscation. The peace proclamation preceded the Bay of Plenty confiscation by some five months, so its promises to return land did not apply to that district. But the policy of returning land to rebels, as outlined by the Government in August and September 1865 in response to imperial concerns, was stated in terms that must have been of general application. The provision in the Confiscated Lands Act 1867 empowering the Governor to make reserves for ‘rebels’ who had since submitted to the Queen’s authority (section 4) confirms that this was a continuing policy. Throughout this period, it was generally – though not always – made explicit that ‘rebels’ should have ‘come in’ or ‘surrendered’ before they would be granted land. In other words, in the wake of conflict with Crown forces and their defeat or expulsion from their lands, Maori would accept the authority of the Queen and – as a consequence of defeat – the right of the Crown to allocate them lands to live on.

4.5.2.4 Policy confusion in the Bay of Plenty: the implementation of confiscation

Tuhoē’s difficulties with the Crown’s processes for returning land or granting compensation in land began with confusion about the operation of these processes in the Bay of Plenty. First, the Crown had provided for a range of officials involved in numerous capacities in different aspects of the implementation of confiscation, namely:

- ▶ the Compensation Court, which had statutory authority to assess monetary compensation for loyals and to be involved, in a reduced role, in the awarding of land compensation for loyals;
- ▶ the colonial secretary and his agent on the ground, who had statutory authority to arrange land compensation for loyals;
- ▶ a Crown agent to arrange the layout of towns, and urban and rural sections for military settlers, under the Settlements Act;

81. Daniel Pollen was informed of the Government’s wish to appoint him ‘special and sole Commissioner’ for Waikato district on 3 September 1865; Robert Parris was appointed civil commissioner for the same purpose in Taranaki.

82. FitzGerald to Pollen, 3 September 1865, ACFL8170, AGG-A1/1, Archives New Zealand, Auckland; FitzGerald to Parris, 30 August 1865, RDB, vol 71, pp 27,507–27,510

- ▶ a Crown agent to arrange land for ‘friendly’ Maori who had been promised land in return for fighting for the Crown;⁸³ and
- ▶ a Crown agent, or special commissioner, to arrange land for those deemed rebels, in accordance with Government policy.

Secondly, the Crown had failed to clarify how its new processes for the return of land to ‘loyal’ Maori and to ‘rebels’ would mesh with the work of the Compensation Court. It had reserved to itself, in the 1865 and 1866 amendments, a substantial role in the arrangement of land compensation for those considered ‘loyal’, without clarifying the respective roles of the Crown agent and the court. It had indicated a separate role for special commissioners but had not specified how their work would fit with that of agents working on behalf of the Colonial Secretary. Either this was because the relationship between the work of the Compensation Court and the various Crown officials was ill-considered, or the Crown had decided to sideline the court and to exercise control itself over the reallocation of land to Maori within the confiscation district.

It was bad enough that there was so little clarity in such a crucial area of Crown policy affecting so many Maori communities, but in the Bay of Plenty things were even more blurred. One man, John Alexander Wilson, represented the Crown in the proceedings in the Compensation Court, was apparently authorised by the Colonial Secretary in connection with the awarding of land compensation to loyal Maori, and operated as a Crown agent dealing with military settlers, ‘friendly Maori’, and those deemed rebels. A number of questions arise about the propriety of the situation. Could the statutory processes for compensation to loyals be undermined by the operation of the less formal processes set up by the Crown to deal with other matters connected to the confiscation? Was it sound practice for the Crown to authorise one man to wear a number of different hats in connection with the confiscation? These are among the questions that arise in considering Wilson’s various roles.

4.5.2.5 Wilson’s early operations in the Bay of Plenty

Wilson, to the best of our knowledge, arrived in the Bay of Plenty without authority or instructions (we have not found a copy of either); nevertheless, he had clearly been charged with reallocating the confiscated lands (see the sidebar on pages 204 and 205). He embarked on the task of organising lands for military settlers, for Te Arawa forces that had assisted the Crown, and for Maori, both ‘loyal’ and ‘rebel’, of the district.

In the absence of any instructions to Wilson, we have to deduce his priorities from Native Minister FitzGerald’s instructions to Pollen and to Parris, and from looking at what he did on the ground. He began by ‘Securing the Government’s interests.’⁸⁴ The first concern of his superiors, clearly, was the military settlers (who

83. Until the Confiscated Lands Act 1867, which authorised the Governor to do so, there was no statutory authorisation for confiscated land to be awarded to Maori who had fought alongside the Crown forces. Nevertheless, Wilson made such arrangements in the Bay of Plenty, with Te Arawa.

84. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 80

John Lanum (Hamilton City Libraries)



Colonel Theodore Haultain, the Minister of Colonial Defence from 1865 to 1869. In March 1866, Haultain and Daniel Pollen visited the eastern Bay of Plenty and, without consulting Tuhoë, decided that land on the eastern bank of the Whakatane River would be suitable for settlement. In December 1866, Ngati Awa, Ngati Pukeko, and Patuwai forfeited their rights to this land in return for reserves along the western bank. But Tuhoë were not invited to be part of the agreement and found out only later that much of their northern lands had been allocated to others.

were granted land in return for military service), for whom sites for towns and nearby farms had to be selected and surveyed so they could secure town and rural sections. As we have seen, Wilson wrote immediately to Auckland when in April 1866 he realised that the official boundaries of the confiscation district excluded much of the land Whitaker had in mind, including Opotiki and the flat plains of Ruatoki and Waimana.

The decision to use Ruatoki lands for military settlement was confirmed by a visit by two high-ranking Government representatives in March 1866. At that time, the Minister for Colonial Defence, Colonel Haultain, and the deputy superintendent of Auckland province, Daniel Pollen, visited the eastern Bay of Plenty in order to decide where the first batch of military settlers would be located. In a decision that was to be crucial for Tuhoë's future, Haultain and Pollen concluded that the land on the eastern bank of the Whakatane River would be suitable for the purposes of settlement.⁸⁵ It was probably also on this occasion that the area to the seaward side of the confiscation boundary in the Waimana Valley was chosen as the location for a military settlement. By August 1866, Haultain was becoming anxious about the military settlers; we know from a minute he wrote dated 4 August that he wanted a 'separate set of [Compensation Court] judges for the East Coast' – as opposed to the west – 'as it is most desirable that claims to land in Districts set apart for Military Settlers should be settled with as little delay as

85. Wilson, 17 April 1866, IA 1 1659/1866, Archives New Zealand, Wellington; 'The Cruise of the *Sturt* in the Bay of Plenty', *Daily Southern Cross*, 22 March 1866

Was Wilson Properly Authorised?

There are doubts about Wilson's authority to act in some of the many roles he performed in the course of implementing the Bay of Plenty confiscation. It has been suggested that he initially operated under the Friendly Natives' Contracts Confirmation Act 1866, but this Act did not apply in the Bay of Plenty.¹ He presented himself to Colonel Lyon, commander of the East Coast Expeditionary Force, on 12 April 1866 as special commissioner in Opotiki 'for the purpose of investigating Native Claims', as Lyon later explained to the Minister for Colonial Defence. But – according to Lyon's somewhat bitter account (he and Wilson fell out quickly) – Wilson had no credentials to present.² Wilson was allegedly, Lyon stated, special commissioner for the Auckland Provincial Government.³ Wilson did sign at least three of his letters as 'special commissioner', and he reported to Frederick Whitaker, both as agent for the general government in Auckland and as superintendent of Auckland province, and later to Daniel Pollen, who succeeded Whitaker as agent in April 1867. The lines of authorisation are blurred, to say the least. Wilson referred to one instruction about the location of a Maori reserve as coming jointly from the

1. The preamble to the Act specifically stated that the purpose of the Act was to validate the contracts negotiated by HH Turton in Waikato in 1864 – that is to say, before confiscation had legally been effected there.

2. Lyon to Minister for Colonial Defence, 12 May 1866, IA 1 1659/1866, NA-W

3. Lyon to Whitaker, 8 May 1866, IA 1 1659/1866, NA-W

possible.⁸⁶ Judge Fenton was also, according to his own account, pressured by Whitaker to hold early sittings of the Compensation Court. Evidently, Whitaker was anxious to know how much of the confiscated land would be needed for Maori – and how much, therefore, he would have for military settlers and for sale.

During the early months of 1866, Wilson embarked on arrangements to set aside enough land for military settlements, for the surveying of Opotiki township, and for military settlements at Opotiki, Ohiwa, and Waimana. He later laid out a settlement at Whakatane, which was surveyed in 1867.⁸⁷ In order to make way for towns and settlements, Wilson had first to secure his arrangements with Maori. A number of hapu of Ngati Awa and Whakatohea were moved off their traditional lands. Wilson's own account sheds some light on how he went about his task. He met with Whakatohea on 13 April, the day after he arrived, and 'informed them they were to move from Opotiki; and to their evident relief, told them that their future country would be Opape'. The people asked for eight days to move; Wilson

86. Haultain, minute, 4 August 1866, RDB, vol 122, p 47,203

87. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 80

Minister for Colonial Defence and the agent for the general government. Doubtless, this reflected the fact that, though special commissioners were evidently sometimes instructed by general government, their position was not created by statute; while in the case of the Bay of Plenty lands, Auckland province agreed to assume its administration for the purposes of military settlement and sale, but it was not the province's job to deal with Maori claims.

On 26 November 1866, Whitaker was appointed commissioner for the sale and disposal of confiscated lands in the province, and it seems that after this Wilson was instructed by Whitaker in respect of the survey and allocation of military settlers' lands.⁴ (He had, however, already been working with surveyors of such lands.) The role assigned to Wilson in the reallocation of the confiscated lands in this district appears to have been an ad hoc response to the confused situation arising from the Crown's failure to clarify responsibilities. We have not found an official record of Wilson's appointment. The fact that it was considered necessary in the Confiscated Lands Act 1867 to give the Governor statutory power to award land to rebels indicates that the Governor did not otherwise have that power. If the head of the executive government, possessing royal prerogative powers, could award land to rebels only when authorised by statute, then no Crown agent could award land to rebels without such statutory authority. That means that all the arrangements Wilson made for rebels before the enactment of the 1867 Act were made without authority.

4. Whitaker was succeeded by Pollen as commissioner on 5 June 1867.

'granted' their request.⁸⁸ By June 1867, Wilson had arranged a number of reserves: one solely for the Whakatōhea 'rebels' who had surrendered, others jointly for 'surrendered Rebels and loyal Natives' of (respectively) Upokorehe, Ngati Pukeko and Ngati Awa, Ngati Kokopu and Ngati Wharepaia, and Te Pahipoto, Ngai Tamaohe, 'and other hapus'. In addition, 87,000 acres (35,208 hectares) was 'given to the Arawa tribe' for their service. Not one reserve was allocated to Tuhoē.⁸⁹

The most important of these arrangements, in terms of its consequences for Tuhoē, was made at a hui at Rauporoa Pa in December 1866. Wilson met with Ngati Pukeko and Ngati Awa and negotiated the location of land for them. As he later explained, 'it was arranged that the Government should take all the land on the eastern side of the Whakatane river for the rebellion of the people.'⁹⁰ In

88. Wilson to superintendent, Auckland, 17 April 1866, IA 1 1866/1659, Archives New Zealand, Wellington (1866 Opotiki correspondence)

89. 'Return of Reserves Made for Friendly Natives and Returned Rebels', AJHR, 1867, A-18

90. Wilson, 'Memorandum Relative to Boundary between Ngatipukeko and Ngatiawa on Western Side of Whakatane River', 7 September 1874, MA 13/99A, Archives New Zealand, Wellington

exchange for forfeiting their rights to the land at Whakatane on the eastern bank, Ngati Awa, Ngati Pukeko, and Patuwai secured a block of reserves all along the western bank. For Wilson's purposes, this agreement was a success. For Ngati Awa and Ngati Pukeko, it was the best of a bad situation. Although they had sacrificed any interests they may have had on the eastern bank of the Whakatane River, the entire western side was theirs, albeit subject to a division between the two iwi.⁹¹ However, it is also important to acknowledge, as Professor Hirini Moko Mead explained to us, that Ngati Awa and Ngati Pukeko did not act entirely of their own free will in the negotiations. The 'agreement' should not be seen as one made between two equal parties.⁹²

4.5.2.6 *Wilson's lack of engagement with Tuhoe*

For Tuhoe, the Rauporoa agreement was an unmitigated disaster. From Wilson's account, it is evident that Tuhoe were absent from the Rauporoa hui and took no part in an agreement which resulted in the reallocation to others of a considerable portion of their northern lands. In setting up the negotiations as he did, Wilson had manufactured a situation where lands in which Tuhoe had interests were subject to agreement between the Crown and other iwi. Tuhoe opposition to the Rauporoa agreement quickly became evident during a hui at Ruatahuna in February 1867, as Wilson reported to Haultain:

Wepiha has come here to tell me he has been informed (he cannot say how truly) that the meeting objected to certain lands in the Wakatane valley, within the confiscated boundary, being given to the govt by the Ngatipukekos; and that this was made the ostensible business of the assembly. From another quarter a rumour comes[?] that they are to meet again at Ruatoki at the head of the Wakatane valley. The general impression is that the Uriweras are on the watch.⁹³

The Rauporoa agreement epitomises Wilson's failure to deal with Tuhoe in respect of their lands within the confiscated district. There are two reasons why we would expect him to have done so. First, almost certainly Wilson acted as Crown agent on behalf of the Colonial Secretary under the provisions in the 1865 Act for abandoning Crown claims to confiscated land, and for returning land to 'loyals'.⁹⁴

91. Wilson, 'Memorandum Relative to Boundary between Ngatipukeko and Ngatiawa on Western Side of Whakatane River', 7 September 1874, MA 13/99A, Archives New Zealand, Wellington

92. Hirini Moko Mead, brief of evidence, February 2005 (doc L23), pp 7–8

93. Wilson to Haultain, 13 February 1867 (Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 116)

94. In the 'Return of Reserves Made for Friendly Natives and Returned Rebels', 9 June 1867 (AJHR, 1867, A-18), compiled by JA Wilson, 'Crown Agent', to explain the arrangements he had made, one entry accounts for over 57,000 acres of land by explaining 'Act not enforced in eastern portion of the district'. The footnote to that entry reads 'Technically "abandoned"', which is a reference to the Colonial Secretary's abandonment of the Crown's claim to that area under section 6 of the 1865 amendment Act. Another entry records that 5,442 acres were 'Given to claimants by award by arrangement, and abandoned', which would seem to be a reference to section 10 of the 1865 Act having been used to return confiscated land to claimants. We might therefore assume that Wilson, as Crown agent, was acting on behalf of the Colonial Secretary in these matters.

Wilson's Upbringing in the Bay of Plenty

Wilson arrived in the Bay of Plenty with some understanding of its geography and politics. In the 1830s, his father was a missionary at Opotiki. In 1840, Wilson senior travelled to Ruatoki and Waimana in order to appraise Tuhoe's support for Christianity and to obtain support for the building of a church at Opotiki.¹ By the time the first chapel was built at Ruatoki in 1842 or 1843, Wilson junior had moved to the eastern Bay of Plenty and had begun farming at Opotiki, which he continued until 1845.²

1. Judith Binney, 'Encircled Lands', 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002), vol 1 (doc A12), pp38–41; Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p 65

2. Jinty Rorke, 'John Alexander Wilson', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.dnzb.govt.nz>, last modified 7 April 2006

Given that there was no other agent on the ground charged with these functions, he was certainly the obvious person to have done so.

Secondly, we might expect evidence of Wilson's early communication with Tuhoe because of the extent of their interests in these lands (which we discuss later in this chapter). But there is no evidence that he discussed with them which lands they might be granted or retain. Nor did he respond after he had learned of Tuhoe's concerns about the agreement. All of this is the more surprising, on the face of it, given that Wilson was no stranger to the region to which he had been sent (see the sidebar above).

We believe that, before his return to the Bay of Plenty in 1866, Wilson must have known who Tuhoe were and where they lived. But, if he was not aware before his return that Tuhoe lands extended to the north of the boundary, he certainly learned as much soon afterwards. The matter of specific knowledge is put beyond doubt by correspondence between Wilson, Whitaker, and Lyon in April and May of 1866. In a letter to Whitaker, Wilson described the land on the eastern bank of the Whakatane River, which Haultain and Pollen wanted for military settlement, as belonging to Ngati Pukeko.⁹⁵ This was either wilful obfuscation or genuine ignorance on his part. However, Lyon made it clear in a memorandum to Wilson that Tuhoe, commonly referred to by Pakeha at the time as 'the Ureweras', had interests in the confiscated land:

Mr Wilson stated this day in Col Lyon's house that he had heard on the 12th April 1866 that one, if not two, gentlemen of high Military rank in the Colony were desirous

95. Wilson to Whitaker, 17 April 1866, IA 1 1866/1659, Archives New Zealand, Wellington

of obtaining Ngatipukeko land, which explained to him what he before did not understand. The previous conversation had related to the Colonel's supposed telling Mr Wilson that it would be unsafe for the surveyors to go on the Ngatipukeko Country. The real fact being that the Colonel had said it would not be safe for the surveyors to go on to the Urewhera Country. In fact the Colonel had intended leasing some land from the Urewhera's, but on finding that it came within the Confiscation boundary, gave up the idea at once.⁹⁶

Wilson had described the Opouriao land as belonging to Ngati Pukeko. But, as Lyon explained, the land that he considered dangerous for surveyors to enter actually belonged to Tuhoe and was seaward of the confiscation boundary. He gave up his own intention of leasing from Tuhoe because by confiscation the land had become Crown land. Certainly, from April 1866, therefore, Wilson was aware that Tuhoe had interests within the confiscated district.

By November 1866 at the very latest, Wilson also became aware of Tuhoe's interests in the Waimana Valley when he travelled to Waimana with the new commander of the ECEF, Major St John, evidently to discuss the survey of the southern boundary and the planned military settlement.⁹⁷ A 'conference' was held with Rakuraku, who indicated that it was 'quite safe' for the surveying to proceed. But St John was unable to give assurances of the 'ultimate safety of the settlement'.⁹⁸ Binney concludes that this may have been the first Tuhoe knew of the full extent of the confiscation and of how far south into the Waimana Valley it reached. While this is a significant fact in itself, the exchange makes it clear that Wilson went to Rakuraku to discuss the cutting of the survey line and that he already knew of Tuhoe's rights to land in the Waimana Valley.

In light of all this, we must ask why Wilson ignored Tuhoe interests in the confiscation area. We have no direct evidence on this important issue, but we cannot ignore it. We discuss possible explanations (which are not mutually exclusive) below:

- ▶ First, Wilson's view of Te Urewera Maori as hostile to the Government may have influenced his actions. He is on record as early as May 1866 as referring to 'our enemies in the Uriwera country'.⁹⁹ But why would this be so, given that he was after all dealing with iwi (including Whakatohea, Ngati Pukeko, and Ngati Awa), all of which were deemed rebels by the Crown? We think it possible that Wilson distinguished between those who had been 'quashed' by

96. Lyon, memorandum, 8 May 1866, Opotiki, IA 1 1659/1866, Archives New Zealand, Wellington. The memorandum was sent by Lyon to Wilson in the course of a strained exchange between the two men after Wilson sent an account of his conversation with Lyon to Whitaker to which Lyon took great exception, considering that he had been misrepresented as having a personal interest in securing confiscated land.

97. Binney, 'Encircled Lands, Part 1' (doc A12), pp 135, 144

98. St John to Under-Secretary, Colonial Secretary's Office, 22 November 1866, AD 1 1866/5225, Archives New Zealand, Wellington

99. Wilson to superintendent, Auckland Provincial Council, 16 May 1866, IA 1 1690/1866, Archives New Zealand, Wellington

Crown forces – who were, as Wilson generally put it, ‘surrendered rebels’¹⁰⁰ – and those whom he regarded as unsundered rebels. In May 1866, he may have thought Tuhoe were the Crown’s ‘enemies’ because he had learned of Lyon’s unsuccessful search for Kereopa Te Rau, which had turned increasingly towards Te Urewera in the early months of 1866. He may have learned of Lyon’s disappointed expectation that Te Rau would be handed over to him. But Lyon also recorded that Tuhoe generally had assisted him and that only one chief had stood out against handing over Te Rau. In any case, that incident could not have made Tuhoe unsundered rebels for the purposes of the confiscation and consequent grants of land for the simple reason that it occurred *after* the confiscation. Tuhoe, unlike Ngati Awa and Whakatohea, had not been attacked by Crown forces in the period before the Order in Council was issued because they were not regarded as enemies; thus, they had not been called upon to surrender.

- ▶ Secondly, Wilson was preoccupied with securing lands in accordance with the demands of the Crown. Both the general and provincial governments were preoccupied with the military settlers. The Ruatoki and Waimana Valleys, unlike the swamps to the west and the rugged hill country in other parts of the district, were highly desirable for military settlement. Wilson also had to find land for Te Arawa who had assisted the Crown and for those coastal Maori who were the immediate targets of punishment and relocation.
- ▶ Thirdly, Wilson was influenced by his view that Tuhoe, unlike other iwi – Ngati Awa, Ngati Pukeko, and Whakatohea – had lands to fall back on inland of the confiscation line. Given the pressure on the quality lands he had available, he might have regarded Tuhoe’s ‘reserve’ as their remaining lands behind the confiscation line.

Put another way, we can explain Wilson’s attitude in terms of negligence (namely, failing to inform himself of the events that preceded, and indeed followed, confiscation); or malice; or reckless indifference to Tuhoe rights, despite knowledge of those events; or partiality to others for whom land had to be found; or expedience in the face of pressure from his superiors. In the end, it does not matter which explanation is right. For Tuhoe, the outcome was the same. Wilson’s actions cannot be excused. As the Crown’s agent, he was – at least in practice – in charge of arrangements made for the confiscated lands. It was thus his duty to engage with all who were affected by the confiscation. In particular, it was his duty to have informed himself of Tuhoe’s entitlement to compensation. Under the New Zealand Settlements Amendment and Continuance Act 1865, it is clear that the Crown’s agent would have to initiate discussions with Maori if land were to be returned to them or if compensation in land were to be arranged for them. Wilson’s failure to do so left Tuhoe out in the cold.

In its *Ngati Awa Raupatu Report*, the Waitangi Tribunal drew attention to the arbitrary nature of the Crown’s proceedings. The outcome of the appointment of agents on the ground was that the Crown secured almost unlimited power to

100. Wilson to Whitaker, 14 March 1867, RDB, vol 122, p 47,123

decide where Maori would be placed within the huge districts it had confiscated. As the Tribunal put it, ‘authority over the land . . . rested with the Government, as did the power to retain, return, or otherwise dispose of the land.’¹⁰¹ We are in agreement with that Tribunal, which considered the fate of Ngati Awa at Wilson’s hand and concluded that there was ‘no independent authority or advocate’ to assist Maori and ‘no laws or regulations to protect their rights or the rights of those then absent from the district’. Maori were thus ‘forced into a situation of having to bargain with the Government for whatever land they could get; and few were in a position to bargain at all’.¹⁰² They were ‘wholly at the mercy of Wilson’. Possessed of arbitrary powers, he made his own decisions, and he could ‘reward or punish as he personally saw fit’.¹⁰³ Unlike a court, Wilson did not operate by any standard rules that were transparent to those whom he removed to Government-allocated lands. Nor do we even know what his instructions were. But he was evidently determined to ensure the success of the Government’s policies: the broad punishment of those deemed to be in rebellion by removing them from their lands; colonisation by military settlers; the securing of further lands for sale; and the rewarding of those who had fought for the Crown.

4.5.2.7 How were Tuhoe’s claims handled in the Compensation Court?

The problems Tuhoe faced in dealing with Wilson were compounded by the problems they faced subsequently in the Compensation Court. Once Wilson had made the decision not to engage with Tuhoe as he marked out lands for Maori within the confiscation area, the only recourse left to them was the court. But they had difficulties both bringing claims and getting a fair hearing.

In the eastern Bay of Plenty, a large number of claims came before the court. In the first sitting at Opotiki, 235 cases were involved.¹⁰⁴ Only three claims were from Tuhoe, and they by no means covered the entire area in which Tuhoe had interests within the confiscated district.¹⁰⁵ Why were there so few? There are several reasons:

- ▶ It appears unlikely that Tuhoe received the guidance and information they should have had in preparing claims in such an unfamiliar process. The notices informing the public of the dates by which claims had to be submitted were little help regarding the process of submitting a claim. As so often with official notifications, Maori would have been dependent on informal advice. Wilson, the Crown’s agent, was the obvious person to provide that advice – and we know that he did discuss with some iwi whether their submission of claims was appropriate. In light of his general failure to engage with Tuhoe,

101. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 80

102. *Ibid*, p 81

103. *Ibid*

104. *Ibid*, p 83

105. There may have been a fourth Tuhoe claim, made on behalf of Ngati Kareke, but the affiliation of the claimant is in some doubt (and the claim was dismissed): see Miles, *Te Urewera* (doc A11), pp 145–146.

we think it unlikely that he would have gone out of his way to supply information to them about submitting claims to the Compensation Court.

- ▶ Wilson also played favourites when it came to deciding which claims to support, according to the Tribunal in its *Ngati Awa Raupatu Report*. In cases where he could not come to agreement with claimants, or where he thought their claim was weak or their demands excessive, he left them, in his own words, to ‘take their chance’ before the court.¹⁰⁶ He then organised witnesses to contest them.¹⁰⁷ Where he had made arrangements with claimants, he notified the court of these. Many cases were therefore ‘simply dismissed when the Crown agent said that they had been settled out of court.’¹⁰⁸ This seems borne out in his approach to Tuhoe claims.
- ▶ It seems unlikely, given Binney’s conclusion that Tuhoe would not have been aware of the extent of the confiscation before November 1866,¹⁰⁹ that they would have had time to organise the submission of claims before the deadline on 1 December 1866. Their leaders had little experience of Government processes, so they would have been particularly dependent on advice and assistance.

Tuhoe then faced further obstacles inside the court – and Wilson was a significant part of them. On 7 March 1867, Wilson, whose role as special commissioner came to an end some time early that year, was appointed Crown agent in the court. This meant that he represented the Crown as defendant in cases brought before the court; the claimants (who might be represented by counsel) were the plaintiffs.¹¹⁰

The three Tuhoe claims were heard at different times by the court. The first, Rakuraku’s, was heard at Opotiki on 9 March 1867. Rakuraku had lodged a claim for ‘Ohiwa’ on behalf of ‘Ngaituhoe’. Wilson called two witnesses to refute Rakuraku’s statements that he had not been involved in rebellious activities; both witnesses had been with Lyon’s expedition to Waimana in February 1866, after the Order in Council effecting the confiscation. Wilson also called Maori counter-claimants to challenge Rakuraku’s claims to the land.

The second claim, for land at Opouriao, was brought by Akuhata Te Hiko of Ngati Huri and Tamakaimoana, and was heard before the court at Whakatane on 12 September 1867. The Crown called several Ngati Pukeko witnesses, who asserted their claims to the land.¹¹¹ One witness admitted Tuhoe’s presence and cultivations at Opouriao but stated that they resided in the area only under the mana of Ngati Pukeko. By the time this claim was heard in September 1867, Wilson knew of Tuhoe objections to the Rauporoa agreement, by which land on the western side of the Whakatane River, and some on the east (from Government-held lands), was allotted to Ngati Pukeko. In court, he was, or could be seen to be, protecting

106. Wilson to Whitaker, 14 November 1866 (Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 82)

107. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 82

108. *Ibid*, p 83

109. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 144

110. Order in council, 16 June 1866, *New Zealand Gazette*, 1866, no 36, p 250

111. Miles, *Te Urewera* (doc A11), p 143

the arrangements he had made outside the court and ensuring that they were not upset.

Tuhoe's third claim, submitted by Tamarau Te Makarini, was heard at the Whakatane court on 17 and 18 September 1867. Te Makarini, who gave his affiliations as Ngatimuriwai and Ngatitoroa, claimed land at Opouriao. Ngati Awa and Ngati Pukeko witnesses were called for the Crown, and two of these witnesses stated that Te Makarini had been in rebellion.

Tuhoe were at a particular disadvantage in their attempts to secure the return of some of their confiscated lands, because the arm of Wilson, the Crown's agent outside the court, also extended into the court. As a representative of a party, Wilson had a duty to the court to be dispassionate. Yet, his own arrangements out of court were in some cases being called into question or were under threat from claims brought to the court. The Crown had apparently failed to consider the difficulties that might arise for claimants because the same man decided on land allocations prior to the court's sitting and then carried the mana of the Crown inside the court. Or, alternatively, it was not greatly concerned that in such a situation the interests of claimants might be overridden. We turn now to consider the treatment of Tuhoe claims in the court.

The processes of the court, in our view, were deeply flawed. The Crown did not provide a proper venue for proceedings that were of huge importance to Maori who appeared before it. Though called a court, it did not act in a considered and dispassionate manner, nor was its independence of the Crown secured. Its judges in the Bay of Plenty were not lawyers. The senior judge of the court, Fenton, would later rue the speed with which he constituted a court for the Bay of Plenty (the result of pressure by Whitaker, then the Auckland agent for the general government), at a time when he could not provide it with 'an experienced Judge.'¹¹²

We are in agreement with the Tribunal in its *Ngati Awa Raupatu Report* as to the cursory nature of the court proceedings. All the Tuhoe cases were dealt with in short order; there was little opportunity for investigating competing claims of ancestry and occupation. All were dismissed, and in two cases no reasons for the dismissals were given. It appears that the failure of the court to explain the basis of its judgments was not unusual.¹¹³ In the third case – that of Rakuraku – no judgment was recorded when the case closed, but seven months later Rakuraku's claim to Ohiwa came before the court again (it is not clear why), and it was recorded then as 'Dismissed, claimant having been in rebellion.'¹¹⁴

All of this would have important ramifications for Tuhoe. In particular, Tuhoe claimants faced allegations of rebellion. These should not have been admissible. Te Makarini was stated to have been a rebel. He had been present at the engagements at Orakau in March 1864 and Te Tapiri in June 1865.¹¹⁵ Rakuraku was alleged

112. FJ Fenton to Native Minister, 31 July 1867, NS67-1203, RDB, vol 122, pp 47,155-47,156

113. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 84

114. Minutes of the Compensation Court, RDB, vol 121, p 46,617

115. Wharehuia Milroy, brief of evidence (in Maori), 15 October 2004 (doc H51), para 8; Miles, *Te Urewera* (doc A11), p 146

to have misrepresented matters to Lyon during an expedition in February 1866. Neither could be adduced as evidence of rebellion resulting in the Bay of Plenty confiscation. Only acts committed between 2 September 1865 (when the proclamation of peace was issued, granting amnesty to those who had borne arms against the Crown up till that date) and 17 January 1866 (when the confiscation was effected by Order in Council) were relevant to the court's decision on whether claimants could be denied compensation in land. Yet, in court, allegations against Te Makarini and Rakuraku went unchallenged. No 'counsel for Natives' was in court when Rakuraku's claim was heard.¹¹⁶ When allegations of rebellion were made against Te Makarini, no questions on the matter were raised by counsel on his behalf.¹¹⁷ Tuhoe were thus either not or inadequately represented, and they failed to grasp the point that the acts alleged, if proven, could not possibly be relevant. The court itself did not reject the Crown's evidence on this matter. As the Tribunal states in its *Ngati Awa Raupatu Report*, 'In most cases, the court simply accepted Wilson's word as to who were "rebels" and who were not.'¹¹⁸ Judge WG Mair, who presided at the hearing of Tuhoe claims, had of course been a commanding officer in the hostilities that followed Fulloon's murder. Given the loss of Tuhoe lands in the subsequent confiscation, it is hard to see that Tuhoe claimants would have been impressed by the impartiality of the law – particularly considering some of the evidence brought against them.

4.5.2.8 Conclusions

Our conclusions as to whether Tuhoe failed to secure either the return of land or compensation in land or money are as follows:

- ▶ Wilson's failure to engage with Tuhoe may have been due to negligence, malice, or reckless indifference to their rights; partiality to others for whom land had to be found; or expedience because he was under pressure from his superiors to find land. Whatever the cause, his actions cannot be excused.
- ▶ Tuhoe's interests were not protected by the Compensation Court's process or by the Crown's agent, who arranged allocations of land outside the court.
- ▶ Having not been in rebellion, as the Crown now concedes, Tuhoe were entitled to receive monetary compensation from the Compensation Court under the New Zealand Settlements Act 1863. From 1865, with the Colonial Secretary's agreement, Tuhoe could have been awarded compensation in land. And, from 1866, land could have been returned to Tuhoe if Crown claims to it were abandoned. Tuhoe got nothing from any of these processes.
- ▶ Tuhoe were unlikely to have known about the extent of the confiscation and the Compensation Court's process in time to make claims, and it seems that Wilson, the Crown's agent on the ground, did not assist Tuhoe to make claims to the court.

116. Minutes of Compensation Court, 9 March 1867, RDB, vol 120, p 46,061

117. Miles, *Te Urewera* (doc A11), pp 146–148

118. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 84

- ▶ Wilson did not arrange land for Tuhoe as he did for other iwi groups, including those who had not been involved in the ‘rebellion’, those who had fought alongside the Crown, and those who had fought against the Crown.
- ▶ Two of the three Tuhoe cases taken to the Compensation Court were rejected on the basis of evidence of the claimants’ rebellion called by Wilson, as agent of the Crown in the court. That evidence should not have been relied on by the court: the alleged acts of rebellion were not related to the confiscation. Either they had been forgiven by the peace proclamation or they had occurred after the confiscation was effected.
- ▶ Further, there is no evidence that Tuhoe were regarded as rebels before the confiscation. That is why they had not been attacked by Crown forces during the period following the landing of the ECEF. They had not ‘surrendered’ because they had not been required to.
- ▶ Despite the failure of the Compensation Court and the Crown agent to secure compensation or the return of land for Tuhoe, the Crown could have reserved land for them under the provisions of the Confiscated Lands Act 1867. But this provision was not used to secure any of the core lands within the confiscated district for Tuhoe.
- ▶ Therefore, despite the fact that Tuhoe were not rebels, as the Crown has now conceded, they were defeated in the various processes established by the Crown for the allocation of land to Maori in the confiscated district.
- ▶ Because of this, Tuhoe’s view that the confiscation was designed to punish them became entrenched.
- ▶ Even though the Crown had not intended at the outset to take Tuhoe lands, its dogged persistence in the confiscation (and its failure to make any attempt to mitigate its impact) explains why the iwi concluded that they had been targeted all along.

4.5.3 How much Tuhoe land was taken in the confiscation?

SUMMARY ANSWER: At the time of the confiscation, hapu of Tuhoe exercised customary rights to, and authority over, substantial areas of land north of the confiscation line. On the alluvial flats of the Ohinemataroa River valley, Tuhoe were dominant as far north as Puketi, at the confluence of the Ohinemataroa and Tauranga Rivers – near the site of modern-day Taneatua. In the Waimana Valley and the basin of the Nukuhou Stream, Tuhoe were dominant as far north as Whakarae. In areas north of Puketi and Whakarae, including Ohiwa, Tuhoe shared rights and interests with other hapu and iwi. The Wai 36 Tuhoe claimants gave us compelling evidence about the extent of Tuhoe interests in the confiscation zone. While this evidence provides us with an important indication of the furthest reach of Tuhoe’s interests, it does not represent an area in which Tuhoe held exclusive rights. For the particular purpose of facilitating settlement negotiations with the Crown, two ‘areas of interest’ can be designated within the boundary described by these claimants. In each of these areas, Tuhoe’s interests can be represented as a percentage of total interests in the area. South of Puketi and Whakarae, where Tuhoe’s authority was paramount, their interests amounted to 90 per cent (area B). North of Puketi

and Whakarae, where Tuhoe coexisted with other hapu and iwi, the figure may be set at 30 per cent (area A). Represented in acres as part of the total area claimed by Wai 36 Tuhoe claimants within our inquiry district, this amounts to 59,655 acres (24,147 hectares).

4.5.3.1 Introduction

In chapter 2, we discussed the traditional history of the hapu and iwi of Te Urewera and the importance of the beliefs and values by which they lived. Here, we consider the extent of Tuhoe's authority over, and their customary rights and interests in, lands within the confiscation district, until the time of the confiscation in 1866. As noted earlier, the Crown did not make submissions on the extent of Tuhoe's interests but said that it 'would appreciate the Tribunal's views on the issue'.¹¹⁹ In light of this and the submissions of counsel for Wai 36 Tuhoe claimants, we proceed to quantify Tuhoe's loss as a proportion of all customary interests in the confiscated district. Our sole purpose is to provide a basis for settlement negotiations. Our estimate is based on an assessment of Tuhoe's customary rights and interests in that part of the confiscation district that is within our inquiry boundary. As can be expected, this is not an exact science.

The nature and extent of Tuhoe's customary rights and exercise of mana were summarised by Tamati Kruger in the following terms:

E whai ana i runga i te mana tipuna, i te mana whenua, i te ahi ka roa, i te ahi tahu-tahu, i te ahi mataotao . . .

It follows the authority that comes from ancestors, from the land, from different forms of occupation – permanent fires, temporary fires, and fires cooled-off.¹²⁰

We understood from Mr Kruger that the kind of rights variously described by the terms 'ahi ka roa', 'ahi tahu-tahu', and 'ahi mataotao' reflected the nature of authority that the hapu might exercise in particular lands. These distinctions further reflected the realities of life for Nga Hapu o Te Urewera: though based in settled home communities, the hapu were also very mobile.

Rights were most strongly established in areas where the authority of the home people (te hunga kainga), inherited from their forebears and long exercised, could not be overturned; in such areas, we understand, rights either were not shared or were shared only if this were negotiated with the home people. This is ahi ka roa: 'unconditional, unrestrained influence, presence, [and] authority' to land.¹²¹ Hapu might of course suffer temporary reversals of fortune, as is to be expected in any tribal history. Conflict, and its resolution, was part of the normal interaction

119. Crown counsel, closing submissions (doc N20), topic 3, p 23

120. Tuawhenua Research Team, 'Ruatahuna: Te Manawa o Te Ika, Part 1: A History of the Mana of Ruatahuna from Early Origins to Contact and Conflict with the Crown' (English) (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc B4(a)), p 176

121. Counsel for Nga Rauru o Nga Potiki, glossary to closing submissions, 13 June 2005 (doc N14(b)), p 10

between neighbouring groups; it need not even have been about land or resources. What was important was that overall Tuhoe authority could be shown over successive generations to be undiminished.

There were other areas, however, where rights were managed differently, such as by negotiation among hapu and iwi. These were ‘common lands’, where the exercise of rights (for instance, for fishing or fowling) might be agreed so as to accommodate several iwi, with none able to exclude the others from the area.¹²² This, Mr Kruger described as ‘roha rohai’. In such areas, ‘temporary fires’ (ahi tahutahu) burned. Nga Rauru o Nga Potiki claimants defined the term ‘ahi tahutahu’ as the ‘qualified, reserved or conditional presence and influence over territory and people.’¹²³ Referring to ‘ahi tahutahu’, Mr Kruger said: ‘This refers to land that is travelled over and where fires are burning for a short time, or for the period that is needed before the people move on. The power gained from te ahi tahutahu is not as great as the authority of ahi ka roa.’¹²⁴ Mr Kruger referred to Ohiwa Harbour as an example of common land and ‘a place of ahi tahutahu.’¹²⁵

If such was the nature of customary rights, how do we characterise them for the purposes of this analysis of the losses suffered by Tuhoe in the confiscated lands? We have referred earlier to the development of Tuhoe as an iwi over generations preceding the confiscation. As we have seen, the basis of that development lay in intermarriage, mobility among the various key settlements, the coexistence of hapu rights in those settlements, closer alliances between the hapu, and a shared sense of identity, of mana motuhake. It is therefore appropriate to consider the overall reach of Tuhoe authority, the takiwa within which their mana tangata and mana whenua were long-established and undiminished in 1866. Conversely, there were lands where rights were shared among iwi. As far as Tuhoe were concerned, those rights might be exercised by groups that chose to burn temporary fires there, as needed. These latter areas, if they were drawn on a map, might appear as overlapping zones, shaded to reflect the nature of negotiated rights between iwi and hapu.

The evidence demonstrated that the Crown’s confiscation boundary bisected two key areas where Tuhoe exercised authority over the land. These were the Waimana Valley and the alluvial plain of the Ohinemataroa River valley. Tuhoe exercised their authority in these areas from time immemorial. From the time of the earliest peoples, in whom Tuhoe’s rights are sourced, these valleys were occupied and their resources utilised. While various inter-hapu and intertribal conflicts meant that hapu occupation was at times in flux, the nature of Tuhoe’s rights in these areas is undoubted. For all practical purposes, and laying aside brief reversals or withdrawals, Tuhoe have demonstrated their effective possession of the land against all comers, from their ancestral origins to the time of the confiscation.

122. Tamati Kruger, Waitangi Tribunal judicial conference, Ruatoki, 26–27 March 2003 (Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 175–176)

123. Counsel for Nga Rauru o Nga Potiki, glossary (doc N14(b)), p 10

124. Tamati Kruger, summary of evidence regarding ‘Ruatahuna, Part 1’, 11 May 2004 (doc D28), p 29

125. *Ibid*, pp 28, 29

While these were two areas where Tuhoe had the strongest interests, their hapu also exercised rights within a region that stretched from the Rangitaiki River in the west to the Waioatahe River in the east. To the north was Ohiwa – Tuhoe’s connection to the sea. We turn now to consider the evidence for Tuhoe’s rights and interests in these two areas – Waimana and the Ohinemataroa Plain – as well as their rights at Ohiwa Harbour.

4.5.3.2 The exercise of Tuhoe authority: customary rights and occupation

In this section, we review briefly the historical evidence in respect of Tuhoe’s authority, customary rights, and occupation in areas north of the confiscation line.

4.5.3.2.1 THE OHINEMATAROA PLAIN

The first area of the confiscation zone in which Tuhoe exercised rights of ahi ka roa is located on the extensive alluvial flats that lie on each side of the Ohinemataroa River as it exits the mountains of Te Urewera. This plain includes a number of smaller side valleys. To the south, where the river emerges from the mountains, is the valley known as Ruatoki. To the west is the Owihakatoro Valley and, beyond that, the Omataroa Forest. To the north, the valley widens at the junction of the Ohinemataroa and Tauranga Rivers then narrows again, following the river. This area is known as Te Hurepo. Because the valley that extends either side of the river contains a number of distinct areas within it, we use the phrase ‘the Ohinemataroa Plain’ to describe the whole district.

Tuhoe’s rights in the Ohinemataroa Plain derive from their ancestral origins in Te Tini o Toi, Ngai Turanga, and Te Hapuoneone. These early peoples settled the land in Ruatoki, Owihakatoro, and Opouriao.¹²⁶ Over time, they interacted with the peoples of Nga Potiki, who moved down the Ohinemataroa River from their heartland at Ruatahuna. Marriage alliances formed and whakapapa became interwoven, though each people retained their own distinct mana.¹²⁷ Many of the hapu in this region derived from an important union between Nukutere of Ngai Turanga and Te Koata of Te Hapuoneone. Their descendants formed many of the hapu commonly identified with Tuhoe – including Ngati Rongo, Ngati Raka, Ngati Tawhaki, Ngati Kareke, Ngati Koura, and Ngati Raumoa.¹²⁸

The arrival of the Mataatua waka reshaped the nature of rights in this region, as elsewhere in the Bay of Plenty. The new Mataatua arrivals married the original inhabitants of the land, adding new lines to their whakapapa. Tuhoe-Potiki, who was born from one of these relationships, had rights in the region by virtue of his whakapapa to Te Tini o Toi, Ngai Turanga, and Nga Potiki.¹²⁹ Tuhoe and his brothers Ueimua and Tanemoeahi resided primarily in the Owihakatoro Valley,

126. Tamati Kruger, ‘Ruatoki: Te Whenua i Puritia, Te Whenua a Tawhia’, 2005 (doc J29(a)), pp 10–83; Tamati Kruger, claimant translation of transcript of oral evidence, Taurarau Marae, Ruatoki, 17 January 2005 (doc J48(a)), pt 1, pp 2–6; Miles, *Te Urewera* (doc A11), pp 11–13

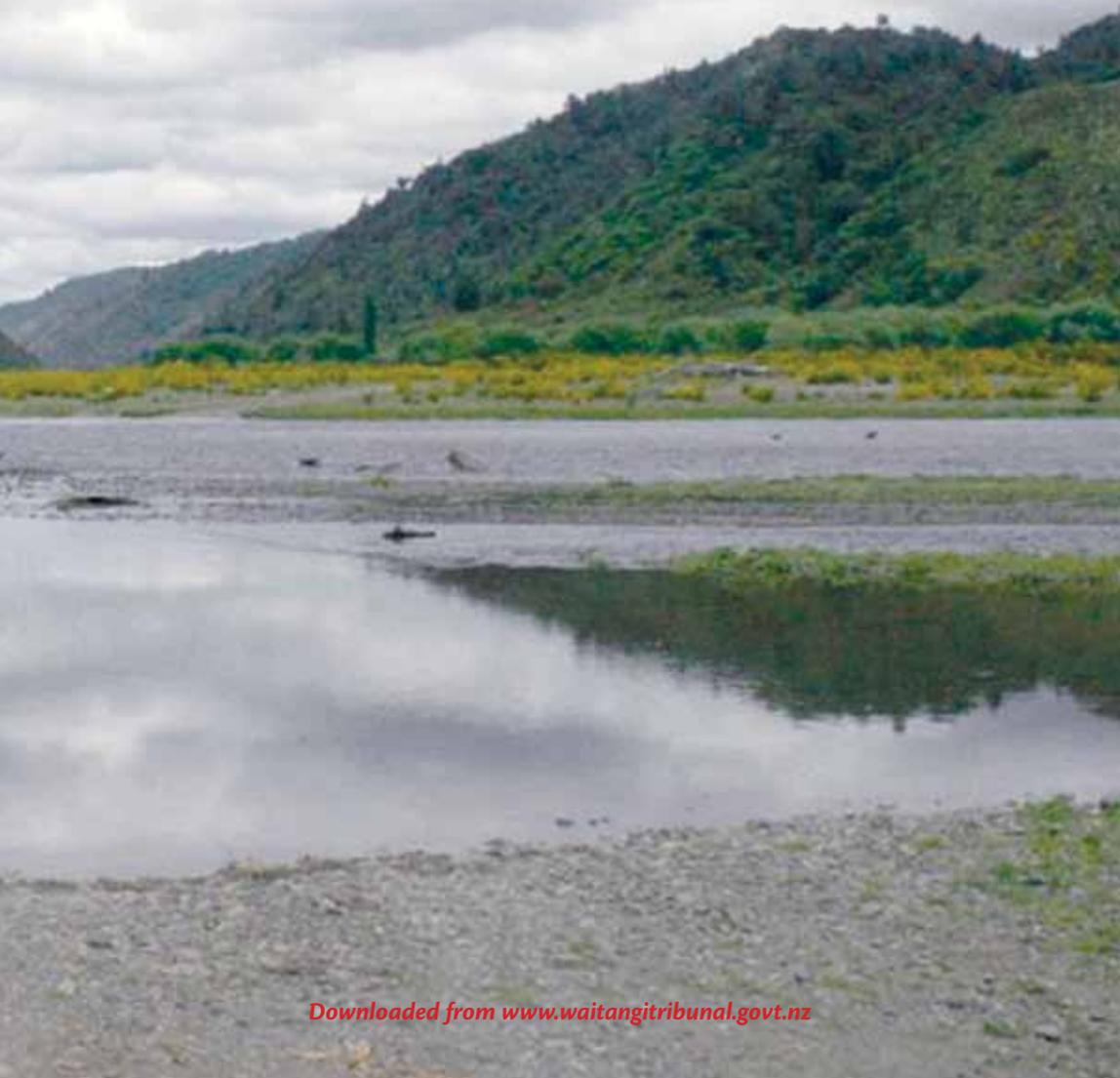
127. Tuhoe-Potiki’s grandmother, Hinemataroa, for example, was of Te Tini o Toi and Nga Potiki descent. See chapter 2 for further explanation of this.

128. Kruger, claimant translation (doc J48(a)), p 6

129. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 20



The Ohinemataroa River flowing through the Ruatoki Valley. Tuhoë whakapapa at Ruatoki is traced back to their earliest ancestors, in particular Ngai Turanga. After the arrival of the Mataatua waka, Tuhoë-potiki's mana at Owhakatoro and Ruatoki was entrenched by his descendants, who formed many hapu.



not far from where the confiscation boundary was drawn many years later. Each built pa in the valley.¹³⁰ In Tuhoe oral tradition, Tuhoe-Potiki established his mana at Owihakatoro by overcoming his brother Ueimua. Subsequently, Ueimua's pa, Kakatarahae, was occupied by Tuhoe-Potiki, or some of his people.¹³¹ The site of Kakatarahae Pa is located approximately two kilometres north of the confiscation line.¹³² Tuhoe-Potiki's mana at Owihakatoro, and later at Ruatoki, was entrenched by his descendants, particularly Ngati Karetehe.¹³³ Nonetheless, Tamati Kruger explained that Tuhoe whakapapa at Ruatoki traces back to the earliest ancestors; in particular, Ngai Turanga. 'Ngai Turanga-Pikitoi has a long-standing jurisdiction in Ruatoki. This was the tribe of Tuhoe. Tuhoe was born here, that is the title of this tribe Ngai Turanga-Pikitoi. The name of Tuhoe came much later.'¹³⁴

Over time, many hapu proliferated at Ruatoki and Owihakatoro. Ultimately, they formed the iwi, taking their identity from the tipuna Tuhoe-Potiki.¹³⁵ As an indication of the number of hapu that exercised rights to land in the Ruatoki Valley, Tuhoe rangatira told Elsdon Best in 1896 of 14 hapu that resided there.¹³⁶ The hapu established numerous kainga and pa throughout the region, particularly at Ruatoki. Best's map of historical pa sites, based on Tuhoe evidence, shows the extent of settlement in the region (see map 4.2). Many of these kainga and pa were on what eventually became confiscated land. These hapu also cultivated the land, utilising its resources and in particular growing crops such as kumara. Hirini Melbourne's map of historical sites indicates the distribution of these cultivations, many of which could be found north of the confiscation line (see map 4.3).

The earliest hapu that exercised rights in the Opouriao Valley were, like those at Ruatoki, descended from Toi. Three hapu in particular emerged from Ngai Turanga and continued to exercise their ancestors' rights at Opouriao. They took the names Ngati Raka, Ngai Takiri, and Ngati Kareke. These hapu occupied 'a considerable part of the Whakatane Valley and also a part of the Waimana watershed.'¹³⁷ The three groups were 'all of the same people as other subtribes of Tuhoe through their ancestral origins from Toi, Hape and Turanga Pikitoi.'¹³⁸

130. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 38

131. Elsdon Best, *Tuhoe: The Children of the Mist – A Sketch of the Origin, History, Myths, and Beliefs of the Tuhoe Tribe of the Maori of New Zealand; with Some Account of Other Early Tribes of the Bay of Plenty District*, 2nd ed, 2 vols (Wellington: AH & AW Reed, 1972–73), vol 1, pp 242, 245

132. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), pp 40–41

133. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 38

134. Kruger, claimant translation (doc J48(a)), pt 1, p 6

135. The development of these hapu and the formation of Tuhoe as an iwi is discussed in further detail in chapter 2.

136. These were Ngati Rongo, Ngati Koura, Ngati Ha, Hamua, Ngati Muriwai, Ngati Kumara, Ngai Turanga, Mahurehure, Ngai Te Kapo, Ngati Murakareke, Ngati Tawhaki, Ngati Korokaiwhenua, Ngati Tamakere, and Ngati Rakei. Some of these hapu were listed as residing in other places in Te Urewera: Binney, 'Encircled Lands, Part 1' (doc A12), pp 17–18.

137. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 30

138. *Ibid*, p 26

The key location in the Opouriao Valley was a pa at the junction of the Ohinemataroa and Tauranga Rivers called Puketi. According to Milroy and Melbourne, this site was held and successfully defended from the time of the earliest peoples through to the time of Ngati Raka.¹³⁹ They explain that Puketi was important as a ‘strategic garrison pa’ that protected the entrance to land further south in Opouriao and Ruatoki. Puketi was also a ‘key centre for the growing and distribution of agricultural products for the rest of Tuhoe’.¹⁴⁰ Adjacent to Puketi was a large kumara plantation called Te Ngutu o Te Ihe.¹⁴¹ Other kumara plots were located to the south of Puketi and on the western bank of the Ohinemataroa River (see map 4.3). This evidence of named, extensive, and traditional kumara gardens suggests at least a degree of permanence – and peace – over a lengthy period. Puketi can be clearly seen today south of Taneatua. As the only hill in the centre of a large plain, its strategic importance to the whole region is undoubted. Whoever held Puketi had a natural defensive position from which to protect all the land that lay to the south.

Another hapu of importance in the area was Ngai Te Kapo, also descended from the union of Nukutere and Te Koata. Through their tipuna, Tairongo, they established themselves at Ohiwa Harbour. Te Kapo o Te Rangi, their eponymous ancestor, and his people were forced to move from Ohiwa by Ngati Awa, and settled at Te Hurepo on the eastern banks of the Ohinemataroa River, north of Puketi. There they built a number of pa.¹⁴² At Te Hurepo stands the maunga Titi-Tangiao and there is a Ngai Te Kapo urupa known as Opihi-Whanaunga-Kore.¹⁴³ According to Milroy and Melbourne, Ngati Pukeko forced Ngai Te Kapo from their land during the 1820s, but they returned following the peace settlement. Te Kapo o Te Rangi Keehi, who was a prominent Tuhoe leader in the 1920s involved in the Tuhoe Raupatu Committee, was born at Te Hurepo. ‘Ngai Te Kapo was one of several Tuhoe hapu who were stripped of all their lands by confiscation.’¹⁴⁴

As we explained in chapter 2, the hapu of the Ohinemataroa Plain forged stronger links with one another over time through marriage and the exercise of rights to resources. In particular, stronger bonds were formed with communities along the Ohinemataroa River – the conduit between Ruatahuna and Ruatoki. Many of the hapu living on the plains at the foothills of Te Urewera came to have a presence in the interior, and vice versa. This was part of the process that led to the emergence of Tuhoe as an iwi.

Early in the nineteenth century, there were shifts in the political landscape as a number of Tuhoe hapu aligned themselves against a series of external threats

139. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), pp 22, 43

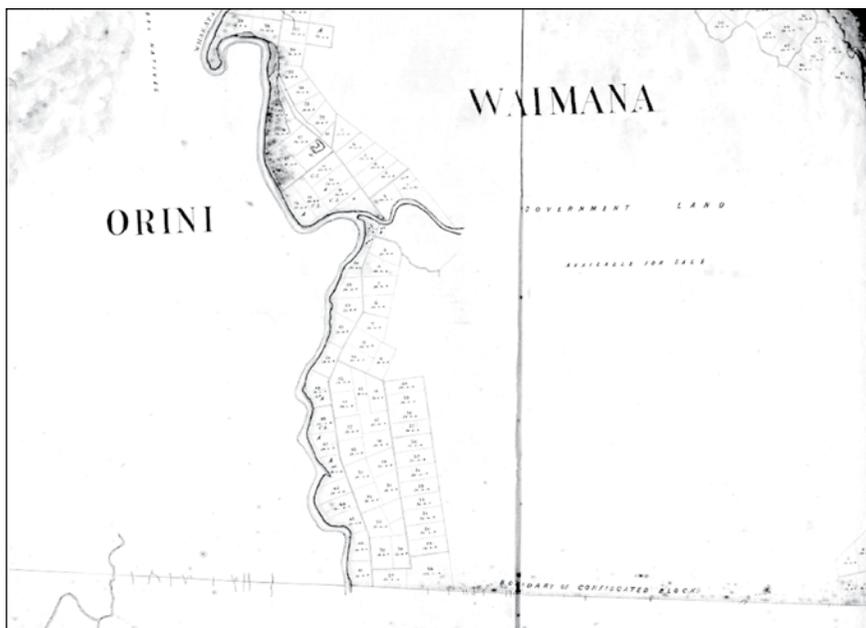
140. Ibid, p 43

141. Ibid, p 130

142. Ibid, pp 45–46

143. Counsel for Te Weeti Tihi and descendants of Ngai Te Kapo, statement of claim, 19 September 2002 (claim 1.1), p [2]

144. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 47



Detail of an 1868 Department of Lands and Survey map showing land parcels in the Bay of Plenty confiscation area along the Whakatane River north of the confiscation line near Ruatoki.

– initially from Ngati Awa and Ngati Pukeko, and later from Ngapuhi. In the course of these developments, Tuhoe hapu were to be found fighting on both sides. At the outset, Ngati Kareke were defeated by Ngati Awa, and many left the district and moved to Ohiwa. In the wake of this defeat, according to Milroy and Melbourne, Ngati Raka put safety and security ahead of kinship obligations and supported Ngati Awa forces against Ngati Rongo, Tamakaimoana, and other Tuhoe hapu.¹⁴⁵

The killing of a Ngati Awa man, Takarehe, was the trigger for hostilities. Ngati Awa, supported by Ngati Raka and Ngai Takiri – and also Ngaiterangi and Te Whanau-a-Apanui – led an attack on Tuhoe at Ohae Pa. Ngati Rongo, through the rangatira Te Purewa, called on their kin Tamakaimoana and Ngai Tama to defeat Ngati Raka and drive them from their settlements in Ruatoki and Opouriao. A series of battles ensued, with each side attacking settlements of the other. The widening sphere of conflict at this time led Ngati Rongo to withdraw from Ruatoki to Ruatahuna to reinforce Tuhoe forces conducting hostilities against Ngati Kahungunu to the south-east, Ngati Pukeko to the west, and Te Arawa to the south-west.¹⁴⁶ Ruatoki hapu remained at Ruatahuna until the peace settlement with Ngapuhi in 1823. This, Milroy and Melbourne state, was the only time before

145. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 32

146. Ibid, pp 32–34

the 1860s that Tuhoe ‘deserted’ the lands of Owhakatoro, Opouriao, and Ruatoki.¹⁴⁷ As we have seen in chapter 2, this temporary withdrawal was in keeping with what might be called normal crisis management.

On the settlement of peace with Ngapuhi, Ruatoki peoples, including Ngati Rongo, Ngati Koura, Ngati Tawhaki, and Te Mahurehure, returned home. To the north, Ngati Raka, Ngai Takiri, and Ngati Kareke returned to Opouriao. Ngati Raka regathered and, together with Whakatohea, launched further attacks on their kin in Ruatoki. Ngati Rongo prepared to deliver what Milroy and Melbourne describe as a ‘final blow’ to Ngati Raka at Te-Pou-o-Urutake in the Waimana Valley.¹⁴⁸ This action was decisive in pushing Ngati Raka from Ruatoki and Opouriao.¹⁴⁹

Thus, Ngati Rongo and the other hapu of Ruatoki settled Opouriao as far north as Puketi, and authority over these lands passed to them. All had strong ancestral connections to this area through Te Hapuoneone and Te Tini o Toi; and the union of Nukutere to Te Koata tied them to the land and to each other. Although Ngati Raka, Ngai Takiri, and Ngati Kareke were dispersed elsewhere following their defeat – Ngati Raka returned later to Te Waimana – they undoubtedly retained some rights to the land. Such was the management of their relationships following conflict. A Ngati Kareke petition in 1924 was submitted to the Government as part of the overall Tuhoe effort to have their confiscation grievances heard.¹⁵⁰

The exact timing of these movements is unimportant, but it appears that the peaceful resettlement of this area had been achieved by the mid-1830s. Elsdon Best placed the date of Tuhoe’s return to Ruatoki at around 1836.¹⁵¹ However, it is likely that they had returned to the district much earlier, probably shortly after the departure of Ngapuhi in 1823. The agreement of peace with Ngati Awa in 1832 – the tatau pounamu at Ohui – would have allowed a much more certain settlement of Ruatoki, Owhakatoro, and Opouriao. What is clear is that by the mid- to late 1830s at the latest, Tuhoe had returned to a peaceful existence on their ancestral lands. Ngati Rongo and Te Mahurehure, under Te Purewa, settled at Puketawhero and Paharehare north of the confiscation line.¹⁵² Te Makarini and his people settled at Puketi Pa, which they used as their main headquarters. They ran cattle there, and grew large cultivations of potatoes, maize, and kumara.¹⁵³ In 1840, Wilson’s father travelled to Ruatoki to test Tuhoe’s support for building a church – further evidence that the communities were settled.

As we have already seen, the only Government representative to visit Te Urewera before the confiscation, C Hunter Brown, reported Tuhoe’s northern boundary as ‘the confluence of the Waimana and Whakatane’ Rivers.¹⁵⁴ He did so

147. Ibid, pp 35–36

148. Ibid, p 34

149. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 113

150. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 331

151. Best, *Tuhoe*, vol 1, p 392

152. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), pp 42–44

153. Ibid, p 38

154. Charles Hunter Brown, ‘Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes’ June 1862, AJHR, 1862, E-9, p 26

on the basis of the information the people gave him. Brown travelled extensively around Te Urewera during his visit in 1862 and was told of Tuhoe's places of residence by those he visited. Three years later, there is evidence that Te Makarini returned to live at Puketi after the conflict at Te Tapiri.¹⁵⁵ Two years after that, Tuhoe were still living at Puketi Pa. This was despite the presence of the ECEF and the conflict in the region. Even after the confiscation in January 1866, and the Rauporoa agreement between Wilson and Ngati Pukeko in December 1866, Tuhoe continued to reside at Puketi. They were still there the following year, when Government agent William Mair rode out to Puketi in an attempt to prevent an exodus by Tuhoe because of a rumoured threat by Ngati Pukeko.¹⁵⁶ Then, following the Compensation Court hearing in September 1867, Tuhoe chiefs – including Tamarau Te Makarini, Te Ahoaho, and Te Ahikaiata – were all at Puketi when they were taken prisoner by Government forces (see the sidebar on pages 256 and 257).¹⁵⁷ Thus, Tuhoe's rights in the Ohinemataroa Plain were maintained right up to the time when confiscation was implemented.

4-5-3.2.2 WAIMANA

The second area of the confiscation zone in which Tuhoe held the strongest interests is the Waimana Valley. Waimana is a crucial connection between Te Urewera and the coast at Ohiwa Harbour. The link is the Nukuhou Stream, which exits the foothills of Te Urewera from the eastern side of the valley and feeds to southern Ohiwa. Either side of the Nukuhou is a narrow but fertile plain, on which military settlements were located following the confiscation. The Tauranga River follows a different course, exiting Te Urewera in a north-westerly direction and travelling through a narrow gorge, after which it connects with the Ohinemataroa River.

The earliest inhabitants of the Waimana Valley, and the ancestors of many of its hapu, were Te Hapuoneone. The tipuna Hape-ki-tumanui-i-te-rangi lived at Waimana and Ohiwa.¹⁵⁸ Waimana also became the domain of Te Tini o Toi, particularly Ngai Turanga, who remained a distinct people in the valley for generations and whose boundary, we were told, was Ohiwa.¹⁵⁹ Here, as in the Ohinemataroa Plain, a number of hapu developed from the union between Nukutere and Te Koata. Subsequent generations saw the emergence of new hapu in the valley. Sissons lists 12 that came to prominence there.¹⁶⁰ While this is unlikely to

155. Miles, *Te Urewera* (doc A11), p146

156. Mair to HT Clarke, 17 April 1867, AJHR, 1867, A-20, p 60 (Binney, 'Encircled Lands, Part 1' (doc A12), p 150)

157. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 43; Binney, 'Encircled Lands, Part 1' (doc A12), p 138

158. Kruger, claimant translation (doc 148(a)), pt 1, p 3

159. *Ibid*, p 6

160. Jeffrey Sissons, 'Waimana Kaaku: A History of the Waimana Block' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A24), pp 8–9. Five of these hapu were listed by Best – Ngai Turanga, Te Whakatane, Ngai Tama, Ngai Te Kapo, and Tamakaimoana: Best, *Tuhoe*, vol 1, pp 37, 79–87, 90–93. Sissons added the remaining seven from the Urewera commission in 1899: Ngati Koura, Ngai Te Kahu, Ngai Tatura, Ngati Kuri, Nga Maihi, Ngai Tamaroki, and Ngati Raka.

TE WAIMANA was an important area as it had easy access to the sea and the inland interiors of Te Urewera.’

Te Kiato Sonny Biddle¹

1. Te Kiato Sonny Biddle, brief of evidence, no date (doc B25), p 4

be an exhaustive list, it is clear that a number of hapu came to exercise rights in Waimana. Many were also established elsewhere in Te Urewera. Further, as Sissons explains, ‘The members of these interrelated hapu also found unity in a common descent from Tuhoe-potiki and his siblings.’¹⁶¹

Over the generations, these hapu established settlements along the Tauranga River. As in the Ohinemataroa Plain, kumara plots were planted – all north of the confiscation boundary (see map 4.3). Best’s map of historical sites, which we have already referred to, shows the densest area of settlement to be along the banks of the Tauranga River, including a number of pa sites north of the confiscation line (see map 4.2). By contrast, there were few sites of historical significance along the banks of the Nukuhou Stream. As we shall see, this absence of settlements can be explained by the location of Whakarae Pa at the head of Ohiwa Harbour.

The hapu of Waimana exercised their rights to land and resources over the generations. In the early nineteenth century, they too experienced a marked but shortlived upheaval. Sissons writes that Waimana peoples withdrew to Maungapohatu in the face of the threat from Ngapuhi.¹⁶² As already noted, this was a normal response to crisis.

Soon after Ngapuhi left and Ngati Raka were defeated at Te Pou-o-Urutake, the Waimana hapu returned to their homes. Sissons notes that there are a number of different traditions regarding this return.¹⁶³ As we shall see, Tuhoe were partly attracted back to Waimana by new trading opportunities. Evidence given later in the Native Land Court emphasises a ‘conquest’ of Ngati Raka that was led by the rangatira Taua and was celebrated in the hakari known as ‘Taua’s feast’ – though we do not think ‘conquest’ is an appropriate term for a defeat of this kind.¹⁶⁴ This was a reoccupation, in which rangatira such as Taua played a dominant role. All of the hapu that returned had long-standing rights to land and resources in the Waimana Valley.

161. Sissons, ‘Waimana Kaaku’ (doc A24), p 9

162. Ibid, p 11

163. Ibid, p 14

164. Evidence of Numia Kereru, Whakatane Native Land Court, minute book 8, 11 August 1905, fols 188–189, 193 (Sissons, ‘Waimana Kaaku’ (doc A24), pp 12–13); Best, *Tuhoe*, vol 1, p 562

What also occurred when these hapu returned was a strengthening of the bonds between Tuhoe and Te Upokorehe at Ohiwa Harbour, and this ultimately reinforced Tuhoe rights in the Ohiwa area.

4.5.3.2.3 OHIWA HARBOUR

Tuhoe have long-standing ancestral connections with Ohiwa Harbour through the tipuna Tairongo, who was the son of Te Kirikino, the fourth child of the union between Nukutere and Te Koata. Tamati Kruger explained the significance of Tairongo at our Ruatoki hearing in January 2005:

Tairongo had the authority of Ohiwa. If you do not have any connection to Tairongo you don't belong in Ohiwa.

From Tairongo came Rongonui, Takiri-o-Rongo, Awaroa and Tama-ruarangi. These are Ngati Takiri, Ngati Tama-ruarangi and Ngati Raumoa; that is me, Tuhoe.¹⁶⁵

Ohiwa Harbour is widely known as Te Moana a Tairongo. A Tuhoe whakatauki conveys the importance of Ohiwa as an economic resource and the connection between Tuhoe and their coastal resources:

No pikipiki mai, no hekeheke atu.

Despite the passing of generations, the bounty of Ohiwa remained plentiful.¹⁶⁶

Ohiwa Harbour has, however, been a contested area because of its resources. Other peoples who have long exercised rights there include Ngati Awa, Whakatohea, and Te Upokorehe. All of these groups have connections to Ohiwa through Tairongo. Milroy, Melbourne, and Nikora, acknowledging the various tribal rights, state that 'no one tribe can claim Ohiwa for itself alone.'¹⁶⁷ As we have seen, Mr Kruger, considering the nature of rights in this area, described Ohiwa as an example of both roha rohai and ahi tahutahu lands. Referring to roha rohai, he said:

Ohiwa is an example of such common land. Te Whakatohea, Ngati Awa and Tuhoe would all be seen there. Not one of them was able to exclude the other from the area. The purpose of such areas varied and would be agreed by all those who used the area. It was the same whether it was lands for fowling, for cultivation, or grounds for fishing. These are the concepts of the roharohai.¹⁶⁸

Mr Kruger also referred to Ohiwa as a place of ahi tahutahu, where resources were used as required.¹⁶⁹ Thus, Tuhoe fires did burn at Ohiwa, but not continuously.

165. Kruger, claimant translation (doc J48(a)), pt 1, p 7

166. Sissons, 'Waimana Kaaku' (doc A24), p 8

167. Milroy, Melbourne, and Nikora, 'Bay of Plenty Confiscation' (doc A123), p 7

168. Kruger, summary of evidence regarding 'Ruatahuna, Part 1' (doc D28), pp 28–29

169. Ibid, p 29

Tuhoe's connection to Ohiwa was ancestral and affirmed by the exercise of rights to resources. Their connection to the area was particularly maintained through their relationship with Te Upokorehe, whose primary place of residence was at Kutarere. Sissons explains the relationship between the different hapu of Waimana and the establishment of rights to Ohiwa:

Te Waimana hapu, especially Ngai Turanga, Te Whakatane and Ngati Raka, played an important role in ensuring Tuhoe access to the coast and maintaining rights to coastal land and resources. Particularly important in this regard were ties between Tuhoe hapu of Te Waimana and their Te Upokorehe relatives.¹⁷⁰

Kin links between Waimana hapu and Te Upokorehe developed over many generations. The Tuhoe rangatira Tamaikoha, for example, had important ancestral connections to Te Upokorehe.¹⁷¹

Following their return to Waimana in the 1820s, Tuhoe strengthened this relationship through further marriage alliances. Sissons explains:

The leaders and the majority of the inhabitants of Te Waimana were Tuhoe, but there were also Te Upokorehe who lived among them as spouses. When Tamaikoha grew to manhood he married Titia, who . . . was of both Tuhoe and Te Upokorehe descent. This marriage may well have been arranged and was a reinforcing of earlier marriage alliances forged after Taua's conquest.¹⁷²

Alongside Tuhoe's ancestral rights through the tipuna Tairongo, the closer relationship with Te Upokorehe would have only strengthened Tuhoe's place at the harbour. This was a major purpose, we assume, of the management of that relationship.

Te Upokorehe kaumatua Charles Aramoana explained the relationship of his hapu with Tuhoe today. He described Te Upokorehe as a hapu of Whakatohea, with strong connections to Tuhoe. 'Our whakapapa joins with both Whakatohea and Tuhoe.'¹⁷³ For Ohiwa, Mr Aramoana claimed kaitiaki status for Te Upokorehe – they were tangata whenua in the region. However, he stated that Tuhoe had clear rights when it came to the harbour:

I'm not saying that Upokorehe are the only people with customary interests within this region. Tikanga Maori in relation to land and resources are very complex things. For example, we know that Tuhoe have rights to access Te Moana-o-Tairongo [Ohiwa]. Also Upokorehe would never consider it could dictate to Tuhoe in the Waimana lands. We just have rights in those lands.¹⁷⁴

170. Sissons, 'Waimana Kaaku' (doc A24), p 8

171. Ibid, p 10

172. Ibid, p 14

173. Charles Aramoana, brief of evidence, 14 January 2005 (doc J46), p 3

174. Ibid, p 6

This nuanced statement reflects the complex historical development of the relationship between Tuhoe and Te Upokorehe. Mr Aramoana's evidence demonstrates the strong bonds that exist between Tuhoe and Te Upokorehe to this day, and the reciprocal arrangement that allows both to maintain rights in different areas or different rights in the same area.

While Tuhoe cultivated their connection to Ohiwa Harbour through closer relationships with Te Upokorehe, they cemented their presence there by settling and defending the strategic hilltop pa known as Whakarae. Whakarae, along with Puketi, is the most crucial site in any analysis of Tuhoe's interests in this area of the confiscation zone. It is a site of undoubted importance in the region, standing above the head of the harbour on an adjacent hill and near to the mouth of the Nukuhou Stream. Milroy and Melbourne describe it as a 'majestic landmark'.¹⁷⁵ Judith Binney says:

Whakarae had long been a guardian of Tuhoe's access route from inland to gather kaimoana from the Ohiwa harbour. Tuhoe elder Hohepa Kereopa states that 'Whakarae' pa was the commanding, inland hill-pa that stands on the eastern side of the Nukuhou river valley. There was, however, also a series of ridge pa, extending over four kilometres, with five major tahi (platforms or central fortifications) on the north side of the Nukuhou river. This complex is also called 'Whakarae' on archaeological site reports. The ridge-pa complex dates from the sixteenth century, and it also has an identifiable archaeological history of occupation in the first half of the nineteenth century.¹⁷⁶

The pa protected the Nukuhou River, the major arterial route into Te Urewera. According to Binney:

The gunfighter pa itself commands a particularly fine view over Wainui valley to the west, over Hokianga island and the heads of the Ohiwa harbour, the coastal route to Opotiki in the east, and the overland route south up the Nukuhou river to Waimana. It is manifestly a controlling site. Equally so is the isolated hill-pa, whose height would give a clear view of the harbour. Nineteenth-century evidence suggests that the Whakarae complex guarded Tuhoe and Ngati Raka's access to the sea.¹⁷⁷

As Binney points out, the importance of Whakarae can be seen in the 'marked absence of defensive sites' south of the pa: 'The complex of pa had clearly protected one frequently used route from Waimana down to the Ohiwa harbour. In this way, Tuhoe and Ngati Raka regularly obtained their shellfish supplies.'¹⁷⁸ Whoever controlled Whakarae also controlled the Nukuhou River and the area to the south.

175. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 65

176. Binney, 'Encircled Lands, Part 1' (doc A12), p 22

177. *Ibid*, p 23

178. *Ibid*

At the time of confiscation, Whakarae had been in the control of Tuhoe hapu for some time. As Milroy and Melbourne explain, it offered Tuhoe who lived in the Waimana Valley the ability to control lands that led to the coast:

Ngati Raka and Ngai Tauranga hapu of Waimana and Ohiwa held steady occupation of the lands from the confiscation line to Ohiwa. They were in permanent occupation and they possessed extensive cultivations and cemeteries through these lands.¹⁷⁹

Following the confiscation, Whakarae became the primary place of residence of Tuhoe leader Rakuraku Rehua. The move was perhaps in anticipation of the imminent hearing of the Compensation Court, where he presented a claim to Ohiwa on behalf of Ngai Tuhoe. In 1869, William Mair described Rakuraku's pa on the Whakarae complex:

Rakuraku's pa, Whakarae . . . is situated on a commanding hill, about a mile and a half from the headwaters of Ohiwa. The pa is visible from all parts of Ohiwa and is about five miles from the sea . . . but the approaches for several miles are such as to render it very doubtful whether an adequate force could surround the pa by surprise.¹⁸⁰

Mair clearly saw the key strategic importance of the pa and the strength of the group that occupied it. Rakuraku also had a pa further to the south inside the confiscation block.¹⁸¹

Counsel for the Mokomoko whanau questioned Professor Binney about the nature of Tuhoe's rights at Whakarae. Binney acknowledged the contested nature of land in that region but emphatically stated that Tuhoe had established a firm presence in the land as far north as Whakarae well before the confiscation:

Tuhoe and Ngati Raka, who were closely associated at Te Waimana, had a defended path to the Ohiwa down beside Nukuhou river by the early nineteenth century. On the earliest maps that we possess (1869), Whakarae is clearly marked as 'Rakuraku's pa'. The track down from Te Waimana to Whakarae and the harbour is also marked on these maps. . . . The track passed by Rakuraku's other pa, situated slightly further inland, and called variously 'Horewea', 'Hororoa' and 'Horoera'. In 1867 this pa was described as being situated near to 'the Kahikatea forest' inside the confiscated block. . . .

I do not doubt that others lived near these pa, or that the zone had . . . been contested land. But by the early nineteenth century, that is after the return of Tuhoe to this area following the Nga Puhī raids in the 1820s, this region came under the sphere of Tuhoe's mana. Tamaikoha stated this fact very plainly, on several occasions, to the

179. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 66

180. W Mair, AJHR, 1869, A-12, p 39 (Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 66)

181. Binney, 'Encircled Lands, Part 1' (doc A12), p 156

Native Land Court. From this time, that is the late 1820s–early 1830s, Te Upokorehe lived in a close, and probably inseparable association with Tuhoe.¹⁸²

A consideration of the evidence as a whole confirms Binney’s analysis. Rakuraku’s whakapapa, in any case, linked him to the earliest peoples of the region and, in particular, to Ngai Turanga, the hapu he identified with before the Native Land Court. His move to Whakarae in the 1860s can therefore be seen as a taking up of his ancestral rights.¹⁸³

By the middle of the nineteenth century, Tuhoe had guaranteed and continued access to Ohiwa Harbour, which included a number of settlements in the region. Milroy and Melbourne state that a study of the names along the shore of the harbour confirms Tuhoe’s ‘long association with Ohiwa’. On the eastern and southern shores, historical sites recall the names of Te Whakatane tipuna.¹⁸⁴ In short, it is abundantly clear that Tuhoe had long-established rights at Ohiwa at the time of confiscation in 1866. These rights derived from the tipuna Tairongo and were exercised predominantly, though certainly not exclusively, by the northern hapu that resided in Waimana. The closer relationship these hapu established with Te Upokorehe in the early nineteenth century created a firmer footing for Tuhoe at the harbour, and allowed hapu to move more freely into harbour lands and islands.

4.5.3.2.4 RANGITAIKI AND WAIOTAHE

Two rivers border Tuhoe’s area of interest in the confiscation zone. To the west of the Ohinemataroa Plain, the Omataroa Forest stretches 10 kilometres to the Rangitaiki River. There, Tuhoe hapu had some rights at Lake Matahina. However, this was also a location in which Ngati Awa and Te Arawa groups held strong rights. To the east of the Waimana Valley is the Waiotahe River. Tuhoe also had rights here, ‘particularly in the Wakataua and Kahikatea flats.’¹⁸⁵ However, this was predominantly an area of Whakatohea settlement – particularly the hapu Ngati Ira. As with the western region, Tuhoe influence gradually waned further to the east.

4.5.3.3 Ngati Awa evidence

We turn now to consider the evidence and arguments of Ngati Awa claimants, particularly Professor Hirini Mead and Samuel Te Hau o Te Rangi Tutua. We reiterate that it is not for us to make findings about the strength of respective Tuhoe and Ngati Awa rights and interests in particular places or to define a boundary between the two. Some of the Ngati Awa evidence, however, challenges the extent of Tuhoe’s interests in a number of areas.

182. Judith Binney, response to questions of clarification posed by counsel for Mokomoko whanau, 30 November 2003 (doc B1(e)), pp [4]–[5]

183. Ibid

184. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 64. Milroy and Melbourne state that there are many places ‘associated with the memory of Panekaha, Kahuki, Hakapurakau and the Hokowhitu a Whakatane.’

185. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 67

Professor Mead stated that one consequence of the wars between Ngati Awa and Tuhoe – which spanned over 200 years, from the 1600s to the 1830s – was the ‘eventual wide separation of the combatants’. This meant that Tuhoe withdrew mostly to Te Whaiti and Ruatahuna, and Ngati Awa to the coast and the swampy fringes of the Rangitaiki River. According to Professor Mead, ‘places such as Waimana, Ruatoki, and Waiohau were deserted and people could not carry out their normal activities.’¹⁸⁶ More specifically for the confiscated lands, Professor Mead stated that the lands within the confiscated territory from Otamarakau to the eastern side of Ohiwa were Ngati Awa lands. He disputed ‘the Tuhoe claim that their territory extends to Kiwinui and across to Ohiwa’ and argued that Tuhoe’s area was much further to the south.¹⁸⁷ He also said that the tatau pounamu at Ohui was not a boundary marker between the two iwi but rather a symbol of the peace agreement that had been reached.¹⁸⁸ Finally, he referred to the Rauporoa agreement between Wilson and Ngati Pukeko and Ngati Awa tipuna in December 1866. He said that the agreement was entered into under duress and that Ngati Awa do not regard their traditional interests as bounded to the east by the Whakatane River. He rejected the suggestion that, because Ngati Awa had ‘ceded’ land to the east of the Whakatane River, this land was not theirs in the first place.¹⁸⁹

We acknowledge Professor Mead’s evidence on the fairness of the Rauporoa agreement. This Tribunal is not tasked with, and is in fact statute-barred from, considering the Treaty-compliance of the Rauporoa agreement with regard to Ngati Awa, but we note that Mead’s point about that agreement was supported by the Tribunal in its *Ngati Awa Raupatu Report*.¹⁹⁰

We agree that the tatau pounamu at Ohui did not indicate a boundary but was rather a symbol of the peace brokered between the two iwi.¹⁹¹ We find ourselves unable, however, to support the proposition that Tuhoe had withdrawn to the interior of Te Urewera for 200 years. The tatau pounamu was not the centre of a ‘no man’s land’. As we have seen, Tuhoe mana had long been established in the river valleys and plains. While it is clear that Tuhoe hapu departed their settlements for a time in the early nineteenth century, this was merely temporary. By the time of the Crown’s confiscation in 1866, Tuhoe had long returned, and had been living on their lands in peace for a generation.

Te Hau Tutua challenged Tuhoe claims to Ohiwa on the basis that Ngati Awa have mana over the harbour. He stated that the major battles over Ohiwa during the early nineteenth century were between Ngati Awa and Whakatohea – not Tuhoe. In the early 1830s, Ngati Awa evicted Whakatohea from the Opotiki region, and the mana of Ohiwa passed to Ngati Awa. Whakatohea returned to Opotiki in 1840, but not to Ohiwa. After attempted mediation from the Kingitanga, Ngati

186. Mead, brief of evidence (doc L23), pp 4–5; Hirini Moko Mead, oral evidence, Taneatua School, Taneatua, 28 February 2005

187. Mead, brief of evidence (doc L23), p 6

188. Ibid, pp 5–6

189. Ibid, pp 6–7

190. Waitangi Tribunal, *Ngati Awa Raupatu Report*, pp 81–82

191. On the tatau pounamu at Ohui, see chapter 2.

Awa and Whakatohea still disputed land to the east of Ohiwa and on the harbour's islands.¹⁹² According to Tutua, this was the situation until the confiscation. As a result, Ngati Awa is able to claim Ohiwa through to Kutarere through ancestry, ahi kaa, and the eviction of Whakatohea; Whakatohea could claim only the eastern side of Ohiwa.¹⁹³ Tuhoe, Tutua argued, had no mana or ahi kaa at Ohiwa: 'They haven't settled at Ohiwa and they haven't been there continuously. They have been there and fought in battles with Whakatohea. But they haven't stayed. They left and went back to Ruatahuna.'¹⁹⁴ Tuhoe established only restricted rights of access. Most importantly, Tutua argued, 'These rights only existed after the raupatu.'¹⁹⁵

These assertions raise a number of issues relating to overlapping claims that this Tribunal is not able or required to assess. It is clear to us that Tuhoe had an established presence at Ohiwa before the confiscation, particularly through their occupation of Whakarae. We cannot agree that Tuhoe's rights to the harbour were created after the raupatu or that Tuhoe never settled at Ohiwa. In addition, these assertions ignore the complex history between Tuhoe and Te Upokorehe. As we have seen, the evidence of Tuhoe claimants, and of Charles Aramoana, attests to the close and ongoing relationship between Tuhoe and Te Upokorehe at Ohiwa. Only these parties are in a position to describe their relationship. Tuhoe claimants have sufficiently established to us that they have exercised rights to Ohiwa Harbour.

4.5.3.4 Tuhoe's furthest reach – Wai 36 Tuhoe boundary

Having examined the historical and traditional evidence of Tuhoe's interests in the confiscation zone and considered the objections of Ngati Awa to this evidence, we turn to consider the arguments of Wai 36 Tuhoe claimants about the extent of Tuhoe's loss. Counsel argued that Tuhoe's interests in the confiscated area amount to 124,300 acres (50,300 hectares) and urged the Tribunal to find that their loss amounted to this figure.¹⁹⁶

This figure of 124,300 acres derives from a report by Milroy, Melbourne, and Nikora. They state that the extent of the loss is shown by a boundary described by Tuhoe at various times over a century. This boundary is primarily sourced from three pieces of evidence:

- ▶ a boundary given by the Tuhoe tribal body, Te Whitu Tekau, in 1872;
- ▶ a boundary given by Tuhoe leader Te Kapo-o-te-rangi Keehi to the Tuhoe raupatu komiti in 1926; and
- ▶ a boundary given by Tuhoe leader Paki Tamahou McGarvey to a general hui of Tuhoe in 1971.¹⁹⁷

Milroy, Melbourne, and Nikora emphasise the comparative consistency of these boundaries.

192. Te Hau Tutua, brief of evidence, February 2005 (doc L24), pp 3–4

193. *Ibid*, pp 4–5

194. *Ibid*, p 5

195. *Ibid*

196. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 26

197. Milroy, Melbourne, and Nikora, 'Bay of Plenty Confiscation' (doc A123), pp 2–3

The descriptions given by Te Hui-o-te-Whitu-Tekau in 1872 . . . is consistent. Te Kapo gave his description 54 years later in 1926 and given that it is not likely that he would have had access to the writings of Te Hui-o-te-Whitu-Tekau, it is remarkable how his description is still reasonably consistent with the 1872 description. Paki McGarvey gave his description 45 years later in 1971, and given that it is not likely that he would have had access to the Tuhoe Raupatu Komiti minute book or old survey plans, it is amazing how his description substantially endorses that of Te Kapo and as to how he has recalled place names in greater detail.¹⁹⁸

Milroy, Melbourne, and Nikora drew on these boundaries to map the ‘Tuhoe tribal boundary’. On the basis of digitised mapping and calculations supplied by the Department of Survey and Land Information, the area within this boundary amounts to 124,300 acres. This includes the entire area of Ohiwa Harbour, which – inclusive of the islands – they estimated at 6,920 acres (2,800 hectares).¹⁹⁹

We agree that the three boundaries are remarkably consistent and reflect a genuine historical memory of Tuhoe’s loss by raupatu. However, we cannot agree with the implication that this is an exclusive boundary, within which Tuhoe had sole rights to the land. The boundary put forward by Te Whitu Tekau should be considered in its specific historical context. Binney argues that the primary purpose of the tribal body, formed in 1872, was ‘to attempt to hold the people and the remainder of their lands together.’²⁰⁰ Confiscation and subsequent surveying created an environment in which boundary markers indicated real lines on the ground, rather than simply reflecting the extent of the area where a hapu or an iwi held customary interests. As Miles explains of Te Whitu Tekau,

Tuhoe reasserted a physical control over their district by making it plain in their letter [to the Government] that the chiefs of each Tuhoe district were responsible for the safeguarding of tracks leading into the Urewera. Their boundaries were marked by carved posts placed on the pathways; Best has noted that the pou on the confiscation line at Ruatoki read, ‘hai arai i te Pakeha me ana mahi – to keep off the white man and his works.’²⁰¹

When confiscation created a boundary through their takiwa (district), Te Whitu Tekau formally asserted customary Tuhoe rights to land in the Urewera region. A key concern at that time was to create a takiwa within which Te Whitu Tekau’s authority, rather than the Crown’s, could be enforced. We discuss Te Whitu Tekau further in a later chapter of this report.

For these reasons, we do not consider that the Te Whitu Tekau boundary can be taken as reflecting an exclusive customary boundary. As we have noted earlier, tribal takiwa are characterised, particularly at their outer reaches, by zones of

198. Ibid, p6

199. Ibid, p7

200. Binney, ‘Encircled Lands, Part 1’ (doc A12), p362

201. Ibid, p195

overlapping interests that are difficult to untangle. This is certainly the case for the confiscation area, especially on the banks of the Ohinemataroa River north of Puketi and in the areas around Ohiwa Harbour. Tuhoe's rights and interests at the outer reaches of their takiwa, on the Rangitaiki and Waitoaha Rivers, are undoubtedly weaker than those in Owihakatoro, Opouriao, Ruatoki, and Waimana. The boundaries offered by Tuhoe leaders, first in 1872, then again in 1926 and 1971, served their own purpose at those times. Certainly, they also reflected Tuhoe authority, and customary rights and interests in the confiscation zone, which is our primary concern here.

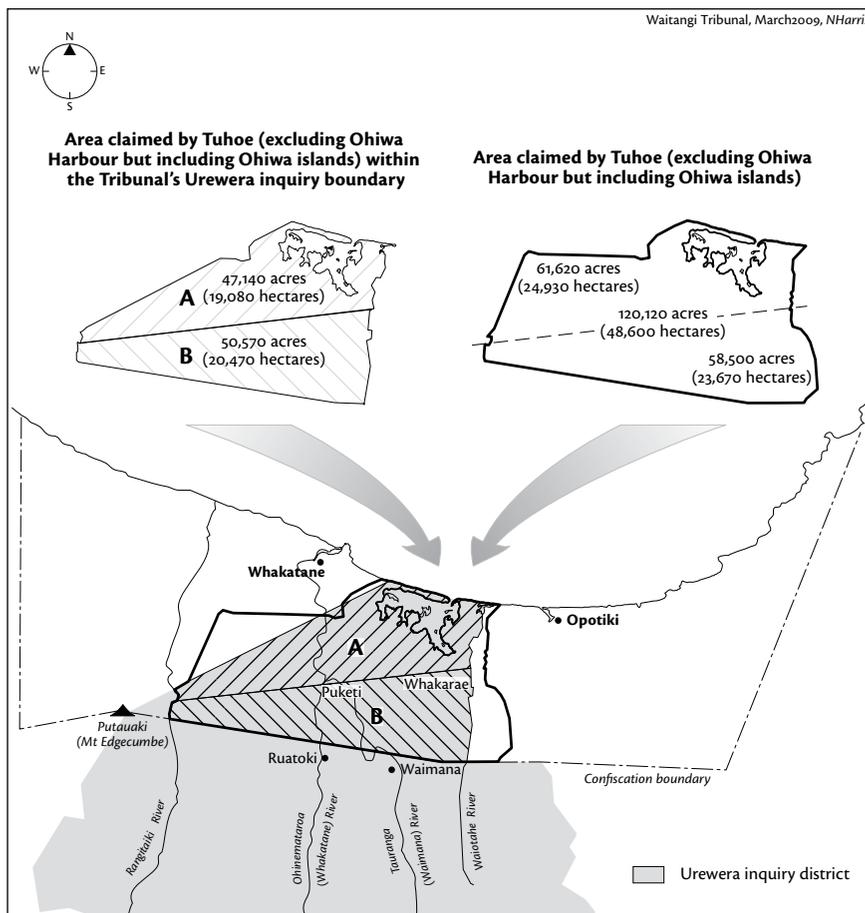
4-5-3-5 Quantifying the loss of land

Before we offer our conclusions on how much land was confiscated from Tuhoe, it should be noted that some of the area claimed by them is outside our inquiry district. The inquiry boundary cuts from the Rangitaiki River in a north-easterly direction across the Omataroa Forest. On the eastern side, the boundary stops at the Waitoaha River, excluding lands on the eastern bank cited by Wai 36 Tuhoe claimants as part of their rohe. In addition, our inquiry boundary excludes the seabed and foreshore of Ohiwa Harbour. Clearly, we can make findings only on areas within our inquiry district boundary. However, this does not preclude claimants taking their case into negotiations with the Crown.

Our analysis leads us to the following conclusions regarding Tuhoe's rights and interests within the land confiscated by the Crown. On the evidence, the key point in the Ohinemataroa Plain is Puketi – the approximate location of modern-day Taneatua. Although the Tuhoe hapu Ngai Te Kapo had settlements in Te Hurepo (the area north of Puketi), this area was strongly contested by Ngati Awa and Ngati Pukeko. In contrast, hapu of Tuhoe settled and successfully defended all the land up to Puketi over generations. Up to the junction of the Ohinemataroa and Tauranga Rivers, Tuhoe clearly exercised their mana, and their rights to these lands were age-old and determinedly upheld. This is not to deny the claims of other hapu and iwi to land south of Puketi but simply to state the strength of Tuhoe's rights. In the Waimana Valley, Tuhoe exercised rights to and authority over the land within the area extending to Whakarae. Tuhoe had rights of access to Ohiwa Harbour and rights to utilise the resources of the harbour itself, which they held in common with other hapu and iwi.

In summary, by 1866, Tuhoe had achieved the sustained exercise of rights to and authority over the area south of Puketi in the Ohinemataroa Plain and, in the east, south of Whakarae. North of Puketi and Whakarae, Tuhoe had coexisting and sometimes conflicting customary rights and interests with a number of other hapu and iwi.

If we consider these as two distinct 'areas of interest', then it is possible to begin to quantify Tuhoe's interests as an approximate acreage. We reiterate that we consider only lands claimed by Tuhoe that fall within our inquiry district. A line intersecting Puketi and Whakarae creates two inexact but workable areas for our purposes. We will call the area to the north 'area A' and the area to the south



Map 4.4: 'Areas of interest' (A and B) designated in the Tribunal's findings

'area B'. Area A contains 47,140 acres (19,080 hectares); area B, 50,570 acres (20,470 hectares).²⁰² See map 4.4.

We consider Tuhoē's interests in area A to be equivalent to 30 per cent. This figure reflects what we consider to be the proportion of Tuhoē's rights and interests in relation to those of Ngati Awa, Whakatohea, Te Upokorehe, and other groups that may have had interests. It includes the area around Ohiwa Harbour, where Tuhoē had settlements, including the Wainui Valley. To the north of Puketi, area A includes Te Hurepo, where Ngai Te Kapo resided. Further to the west, area A

202. Areas A and B have been computed in MapInfo GIS from a digitised tracing of the map in Milroy, Melbourne, and Nikora, 'Bay of Plenty Confiscation' (doc A123). Thus, the figures given for these areas have a slight margin of error, but one that is not material for negotiation purposes.

Area	Confiscation area in inquiry district		Tuhoe's interests	
	Acres	Hectares	Acres	Hectares
Area A	47,140	19,080	14,142	5,724
Area B	50,570	20,470	45,513	18,423
Total	97,710	39,550	59,655	24,147

Table 4.1: A comparison of Tuhoe's total interests within the inquiry district with their interests in the Wai 36 Tuhoe boundary based on 'areas of interest' (A and B)

includes much of the Omataroa Forest. All of these were areas of shared interests with other hapu and iwi. For these reasons, we believe a figure of 30 per cent best reflects the extent of Tuhoe rights and interests in area A. Converted into acres, this figure is 14,142 acres (5,724 hectares).

While it is evident that Tuhoe had shared interests in area A, it is also clear that they have the paramount claim within area B. We consider that in this area their rights and interests are equivalent to a figure of 90 per cent. Area B includes all the land in the Opouriao Valley south of Puketi and the area in the Waimana Valley to the south of Whakarae. It also includes the western reaches of the Omataroa Forest where it meets the eastern bank of the Rangitaiki River. Although our inquiry boundary extends beyond the river and the area claimed by Wai 36 Tuhoe, we have considered only the land inside their boundary line. The figure of 90 per cent, in our view, fairly reflects Tuhoe's interests over the whole of area B, based on the nature and extent of the authority they exercised and their history of settlement and resource use, while leaving room for the claims of other iwi. Expressed in acres, this percentage for Tuhoe interests within area B equates to 45,513 acres (18,423 hectares).

Combining our findings for area A and area B, Tuhoe's total interests amount to an equivalent of 59,655 acres (24,147 hectares). As noted, this finding is based on land inside the Urewera inquiry district. See table 4.1. If, however, Tuhoe wish to enter into negotiations with the Crown on the basis of the Wai 36 Tuhoe boundary, the combined area of Tuhoe interests is 71,136 acres (28,782 hectares). See table 4.2.

4.5.3.6 Grants of land to Tuhoe in the confiscation district

Having concluded that the equivalent of 59,655 acres was confiscated from Tuhoe within the Urewera inquiry district, we also note that, over the course of several decades in the late nineteenth century and early twentieth centuries, only one area within the confiscation zone was returned to them.

In 1874, a total of 142 acres (57 hectares) was set aside for Rakuraku Rehua and his immediate hapu (at the time, 38 people) at Whakarae. But the title was not available until 1905.²⁰³

203. Binney, 'Encircled Lands, Part 1' (doc A12), pp 23, 362

Area	Confiscation area		Tuhoe's interests	
	Acres	Hectares	Acres	Hectares
Area A	61,620	24,930	18,486	7,479
Area B	58,500	23,670	52,650	21,303
Total	120,120	48,600	71,136	28,782

Table 4.2: A comparison of Tuhoe's total interests within the inquiry district with their interests in the Wai 36 Tuhoe boundary based on 'areas of interest' (A and B)

There are four further matters to consider. For the sake of completeness, we list them here. None, however, involves a grant to Tuhoe:

- ▶ Te Upokorehe and Tuhoe leader Hemi Kakitu obtained confiscated land in the Waiotaha region; however, his land was purchased from the Government and so cannot be regarded as a formal grant.²⁰⁴
- ▶ Another reserve was ostensibly granted to the supporters of Te Kooti in the Wainui Valley adjacent to Ohiwa Harbour. This reserve, totalling 600 acres (243 hectares), was gazetted in 1895 as a general Crown reserve for Maori. Initially, a proposal was made to grant the land to Te Kooti. Tuhoe leader Kereru Te Pukenui later asked the Government to grant the land to Tuhoe so that they could have a place of residence near the sea. Binney says that the land, when it was eventually granted, 'was not given to Te Kooti, nor to Tuhoe'. Instead, it was gazetted as a general Crown reserve and later, in 1923, transferred to the Haahi Ringatu (Ringatu Church).²⁰⁵
- ▶ We also note here the issue of the Crown's promised reserve for Ngati Whare and Ngati Haka Patuheuheu at Te Putere. A Government schedule in 1873 outlining the allocation of the confiscated lands included a column entitled 'Land Given to Surrendered Urewera'. The 500 acres (202 hectares) recorded next to the column was, in fact, the promise of a reserve made by Donald McLean to Ngati Whare and Ngati Haka Patuheuheu. According to Binney, McLean made the promise in 1872 and the 500 acres that appeared on the 1873 list of the disposal of confiscated lands was probably to accommodate that promise.²⁰⁶ Ngati Whare and Ngati Haka Patuheuheu continued in their attempts to secure title to the reserve into the twentieth century, but to no avail.²⁰⁷ Crown counsel conceded in closing submissions that 'The reserve should have been arranged, or compensation negotiated. The Crown failed to carry out its original arrangements.'²⁰⁸ While we acknowledge the Crown's

204. Ibid, p 301

205. Ibid, pp 363-364

206. Ibid, p 356

207. David Armstrong, 'Ika Whenua and the Crown, 1865-1880' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A46), pp 101-112

208. Crown counsel, closing submissions (doc N20), topic 3, p 35

concession, it should be noted that Ngati Whare and Ngati Haka Patuheuheu were not the hapu whose land was confiscated. Rightfully, it was someone else's land and should never have been promised in the first place. However, this does not diminish the right of Ngati Whare and Ngati Haka Patuheuheu to seek redress for the Crown's failed promises, particularly in light of other events.

- ▶ Eru Tamaikoha received two very small sections (of one rood each) in Opotiki on the request of the Native Minister.²⁰⁹ This was not a return of Tuhoe land, nor was it made in connection with the confiscation (see chapter 5).

The grants to Rakuraku and Tamaikoha were the only lands officially granted to individuals or hapu of Tuhoe. This miniscule amount does not change our conclusion as to the overall impact of the confiscation on Tuhoe. They were so small as to be derisory in the context of Tuhoe's loss.

4-5-3-7 Conclusions

Our conclusions as to how much Tuhoe land was taken by confiscation is as follows:

- ▶ For the sole purpose of settlement negotiations with the Crown, we estimated the extent of Tuhoe's customary rights and interests as a percentage of the confiscation area that falls within our inquiry district. We cannot be mathematically precise about such a percentage, nor do our figures represent particular areas on the ground. Our estimate is based on our assessment of the strength of Tuhoe's rights and interests in two adjacent zones, which we delineated on the basis that the rights and interests in them were markedly different.
- ▶ Tuhoe's customary rights and interests in the confiscation zone were extensive, though not exclusive. Tuhoe were paramount in area B, which we have represented as a 90 per cent interest. In area A, Tuhoe share interests with other iwi, and we have represented their share as 30 per cent. Taken together, these percentages represent a figure of 59,655 acres (24,147 hectares).
- ▶ The only land in the confiscation district granted to Tuhoe individuals or hapu was 142 acres at Whakarae to Rakuraku Rehua and his hapu, and two one-rood sections in Opotiki to Eru Tamaikoha.

4.5.4 Treaty analysis

The Crown acknowledges that it made the undertakings in the Treaty of Waitangi to all Maori, whether or not they or their rangatira signed it or had the opportunity to do so. The most fundamental of its promises is stated in the Maori and English-language versions of article 2, as follows:

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa . . .

209. Miles, *Te Urewera* (doc A11), p 151

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of the Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession . . .²¹⁰

The English text of the Treaty is not a translation of the Maori text and does not convey a clear sense of the meaning of tino rangatiratanga. In Professor Hugh Kawharu's English translation of the Maori text, the quoted part of article 2 provides: 'The Queen of England arranges [and] agrees to the Chiefs to the subtribes to people all of New Zealand the unqualified exercise of their chieftainship over their lands over their villages and over their treasures all.'²¹¹

The article 2 promise is strengthened by the Treaty's protective purpose, readily apparent in the wording of its preamble. There, Her Majesty states that, 'in consequence of the great number' of her own subjects 'who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress', she is 'anxious to protect the just Rights and Property' of the 'Native Chiefs and Tribes of New Zealand' and 'to secure to them the enjoyment of Peace and Good Order'. To that end, it is stated, Her Majesty is 'desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects'. The protective role of the Crown is also made plain in article 3 of the Treaty, where Her Majesty 'extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects'.

The Treaty principles of active protection and good government derive from the Crown's article 2 promise and its protective role. The former principle holds that the Crown must not merely refrain from conduct that jeopardises the retention of tribal lands and other properties; it must also take such positive action as is reasonable to ensure that the properties are retained where that is desired. In 1987, the president of the Court of Appeal put it this way: 'the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable.'²¹²

The central tenet of the principle of good government is that the Crown will obey the law – a vital matter if its conduct towards Maori is to be predictable, not capricious.²¹³ The Crown's obligation to act within the law also gives rise to an

210. See the Treaty of Waitangi texts in English and Maori in the first schedule to the Treaty of Waitangi Act 1975.

211. I H Kawharu, ed, *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* (Auckland: Oxford University Press, 1989), app, pp 319–320

212. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA), at p 664 per Cooke P

213. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 736; Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, pp 428–429

affected party's right to challenge Government conduct in the courts as unlawful. The courts' ability to scrutinise Government conduct is a fundamental feature of the British legal system as introduced to New Zealand. The other element of the good government principle is that the Crown will govern in such a way as to be just and fair to all.²¹⁴ Thus, it will treat like cases alike and not make arbitrary distinctions between situations or groups so as to favour some ahead of others.

The Crown has conceded that the eastern Bay of Plenty confiscation was unjust, excessive, and in breach of the Treaty. It accepts that its previous failure to acknowledge the wrongful confiscation of Tuhoe's land is a matter of continuing grievance for them. The Crown also accepts that its delay in addressing the confiscation issues is a breach of the Treaty. It expects to address these issues in settlement negotiations with Tuhoe.²¹⁵ These concessions are notable: they relate to issues of great importance, and the Crown has not often made such concessions in Waitangi Tribunal proceedings. By their baldness, however, the concessions do not convey the magnitude of the wrongs perpetrated against Tuhoe – a matter that is critical not only to understanding the course of events that followed the confiscation but also to the fair settlement of Tuhoe's Treaty grievances. For these reasons, we summarise here how the *raupatu* was inconsistent with Treaty principle.

4.5.4.1 The *raupatu* in light of Treaty principle

The Crown's confiscation of a very substantial, and vitally important, tract of Tuhoe's land, and the process and outcome of the arrangements it then made for the land, were in utter contradiction of the Treaty principles of active protection and good government. The unfairness of the situation Tuhoe found themselves in cannot be overstated. Having had their lands swept away in a confiscation aimed at others, Tuhoe were then thwarted in obtaining either the compensation to which they were entitled by law or the return of land, which was possible at the Crown's discretion. They could not even get the Crown to award them land as was awarded to iwi that had fought against the Crown. Where, according to the law and the Crown's stated policy, Tuhoe should have emerged from the confiscation of eastern Bay of Plenty unscathed, or nearly so, all of the Crown-constructed paths that should have led to that outcome were closed to Tuhoe. Worse, Tuhoe were not even allowed on the path built for those whom the Crown regarded as the least deserving casualties of confiscation. Thus, not only were Tuhoe wronged by the confiscation, they were also wronged again by obtaining nothing by way of compensation and having none of their land returned.

The gulf between the Crown's statements in the mid-1860s about the impact of its confiscation policy on 'loyal' and 'rebel' Maori and what happened to Tuhoe in reality is readily apparent. The Crown says now that it was not intended that Tuhoe's lands be taken. It has also noted that Tuhoe had other lands to utilise, unlike some iwi that suffered more comprehensive *raupatu*. Neither of these

214. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 737

215. Crown counsel, closing submissions (doc N20), topic 3, pp 2, 34

matters reduces the claimants' grievance or the Crown's responsibility. The Crown may not have known at the outset that the lands confiscated included a substantial part of Tuhoe's land, but it should have done. Certainly, by the time the confiscated lands were being reallocated, the Crown, through its agent, knew of Tuhoe's interests. But it wanted those very lands for its own purposes and was determined to achieve that end.

The Crown relied on a dubious interpretation of the confiscation law to take the entire eastern Bay of Plenty district. It then used a tangled process of its own creation to deal with the various groups with interests in, or claims to, the land it recognised. The blurred line between the statutory authority of the Compensation Court and the role of the informal Crown agents working on the ground served to put Tuhoe at the mercy of one agent who performed various roles and whose priorities were with everyone but Tuhoe. His conduct and instructions were inspired by an alarming lack of care, by malice, or by ruthless pragmatism, any one of which would break the Crown's Treaty promises.

Several earlier Tribunals have determined that the confiscation of tribal land – the basis of well-being of tribal society, then and for future generations – is, in itself, a grave breach of the Treaty's promise of active protection. If the Crown was determined to proceed, however, the principle of active protection obliged it to take the greatest possible care to ascertain who would be affected by the confiscation and to ensure that those who were not its targets would be as little disadvantaged as possible. To ensure that outcome, the principle of good government required the Crown to establish clear and fair processes for compensation and land return, the implementation of which would be subject to independent scrutiny. None of this occurred. The Compensation Court's role was undermined by Crown agents working with various groups whose claims fitted the Crown's agenda for the confiscated land – an agenda in which Tuhoe did not figure. The court itself was not equipped to dispense justice to those who came before it. There was nowhere Tuhoe could turn to have their rights upheld.

The Treaty principle of redress holds that Treaty breaches must be remedied or else the prejudice suffered as a consequence, including the claimants' sense of injustice, will be magnified,²¹⁶ the honour of the Crown will not be restored, and reconciliation will not be achieved.²¹⁷ In the next section, we examine the far-reaching impacts of the raupatu on the interwoven elements of Tuhoe's well-being: economic, political, social, cultural, and spiritual. The Crown has acknowledged that redress must be made to Tuhoe for the prejudice they have suffered as a result of raupatu. In our analysis, as will be seen in later chapters, that prejudice is inextricably linked with later events, further Treaty breaches, and additional prejudice to the people. In this way, a grim pattern emerges of accumulating prejudice from

216. See, for example, *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at p 674 per Richardson J.

217. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend, 1991), vol 2, p 245; Waitangi Tribunal, *The Taranaki Report*, pp 314–315

a succession of Treaty breaches. It is always important that the Crown recognises the cumulative nature of the prejudice suffered when successive breaches of Treaty principle occur over time. In Te Urewera, it is particularly important because, as will be seen in later chapters, the history of the Crown's dealings with Tuhoe is characterised by a succession of substantial Treaty breaches, including some of a unique nature. For this reason, while we agree with the Crown that redress must be provided for the prejudice suffered by Tuhoe in consequence of the raupatu, we urge the Crown to evaluate that prejudice, and so consider appropriate redress, in the larger context of the Crown's and Tuhoe's interactions right through their shared history, from 1840 to the twenty-first century.

4.5.4.2 Summary

The summary of our analysis is as follows:

- ▶ The Crown's actions and omissions in confiscating Tuhoe's land were inconsistent with the Treaty principles of active protection and good government.
- ▶ The Crown's actions and omissions in failing to secure for Tuhoe either compensation in land or money or the return of land were inconsistent with the Treaty principles of active protection, good government, and redress.

4.5.5 What were the impacts of confiscation?

SUMMARY ANSWER: The confiscation of much of Tuhoe's best land had devastating impacts economically, socially, culturally, and politically. The northern lands were integral to the overall economy of Tuhoe. It was only on the warm, flat land of the Ruatoki, Opouriao, Owhakatoro, and Waimana Valleys that many local and introduced crops could be grown. By the early 1860s, Tuhoe clearly demonstrated the desire to integrate into the colonial economy and were developing the capability to do so – despite the impediment of distance from markets. The prejudice suffered from the loss of these lands is clear. Tuhoe have been deprived of 140 years of potential development and return from their most fertile lands. Their rights to resources at Ohiwa Harbour were also severely diminished. Confiscation severed Tuhoe's links with lands and waterways over which they had long exercised mana. A number of hapu had to move back across the line to be accommodated in existing settlements. This increased pressure on communities in both the short and the long term as the population increased. Confiscation also increased tensions with neighbouring iwi. It has created the impression that Tuhoe were always a landlocked people, with no rights on the coast. The political impact of raupatu can be seen in Tuhoe's long-standing distrust of the Crown. Raupatu, and the transgression against Tuhoe's mana that it entailed, has embedded itself in the people's consciousness. It is a central pillar of their grievance against the Crown. For over 140 years, Tuhoe have sought redress without success. In the short term, the Crown's enforcement of the raupatu further entrenched Tuhoe's animosity towards the State. Major hostilities had been averted by mid-1868, but the brooding sense of wrong spurred Tuhoe to join Te Kooti on his arrival in Te Urewera in early 1869. This led in turn to further and more devastating conflict with the Crown.

4.5.5.1 Introduction

Our analysis of the impacts of confiscation is divided into three parts:

- ▶ What were the short- and long-term economic impacts of confiscation, especially on Tuhoe's ability to exercise authority over, and to benefit from, their lands and resources? Particular reference is made to the importance of the northern lands to the Tuhoe economy and rights to Ohiwa and its resources.
- ▶ What were the social and cultural impacts of confiscation?
- ▶ What were the political impacts of confiscation?

4.5.5.2 What were the short- and long-term economic impacts of confiscation?

Ka takoto te manemane rau na te karauna, ko te roi o te whenua a Tuhoe ki roto ki te karauna, Ko te momonatanga o te whenua ki te motu o te ngaku i tangohoe.

The confiscation line was laid down by the government, and the lands of Tuhoe, the fertile lands of Tuhoe, the very kernel of our lands were taken.²¹⁸

Raupatu had both immediate and lasting economic consequences for Tuhoe. On this, the Crown and claimants are in agreement. At issue before us is the extent of the economic impact in terms of the quality of the land lost to Tuhoe, and its economic potential. The Crown did not attempt to provide a full assessment of the quality of the confiscated land, but counsel did submit that there is little direct evidence of the quality of land in the nineteenth century. The Crown also implied that Tuhoe's engagement with the colonial economy, both before and after confiscation, was relevant when considering the fundamental quality of that land and its importance in the overall productive capacity of the Tuhoe economy.²¹⁹ Both of these positions contradicted the claimant view, as captured in Wharehuia Milroy's evidence to us, that the land not only was of the highest quality but was also critical to the overall productive capacity of Tuhoe.²²⁰ Here, we address:

- ▶ the evidence of the quality of the land; and
- ▶ Tuhoe uses of the land before the confiscation.

Evidence for the intrinsic quality of the land is largely derived from the research of Professor Brian Murton, who closely analysed a wide range of economic activity in the confiscation district. He concluded that the northern lands were 'resource-rich': 'Here kumara, hue, and taro would grow, freshwater fish resources were abundant, the marine resources of Ohiwa Harbour could be tapped, and there were extensive tracts of swamp and fern land.'²²¹

Murton estimated the lands lost through confiscation were about half the higher quality lands within the rohe of Tuhoe.²²² The historical evidence used

218. Wharehuia Milroy, oral evidence, Tataiahape Marae, Waimana, 24 November 2003

219. Crown counsel, closing submissions (doc N20), topic 3, pp 23–24

220. Wharehuia Milroy, oral evidence, Tataiahape Marae, Waimana, 24 November 2003

221. Brian Murton, summary of 'The Crown and the Peoples of Te Urewera', no date (doc J1), p 4

222. Ibid, p 7

in support of this conclusion included a Ministry of Works land-use capability survey from 1962. Murton pointed to the extensive area of soils with the potential to be converted into high-quality pastoral land to the north of the confiscated line (Opouriao to Taneatua); to the extensive area of soils with moderate limitations for pastoral uses on flat and rolling land to the west of the Whakatane River valley and in the Tauranga River valley; and to the large area of soils stretching from Waimana along the Nukuhou River to Kutarere, and between Ohiwa Harbour and the Waiotaha River. Even the hilly and steep lands between the Tauranga and Nukuhou Rivers, stretching north to Ohiwa Harbour, were classified as being able to support grazeable pasture.²²³ These lands had the potential to be used for 'dairy farming, and intensive and extensive sheep and cattle farming'.²²⁴

Crown counsel warned against assessing land use and quality in the nineteenth century against those same factors almost 100 years later.²²⁵ Counsel cited the evidence presented by the Crown's historian, John Battersby, who suggested that land surveys from the twentieth century do not demonstrate the actual quality of the land in the nineteenth century: 'There is insufficient information on land quality, bearing in mind that land use and land quality now is no indication of what the land was like in the nineteenth century'.²²⁶

We are aware that the 1886 Tarawera eruption, which mitigated cobalt deficiency in the Whakatane and Opotiki areas, may have made land there more valuable. Otherwise, we have no reason to think that any natural occurrences may substantially have altered the soil or that the fundamental quality of the land had been improved by any human activities since the mid-nineteenth century. The Ministry of Works survey is a firm and reliable indicator of the range of economic activities that could be conducted on the lands seaward of the confiscation line.

Crown counsel's main point – that there is little direct evidence in respect of land quality – stands in stark contrast to the Crown's acknowledgment of the high quality of the land at the time it was confiscated in 1866. As we have already seen in this chapter, officials specifically chose the Ruatoki and Waimana Valleys as sites for military settlement based on the fact that the land was resource rich. A similar contemporary tribute to the high value of the confiscated land is noted by Bryan Gilling, who argues that the Government's knowledge of the quality of the confiscated land is evident in its comparatively high sale price. In the Bay of Plenty district, saleable land was valued at 'the relatively high rate of £1 [per acre]': 'In other confiscated districts, the land was valued at as little as 5/- per acre and only for one area in northern Wanganui was any valued higher'.²²⁷ Gilling concludes

223. Brian Murton, 'The Crown and the Peoples of Te Urewera, 1860–2000: The Economic and Social Experience of Te Urewera Maori' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc H12), p 186

224. *Ibid*, p 188

225. Crown counsel, closing submissions (doc N20), topic 3, pp 23–24

226. John Battersby, summary of 'Conflict in the Bay of Plenty and Urewera Districts, 1864–1868', 14 March 2005 (doc M2), p 33

227. Gilling, 'Te Raupatu o te Whakatohea' (doc A53), p 146

that the Government was aware of the quality of the eastern Bay of Plenty land and that this influenced its subsequent disposal of the land. Settlers have never regarded the region as misnamed.

A wide array of historical sources also demonstrates the actual productive capacity of the land in the nineteenth century. The use of the land by Pakeha farmers after confiscation is instructive. For example, the Whakatane Cattle Company was established in 1874 on 7,000 acres (2,834 hectares) of confiscated land at the junction of the Whakatane and Tauranga Rivers. According to Alison Heath, the land used to establish the company was purchased from military settlers who had abandoned their allotments for 'a mere pittance', which were sold by the Government at a 'reasonable price'.²²⁸ The company ploughed the land and sowed a number of English grasses as a basis for pastoral farming. A correspondent for the *Bay of Plenty Times* in May 1882 described the extent of pastoralism at that time:

The stock on the station consist of 43 horses, over 1,300 head of cattle, and over 3,000 sheep. . . . there were 150 fat bullocks intended for this season's market. . . . They were certainly the best herd of fat cattle that I have had the privilege of inspecting for a very long time. . . . I was shown the accounts of cattle which had been fed on the station and which reached the very high prices of £12 and £17 10s per head for beef in the Auckland market. These amounts prove the richness of the feed and the fertility of the soil in the Whakatane Valley much more satisfactorily than any description that can be given by a newspaper correspondent. We then inspected a herd of 350 cows, with their calves running with them; they are also in prime condition. I also saw two imported shorthorn bulls; they are really magnificent animals.²²⁹

The correspondent also reported the farm to hold 200 head of young heifers, 400 young steers 'in first-rate condition', 1,200 ewes and rams 'in prime condition', 1,300 hoggets, and 600 wethers that were 'fattening for market'. These activities were brought to a temporary halt by the Tarawera eruption. The death of the station manager in 1892 led to the Seddon Government's purchase of the land in 1896 for £24,261. The station was then transformed into the modern-day settlement of Taneatua.²³⁰ In the 18-year history of the company, then, the area was transformed by pastoralism – evidence of which can be seen in a comparison of the purchase price and the price at sale. The history of the Whakatane Cattle Company quite clearly supports Murton's contention that the land had the potential for pastoral farming.

The other type of historical evidence drawn on by Murton to support his thesis is that of Tuhoē's use of the land prior to confiscation. This raises the issue of the importance of this land for the Tuhoē economy. Given the loss of half the higher quality lands in their rohe, Murton concludes that confiscation for

228. Alison B Heath, *The Opouriao–Taneatua Settlement of 1896* (Whakatane: Whakatane and District Historical Society, 1989), p 1

229. 'Chats with Farmers', *Bay of Plenty Times*, 16 May 1882, p 2

230. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 157

Tuhoe represented a ‘huge diminution of economic capability.’²³¹ As the regional economy developed, Tuhoe faced ‘severe limitations’ on their participation in it.²³² Crown counsel appeared to argue otherwise, suggesting that the land was not as critical to Tuhoe’s economy as Murton and the claimants suggest. Thus, the Crown accepted that all confiscation of land ‘caused significant prejudice’, but it added that ‘Urewera Maori did still retain a significant proportion of their lands, whereas in the case of other groups, almost the entirety of their landholdings were confiscated.’²³³ As a result, the Crown suggested, Tuhoe were not in the ‘same position as Ngati Awa and Whakatohea in terms of the scale of the confiscation and the corresponding degree of prejudice suffered.’²³⁴ This suggestion was based on the apparent view that the confiscated land was of no more economic significance to Tuhoe than any of their other land.²³⁵

The Crown’s position reflects the evidence of its historian, John Battersby, who argued that there is no suggestion that Tuhoe were poorly off in the 1870s following war and confiscation.²³⁶ The implication is that the confiscated land was not crucial to sustaining Tuhoe before the confiscation or after. He added: ‘Tuhoe do not appear to have been involved in significant cash cropping prior to the wars, and it is not surprising therefore that they were not mentioned as such afterwards.’²³⁷ Battersby suggested that the absence of significant economic activity after the wars was not because Tuhoe had lost their lands but because they lacked the inclination to make the most of the resources they had. In his view, Tuhoe faced two impediments to their economic progress: ‘a combination of the pre-war remoteness of their district, and the lack of any unified desire to exploit the economic opportunities that were brought about by the end of the wars.’²³⁸ He emphasised the impediments as factors in Tuhoe’s lack of significant engagement with the colonial economy, citing the distance from the main economic hub of Auckland, and the lack of a coastal port, of roads, and of significant assets such as mills and trading vessels.²³⁹ All of these points were made to suggest that utilisation of the northern lands was never fundamental to Tuhoe’s development in the colonial economy. There is also an implication that, because Tuhoe could still feed themselves in the 1870s, the loss of this land was not critical for their traditional economy either.

In light of these arguments, we address three matters:

- ▶ the importance of the northern lands in the traditional Tuhoe economy;
- ▶ the importance of the northern lands in pre-confiscation attempts to develop the Tuhoe economy; and

231. Murton, summary of ‘Crown and the Peoples of Te Urewera’ (doc J1), p 6

232. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p 188

233. Crown counsel, closing submissions (doc N20), topic 3, p 24

234. *Ibid*, p 22

235. *Ibid*, pp 22–24

236. Battersby, summary of ‘Conflict’ (doc M2), p 30

237. *Ibid*, p 33

238. *Ibid*, p 31

239. *Ibid*, pp 26–27

- ▶ the effect of the confiscation of these lands on Tuhoe's capacity for economic development after 1866.

4.5.5.2.1 THE IMPORTANCE OF THE NORTHERN LANDS IN THE TRADITIONAL TUHOE ECONOMY

Tuhoe's traditional economy was based on hunting and gathering a range of forest resources; on the rich resources of the rivers; on the saltwater (kaimoana) resources of Ohiwa Harbour; and on horticulture. A number of the plants and crops crucial to sustaining its people were predominantly grown in the valleys of Tuhoe's northern lands: Waimana, Ruatoki, Opouriao, and Owhakatoro. These included kumara, harakeke, hue, and taro. Of these, harakeke and kumara were undoubtedly the most important. Harakeke was crucial for the fibrous material it produced and was used for a variety of purposes.²⁴⁰ Kumara was an important source of carbohydrates and was a highly valued food, notably for hakari. Waimana, in particular, was known for its kumara, which was said to have been brought there by the ancestor Hape-ki-tumanui-i-te-rangi.²⁴¹ Jeffrey Sissons described the place of the kumara in the cultural landscape of Waimana: 'The association of the valley with kumara is expressed in a famous Tuhoe saying in which the unity of the Waimana people is compared to the spreading, entangled growth of the kumara vine: Waimana Kaaku; te horana o te kururangi.'²⁴²

As already noted in this chapter, kumara plantations were located throughout the northern valleys. Milroy and Melbourne recorded that among Tuhoe lands confiscated by the Government were three 'large kumara and potato gardens': Te Ngutu o Te Ihe, Nga Mahanga o Nore, and Te Pawa.²⁴³ The northern lands were, therefore, crucial to the overall integrity of the Tuhoe economy. They provided crops that sustained Tuhoe people throughout Te Urewera. As Wharehuia Milroy explained, these lands were 'occupied by our ancestors to grow food during the summer and in autumn they would cultivate and return then to the inland country.'²⁴⁴

4.5.5.2.2 THE IMPORTANCE OF THE NORTHERN LANDS IN PRE-CONFISCATION ATTEMPTS TO DEVELOP THE TUHOE ECONOMY

The economic importance of the northern lands before the arrival of Europeans was even more obvious as new crops and cultivation methods were acquired. Evidence of the utilisation of introduced food crops and tools from the 1820s to

240. Sissons, 'Waimana Kaaku' (doc A24), pp 7–8. The Tuawhenua report describes the unique micro-climate at Ruatahuna that allowed the growing of harakeke. According to Wharekiri Biddle, although harakeke did not grow naturally there, once it was introduced and planted in the late nineteenth century it was discovered that it could be grown: Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 169–170.

241. Kruger, claimant translation (doc J48(a)), pt 1, p 3

242. Sissons, 'Waimana Kaaku' (doc A24), p 8

243. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 130

244. Wharehuia Milroy, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 24 November 2003

the 1860s demonstrates that Tuhoe not only wanted to integrate into the colonial economy before the confiscation but also demonstrated a developing capability to do so. Anita Miles reported that by 1829, when the ship *Haweis* visited the coastal Bay of Plenty region, ‘wheat, potatoes and other European fruit and vegetables were being grown’ on Tuhoe’s northern lands.²⁴⁵ The other significant addition to Tuhoe’s cropping economy at this time was corn. According to Elsdon Best, Tuhoe acquired corn around 1820 from the Bay of Islands.²⁴⁶ Pou Temara says that by the late 1830s Tuhoe had begun preparing their lands in Ruatoki and Opouriao for these new crops, planting potatoes, corn, and wheat.²⁴⁷ Hemi Kopu gave evidence in the Native Land Court that, after Tuhoe returned to Opouriao in 1834, large cultivations of kumara, potatoes, and maize were grown for commercial purposes. Many of these were cultivated with Pakeha agricultural tools and methods.²⁴⁸ Only the potato, however, could be grown in the colder, less fertile conditions of Te Urewera’s mountainous terrain. In contrast, crops such as wheat and corn could be grown only on the fertile plains of Opouriao, Ruatoki, and Waimana. All of this is further evidence of the productive capacity of the northern lands.

In the period between the 1820s, when Western goods began to be traded in many parts of the North Island, and the 1860s, Tuhoe also obtained cattle (from Poverty Bay).²⁴⁹ These acquisitions laid the basis for a pastoral industry. Tamarau Te Makarini stated in the Native Land Court that, after Tuhoe’s return to Opouriao in 1834, they established Puketi as their headquarters and began running cattle.²⁵⁰

Tuhoe’s acquisition of these new items, however, was not enough in itself to secure a viable economic future. As the Crown and its historian rightly observe, Tuhoe faced a number of obstacles in their attempts to move from a traditional-oriented economy to one that capitalised on the new opportunities of trade in the colonial markets. As Battersby says, the main obstacle to economic development was the relative isolation of Te Urewera:

Compared to Maori in Auckland or Hauraki, whose closeness to the colony’s main economic hub provided easy access to markets and goods, or even compared to coastal points such as Tauranga, Maketu, Whakatane and especially Opotiki, which harbours allowed for seaborne trade, Urewera Maori were at a disadvantage. Carriage of goods down to coastal points was possible and did occur, but the amount of goods that could be conveyed in a road-less terrain, without mechanical means of carriage,

245. Miles, *Te Urewera* (doc A11), p 60

246. Best, *Tuhoe*, vol 2, p 556

247. Pou Temara, ‘Te Whenuanui’, *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.dnzb.govt.nz>, last modified 22 June 2007

248. Whakatane Native Land Court, minute book 4A, 7–8 November 1894, fols 186, 203, 208 (Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 38)

249. Best, *Tuhoe*, vol 2, p 560

250. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 38

was severely limited and they could not compete with the quantities of produce generated at coastal points in the Bay of Plenty.²⁵¹

Battersby argued that Tuhoe had to pursue economic opportunities outside their rohe, such as trading with other iwi as conduits to the colonial markets and participating in wage labour in Hawke's Bay.²⁵² This undermined their ability to develop economically in terms of both domestic production and production for a tradable surplus.

These arguments, while providing an accurate view of the difficulties faced by Tuhoe, appear to underestimate the lengths to which they went to overcome the barriers of distance. The extent to which Tuhoe had developed their economic capability by the time war broke out in the 1860s is indicated by a number of factors. First, Tuhoe, like many iwi, changed their settlement patterns in order to be closer to new markets. Milroy and Melbourne argue:

The possession of fertile alluvial flats of Opouriao and Waimana allowed Tuhoe to take advantage of new introduced crops such as potato and maize as well as to acquire new agricultural knowledge to increase kumara production. The desire for closer contact with Pakeha goods and trade brought many of the people from inland into Opouriao and Waimana.²⁵³

It was no coincidence that people migrated to the most fertile land in the Tuhoe rohe. Secondly, Tuhoe attempted to circumvent the middlemen of other iwi by accessing markets directly. Elsdon Best recorded that 'The Tuhoe people used to drive mobs of pigs as far as Auckland in the early times of that town.'²⁵⁴ This is merely one anecdote, but it provides a picture of a people attempting to overcome the impediments to trade that topography had placed in their way. Thirdly, responding to and enhancing the new demand created by Tuhoe, a number of traders settled in the vicinity of Te Urewera by the 1830s. A trader named Jack Fox resided in the Opouriao district.²⁵⁵ Fox married Hopaea, the daughter of Te Ahoaho, and remained in Opouriao until the outbreak of war in the 1860s.²⁵⁶ In the Waimana Valley, a trader called Scott was resident in the 1830s.²⁵⁷ These traders would have been important conduits to outside markets and were conveniently located in the coastal regions of the eastern Bay of Plenty.

All of these factors were evident in the 1840s when the missionary William Colenso travelled through Te Urewera. According to Binney:

251. Battersby, summary of 'Conflict' (doc M2), p 26

252. Ibid, pp 26-27

253. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 80

254. Best, *Tuhoe*, vol 2, p 556

255. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 38

256. Best, *Tuhoe*, vol 2, p 560

257. Binney, 'Encircled Lands, Part 1' (doc A12), p 55

It is evident from Colenso's account that, in the early 1840s, the inland Tuhoe leaders were in regular contact with the coastal regions of the eastern Bay of Plenty. The chiefs went to Opotiki and Whakatane, where trading ships called; inland families were gardening on the river flats and the lower valley lands of the Whakatane and Waimana rivers. They were trading with Europeans at Opotiki and Whakatane[.]²⁵⁸

Colenso's account depicts widespread economic activity extending beyond the fringes of Te Urewera.

Finally, there is evidence that Tuhoe had begun to develop industries in flax and wheat that had the potential for trade. A burgeoning flax trade existed in Waimana in the 1830s.²⁵⁹ Tamarau Te Makarini recounted the following story to Elsdon Best:

When I was a child, a European named Nikorehe (? Nicholas) came in a vessel to O-hiwa and lived there. His employer was another European named Kaketuku (?). Hence many of Te Ure-wera went and settled at Te Wai-mana to prepare flax-fibre to sell to that trader.²⁶⁰

Best dated this development around the time Christianity was introduced (he thought in 1839). This example suggests that there was enough flax to trade in the region. As we have already seen, flax was primarily grown on the northern lands, which were confiscated. Nowhere in Te Urewera, outside the micro-climate of Ruatahuna, could flax survive. The story also demonstrates that Tuhoe were developing the capacity to trade traditionally grown goods in markets that were new to them.

Despite the fact that requirements of soil and climate limited the range of many new crops, wheat was being grown in sufficient quantities for every kainga in the Waimana and Ruatoki districts to have steel hand-held mills for grinding it. Hunter Brown recorded this during his 1862 visit.²⁶¹ Battersby argues that hand-held mills could not mill enough wheat for trade,²⁶² but, according to Best, production reached such a level in 1863 that Tuhoe made plans for erecting a mill in Ruatoki.²⁶³ Timber was cut and a site was chosen, but tribal disagreements and the outbreak of war scuttled the plan. The presence of the Ngati Pukeko mill south of Whakatane, which was in place at least from 1865, further demonstrates that the land in the region could produce enough wheat for production.²⁶⁴ Tuhoe's productive capacity had built up to the extent that they contemplated the construction of their own mill.

258. Miles, *Te Urewera* (doc A11), p 55

259. *Ibid*, p 61

260. Best, *Tuhoe*, vol 2, p 560. The bracketed question marks are in Best's text.

261. 'Report from C Hunter Brown, Esq, of an official visit to the Urewera tribes', June 1862, AJHR, 1862, E-9, p 27; Sissons, 'Waimana Kaaku' (doc A24), p 19

262. Battersby, summary of 'Conflict' (doc M2), p 26

263. Best, *Tuhoe*, vol 2, p 561

264. See the reference to Ngati Pukeko's mill in Binney, 'Encircled Lands, Part 1' (doc A12), p 90.

From this evidence of pre-war activity, we conclude that there was both a desire to integrate into the colonial economy and a developing capability to do so. It is clear that, by the time of the confiscation, Tuhoe were no longer servicing just their internal economy.

4.5.5.2.3 THE LONG-TERM ECONOMIC IMPACT OF CONFISCATION

We reject the implications of the Crown and its historian that Tuhoe did not engage with the colonial economy after confiscation and military conflict because they lacked the inclination. By the early 1870s, not only were Tuhoe deprived of their northern lands beyond the confiscation line but they were also severely affected by the conflict with the Crown that had followed confiscation, and by its aftermath. The immediate economic effects of the raupatu were overtaken by that conflict. We deal with that issue, and Tuhoe reconstruction in the 1870s, in chapters 5 and 7. Here, we focus on the longer-term economic consequences of confiscation.

As we discussed above, Battersby's evidence concentrated on the potential for Tuhoe to participate in cash cropping. Based on his evidence, the Crown submitted: 'Productive land use in the 19th century, for Maori, was primarily in terms [of] cultivation (either subsistence or as cash crops), and, for trade purposes, land had to be accessible to ocean bound vessels.'²⁶⁵ From that starting point, the Crown submitted that there was no evidence of Tuhoe cash cropping either before or after the wars, and the lack of roads limited Tuhoe's trading potential in any case.²⁶⁶

We do not accept these submissions. As we have seen, Tuhoe were developing a trading economy prior to the confiscation, working as best they could around difficulties of distance and transport. But, from the 1870s onwards, cash cropping was not the main economic opportunity for Maori. Rather, if tribes sought to engage in the colonial economy, the obtaining of an income from leasing land, the accumulation of capital from strategic land sales, and the development of land for pastoral farming were their main opportunities. In the twentieth century, there were other opportunities as well, including cash cropping, horticulture, and exotic forestry.

Murton assessed the significance, in this respect, of the loss of half of Tuhoe's best land. He posed the question: Were Te Urewera Maori given the opportunity to succeed economically?²⁶⁷ His answer was that a 'development gap' was created in the nineteenth and early twentieth centuries that has been difficult to overcome. Modern observers tend to see the socio-economic situation in Te Urewera as the product of current trends, but Murton argued that historical factors played a critical role in creating the long-term poverty still evident today. One such critical factor was the confiscation.²⁶⁸

265. Crown counsel, closing submissions (doc N20), topic 3, p 24; Battersby, summary of 'Conflict' (doc M2), p 33

266. Crown counsel, closing submissions (doc N20), topic 3, p 24

267. Brian Murton, summary of 'Stage Three: Socio Economic Impact Issues', 10 January 2005 (doc J10), p 4

268. *Ibid*, pp 3-4

Many claimants agreed with this perspective. Te Kiato Sonny Biddle, for example, who lives at Waimana, believes that the confiscation of ‘the most fertile land’ has had long-term economic effects: ‘This has prevented us from being able to rebuild economically.’²⁶⁹ Alana Burney spoke at Ruatoki on behalf of ‘dislocated’ urban Tuhoe.²⁷⁰ She described how solutions to today’s problems are constrained by the past: ‘I believe that if we had not had our structural, cultural and economic base stripped from us we would have been able to grow better strategies than these ill fitting mechanisms of today.’²⁷¹ Confiscation, in her view, is one of the key contributors to social and economic problems at Ruatoki.²⁷²

According to Murton, the long-term economic impacts of confiscation took two forms. First, there was a loss of income and a loss of access to resources, which were hitting hard by the 1890s. Loss of opportunity for internal trade in foodstuffs and the inability to seasonally relocate to the confiscated lands, as well as loss of the food resources of those lands, all had an effect on the ability of the growing population to feed itself. ‘By the 1890s,’ Murton argued, ‘the full implications of reduced access to food . . . was manifesting itself.’²⁷³ As we shall see, the settler occupation of confiscated land around Ohiwa Harbour, with pastoral development and fencing, had also restricted access to traditional food resources by that time.²⁷⁴ Murton commented, in response to a question from the Crown:

This would be the time [by 1900] when the constraints were being to be placed on people. North of the confiscation line by now settlement had occurred, fences were being put up. Private property rights including the whole point of exclusivity that relates to private property were coming into being. It was difficult [to] traverse areas that once might have been traversed for subsistence activities including [Ohiwa] harbour access . . .²⁷⁵

Partly as a result of this, Tuhoe were vulnerable to any interruption of the food supplies on their remaining lands. Frosts and floods in the 1890s and early 1900s had extreme effects, revealing the extent to which Tuhoe communities had lost access to key resources in the preceding 20 years. Further, loss of land (some from confiscation, some from sales) had helped constrict and concentrate the population on the remaining lands that were easiest to crop. There was an overall decline in the diversity of the foods that could be obtained, causing a growing dependence on a single crop, potatoes. By the late nineteenth century, with settlers in

269. Biddle, brief of evidence (doc B25), p 6

270. Alana Burney, brief of evidence, 10 January 2005 (doc J14), para 1

271. *Ibid*, para 25

272. *Ibid*, para 24

273. Murton, summary of ‘Stage Three’ (doc J10), p 6

274. *Ibid*; see also Brian Murton, under cross-examination by counsel for Wai 36 Tuhoe, Tauarau Marae, Ruatoki, 20 January 2005 (transcript 4.13, p 80)

275. Brian Murton, under cross-examination by counsel for Wai 36 Tuhoe, Tauarau Marae, Ruatoki, 20 January 2005 (transcript 4.13, pp 79–80)

occupation and confiscation thus a reality on the ground, it was no longer an option for significant numbers of Tuhoe to move temporarily to coastal zones if the potato crops of the interior failed. Their relations at Ohiwa had also been affected by the contraction of the customary economy, and wider kinship networks could no longer provide the kind of resources that had been possible earlier. In all these ways, the confiscation of land in the Bay of Plenty was having a serious effect on Tuhoe's economy by the turn of the century.²⁷⁶

The second major effect of the confiscation was that it foreclosed economic development opportunities. As Murton noted, Tuhoe were deprived of the opportunity to obtain income (or capital) from land sales, if they had chosen to part with some of their land for that purpose.²⁷⁷ Also denied them was the opportunity of leasing this land for development as pastoral farms, a strategy that was attractive to many Maori in the late nineteenth century. Battersby, in his evidence for the Crown, agreed with these two points. He acknowledged that confiscation clearly had 'an economic impact in the removal of access to land formerly available to Tuhoe.'²⁷⁸ The tribe lost the ability to obtain income from leasing land or selling parts of it, a loss that he argued was being felt by the 1880s.²⁷⁹ Thus far, the claimant and Crown historians agreed.

The most notable impact of all, however, was in the lost potential for Tuhoe to farm this higher quality land themselves, and the loss of such a high proportion of Tuhoe land suitable for that purpose. All potential farming (especially pastoral farming) or other direct economic uses of this land were transferred from Tuhoe to settlers in 1866. From the evidence available to us, we accept Murton's overall judgement:

The loss of these lands represents a severe reduction of Tuhoe's economic capability, that is, their freedom to achieve economically in the regional and national economy that was to develop, especially after refrigeration made it possible to ship meat and dairy products to Britain. Effectively severe limitations were placed on Tuhoe's ability to participate through the confiscation of about half of the higher quality land in which they had rights. Whether or not they would have used this land to its full potential is not the question here: they were never given the chance to either succeed or fail.²⁸⁰

4.5.5.2.4 RIGHTS TO OHIWA AND ITS RESOURCES

We cannot conclude our discussion of the economic impacts of confiscation without reference to a major, yet little understood, outcome for Tuhoe: the curtailing of their rights on the coast, in particular at Ohiwa Harbour. In claimant and

276. Murton, summary of 'Stage Three' (doc J10), pp 6–8

277. *Ibid*, pp 6, 8, 14–15

278. Battersby, summary of 'Conflict' (doc M2), p 28

279. *Ibid*, p 31

280. Murton, summary of 'Stage Three' (doc J10), pp 8–9

Tuhoe Leaders' Imprisonment

We note Battersby's statement that 'there is no evidence for' the imprisonment of these Tuhoe leaders.¹ Battersby argues that St John's letter, dated 19 September 1867, in which he stated that Te Makarini and others had been 'deported' to Whakatane, merely indicates that Te Makarini had left Ruatoki of his own volition 'for reasons of safety'. But the evidence suggests otherwise. First, the full transcript of St John's letter makes it clear that the word 'deported' means they were taken to be imprisoned. The word appears in the context of a discussion of Rakuraku and his supposed 'doublefacedness'. St John suggested that a similar approach be taken with Rakuraku as had been adopted with Te Makarini:

I . . . had a consultation with Messrs Clarke and Mair about Raku Raku and his people; not the slightest doubt exists as to his doublefacedness, and as Mr Clarke

1. John Battersby, 'Conflict in the Bay of Plenty and Urewera Districts, 1864–68' (commissioned research report, Wellington: Crown Law Office, 2003) (doc B3), p 133

Crown submissions to us, this issue was framed as one of access: that is, whether confiscation had denied Tuhoe their traditional pathways to the coast. In our view, the issue is whether confiscation denied Tuhoe their ability to exercise rights to resources at Ohiwa in accordance with their tikanga.

As we have already noted, Tuhoe had established strong rights at the south-eastern end of the harbour prior to the confiscation. These rights were ancestral, based in their whakapapa to the tipuna Tairongo. Tuhoe's ability to exercise these rights was strengthened through a closely managed relationship with Upokorehe, and this was attested to by Upokorehe kaumatua Charles Aramoana at our hearing. Tuhoe rights to the harbour were not merely negotiated through Te Upokorehe. The presence they established at Whakarae meant they could exercise rights to the harbour alongside other iwi of the region. This settlement was important in protecting rights to the resources of the harbour. Milroy and Melbourne explain the resources available at Ohiwa and their cultural significance to Tuhoe:

There was food in its waters, in its mud and banks – shark, fish of all kinds, eels, water fowl, and most shellfish . . . The harbour was also an inexhaustible source of cleansing and recreation. The surrounding low hills created easily fortifiable positions and extensive cultivations. Thus 'Te umu taoroa a Tairongo' [the long cooking oven of Tairongo].²⁸¹

281. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 62

deported Makarini and his men down to Whakatane, he suggests that the same course should be adopted with regard to the Ohiwha people. They are neither more nor less than a lot of spies.²

This shows that St John understood Te Makarini and others to have been 'deported' for no other reason than they were not trusted by the Government. Secondly, we can add the evidence of Elsdon Best and others that Te Makarini and those with him were released from their imprisonment by Te Kooti and his Tuhoe supporters in March 1869. Thirdly, we refer to the statements of Te Makarini himself in the years following his imprisonment. As we shall see in the next chapter, in 1871 he referred to his fear of once again becoming a 'mokai' – a slave of the Crown, imprisoned for no reason. Finally, we can refer to the strong claimant evidence given to us about these events, in particular in the report 'Te Roi o te Whenua' by Wharehuia Milroy – a direct descendent of Te Makarini – and Hirini Melbourne, and in the oral evidence of Mahue Te Waara.

2. St John to Holt, 19 September 1867, AJHR, 1868, A-8A, pp 3-4

Such was the abundance of food in the harbour that Tairongo could continue to keep his ovens burning continuously.

Although rights in the harbour were well founded, the ability to travel freely between the coast and Te Urewera was nevertheless crucial to their maintenance. For Tuhoe, a permanent presence could be maintained only by securing pathways between the coast and settlements in Waimana and further inland. Sissons' evidence describes the importance of these pathways:

Many of the Te Waimana residents, and especially the leaders, also had kaingas in communities further inland. Mobility between Te Waimana and these places and between Te Waimana and Ohiwa was essential, not only for trade, but also for maintaining rights to land and resources and sustaining political and personal ties.²⁸²

Miles makes a similar point about the economic importance of the resources of Ohiwa to Tuhoe: 'Inland tribes came to special places in the harbour, particularly in summer, to gather and dry pipi, cockles and mussels for winter food.'²⁸³

How far-reaching were the impacts of confiscation on Tuhoe rights at Ohiwa? In their report, Milroy and Melbourne explain Tuhoe's view that they were the only Mataatua tribe whose links to Ohiwa were 'cut, severed completely by acts of

282. Sissons, 'Waimana Kaaku' (doc A24), p18

283. Anita Miles, 'Ohiwa Harbour Scoping Report' (commissioned research report, Wellington: Waitangi Tribunal, 2001) (doc A5), p 22

the Crown in 1866, when lands in the Bay of Plenty were confiscated. Before then, Tuhoe had a long-association with Ohiwa . . . kept alive by historic associations and occupation.²⁸⁴

Crown counsel, however, argued that Tuhoe's rights to Ohiwa Harbour were not 'completely' denied by confiscation.²⁸⁵ Counsel noted that it was difficult to ascertain the exact degree to which Tuhoe's links to the Ohiwa area 'would have been affected by the confiscation.'²⁸⁶ The close whakapapa connections between Tuhoe and Upokorehe, Crown counsel argued, meant that 'at least some connection with the harbour was likely maintained.'²⁸⁷ Hemi Kakitu, who was both Tuhoe and Upokorehe, was included in the Compensation Court's award of land at Hiwarau and Okianga Island.²⁸⁸ 'His inclusion may represent some Tuhoe interests.' Counsel also noted that Rakuraku received a grant of 142 acres (57 hectares) at Whakarae.²⁸⁹

While some Tuhoe groups, most notably Rakuraku's community at Whakarae, did continue to occupy land at Ohiwa immediately after the confiscation, it was, in this period, on sufferance. In mid-1868, an Arawa party was placed at the mouth of Ohiwa Harbour as a garrison to 'keep the Uriwera tribe in check' and to watch the harbour mouth as well as Rakuraku himself.²⁹⁰ In addition, as we have seen, the reserve that was granted to Rakuraku was not formally gazetted until 1905. The point we would stress, however, is that one meagre reserve at the head of the harbour, given only to a small hapu, can hardly be said to have ensured the preservation of customary tribal rights. The rights Tuhoe exercised over resources and their conservation would have been severely diminished in the wake of the confiscation.

Similarly, the Compensation Court's awards of land to Te Upokorehe, including that to Hemi Kakitu, cannot be said to have preserved the situation before confiscation. As Mr Aramoana explained to us, the whanaungatanga that existed between Tuhoe and Te Upokorehe continued after confiscation, when some of Te Upokorehe went to live at Waimana.²⁹¹ But the new circumstances must sorely have tested that traditional relationship. The small reserves that were granted to Te Upokorehe were barely enough for their own people. Their ability to host Tuhoe kin who came to the coast to utilise the resources of Ohiwa would have been significantly compromised as a result.

284. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), pp 63–64

285. Crown counsel, closing submissions (doc N20), topic 3, p 24. The actual wording in the Crown's closing submission is 'completely not denied'. We accept that this is a mistake in wording and that it should be read as 'not completely denied'.

286. Crown counsel, closing submissions (doc N20), topic 35, p 5

287. *Ibid*, p 6

288. For the spelling of Hokianga/Okianga/Okihanga Island, see chapter 5.

289. Crown counsel, closing submissions (doc N20), topic 35, pp 5–6

290. Binney, 'Encircled Lands, Part 1' (doc A12), p 168

291. Aramoana, brief of evidence (doc J46), p 11

Finally, although the evidence is not very helpful on this point, it is clear that Tuhoe's customary rights to access the coast were immediately restricted. In the wake of confiscation, access to traditional pathways along rivers would have been limited by the occupation of settlers on the confiscated land. This is evident in the fact that Tuhoe became known as a landlocked people. The impact of raupatu was thus observed but not understood. The Crown itself, we note, referred to Tuhoe's access to Ohiwa as not being 'completely' denied. While this seems an admission of the impact of confiscation on Tuhoe's rights, we urge the Crown to make a fuller acknowledgement on a matter that has long caused distress and bitterness.

4-5-5.2.5 CONCLUSION – FINDINGS ON ECONOMIC IMPACTS

Raupatu had immediate and lasting economic consequences for Tuhoe. The most damaging of these, for both the immediate and the long-term development of Tuhoe's economy, stemmed from the loss of so much of their most fertile lands. Nor was the loss felt only by those hapu whose homes were near the confiscation line. It impacted also on their whanaunga inland. The evidence is that Tuhoe not only wanted to integrate into the colonial economy before the wars but also demonstrated a developing capability to do so. Tuhoe's growing interest in production and trade was cut short by the wars themselves. After the wars, as we shall see in chapters 5 and 7, Tuhoe turned their attention to the internal economy – not because of a lack of desire to expand their productive capacity but because of the economic and social impacts of the wars. With their overall capability severely diminished by the confiscation, all Tuhoe's efforts went into sustaining the internal economy. As counsel for Wai 36 Tuhoe noted, 'The point is not whether Tuhoe did or did not engage with the colonial economy but, after raupatu, whether or to what extent they *could* engage in that economy.'²⁹² In answering this question, we accept Murton's evidence that Tuhoe had lost half of their most suitable land for economic development. Longer-term opportunities for leasing, strategic sales, pastoral farming, or (in the twentieth century) alternative land uses were all foreclosed by the confiscation.

We are taken aback that the Crown, having conceded that the land was wrongfully taken, is quibbling now as to its value. It has had the land or proceeds of its sale for 140 years. While we accept the importance of the Crown's acknowledgement of the prejudice caused by confiscation, counsel seemed to overlook the fact that the Crown took such a significant proportion of the good land and implied that Tuhoe's confiscated land had no more economic significance than any of their other land.

We find that the lands confiscated from Tuhoe were undoubtedly the flattest, warmest, and most fertile they had. They had the added advantage of being the closest to potential markets, and they gave access to the rich resources of Ohiwa Harbour, in which Tuhoe had customary rights. The confiscation of half of Tuhoe's

292. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 17

productive land was a cruel and devastating blow to the iwi. The effect of the confiscation of the lower reaches of the Opouriao and Waimana Valleys was felt by every hapu of Tuhoe. These valleys were a vital economic resource for them all. Raupatu deprived the hapu of their right to develop the resource as they saw fit, at their own pace. And, as their population recovered in the early twentieth century, Tuhoe's diminished ability to feed their own people was inevitably keenly felt.

4.5.5.3 What were the social and cultural impacts of confiscation?

Inside Te Roi o te Whenua we look up to the tahu or ridge pole. We notice this is held aloft by three pillars. We look to that immediately to the side of the door. This pole is called Te Pou Te Wharau. It is at this pillar that the knowledge pertaining to evil things which affect not only humans but also the land, the water, the air and all other living things. It is appropriate that Te Pou Te Wharau of Te Roi o te Whenua is carved with the legacy of Raupatu that which was taken by force. Carved onto this pole is the history covering the implementation of confiscation in the Bay of Plenty, the surveys, the actions of John Wilson and the workings of the Compensation Court and the fatal blow of the military campaigns in Te Urewera.²⁹³

Alongside the economic impacts of confiscation were the impacts both on the people themselves and on their long-established relationship with the lands and waterways of the confiscated district. As was so often the case with the implementation of raupatu in colonial New Zealand, there was a delay between confiscation on paper and the final withdrawal of the people from their land. In the eastern Bay of Plenty, however, the first measures to implement the confiscation on the ground were not far behind its proclamation. Surveyors arrived in Waimana by the end of 1866 to begin cutting the line. There was a period of confusion at the outset as Tuhoe began to adjust to the reality of confiscation. Movements in the district over the next decade were unpredictable. This was partly because of the impact of the wider military conflict which engulfed the district from 1869 to 1871. Communities were as likely to re-inhabit areas within the confiscation zone as they were to evacuate them. As examples of this, both Rakuraku and Tamaikoha – and their communities – moved to locations inside the confiscation zone.

The period 1867 to 1868 saw the first confrontations between Crown forces and some Tuhoe leaders. In this context, the pace of Tuhoe's retreat behind the confiscation lines quickened. Tensions increased when, following his appearance in the Compensation Court, the Tuhoe leader Tamarau Te Makarini was forcibly removed from Ruatoki and detained (along with Te Ahoaho, Te Ahikaiata, Hemi Kopu, and others) at Whakatane.²⁹⁴ There they were held, initially in the cave Te Ana o Muriwai and later under the surveillance of Ngati Pukeko, until they were freed in March 1869.²⁹⁵ After this, Puketi was handed to Ngati Pukeko, who a few

293. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p121

294. Ibid, p164

295. Ibid, p153; Binney, 'Encircled Lands, Part 1' (doc A12), p149

months earlier had caused consternation at Opouriao by threatening to drive Tuhoe into the 'interior'.²⁹⁶ On that occasion, William Mair reprimanded Ngati Pukeko, but their threat cannot have seemed an empty one to Tuhoe.

In the wake of the Compensation Court hearings, and as relations with the Crown deteriorated, there were further upheavals in the Ruatoki Valley. Tuhoe occupants of Opouriao, Pa Harehare, Kai Matahi, and Hatupere moved back behind the confiscation line to seek security with their kin at Otenuku, which was 'strongly garrisoned'.²⁹⁷ The actions of Crown forces contributed to Tuhoe's withdrawal. In May 1868, St John recorded that all the Tuhoe 'outposts' in the Ruatoki Valley which had been inhabited two years before were deserted.²⁹⁸ In March, he had mounted a pursuit of those whom he suspected were involved in an attack on Okianga Island, but was obstructed by his Arawa force, which refused to go further inland. St John then embarked on widespread crop destruction, evidently extending well behind the confiscation line, 'so that between Tawhana and Ohiwa any attacking force must now carry its own provisions'.²⁹⁹ On 1 May 1868, St John and Fraser (who commanded a newly established Armed Constabulary unit on the Whakatane River, with a force of the Arawa Native Contingent) moved inland to Ruatoki. On this occasion too they destroyed potato pits along the road, recording that 'Any parties coming now . . . down either the Waimana or Whakatane, will find themselves pushed for food'.³⁰⁰

Despite such deterrence and despite the wider conflict that followed in the area, some Tuhoe groups continued to reside on confiscated lands even into the mid-1870s. Rakuraku and a section of Nga Maihi continued to live at Ohiwa during the period of road construction at that time. According to Sissons, about 34 people were part of that community. However, between 1874 and 1877 they returned to Te Waimana. In 1877, Rakuraku was living at Tuwharua (a new kainga near Paetawa), while Tamaikoha was living on the other side of the river at Te Rahui.³⁰¹ Both these kainga were north of the confiscation line. But, by the late 1870s, hapu of Tuhoe were settled south of the confiscation line, except in the few pockets we have outlined in the previous section of this chapter.

The arbitrary drawing of the confiscation line affected many Tuhoe hapu to varying extents. Ultimately, the people had to move south of the confiscation line. Some Tuhoe hapu lost all of their land, while others lost some. According to Hirini Melbourne, the hapu that lost some of their land in the Opouriao region were Ngati Rongo, Te Mahurehure, Ngati Koura, Te Urewera, and Ngati Tawhaki.

296. Mair to Clarke, 17 April 1867, AJHR, 1867, A-20, pp 60-61 (Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 118)

297. Stephen Oliver, 'Ruatoki Block Report' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A6), p 39; Hirini Melbourne, 'Te Manemanerau a te Kawanatanga' (MA thesis, University of Waikato, 1987), p 85

298. St John to Holt, 10 May 1868, AJHR, 1868, A-8A, pp 19-20 (Miles, *Te Urewera* (doc A11), p 168)

299. St John to Holt, 17 March 1868, AJHR, 1868, A-8A, p 17 (Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 149)

300. St John to Holt, 10 May 1868, AJHR, 1868, A-8A, pp 19-20 (Miles, *Te Urewera* (doc A11), p 168)

301. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 28

Those that lost all their land were Ngati Kareke, Ngati Raka, Ngai Te Kapo, Ngati Muriwai, and Ngai Takiri.³⁰² But we lack detailed evidence of the effects on particular hapu. We agree with counsel for Wai 36 Tuhoe that the whole tribe suffered a loss.³⁰³ Counsel submitted:

There are some claims where the Tribunal can only conclude that the grievance was suffered at a tribal level. For example, the confiscation in the Eastern Bay of Plenty and the de facto confiscation of the four southern blocks affected Tuhoe in general. Due to the nature of the confiscations there was no investigation of interests at a more defined level (such as by the Native Land Court) and there has been no attempt in this forum [the Tribunal] to better define the aggrieved than ‘Tuhoe’ generally.³⁰⁴

Counsel for Nga Rauru o Nga Potiki agreed that the confiscation had affected all Nga Hapu o Te Urewera and did not attempt to particularise the impacts as between hapu.³⁰⁵ The effects were not limited to those groups which had customarily cultivated or used resources in the confiscated lands. Ngati Haka Patuheuheu, for example, did not ‘claim lands within the Eastern Bay of Plenty Confiscation.’³⁰⁶ Nonetheless, as the evidence of Ani Hare indicates, they were affected by a loss of access to Ohiwa, a disruption of tribal relationships and trade, and the contraction of customary resources available for the economy.³⁰⁷

Landlessness and relocation resulted in new patterns of settlement in areas inland of the confiscation line. Those hapu that had lost all their land in the Opouriao Valley, according to Oliver, ‘lived at Ruatoki as a consequence of the confiscation.’³⁰⁸ In other words, those who lost all their land were accommodated by their whanaunga in existing settlements. Even at the time, this meant increased pressure on land and resources as hapu and whanau had to cope with the shrinking of their takiwa. The question of the establishment and allocation of rights to those who were recently arrived must have been a difficult one. But the effects of the concentration of the population in a few settlements would be even more pronounced in later generations. The subsequent arrival of the Native Land Court increased tensions, as whanau had to decide how to source their claims to the remaining land at Ruatoki and Waimana before the court. ‘The concentration of Tuhoe on Ruatoki increased the number and complexity of land claims later made on Ruatoki.’³⁰⁹ As counsel for Wai 36 Tuhoe claimants noted, this impacted on Tuhoe life for years to come:

302. Melbourne, ‘Te Manemanerau a te Kawanatanga’, pp 140, 145

303. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), pp 5–6

304. Ibid

305. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 59–63

306. Counsel for Ngati Haka Patuheuheu, closing submissions, 31 May 2005 (doc N7), p 12

307. Ibid, pp 12–13

308. Oliver, ‘Ruatoki’ (doc A6), p 40

309. Ibid

Tuhoe had been forced to relocate from the confiscated territory to Ruatoki and Waimana, and the good land here had to support a growing population in the late 19th and 20th century. The small size of whanau partitions at Ruatoki reflected the small amount of good land available to Tuhoe, contained as they were behind the confiscation line.³¹⁰

Alana Burney gave evidence about the severe shortage of land for whanau housing at Ruatoki today. She described her understanding of how this problem stems from the confiscation and other past acts of the Crown.³¹¹ Although there were additional factors encouraging concentration at Ruatoki in the late nineteenth century, the effect of the confiscation was an important one.³¹²

Confiscation also had major impacts on relationships between Tuhoe and neighbouring iwi.³¹³ In some cases, it revived tensions. As we have seen, Tuhoe, Ngati Awa, and Ngati Pukeko fought bitter and protracted battles in the early nineteenth century; many of these took place on land that was later confiscated. The peace settlement in the 1830s saw Tuhoe resettle the land as far north as Puketi, where they cultivated their land in peace for a generation. The Crown's confiscation of this land was aggravated by the fact that some of it was given to Tuhoe's traditional enemies, reopening wounds that had seemingly healed a generation before. It seemed to Tuhoe that Ngati Pukeko were provocatively placed on Tuhoe land. The Crown then gave Ngati Pukeko the authority to establish a garrison at Puketi, where they monitored Tuhoe. Given this sequence of events, it is no surprise that Tuhoe picked out Ngati Pukeko for attack at Puketi in September 1867. As we shall see in the next chapter, Ngati Pukeko became the immediate focus of reprisal by Tuhoe when they joined Te Kooti in early 1869, attacking Ngati Pukeko at Rauporoa Pa in March of that year. Counsel for Nga Rauru o Nga Potiki argued that 'These divisions have been entrenched by successive Crown regimes' and have continued, to a degree, through to the present day.³¹⁴

Above all, confiscation meant the severing of links with lands which Tuhoe had occupied and exercised authority over for generations. Milroy and Melbourne wrote of the boundary names maintained by Tuhoe in their schools of learning and the explanations of those names given to younger Tuhoe tribal members by Kupai McGarvey at a school held in 1971.³¹⁵ The names bear testament to Tuhoe authority within the confiscated district. Through confiscation, Tuhoe lost lands, and their losses included pa sites, villages, natural food sources, and burial grounds.³¹⁶

310. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 17

311. Burney, brief of evidence (doc J14), para 24; see also paras 1, 19–27

312. Murton, summary of 'Stage Three' (doc J10), pp 6–9; see also Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 294–308, 423–429

313. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 60

314. *Ibid*, p 257

315. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), pp 130–135

316. Melbourne, 'Te Manemanerau a te Kawanatanga', p 145

4.5.5.4 *What were the political impacts of confiscation?*

In the short term, Tuhoe–Crown relations – barely established in any case – did not survive the confiscation. The arrival of surveyors on the ground triggered Tuhoe’s understanding of the extent of confiscation. By September 1867, when their three claims for compensation had been rejected by the Compensation Court, Tuhoe also understood that they had failed to secure the return of any of their lands. The result was confrontation between Tuhoe and Crown forces in 1867 and 1868, reflecting the first anger of tribal leaders. Their hostility would have immediate and terrible consequences following the arrival of the redoubtable leader Te Kooti in Te Urewera in 1869. We consider these matters further in the next chapter.

Here, we focus on the longer-term impacts of Tuhoe’s loss of trust in the Crown. Confiscation has remained an overwhelming grievance. Kupai McGarvey’s brief summary of Tuhoe history in 1970 suggests the extent to which raupatu became part of that history:

First, there was Potiki, Toi and Hape. They claimed the land and held it. Then came the canoe Mataatua and its people. They tilled the earth and made laws for the benefit of and to ensure the survival of all the people. Then the Pakeha came to settle, they forced our people off the land and claimed it for themselves.³¹⁷

The first tangible expression of Tuhoe opposition to the raupatu came shortly after the hearings of the Compensation Court: ‘On arrival at the confiscation line two boundary poles were erected. One called “Rangimoaho” was placed on Tairahia, while the other named “Tuhoe” was placed at Owihakatoro.’³¹⁸ The carved posts, named for tipuna, symbolised Tuhoe’s defiance. Tamaikoha later placed a message on one of the pou: ‘Those that trespass will be relish for my food.’³¹⁹ Tuhoe came to embrace the confiscation boundary as a marker of their political identity, albeit one that symbolised their loss.

Although Tuhoe remained defiant, they made no further military challenge to the confiscation after the forging of peace in 1870 and 1871. As we shall see in chapter 7, a key question for the political settlement reached in the 1870s was whether the confiscated lands would be returned to Tuhoe. At first, this was the subject of direct negotiations. At hui with Ministers and officials in the early 1870s, tribal leaders raised the question without success.³²⁰ In 1875, Donald McLean, the Minister of Native Affairs, refused to budge.³²¹ As Tama Nikora reported, the Minister wrongly told Te Whenuanui that the confiscation had arisen from ‘your own unwarrantable action.’³²² The Government repeatedly refused to move the

317. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 84

318. Ibid, p 40

319. Ibid, p 184

320. Miles, *Te Urewera* (doc A11), pp 119, 151–154

321. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 329

322. ‘Te Taenga Atu o te Makarini ki Whakatane’, *Te Waka Maori o Niu Tirani*, vol 11, no 13 (Tama Nikora, brief of evidence, 12 January 2005 (doc J40), p 42)

confiscation line or return land to Tuhoe.³²³ The rangatira contemplated pursuing the matter in the imperial courts but were advised that legal challenges would be expensive and probably fruitless.³²⁴

Having failed to gain satisfaction directly from the Government, Tuhoe began to pursue the avenue of petitioning. The earliest surviving petition regarding the raupatu was that submitted by Heteraka Te Wakaunua in 1878.³²⁵ According to Binney (drawing on the advice of Tama Nikora), Te Wakaunua ‘used the adopted name “Te Takiwa”, the separated or lost land, as a poetic refrain’ throughout the petition.³²⁶ Te Wakaunua defined the Tuhoe ‘line’ (rainia) and sought the return of land now in the hands of other iwi, including the reserve at Te Puketi. Binney explained how, through a terse response by civil commissioner H T Clarke, Tuhoe learned that there would be no legal avenue to pursue their claims to the confiscated land. Clarke told Tuhoe the land had been taken ‘for the sins of your people.’³²⁷ Despite Clarke’s rebuff, numerous petitions followed in subsequent years.³²⁸

Tuhoe continued their efforts to have their grievance investigated. In the 1920s, there was a particular sense of urgency. In 1920, a petition was signed and sent to the Government by Te Kapo-o-te-Rangi Keehi and 237 others demanding the return of the confiscated land. The petition stated Tuhoe’s position that they had no involvement in the killing of either Volkner or Fulloon, nor had they taken up arms in resistance to Government troops.³²⁹ News that the Government would set up an inquiry into the nineteenth-century confiscation of Maori land – later known as the Sim commission – spurred similar petitions from iwi throughout the country. Binney states that they ‘began to pour into parliament from 1922 in anticipation of a government inquiry.’³³⁰ On the back of this news, Tuhoe established their komiti raupatu in June 1923. As Hirini Melbourne explained, ‘This committee was responsible for the planning and directing of all tribal efforts towards the success of their petition of 1920.’³³¹ In support of this, the committee prepared the presentation of its case and raised funds from all over the rohe. It did not hold its last meeting till 1935.³³² A further petition was submitted by Ngati Kareke in 1924 highlighting the ‘hardship’ suffered when the Government confiscated all

323. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 272–278, 290–294, 300–304, 322–323, 327–329

324. H W Brabant, ‘Native Meeting of Urewera Tribes, Held at Ruatahuna’, 1 April 1874, AJHR, 1874, G-1A, p 3; ‘Notes of Speeches Made at the Native Meeting at Ruatahuna’, 23–24 March 1874, AJHR, 1874, G-1A, p 5; Miles, *Te Urewera* (doc A11), p 153

325. Heteraka Te Wakaunua to Native Minister, 23 February 1878 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), pp 37–40)

326. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 351

327. Draft reply, Clarke to Te Takiwa Te Wakaunua, 9 April 1878 (Miles, *Te Urewera* (doc A11), pp 351–353)

328. Binney details the surviving petitions sent by Tuhoe, from that sent by Heteraka Te Wakaunua in 1878 to a petition sent by Wari Te Whiu in 1944: Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 352, 383.

329. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 329

330. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 368

331. Melbourne, ‘Te Manamanerau a te Kawanatanga’, p 139

332. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 368–369; Miles, *Te Urewera* (doc A11), pp 154–155

their lands west of Opouriao and around Te Poroa.³³³ Two years later, and with the hearings of the Sim commission approaching, the komiti raupatu hired a lawyer, Captain Pitt, to assist Tuhoe with their claim.

Despite these efforts, the Sim commission did nothing to rectify the wrong that had been inflicted. No Tuhoe people gave evidence at the commission's hearing at Opotiki in March 1927.³³⁴ The evidence that was given was cursory and uncontested. In addition, the commission's report barely addressed Tuhoe's grievances. The commission concluded that, 'except in the case of Whakatohea, the confiscations in the Bay of Plenty did not exceed what was fair and just.'³³⁵ The reports by the Crown commissioner for lands on the two petitions indicate why Tuhoe were not included in this exemption. The report on Te Kapo-o-te-Rangi Keehi's petition relied on Thomas Gudgeon's book, *Reminiscences of the War in New Zealand*, to conclude:

The Ureweras were in rebellion before the murder of Mr Volkner and Mr Falloon [sic] for they were one of the first tribes to join the King Party in the Waikato and with the Taupo and Upper Wanganui they fought against General Cameron at Orakau and other places. No tribe in New Zealand deserved punishment more than these people living in the midst of almost impenetrable and forest clad mountains and seldom mixing with Europeans against whom they could have no grievance.³³⁶

In paraphrasing Gudgeon, the report signalled that Tuhoe were not entitled to compensation on account of events that had taken place before the proclamation of peace. This was, as Binney says, a 'crude' reading of the historical issues.³³⁷ As the commission itself pointed out in its published report, all Maori participation in the battle of Orakau had been forgiven by the proclamation in September 1865. In addition, the report drew on Gudgeon's account to condemn Tuhoe for supporting Te Kooti: 'It was not until Te Kooti[s] star was on the wane and the King Movement and Hauhauism had been severely dealt with that the Urewera thought of adjusting their attitude to the Queen's authority.'³³⁸ The Sim commission supported the Crown's confiscation of Tuhoe's lands and appears to have underscored the entrenched public perception of Tuhoe as an isolated and rebellious people.

It is not surprising, given the commission's failure to acknowledge Tuhoe's grievances in any meaningful way in its published report, that a further petition was filed by Te Kapo-o-te-Rangi Keehi on 2 August 1949 asking the Government to set up a royal commission.³³⁹ In 1980, the issue was raised again (without

333. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 331

334. Binney, 'Encircled Lands, Part 1' (doc A12), pp 372-373

335. 'Report of the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances . . .', AJHR, 1928, G-7, p 22

336. K M Graham, commissioner of Crown lands, 'Report on Petition No 1, Royal Commission on Native Grievances 1927', RDB, vol 51, p 19,788

337. Binney, 'Encircled Lands, Part 1' (doc A12), p 378

338. Graham, 'Report on Petition No 1', RDB, vol 51, p 19,789

339. Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 332

'TO ME, when you first set foot on our shores – our problems began, which remain to this day. Land Confiscation. You the Crown, the Government, you confiscated our land through devious means, with lies, and with wars.'

Te Weeti Tihi¹

1. Te Weeti Tihi, brief of evidence, 10 January 2005 (doc J17), p 2

success) by Kupai McGarvey when the Minister of Maori Affairs, Ben Couch, visited Ruatoki.³⁴⁰ Tuhoe have continued to pursue the right to have their grievance investigated, filing an early historical claim to the Waitangi Tribunal in 1987.

The Crown, in one of its major concessions in these hearings, acknowledged that the failure to remedy the wrong of confiscation is equal to the act of confiscation itself. For Tuhoe, this failure was experienced in the lack of response to numerous petitions requesting the return of confiscated lands. It was not acknowledged until our hearings.

One of the long-term impacts of confiscation has been that Tuhoe have an inherent mistrust of the Crown. This was very evident in the personal submissions made to this Tribunal during our hearings. Kaumatua Sonny Biddle conveyed Tuhoe's understandings both of the Crown's justification for its confiscation of their land and of the unfairness of its punishment for acts in which they had not been involved:

My name is Te Kiato Sonny Biddle. I live at Whakarae. Not the Whakarae at Matakerepu, the Whakarae at Te Tawa. When the Crown confiscated our land down at the coast for alleged acts of rebellion, my tipuna were forced to move their Pa inland.

The Crown's reaction to the death of Volkner and Fulloon was devastating to our people. Tama-i-koha's crops and stock were destroyed and his houses burnt; this in my view placed my people in a situation of poverty, both physically and spiritually. The fact that the Crown punished us and confiscated our lands on the basis of deeds committed by one not from Te Urewera has always confused me. . . .

Not only was our land taken, but the most fertile land was taken. This meant that the people of Tamaikoha were left with mainly mountainous land on which to survive. We are still largely bereft of fertile lands. This has prevented us from being able to rebuild economically.³⁴¹

340. Ibid, pp 332–333

341. Te Kiato Sonny Biddle, brief of evidence, no date (doc B25), pp 2, 5, 6

We do not think it surprising, given that the Crown later cited the murders of Volkner and Fulloon as justification for the confiscation, that Tuhoe were both astonished and embittered that the taking of their lands should apparently be tied to those murders.

Tuhoe have struggled over many years to have their claims heard, passing knowledge of the raupatu down through successive generations. Tame Iti spoke of how this grievance has been kept alive in oral histories and passed on by Tuhoe elders through to the present day: 'I remember Papi Purewa spoke with Timoti and [me] near the confiscation line, he pointed to lands that he described as "he whenua whanako mai o koroua kuia" (land stolen from your ancestor[s]).'³⁴² After the performance of the haka *Te Puru* at our powhiri at Ruatoki, Tamati Kruger explained:

Koina te haka akone e kii a whakatipuranga o Ngai-Tuhoe. Koira te reo tuarua o Tuhoe, ko te ako i a matau tamariki ki nga korero o te raupatu, ki nga korero o te hara o te karauna kia kore rawa e warewarehia. Tera pea kia ea enei kaupapa, a kia taea te whakamoe atu.³⁴³

This is the war dance that is taught to all the children of Tuhoe. It is their second language to teach our children talks [korero] concerning the confiscation, all the talks concerning the shortcomings of the crown, so they do not forget. So that all the misdeeds are addressed and justice will prevail.³⁴⁴

For Tuhoe who continue to live at Ruatoki or Waimana, confiscation is an everyday reality. They cross the boundary line on a daily basis. Tama Nikora pointed out the line to us at our first Waimana hearing:

The people on this side live and consider their livelihoods against those on the other side of that line. And Ruatoki is pretty bad on that. So their kids ask, 'How come that the Pakeha are better off and they are worse off?' . . . And so my wish is that you gather a sense of the lament of the hurt from the children, talking about the confiscation – there. Just outside, you go out that road, when you get to that cemetery, that is the line of confiscation. Tuhoe land is on this side. Pakeha world is on the other side of the line.³⁴⁵

The line is a reminder not only of what Tuhoe have lost through unjust acts by the Crown but also of the people they have become. They no longer have their best lands or their traditional pathways to the coast. They have become a landlocked people. Because of this, many people today are unaware that Tuhoe ever occupied coastal lands. Confiscation created a boundary between Tuhoe and the rest

342. Tame Iti, brief of evidence, 10 January 2005 (doc J22), p 6

343. Tamati Kruger, claimant transcript of oral evidence, Tauarau Marae, Ruatoki, 17 January 2005 (doc J48), pt 2, p 2

344. Kruger, claimant translation (doc J48(a)), pt 2, pp 1–2

345. Tama Nikora, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 24 November 2003

of the world, and this has left an indelible mark on their collective psyche. It is a boundary, nevertheless, that they do not wish to let stand.

4.5.5.5 Conclusions on the impacts of confiscation

Our conclusions as to the impacts of confiscation are as follows:

- ▶ About half of Tuhoe's most productive lands were confiscated, and 140 years' use of those lands has been lost.
- ▶ Before confiscation, those lands were being used by Tuhoe to engage in the developing colonial markets; confiscation stopped that use and precluded the development opportunities of the late nineteenth and twentieth centuries. The loss of these key lands, in the words of Professor Murton, 'represents a severe reduction of Tuhoe's economic capability, that is, their freedom to achieve economically in the regional and national economy that was to develop'.³⁴⁶
- ▶ Tuhoe's ability to exercise their customary rights to valuable food and other resources at Ohiwa was severely diminished, to the point where they are commonly thought to be a landlocked people, with no coastal rights.
- ▶ As a result of the arbitrary drawing of the confiscation line, some Tuhoe hapu lost all their lands; others lost some. The need for landless hapu to relocate put pressure on the land and resources of their whanaunga and increased the number and complexity of claims later made to land, especially at Ruatoki.
- ▶ The Crown's award of confiscated land to Tuhoe's traditional enemies strained relationships and revived tensions among iwi of the area.
- ▶ The loss of the confiscated lands meant that Tuhoe's links with that land, and all that it had provided for them and meant to them over time, were severed.
- ▶ Tuhoe's view of the Crown, little developed before confiscation, was permanently tarnished by the confiscation. This led to resentment and mistrust of Crown authority, especially as numerous petitions to regain the land, made between 1878 and the present day, were rebuffed.
- ▶ As a result of the Crown's confiscation of half of their most productive land, in breach of the Treaty, Tuhoe suffered significant social, cultural, and economic prejudice. This prejudice was both immediate and lasting.

4.6 MOKOMOKO WHANAU CLAIM

4.6.1 Should the terms of the pardon granted to Mokomoko in 1992 be revisited and compensation paid to his descendants?

SUMMARY ANSWER: The wording of the Governor-General's pardon of Mokomoko suggests its sole basis is that he should be treated consistently with three Ngati Awa persons who, in 1988, received a statutory pardon for Volkner's killing. Whereas the statutory pardon states that it restores the character, mana, and reputation of the Ngati Awa persons, Mokomoko's pardon contains no such

346. Murton, summary of 'Stage Three' (doc J10), p 9

statement. The result is that Mokomoko's pardon appears hollow. The Tribunal recommends that its terms be revisited.

The prejudice suffered by the claimants as a result of the view, now proven to be false, that their tipuna was largely responsible for the events initiating raupatu is such that monetary compensation is not appropriate but a pardon alone is not enough. The Tribunal recommends the creation of some tangible tribute, agreed between the Crown and the claimants, to mark the wrong done and to demonstrate that Mokomoko and his descendants are not to blame for raupatu.

The Wai 203 amended claim, submitted by Tuiringa Mokomoko for the Mokomoko whanau, raises issues relating to the trial and execution in 1866 of their chiefly ancestor, Mokomoko, for the murder of the Reverend Carl Sylvius Volkner in 1865. They seek:

- ▶ a pardon in different terms from that granted to Mokomoko in 1992; and
- ▶ monetary compensation.³⁴⁷

We consider these matters in turn.

Although neither the killing of Volkner nor the execution of Mokomoko occurred in the Urewera inquiry district, Wai 203 was admitted by consent in the knowledge that the issue of the pardon is a matter for urgent inquiry. However, we are not empowered to revisit the facts of the murder itself or the question of Mokomoko's innocence. The central issue for us is whether Mokomoko's pardon was equal to a pardon granted to a group of Ngati Awa who were convicted and executed for the same killing. The other issues raised in the Wai 203 amended claim, particularly those relating to land in the north of the Urewera inquiry district, remain to be considered and resolved at another time. As previously stated, the northern area of the Urewera inquiry district was included only for the limited purpose of investigating Tuhoe's claims.

4.6.2 Background to the 1992 pardon

The Wai 203 claimants contend that the 1992 pardon does not fully restore the mana, character, and reputation of Mokomoko and the wider whanau. The immediate background to this issue can be traced to the 1980s, when the whanau began its campaign to locate Mokomoko's remains at Mt Eden Prison and relocate them to Opotiki. At the same time, a pardon was granted to members of Ngati Awa. This pardon is contained in section 11 of the Te Runanga o Ngati Awa Act 1988, which reads:

after the passing of this Part of this Act the character, mana, and reputation of the persons of Ngati Awa descent who were arrested, tried, and labelled as rebels in or about 1865 is restored to them and their whanau and to the iwi of Ngati Awa as a whole, and a full pardon is hereby granted to them in respect of all matters arising out of the land wars in 1865.

347. Wai 203 amended statement of claim, 17 March 1994 (claim 1.11(a)), paras 5.1–5.2

These terms clearly encompass the Volkner killing.

After the 1988 Act was passed, the claimants wrote to the Prime Minister and the Minister of Justice seeking similar redress. Even at this early stage, they expressly requested that Mokomoko's pardon be worded in such a way that it would not seem to be 'an act of clemency towards a guilty man.'³⁴⁸ The Secretary of Justice rejected this application for statutory redress on the ground that there was a lack of evidence.³⁴⁹

In May 1991, Tuiringa Mokomoko filed Wai 203, seeking recommendations that the Crown:

- ▶ 'reconsider its provisional assessment that an acquittal and/or statutory pardon should not be granted'; and
- ▶ take 'appropriate action to grant by whatever appropriate means a pardon for Mokomoko'.³⁵⁰

It is clear that the Mokomoko whanau sought a pardon equivalent to Ngati Awa's.

The push for a pardon found favour with the then Minister of Justice, the Honourable Douglas Graham. On 15 November 1991, he met with Tuiringa, who clarified his whanau's position in a letter of the same day.³⁵¹ Thus, dialogue was established. However, having heard nothing about the progress of the pardon application for a number of months, Tuiringa wrote to the Minister on 14 April 1992. The Minister's response was that information was being sought from the Crown Law Office. On 15 June, Tuiringa was advised that the Minister wanted to meet him at Opotiki to provide an update on progress. Instead, the meeting was held at the Whakatane District Court, where the Mokomoko whanau were presented with a *fait acompli* – a pardon that had been signed by the Governor-General the previous day.³⁵²

The pardon is what is known as a 'free pardon'. The granting of a pardon is an exercise of the royal prerogative power. Section 407 of the Crimes Act 1961 sets out its effect:

Where any person convicted of any offence is granted a free pardon by Her Majesty, or by the Governor-General in the exercise of any powers vested in him in that behalf, that person shall be deemed never to have committed that offence:

Provided that the granting of a free pardon shall not affect anything lawfully done or the consequences of anything unlawfully done before it is granted.

The pardon itself drew heavily from the wording of section 11 of the Te Runanga o Ngati Awa Act:

348. Tuiringa (Mani) Mokomoko, brief of evidence, no date (doc B19), app F, p 4

349. Secretary of Justice to William Jeffries, December 11 1990 (Mokomoko, brief of evidence (doc B19), app G, p 5)

350. Wai 203 Statement of Claim, 14 May 1991 (claim 1.11), paras 5.1–5.2

351. Tuiringa Mokomoko to Douglas Graham, 15 November 1991 (Mokomoko, brief of evidence (doc B19), app D)

352. Mokomoko, brief of evidence (doc B19), pp 24–25

Free Pardon
Governor-General

To all to whom these presents shall come:

WHEREAS on the 4th day of April 1866 Mokomoko was convicted in the Supreme Court at Auckland of the murder of Carl Sylvius Volkner and sentenced to death, and was subsequently executed:

And whereas the said Mokomoko was of Whakatohea descent:

And whereas three other persons were also convicted with Mokomoko on the 4th day of April 1866 of the murder of Carl Sylvius Volkner, those three persons being of Ngati Awa descent:

And whereas section 11 of the Te Runanga of Ngati Awa Act 1988 restores the character, mana and reputation of the persons of Ngati Awa descent who were arrested, tried and labelled as rebels in or about 1865 and grants to them a full pardon in respect of all matters arising out of the land wars of 1865:

And whereas it appears that one of the incidents of section 11 of the Te Runanga o Ngati Awa Act 1988 is to pardon the three persons convicted with Mokomoko of the murder of Carl Sylvius Volkner:

And whereas it appears to me just and expedient that a pardon should also be granted to Mokomoko:

Now therefore I, Catherine Anne Tizard, Governor-General of New Zealand, acting upon the advice of the Minister of Justice, do hereby in the name and on behalf of Her Majesty, grant to the said Mokomoko a free pardon in respect of the said crime.³⁵³

Tuiringa told us that the Minister, in presenting the pardon, informed the whanau of the Government's reasoning: 'the failure to pardon Mokomoko was inconsistent with the Te Runanga o Te Awa Act 1998 [*sic*] in that three of those who had been executed along with Mokomoko for the killing of Volkner were pardoned while Mokomoko was not.'³⁵⁴

A media statement also declared that the justification for issuing the pardon was solely to bring about equality with Ngati Awa: 'Justice Minister Hon DAM Graham said Crown Counsel believed it would be inconsistent to withhold a pardon for Mokomoko when legislation had been passed which effectively pardoned Ngati Awa convicted of Volkner's murder.'³⁵⁵

These references to the principle of equality motivating the pardon deeply concerned the whanau. Tuiringa told us:

Once the dust settled and we were able to examine the pardon in more detail, the whanau grew increasingly concerned . . . To us the pardon reads that because certain

353. Governor-General, 'Free Pardon', 15 June 1992 (counsel for the Mokomoko whanau, comp, supporting papers to closing submissions, 30 May 2005 (doc N3(a)), doc 14)

354. Mokomoko, brief of evidence (doc B19), p 25

355. Minister of Justice, press statements and speech notes, 18 June 1992

Ngati Awa persons were pardoned, Mokomoko should likewise be pardoned. This did not satisfy the family in clearing his name and declaring him innocent.³⁵⁶

Thus, in the view of the Mokomoko whanau, the pardon – while an important first step in ‘clearing the name of their Tipuna’ – did not restore Mokomoko’s character, mana, and reputation.³⁵⁷ As a result, the whanau amended their claim, seeking a further and better pardon – a pardon that would see Mokomoko dealt with in his own right and not just as a matter of consistency under the law or as a mere adjunct to the Ngati Awa pardon.³⁵⁸

4.6.3 The pardon: Tribunal analysis

There are substantial differences between the two pardons – both in the way they were created and in their content. Ngati Awa were closely involved in the drafting of their pardon,³⁵⁹ the Mokomoko whanau were not. This lack of consultation and participation is reflected in the wording of the 1992 pardon. With its extensive reference to the Te Runanga o Ngati Awa Act, it has the appearance of a technical correction by which a legal inconsistency is resolved. The public statements by the Minister of Justice and Crown officials have added to the impression that the Crown’s sole basis in granting a free pardon to Mokomoko was simply to bring about equality with Ngati Awa. As a consequence, we agree that the pardon appears hollow. The situation is compounded by the fact that the Ngati Awa pardon is enshrined in statute, a public document recording the law of the New Zealand Parliament, whereas Mokomoko’s pardon is not. Although, technically, the pardons are of the same effect, the difference in their form is significant to the claimants.

It is implicit in the Minister’s actions and the provision of the 1992 pardon that the Crown accepts that Mokomoko was treated in a manner inconsistent with the principles of the Treaty of Waitangi. Equality of treatment in relation to such pivotal events at such a pivotal time has immediate and obvious Treaty implications. Therefore, we recommend that a fresh pardon be granted without reference to the Ngati Awa pardon. The claimants have suggested a draft that appears to be appropriate:

On 4 April 1866, Mokomoko was convicted, along with three other persons of Ngati Awa descent, for the murder of Carl Sylvius Volkner.

Prior to his sentence Mokomoko maintained that he was innocent of the murder of Carl Sylvius Volkner.

On 17 May 1866, Mokomoko was executed and buried at the old Jail and Courthouse. Mokomoko was later re-interred at Mt Eden Prison and in October 1989 was re-interred at Waiaua Marae, Opotiki.

356. Mokomoko, brief of evidence (doc B19), pp 26–27

357. Kevin Were to Douglas Graham, Minister of Justice, 18 June 1992 (doc B19), app H

358. Wai 203, amended statement of claim (claim 1.11(a)), para 5.1

359. 28 July 1988, NZPD, vol 490, p 5461

On 15 June 1992 Her Excellency the Governor-General provided a free pardon for Mokomoko.

It is hereby declared that after the passing of this Act the character, mana and reputation of Mokomoko, who was arrested, tried and executed is restored to him and his whanau and to his iwi Whakatohea as a whole and a full pardon is hereby granted to them in respect of all matters arising out of the murder of Carl Sylvius Volkner in 1865.³⁶⁰

We suggest that the wording of this document should be used as the basis for a statutory pardon. The Crown, in closing submissions, suggested that this issue be dealt with at the same time as the larger Whakatohea claim.³⁶¹ In our view, there is no reason why the matter cannot be dealt with now as a discrete matter.

4.6.4 Compensation

Claimant counsel sought a recommendation from us that an ex gratia payment be made to the Mokomoko whanau as a way of 'restoring Mokomoko's reputation, character and mana.'³⁶² We were referred to the Cabinet paper of 2 December 1998 that outlines the criteria for compensation for those wrongly convicted:

1. The category of claimants who shall be eligible to receive compensation or ex gratia payment in respect of being wrongly convicted of offences (qualifying persons) is limited to those who:
 - (a) Have served all or part of a sentence of imprisonment; and have either
 - (i) Have had their conviction quashed on appeal, without order of retrial, in the High Court (summary convictions) or Court of Appeal (including references under section 406 of the Crimes Act 1961); or
 - (ii) Have received a free pardon under section 407 of the Crimes Act 1961; and
 - (b) Are alive at the time of the application.
2. A qualifying person may apply to the Minister of Justice for compensation or ex gratia payment and the Minister shall refer those cases meriting further assessment to a Queen's Counsel appointed by the Minister for that purpose.
3. The Queen's Counsel shall report to the Minister of Justice, certifying whether he or she is satisfied that the claimant is innocent beyond reasonable doubt.³⁶³

We were also referred to a later Cabinet paper, of 12 December 2001, which amended the third point above so that the Queen's counsel now must certify whether he or she is satisfied that the claimant is innocent 'on the balance of

360. Counsel for Mokomoko whanau, closing submissions, 30 May 2005 (doc N3), pp 57–58

361. Crown counsel, closing submissions (doc N20), topic 5, p 18

362. Counsel for Mokomoko whanau, closing submissions (doc N3), p 63

363. Craig Tamihana Coxhead, brief of evidence, no date (doc B17), pp 4–5

probabilities.³⁶⁴ Crucially, this paper also contains a passage that relates specifically to claims before the Waitangi Tribunal:

As a point of clarification, it is not intended that this paper extend to statutory or free pardons that are the subject of Treaty of Waitangi claim settlements. In this regard, it is noted that claims have been made to the Crown by the descendants of persons who have received free and statutory pardons in respect of historical grievances.³⁶⁵

In his evidence for the claimants, Craig Tamihana Coxhead confirmed that Mokomoko and his whanau are not eligible for compensation. He concluded:

The only apparent avenue within the compensation scheme available to the Mokomoko whanau to gain justice rests with the Crown's reserved right, in extraordinary circumstances, to consider claims falling outside the criteria specified on their individual merits where it is in the interests of justice.³⁶⁶

The Mokomoko whanau believe this case is extraordinary and warrants compensation.

4.6.5 Compensation: Tribunal analysis

We accept the propriety of a general compensation policy to the effect that personal rights of action die with the person concerned. However, there would be a cynical circularity if that policy were to be applied to a person who had been wrongly executed. In those circumstances, we consider that relief to immediate dependants and whanau may well be appropriate. The Mokomoko claimants are several generations removed from their ancestor, so such relief could not assist them.³⁶⁷

In this case, however, there is an overlay of continuing prejudice. Mokomoko was regarded for decades by Crown officials and politicians as being largely responsible for the events initiating raupatu. That view is demonstrably false. It is a view that has come to be shared at an unspoken and even overt level by Maori, particularly Maori in the Bay of Plenty. Resentment on the one hand and defensiveness on the other have dogged this whanau and others holding this tipuna's name. In our view, a pardon is not enough and money is inappropriate.

The Crown should consider, over and above the pardon, creating some tangible tribute that will mark the wrong done and demonstrate to all concerned that the blame for raupatu did not and does not rest on Mokomoko or his descendants.

364. *Ibid*, p 5

365. *Ibid*, p 6

366. *Ibid*, pp 6–7

367. Indeed, the larger issue of compensation to immediate dependants of a person wrongly executed must be academic: in New Zealand, the death penalty was abolished as recently as 1989 but the last execution took place in 1957. See <http://www.nzhistory.net.nz/culture/the-death-penalty>.

Our initial thought was that a memorial scholarship for uri of Mokomoko might be appropriate but on reflection consider this is not a matter for us but one to be discussed between the whanau and the Crown.

We therefore find that the Wai 203 claimants have established the breach of Treaty principle and resulting prejudice, and we recommend that redress be provided in the form of a statutory pardon, as outlined, and some further tangible tribute, to be decided between the claimants and the Crown.

4.6.6 Conclusions

Our conclusions on the Mokomoko whanau claim are as follows:

- ▶ By pardoning Mokomoko in 1992, the Crown acknowledged that its treatment of him had not been consistent with the principles of the Treaty of Waitangi.
- ▶ The form and wording of that pardon has not redressed the original Treaty grievance.
- ▶ A statutory pardon should be granted to Mokomoko, the wording to be based on the claimants' draft wording and finalised in consultation with them.
- ▶ In addition, the Crown should consult with the claimants about the nature of an appropriate tribute to mark the wrong done by perpetuating the false view that Mokomoko was largely responsible for the raupatu.

4.7 SUMMARY

4.7.1 Te Raupatu o Tuhoe Whenua

We summarise our findings on Te Raupatu o Tuhoe Whenua as follows:

- ▶ The Crown has conceded that the confiscation of land in the eastern Bay of Plenty was 'a breach of the Treaty, unjust and excessive' and that its past failure to acknowledge the 'wrongful confiscation of Tuhoe land . . . is a breach of the Treaty'.³⁶⁸ We agree.
- ▶ The Crown has also conceded that, after the landing of the ECEF at Opotiki in September 1865, 'Ngai Tuhoe as a whole were not in "rebellion"'.³⁶⁹
- ▶ The Bay of Plenty confiscation, proclaimed in January 1866, was the first substantial contact between the Crown and Tuhoe. The Crown had not even intended to punish Tuhoe by confiscating their land, although it was determined to acquire land for settlement in the Ruatoki and Waimana Valleys. Tuhoe lands were caught up in a confiscation aimed at other iwi. And yet, Ministers and officials later affirmed that the Crown had intended to punish the tribe and had confiscated their land deliberately. The Crown's explanations after the event have contributed greatly to Tuhoe's sense of injustice.
- ▶ Having confiscated Tuhoe's land in breach of the Treaty, the Crown then compounded its action by failing to return any land to them or to use any of the available mechanisms for compensating or providing for iwi whose

368. Crown counsel, closing submissions (doc N20), topic 3, pp 2, 34

369. Ibid, p 5

land had been taken. This was in breach of the Crown's Treaty obligations to both govern fairly and in accordance with the law, and actively to protect the lands and interests of iwi. The Government's agent, Wilson, who was authorised to make reserves for 'surrendered rebels' (as well as 'friendlies'), failed to approach Tuhoe or inquire into their rights, although there is evidence he was aware of those rights. But Tuhoe were not 'surrendered rebels'; they had not fought the Crown after the peace proclamation of 2 September and their surrender had not been sought. Wilson thus ignored them when he made reserves for other 'rebels'. Instead, Tuhoe were left to struggle with claims in the unfamiliar Compensation Court, where they were opposed by the Crown's agent (Wilson, wearing a different hat) and where their claims could be – and were – rejected on the ground that they were 'rebels'. Tuhoe received neither land nor money.

- ▶ Because of their treatment during this period, as confiscation was implemented, Tuhoe's view that the confiscation was designed to punish them became entrenched. Even though the Crown had not intended at the outset to take Tuhoe lands, the fact that it doggedly persisted in the confiscation (rather than making any attempt to mitigate its impact) explains why the iwi concluded that it had been targeted all along.
- ▶ The Crown's failure to return land to Tuhoe was motivated by its determination to retain their lands for military settlement. This was unjust and in breach of the Treaty. The later grant of 142 acres to Rakuraku's people – the only land ever returned – did not improve the situation for Tuhoe.
- ▶ At the time of confiscation, hapu of Tuhoe exercised customary rights to, and authority over, substantial areas of land north of the confiscation line. These included rights at Ohiwa Harbour, which were shared with other hapu and iwi. For the particular purpose of facilitating settlement negotiations with the Crown, we have identified two 'areas of interest' in the confiscated lands. South of Puketi and Whakarae, where Tuhoe's authority was paramount, their interests amounted to 90 per cent. North of Puketi and Whakarae, where Tuhoe coexisted with other hapu and iwi, their interests amounted to 30 per cent. Represented in acres, this amounts to 59,655 acres (24,147 hectares) of the confiscated land in our inquiry district. Tuhoe also had interests in confiscated lands outside our district.
- ▶ The confiscation of much of Tuhoe's best land had devastating impacts economically, socially, culturally, and politically for them. Tuhoe have been deprived of 140 years of potential development and return from their most fertile lands. Their rights to resources at Ohiwa Harbour were also severely diminished. So complete was their severance from Ohiwa that it has created the impression that Tuhoe were always a landlocked people, with no rights on the coast. Confiscation severed Tuhoe's links with lands and waterways over which they had long exercised mana. A number of hapu had to move back across the confiscation line to be accommodated in existing settlements, which created both immediate and long-term pressure on the remaining lands. Confiscation also increased tensions with neighbouring iwi. Tuhoe

have therefore suffered economic, social, and cultural prejudice from the Crown's breaches of the Treaty.

- ▶ The political impact of raupatu can be seen in Tuhoe's long-standing distrust of the Crown, which has echoed down through generations. Raupatu, and the transgression against Tuhoe's mana that it entailed, has embedded itself in the people's consciousness. It is a central pillar of their grievance against the Crown. For over 140 years, Tuhoe have sought redress without success. The Crown has acknowledged that its failure to provide redress is in breach of the Treaty.

4.7.2 The Mokomoko whanau claim

We summarise our findings on the Mokomoko whanau claim as follows:

- ▶ The Governor-General's pardon of Mokomoko in 1992 appears hollow because it does not restore his character, mana, and reputation, unlike the 1988 statutory pardon of three Ngati Awa persons for Volkner's killing. It has not removed the Treaty grievance. We recommend that its terms be revisited in a statutory pardon, with a wording to be agreed between the Crown and the claimants.
- ▶ In addition to a statutory pardon, we recommend the creation of some tangible tribute, agreed between the Crown and the claimants, to mark the wrong done and to demonstrate that Mokomoko and his descendants are not to blame for raupatu.

CHAPTER 5

TE MURA O TE AHI – WAR, TE UREWERA, AND TE KOOTI

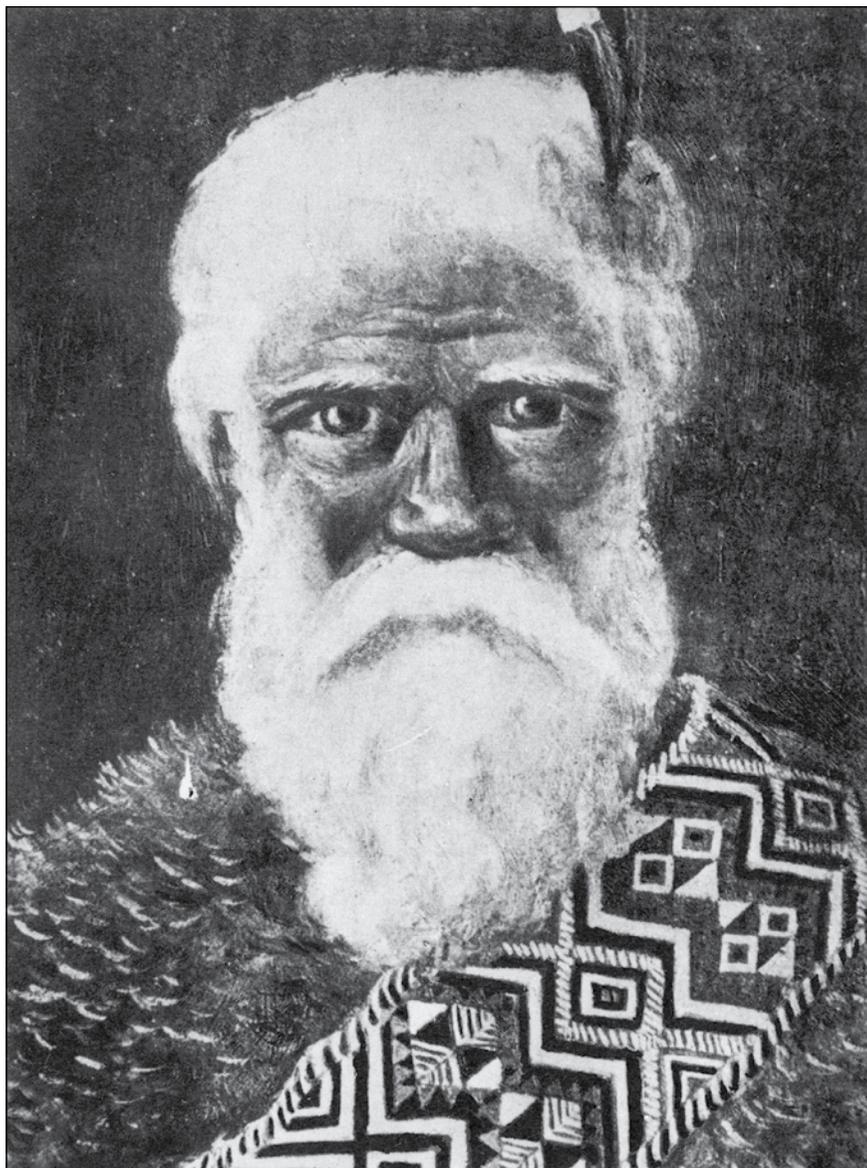
5.1 INTRODUCTION

Between 1869 and 1871, the Government launched a number of military expeditions and operations into the heart of Te Urewera. This was the first time it had made its presence felt beyond the fringes of the region. The stated purpose of these expeditions was to capture the formidable and charismatic Ringatu spiritual leader Te Kooti Arikirangi Te Turuki and to destroy the basis of his support within Te Urewera.

Te Kooti had led the escape of some 160 men captured in various conflicts with Crown forces, and their families – nearly 300 people in all – from Wharekauri (the Chatham Islands). There, they had been held without trial for a prolonged period. In July 1868, they returned aboard a hijacked vessel to Te Kooti's home region of Turanga (Poverty Bay), hoping to make their way peacefully inland to sanctuary at Taupo. Pursued by Crown forces, and initially denied passage through their rohe by both Tuhoe and the Kingitanga, who feared the consequences of assisting him, Te Kooti eventually turned back and attacked both military settlers and those Maori in Turanga whom he saw as agents of an unjust Crown. His visions from God sustained what he saw as his fight against oppression, and his spiritual teachings drew followers to him. In the wake of his Turanga raids and killings, Te Kooti was attacked by Crown forces at Ngatapa Pa; many of his men were killed, and in early 1869 he escaped into Te Urewera with the small number who survived. Once there, he gained the support of a significant number of Tuhoe and Ngati Whare. Many of the men of these iwi joined Te Kooti in raids on Ohiwa, Whakatane, and Mohaka. Some 80 people were killed, and homes and substantial amounts of property were destroyed.

The claimants and the Crown agree that, in launching the military expeditions, the Government was responding to the threat posed by Te Kooti after his attack on Turanga in November 1868, and his subsequent attacks on the Bay of Plenty and Hawke's Bay in March and April of 1869.

The Crown's first military expedition into Te Urewera, sent in May 1869, employed a strategy of systematic destruction of villages and cultivations. From April to May 1870 onwards, the Crown also adopted a policy of removing surrendered combatants (and their families) from Te Urewera and relocating them to coastal reserves. In December 1870, however, this policy was changed to allow those who had not left to stay in Te Urewera. At first, they were to be concentrated in certain locations there, and under supervision, but this plan was abandoned in February 1871. The last of the Government's troops were withdrawn in December



Thomas Ryan (ATL, MNZ-0910-1/2)

Te Kooti Arikirangi Te Turuki. Te Kooti's spiritual and military leadership sustained Tuhoë in the wake of the confiscation of much of their best lands in 1866. Following his defeat at Ngatapa in 1869, he retreated into Te Urewera, where he gained widespread allegiance. However, the support of Tuhoë and Ngati Whare for Te Kooti and their involvement during 1869 in several armed attacks directed at particular communities made them the targets of destructive Crown campaigns between 1869 and 1871. No known photographs of Te Kooti exist. The portrait of Te Kooti as an old man was painted by Thomas Ryan in 1891, shortly after Ryan visited Te Whaiti. Judith Binney noted that the portrait does not fit with contemporary descriptions but considered also that it 'may not be totally misconceived'; it is the best-known image of Te Kooti.

1871. Hostilities formally came to a close in that month, when Te Urewera leaders accepted the Crown's offer that they be fully responsible for managing their own affairs and for keeping Te Kooti out of their districts. All of the communities in Te Urewera experienced the impact of war during this period; many saw their pa, kainga, homes, and gardens burnt and destroyed.

The Crown has made several concessions on this issue, all relating to the conduct of its expeditions:

- ▶ The summary execution of prisoners by Maori troops engaged in military activities on behalf of the Crown constituted 'a breach of the guarantee of the rights of British subjects under Article 3 of the Treaty of Waitangi'.¹ On this point, the Crown made specific reference only to the execution of prisoners at Onepoto (Waikaremoana) in 1866 (see chapter 4).
- ▶ More generally, the Crown accepted that it was responsible for the actions of Maori troops under the command of its military leaders, even if they were not formally commissioned by the Government.²
- ▶ Government forces made a number of 'notable mistakes' during the period when the Crown was attempting to make peace or when the district had returned to a state of peace.³ These included:
 - the killing of Tamaikoha's uncle, Tipene, by St John's forces at Whakararae in 1870; and
 - the 'continuing use of draconian policies such as the burning of kainga when it was apparent that the district had returned to a state of peace'.⁴ Crown counsel cited no specific instances of this.
- ▶ The Crown adopted Dr John Battersby's observation that looting and the destruction of property other than food stores occurred and that, generally, this served no military purpose.⁵ No particular incidents were cited by the Crown.

The Crown consistently argued that its military actions were both reasonable and necessary to protect the colony from potential threats. The Crown acknowledged that it set aside its Treaty commitments to the peoples of Te Urewera but argued that this was necessary in order to 'deprive Te Kooti of a safe haven'.⁶

By contrast, the claimants view the military expeditions of this period as being fundamentally and inexcusably in breach of the Treaty. Some claimants argued that, as well as attempting to apprehend Te Kooti, the Crown aimed to destroy the strength of Tuhoe and Ngati Whare by laying waste to their communities. To the claimants, the Crown was acting simply to crush what it saw as the last outpost of lawlessness in the colony: an almost impenetrable mountain fortress that needed

1. Crown counsel, closing submissions, June 2005 (doc N20), topic 4, pp 2, 12–14

2. Ibid, pp 13–14

3. Ibid, p 10

4. Ibid

5. Ibid, p 12; John Battersby, 'The Government, Te Kooti and Te Urewera' (commissioned research report, Wellington: Crown Law Office, 2003) (doc B3), p 71

6. Crown counsel, closing submissions (doc N20), topic 4, p 6

to be subdued. The claimants argued that, by treating the peoples of Te Urewera as an enemy, the Crown was in breach of the Treaty.

5.2 ISSUES FOR TRIBUNAL DETERMINATION

The Crown and the claimants agree on the main events of the Crown's military expeditions in Te Urewera. They do not always agree, however, on the nature or details of those events. In particular, there may be discrepancies between the written sources available to us (many of which are official sources) and oral sources. We consider both types of sources on their merits.

Nor do the Crown and the claimants agree on the legal and Treaty standards by which the Crown's dispatch of military expeditions into Te Urewera, and their conduct, is to be assessed. It is our task to examine whether the Crown and its forces acted in a Treaty-compliant manner. In this examination, the lawfulness or otherwise of the Crown's conduct is relevant. It is also important that we consider the immediate and long-term effects of the military operations in one of the final theatres of the New Zealand Wars.

Our analysis is structured around the following questions:

- ▶ Was the Crown justified in launching a military response in Te Urewera in 1869?
- ▶ What standards apply to the Crown's conduct of its military expeditions?
- ▶ How did the Crown conduct its military expedition of 1869?
- ▶ Was the Crown justified in launching further expeditions in 1870 and in its conduct of them?
- ▶ How did the Crown conduct its military expeditions in 1871?
- ▶ What were the immediate and long-term impacts of the military operations undertaken by the Crown?

After addressing those questions for the claims before us, we turn to Ngati Manawa's claim about their experiences of the war. Of necessity, Ngati Manawa's issues are dealt with separately. As Kawanatanga supporters, their claim is different from that of the other peoples of Te Urewera. It focuses on whether their homes and lands were equally affected by wartime destruction and whether the Crown assisted them to recover or took improper advantage of their troubles following their return to Te Urewera at the end of the war.

We note here that the claims of Ngai Tamaterangi are dealt with in chapter 6, in the context of our assessment of claims about confiscation and the 'four southern blocks' in the upper Wairoa–Waikaremoana region.

5.3 KEY FACTS

5.3.1 Confrontations before the first Urewera expedition

The possibility of sending military expeditions into Te Urewera first arose in the late 1860s, in the wake of confiscation (see chapter 4). The Urewera rangatira Erueti Tamaikoha adopted the strategy of harassing surveyors, isolated settlements, and Maori groups who relocated onto contested reserves, but his actions

Unknown (Museum of New Zealand Te Papa Tongarewa, 0.013608)



Colonel (later Major-General) George Whitmore, commander of the Crown's first campaign to defeat Te Kooti in Te Urewera in 1869. Whitmore's forces applied a scorched-earth policy, destroying kainga and food supplies in a bid to 'punish' Te Urewera Maori for their support of Te Kooti and to undermine the district's capacity to provide a base for Te Kooti and his followers.

were small-scale. There were four murders at this time, though none of them could be tied definitely to Tamaikoha. The Government response included the destruction of cultivations between Ohiwa and Tawhana. On the whole, the Government's approach was to avoid a confrontation while it concentrated on the larger scale threat of Titokowaru and Te Kooti elsewhere. The situation in the eastern Bay of Plenty was not considered serious enough to justify military intervention.

This changed in 1869, after the defeat of Te Kooti at Ngatapa (see above) and his retreat into Te Urewera. Te Kooti won the support of Tuhoe and Ngati Whare, who adopted his Ringatu teachings and his cause. This meant that Te Kooti, who had lost many of his men at Ngatapa, now had a large fighting force numbering in the hundreds. A series of surprise attacks followed at Ohiwa, Whakatane, and Mohaka in March and April, in which some 80 people – Maori, settlers, men, women, and children – were killed. The Government was powerless in the face of these unpredictable attacks but was determined to destroy Te Kooti before he could carry out any more. From March and April 1869, the Government's response of sending a military expedition into Te Urewera was inevitable.

5.3.2 The 1869 expedition

The first expedition, under the command of Colonel Whitmore, comprised three columns; it attacked pa and devastated kainga and gardens throughout Te Urewera during May 1869. Whitmore had a dual strategy: to 'punish' the peoples of Te Urewera, and to prevent Te Kooti from using the district as a base. All pa, kainga, and food supplies were to be destroyed and all people either killed or captured. The only successful capture took place at Te Harema, where between 30 and 50 women and children were taken. These prisoners were sent off as captives with the Crown's Te Arawa force. Some non-combatants – elderly men, women, and children – were killed as well as fighting men during the retreats from the various pa. The expedition succeeded in penetrating as far as Ruatahuna but did not reach Maungapohatu. Whitmore's explanation of its success was that it had destroyed all food supplies. The people of Te Urewera were to be blockaded and left to starve.

After reaching Ruatahuna, however, and destroying its settlements, the Maori forces refused to go further. With harsh weather and extended, vulnerable supply lines, it was considered too dangerous to go on. The third column of the expedition, which had been aimed at Waikaremoana, was bogged down and had achieved none of its objectives by the time the decision was made to withdraw.

After Whitmore's departure, Te Kooti left the region, moving towards Taupo. He was accompanied by a number of Te Urewera chiefs and a significant force of their fighting men. Initially successful in Taupo, Te Kooti failed to secure the support of the Kingitanga when he visited Tokangamutu (Te Kuiti) in Ngati Maniapoto territory and was forced to turn back from the King Country.⁷ After a serious defeat at Te Porere in October 1869, Te Kooti had to retreat from the Taupo district as well, and he returned to Te Urewera in February 1870. There, his force was much

7. King Tawhiao, with hundreds of Waikato people, had been forced to leave Waikato by war and confiscation.

reduced and the Ruatahuna people asked him to leave the district. He retreated to the remote Waioweka Gorge, with very few Tuhoe people still with him.

5.3.3 The 1870 expeditions

Unaware that Te Kooti had left Te Urewera, the Government was convinced that he remained a serious military threat to the various Maori and settler communities in the Bay of Plenty and East Coast regions. A new expeditionary force was sent in early 1870. This time, there were two main forces commanded by Kawanatanga rangatira Meiha Te Keepa Te Rangihwinui (Major Kemp) of Whanganui iwi and Rapata Wahawaha (Major Ropata) of Ngati Porou. Before advancing very far into Te Urewera, Te Rangihwinui concluded a critical peace agreement with Tamaikoha, thenceforth known as Major Kemp's rongopai. Such was its scope, this rongopai committed all Kawanatanga forces and almost all Te Urewera leaders as well.

A third branch of this expedition, however, under the command of colonial officers Hamlin and Witty, did not immediately accept the rongopai. They attacked Waikaremoana and, despite meeting almost no resistance (and therefore killing very few), destroyed all pa, kainga, and food supplies in the lake region. While these attacks continued, another colonial officer, Lieutenant-Colonel St John, attacked Tamaikoha at Whakarae (Ohiwa) in April 1870. This attack, considered a treacherous breach of the rongopai by Maori (including the Kawanatanga forces), led Defence Minister Donald McLean to publicly accept the rongopai in May 1870. His terms, however, included the unconditional surrender of all Te Urewera leaders and the exile of all Urewera communities to coastal reserves. There, they would be supervised by Kawanatanga chiefs. This was a shift of strategy. Instead of the 1869 strategy of depriving Te Kooti of a base by destroying everything and leaving everyone to starve, the people would now be moved out of Te Urewera altogether. The same goal would be achieved.

From July to December 1870, after the end of the attacks on Waikaremoana, there was no further military action in Te Urewera. During those months, the Government negotiated with a number of Urewera leaders, securing the unconditional surrender and 'coming out' of Ngati Whare, Ngati Haka Patuheuheu, and various Tuhoe communities, including the leaders Te Whenuanui and Paerau. Many of these people were settled at the small coastal reserve, Te Putere. Te Whenuanui and Paerau were kept with Ngati Kahungunu in Napier, and the Government negotiated an agreement with them there in December 1870. In essence, that agreement provided for the return of the Urewera exiles only after Te Kooti had been captured. No more of the remaining, unsundered people had to come out to the coast. Instead, they were to gather at Ruatahuna under Ngati Porou rangatira (and military commander) Rapata Wahawaha, and actively assist the Government in its capture of Te Kooti.

5.3.4 The 1871 expeditions

In 1871, the focus shifted to further negotiations alongside expeditions in Te Urewera (and elsewhere) to search for Te Kooti. The first expedition entered Te

Urewera in early 1871, led by Rapata Wahawaha. Its original plan of concentrating the people at Ruatahuna was soon abandoned. Tamaikoha and the Maungapohatu chiefs refused to move, and Te Kooti was discovered outside the district, so the force withdrew to concentrate on pursuing him. During this expedition, peace was negotiated between the Crown and Ngati Huri of Maungapohatu for the first time.

Having failed to capture Te Kooti, the Government arranged a second expedition. It split into smaller units which combed Te Urewera but again failed to find him. In the meantime, in April the Government sent Te Whenuanui and Paerau back to Ruatahuna. They summoned a large tribal hui there which committed itself to the Government and brought all leaders into alignment. This included Te Kereru and Ngati Huri of Maungapohatu, who had earlier hidden and assisted Te Kooti.

At the end of June 1871, Te Kooti returned to the Waikaremoana district, where he stayed briefly at Te Marau and carried off some of Waikaremoana chief Tamarau Te Makarini Te Wharehuiu's young men.⁸ Te Makarini immediately contacted the Government and sought its help. By this time, the Government no longer thought of Te Kooti as a threat. Its agent at Napier, JD Ormond, explained that Te Kooti now had too few people to mount a defence against even a small force. Although Te Kooti was soon gone again, Wahawaha sacked Te Marau and destroyed cultivations at the lake, which led to protests from Te Makarini.

In the months that followed, negotiations continued with Te Urewera leaders. Some of them now agreed to take an active part in hunting for Te Kooti, although they had mostly resisted doing so in the past. In November, after a small-scale encounter between Te Kooti and Ruatahuna leaders, Wahawaha entered Maungapohatu and Ruatahuna, building redoubts and stationing Ngati Porou forces there. These forces were withdrawn, along with the whole expedition, in December 1871. The Government finalised a political agreement with the Urewera leaders in that month. Te Kooti finally found refuge in the King Country in May 1872, and Defence Minister McLean allowed Te Urewera exiles to start coming home from April 1872, two years after the first Ngati Whare surrendered and 'came out' in 1870.

5.4 THE ESSENCE OF THE DIFFERENCE BETWEEN THE PARTIES

5.4.1 Was the Crown justified in sending a series of military expeditions into Te Urewera?

Crown counsel argued that 'rebellion' by Te Kooti and his Tuhoe and Ngati Whare supporters justified the Crown's military response in Te Urewera. Counsel argued that Te Kooti did not act simply as a criminal; he and those with him were

8. For the purposes of this chapter, when we refer to the Waikaremoana people, we refer to people of Tuhoe or of Ngati Ruapani descent (or of both). We do not intend to imply that Ngati Kahungunu were not also present at the lake. We address Ngati Kahungunu claims in respect of hostilities at and near the lake in chapter 6.

a ‘serious threat to law and order.’⁹ His various attacks ‘all involved armed and organised engagement against government forces’. His success relied on ‘winning support in order to incite further resistance. This constituted rebellion.’¹⁰

Counsel submitted that, in order to fulfil its aim of establishing peace, it was necessary for the Crown to undertake an ‘active pursuit’ of Te Kooti and to deprive him of a ‘safe haven’. The Crown had a responsibility to ‘protect the colony from threats, internal or external’. Counsel submitted that the Crown, out of necessity, set aside its Treaty obligations to the peoples of Te Urewera in order to achieve these goals.¹¹ It would have been unreasonable, counsel argued, for the Government to ignore Tuhoe support of Te Kooti in 1869.

Claimant counsel argued that neither Tuhoe nor Ngati Whare were in rebellion between 1868 and 1871.¹² For example, counsel for Wai 36 Tuhoe claimants argued that there was no evidence to suggest that ‘any Tuhoe group, or Tuhoe collectively, were contemplating the overthrow of the Government or of Crown authority’.¹³ Counsel for Ngati Whare submitted that ‘the approach of the Crown and its troops was one of deliberate or at least reckless disregard for any actual assessment of whether a particular community that they encountered was in rebellion or not’.¹⁴ Counsel stated that ‘if a legal basis for the military action does not exist, then the action must be illegal’.¹⁵

Counsel for Wai 36 Tuhoe claimants argued that, in the eyes of the law, Te Kooti was essentially a criminal; therefore, the Crown should have approached his apprehension as a police operation. Such ‘policing actions’ would have allowed ‘a limited right of entry into Te Urewera’, not a full-scale invasion. ‘Government efforts to capture Te Kooti were not policing actions to capture a criminal but military actions to subjugate Tuhoe.’ Counsel urged that ‘Waging war on a Treaty partner is a very serious breach.’ The Crown’s military actions from 1868 to 1872, he stated, ‘entitled Tuhoe to resist Crown forces and to protect their lives and property’, even though not all Tuhoe availed themselves of this entitlement.¹⁶

5.4.2 How were the military expeditions conducted?

The Crown, as we have noted, made a number of concessions on this issue. In particular, it conceded that ‘the execution of unarmed prisoners by Maori troops engaged in military activities on behalf of the Crown was a breach of the guarantee

9. Crown counsel, closing submissions (doc N20), topic 4, pp 6–7

10. *Ibid.*, p 2

11. *Ibid.*, pp 1, 6

12. Counsel for Nga Rauru o Nga Potiki, closing submissions, June 2005 (doc N14), p 53; counsel for Ngati Whare, closing submissions, no date (doc N16), p 21

13. Counsel for Wai 36 Tuhoe, closing submissions, pt B, response to statement of issues, 30 May 2005 (doc N8(a)), p 29

14. Counsel for Ngati Whare, closing submissions (doc N16), p 27

15. *Ibid.*, p 29

16. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 28

of the rights of British subjects under Article 3 of the Treaty of Waitangi.¹⁷ However, counsel referred only to executions at Onepoto.

The Crown accepted also that it was responsible for the actions of Maori troops under the command of its military leaders.¹⁸ In addition, counsel noted that some measures undertaken by Government forces were 'draconian', including 'the evacuation of people out of the district, and the burning and destruction of kainga and cultivations'.¹⁹ However, counsel also attempted to justify these measures. 'Such military actions, though draconian, were not uncommon in warfare.'²⁰ Counsel argued, moreover, that actions on both sides caused hardship for non-combatants.²¹ She rejected the charge of genocide laid before the Crown over the 1869 decision to send Te Harema women away with Te Arawa forces. Counsel argued that it was likely the women who did not return to Te Urewera married into Te Arawa, rather than committing suicide, as claimants suggested.²²

Claimant counsel argued that the Crown approached its 'invasions' of Te Urewera with the intent of subjugating the peoples of the region. This motive was over and above its need to capture Te Kooti. Counsel for Tuawhenua argued that the Crown's campaign was aimed at destroying 'the homeland and economic base of the Urewera'.²³ Counsel for Nga Rauru o Nga Potiki stated that the Crown's disregard of peace efforts by Te Urewera rangatira 'amplifies the visibility of its ultimate goal, which was the colonisation of the peoples of Te Urewera . . . by force if necessary'.²⁴ Counsel for Wai 36 Tuhoe claimants argued that, while the Crown had a duty to protect its citizens, 'the wholesale pursuit and punishment of Tuhoe and the laying waste to Te Urewera' could not be justified in legal or Treaty terms.²⁵ Counsel for Ngati Whare argued that the actions of the attacking force under Whitmore went 'far and beyond' what was reasonable.²⁶

Claimant counsel pointed to a range of Crown actions which breached the Treaty in the course of the expeditions. They included:

- ▶ the killing of members of Nga Hapu o Te Urewera who were engaged in the legitimate defence of 'themselves, their whanau and their homes',²⁷ and desecrating the bodies of men and women;²⁸
- ▶ the killing of innocents, and execution of unarmed prisoners;
- ▶ the taking of hostages;
- ▶ the destruction and looting of food stores and property, removing the ability of the people to feed themselves; and

17. Crown counsel, closing submissions (doc N20), topic 4, p 14

18. *Ibid*, p 14

19. *Ibid*, p 6

20. *Ibid*, p 2

21. *Ibid*, pp 11–12

22. *Ibid*, p 12

23. Counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), p 44

24. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 50

25. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 28

26. Counsel for Ngati Whare, closing submissions (doc N16), pp 28–29

27. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 51

28. Counsel for Tuawhenua, closing submissions (doc N9), p 70

► the depopulation of Te Urewera and the removal of people to prison camps.²⁹ Among the more specific allegations against the Crown were the following. Counsel for Ngati Whare pointed to:

- the Crown's attack on Te Harema and consequent actions;³⁰
- sending Ngati Whare women away with Te Arawa 'irregulars';
- concentrating Ngati Whare prisoners at Te Putere; and
- failing to compensate the iwi for not providing them with promised reserves.³¹

Counsel for Ngati Haka Patuheuheu cited as Treaty breaches:

- the looting and pillaging of communities along the Rangitaiki River in May 1869;³²
- the Crown's requiring Ngati Haka Patuheuheu 'to leave their ancestral lands and be forced to resettle at the coast at the lands of Te Putere',³³ and the Crown's failure to provide 'adequate resources and supplies' to those imprisoned there;³⁴ and
- the Crown's failure to provide or compensate for a promised reserve at Te Putere, following the expeditions and imprisonment.³⁵

Counsel for Tuawhenua submitted that, in breach of the Treaty, the Crown:

- 'Directed and undertook the invasion of Ruatahuna, forcibly destroying property, crops and causing the death of a number of Ruatahuna people';
- used traditional enemies of Ruatahuna against the people, fuelling the hostility;
- disrupted the settlement patterns of Ruatahuna people by destroying homes and crops, and forcing the people to live as exiles from their lands; and
- desecrated and destroyed whare tipuna.³⁶

Counsel for Ngati Ruapani argued that the Crown:

- attacked Waikaremoana, resulting in the loss and destruction of lives and property, without just cause – which was therefore 'criminal conduct' on the part of the Crown;³⁷
- attacked Waikaremoana in 1870 in rejection of Te Keepa's rongopai there, despite the Crown's acceptance of the rongopai and peaceful negotiations in other parts of Te Urewera at the time;
- forced Ngati Ruapani to surrender unconditionally in 1870 and to leave their homes, which were all destroyed; and
- attacked Waikaremoana in 1871, despite the peace agreement and the assistance provided the Crown by Te Makarini.³⁸

29. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 31–32

30. Counsel for Ngati Whare, closing submissions (doc N16), p 21

31. *Ibid*, pp 20–37

32. Counsel for Ngati Haka Patuheuheu, closing submissions, 31 May 2005 (doc N7), pp 15–16

33. *Ibid*, p 19

34. *Ibid*, p 23

35. *Ibid*, p 26

36. Counsel for Tuawhenua, closing submissions (doc N9), pp 70–71

37. Counsel for Ngati Ruapani, closing submissions, 3 June 2005 (doc N19), pp 40–41

38. *Ibid*, pp 13–16

The Crown argued that the Government's 'dual objective' was to ensure a peaceful outcome to the conflict and remove the 'militant potential' of those it dealt with. According to Crown counsel, the Government started from May 1869 to induce Urewera leaders to separate themselves from Te Kooti. Early efforts for peace included attempts to obtain the oath of allegiance. While the Government saw the peace negotiated by Major Keepa in early 1870 as unauthorised, and as not meeting its objective of removing the military potential of its foes, it attempted to 'harness the movement toward peace that Te Keepa had initiated'.³⁹

To that end, it engaged in peace talks with Tamaikoha, which bore fruit in October 1870, and also with Te Makarini, which led to Whenuanui and Paerau 'coming out' in October 1870 and then returning to Te Urewera to promote peace. The Crown acknowledged that there were 'impediments' along the way to peace, including the large-scale Crown destruction of crops at Waikaremoana. It also acknowledged 'notable mistakes' by Government forces, including the killing of Tamaikoha's uncle and the burning of kainga when it was apparent the district had returned to a state of peace. In sum, however, the Crown argued that, from 1869, the Government made efforts to establish a peaceful outcome to the conflict on condition that the military potential of those it was dealing with was also removed. Counsel submitted:

The government's military activities increasingly focused on Te Kooti and his immediate supporters and continued with efforts to negotiate peace with the Urewera in 1871, which Urewera people reciprocated resulting in peace in that year. Finally Te Kooti gave up his attacks and the government gave up pursuing him.⁴⁰

Peace was eventually achieved by 1872.

Claimant counsel submitted that the Crown had not made 'all reasonable efforts' to ensure a peaceful outcome.⁴¹ Counsel for Nga Rauru o Nga Potiki stated that the Crown 'refused to respond to the attempts by nga Rangatira o Nga Hapu o Te Urewera me Ngai Tuhoe who attempted to ensure [that] peace and good order was maintained'.⁴² Similarly, counsel for Tuawhenua stated that the Crown 'repeatedly refused to make peace with Ruatahuna chiefs on reasonable terms'.⁴³ Counsel for Ngati Whare added that the "peace" offered [by the Crown] was surrender and only *after* surprise attacks had been made' (emphasis in original). This type of peace was described as 'shoot first, ask for peace later'.⁴⁴ It was unclear to counsel whether Tuhoe could ever have met the terms set by the Crown – namely, the capture of Te Kooti.

39. Crown counsel, closing submissions (doc N20), topic 4, pp 9–10

40. *Ibid*, p 10

41. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 30

42. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 50

43. Counsel for Tuawhenua, closing submissions (doc N9), p 71

44. Counsel for Ngati Whare, closing submissions (doc N16), p 28

It is evident from the submissions made during our hearings that there is a considerable gulf between the positions of the Crown and of the various claimants on the conduct of the expeditions. As Crown counsel stated, claimants and the Crown agree that the Crown's military activities were in direct response to Te Kooti's activities and that the Crown had a basic right to protect its citizens. 'What is not agreed are the means that could be used in achieving that end.'⁴⁵

5.4.3 What were the immediate and long-term impacts of the Crown's military operations in Te Urewera?

Claimants and the Crown also differed over the extent of the impact of the Crown's military expeditions. Crown counsel acknowledged that systematic destruction of kainga, pa, food stores, and cultivations occurred during the expeditions from May 1869 through to late 1871.⁴⁶ Counsel also acknowledged that a significant number of people died during the invasions, though it is not clear how many.⁴⁷ However, counsel argued that the Tribunal should not ignore the Government assistance provided to Urewera communities at the end of hostilities 'aimed at hastening [their] recovery'.⁴⁸ Crown counsel added that the recovery of inland communities following the military actions in Te Urewera was inhibited by their distance from the coast and colonial markets. Nonetheless, the Crown also acknowledged that the ability of these communities to survive was severely impaired as the result of their property being damaged, destroyed, and looted.⁴⁹

The claimants submitted that the short- and long-term impacts of the Crown's military expeditions were severe. Counsel for Wai 36 Tuhoe claimants argued that the destruction of food stores, crops, livestock, and housing resulted in the 'overall poor condition' of Tuhoe in this period. The campaigns led to 'widespread mortality by starvation and influenza, acute in the winters of 1870-71'.⁵⁰ Counsel for Tuawhenua cited the disruption of settlement patterns and a significant drop in population as key effects of the Crown's military expeditions.⁵¹

Counsel for Ngati Whare pointed to the 'considerable amount of damage . . . done to Te Harema pa and the Ahikereru area' by the Crown's actions. The May 1869 attack had a devastating impact on Ngati Whare and its food sources.⁵² Ngati Whare's exile from their lands had a long-term impact on the settlement patterns of the iwi. Individuals remained at Matata, Te Teko, Opotiki, and Whakatane 'due to the permanence of the dislocation caused by their exile from their homeland'.⁵³

45. Crown counsel, closing submissions (doc N20), topic 4, p 5

46. *Ibid*, p 15

47. *Ibid*

48. *Ibid*, p 16

49. *Ibid*

50. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 32-33

51. Counsel for Tuawhenua, closing submissions (doc N9), pp 68, 69-70, 273-274, 277-280

52. Counsel for Ngati Whare, closing submissions (doc N16), p 32

53. *Ibid*, p 36

Counsel for Ngati Ruapani argued that the military expeditions changed their situation permanently. In addition to the immediate loss of homes and resources, the population at Waikaremoana was significantly reduced, and those who returned carried psychological scars that have been passed down to present generations.⁵⁴

Counsel for Ngati Manawa submitted that, even though Ngati Manawa largely allied itself with the Crown in the period under consideration, it too was adversely affected.⁵⁵

5.5 TRIBUNAL ANALYSIS

5.5.1 Was the Crown justified in launching a military response in Te Urewera in 1869?

SUMMARY ANSWER: The Crown was justified in deciding in 1869 to respond with military force to the attacks made in the early months of the year by Te Kooti. These had had widespread Te Urewera support, and targeted Ngati Pukeko, Ngati Manawa, and Ngati Pahauwera. Te Kooti was responsible for the killings of many people, Maori and Pakeha, in Turanga, among them agents of the Crown. After his defeat by Crown forces at Ngatapa, he sought refuge in Te Urewera. He rightly held the Crown responsible for his own unjust treatment. His visions from God and his immersion in Old Testament teachings convinced him of the righteousness of his cause. His teachings brought him widespread adherence in Te Urewera, where the leaders were bitter at the unjust confiscation of their best lands. Largely pushed back behind the confiscation line by 1868, Tuhoe joined Te Kooti in large numbers, and participated with him in attacks on Ohiwa, Whakatane, Rauporoa, Motumako, and Mohaka. There was no real engagement with Crown forces. Rather, the attacks were mounted against iwi who had benefited from the confiscation which so angered Te Urewera leaders, who were also traditional enemies, or who had earned Te Kooti's wrath by aiding the Crown against him. Thus, the attacks were an indirect way of expressing outrage at the Crown's confiscations. Some 80 people were killed, the great majority at Mohaka, and there was widespread destruction of property.

The Crown had a duty to its citizens to protect them, and to try to ensure there were no further such attacks. It was justified in following Te Kooti, Tuhoe, and Ngati Whare into Te Urewera. Tuhoe and Ngati Whare, by aligning themselves with Te Kooti, deemed a rebel, and by involving themselves in hostilities alongside him, were themselves now deemed rebels. Whether they were rebels according to the law depends on whether, as citizens owing a duty of allegiance to the Crown, they intended to overthrow the authority of the Government by force of arms or the threat of such force. The law's view of rebellion is not, however, readily applied to the leaders of Te Urewera. They had not signed the Treaty of Waitangi, which was the source of the Crown's authority to govern, and the Crown had not

54. Counsel for Ngati Ruapani, closing submissions (doc N19), pp 21–22

55. Counsel for Ngati Manawa, closing submissions, 2 June 2005 (doc N12), pp 18–20

otherwise established a relationship with them from which a meaningful duty of allegiance could derive. Indeed, their prior contact with the Crown was so minimal, their understanding of its Government must also have been minimal.

In these circumstances, it is unfair for the Crown to rely on any ‘rebellion’ of the Te Urewera leaders in order to justify its decision to use military force against them. And there is no need for the Crown to do that. Quite apart from the law on rebellion, the Crown has the right to put down breaches of the peace using force that is reasonable in light of the threat posed. Therefore, we consider that the Crown rightly perceived the leaders of Te Urewera to be a continuing threat to law and order, and to its citizens, armed and unarmed, Maori and Pakeha. It was justified in sending a military expedition into Te Urewera in 1869 to neutralise this threat. Whether it remained justified in sending later expeditions, and whether the conduct of the Crown’s military response was consistent with the principles of the Treaty of Waitangi, are separate questions.

The dispatch of Crown forces to Te Urewera can only be understood in the context of:

- ▶ the retreat of Te Kooti into Te Urewera early in 1869;
- ▶ the commitment of Tuhoe and Ngati Whare to his leadership; and
- ▶ the destructive forays they then made together against a number of communities both in the Whakatane district and at Mohaka.

Tuhoe forays beyond the confiscation line during 1867 and 1868 had not produced the kind of response the Crown made once Te Kooti appeared. We first examine the Crown’s approach to these earlier forays, and then consider the Crown’s motives in using military force in Te Urewera early in 1869. This is necessary to understand the Crown’s attitude to those whom it called ‘the Ureweras’, and to determine whether the events of 1869 happened in part because ‘the Ureweras’ were already considered a formidable threat independently of Te Kooti.

5.5.1.1 Crown response to earlier Tuhoe forays, 1867–68

Crown forces were not sent into the heart of Te Urewera before 1869, despite increased tensions from the beginning of 1867. These tensions arose with growing Tuhoe realisation of the extent of confiscation, and of its impact on themselves and on the tribal landscape of the whole district. Hapu of Whakatohea, for instance, were moved from Opotiki onto a reserve at Opape. Upokorehe were settled on Hokianga Island, a small island in Ohiwa Harbour, and at Hiwarau. Ngati Awa and Ngati Pukeko were turned off their land at Whakatane and took up occupation of a block of reserves on the west bank of the Whakatane River. Between June and September 1867 and March and October 1868, there were a number of attacks, notably by the Tuhoe rangatira Eru Tamaikoha of Waimana. Tamaikoha was also of Te Whakatane, and had strong links to Te Upokorehe, as did his wife Titia. A leader ‘famous for his independence, his courage and his integrity’, as Binney stated, he developed the strategy of ‘contesting the confiscation.’⁵⁶

56. Judith Binney, under cross-examination by Crown counsel, Tataiahape Marae, Waimana, 26 November 2003 (transcript 4.2, p13)

The evidence is unclear as to whether Tamaikoha was involved in four murders committed from May to June 1867: of two military settlers (Moore and Beggs); a trader (Bennett White); and an Arawa mail carrier, Wi Popata.⁵⁷ The bodies of the two military settlers were found weeks after an armed group approached their hut on land east of Opotiki. A party of surveyors was also pursued and fired on and had their instruments taken. It was 'generally believed' that the major role in the capture and killing of Moore and Beggs had been played by Whakatohea, with support from Ngati Huri of Maungapohatu and Tamaikoha's Ngai Tama people.⁵⁸ Major William Mair thought 'that, if not partakers in the outrage, the Urewera are the Instigators'.⁵⁹ It was 'possible', in Binney's view, that Tamaikoha's party was responsible for the death in June of the trader Bennett White.⁶⁰ In August 1867, after a preliminary foray, an attack on the Waioweka redoubt was said to have been led by Tamaikoha; it seems that any casualties sustained were those of the attacking party.

From the beginning of 1868, Binney states, Tamaikoha led the 'main thrust against the surveying in Waiotaha and Waimana'.⁶¹ He and Te Puehu of Ruatoki led a large party which planned an ambush at Waiotaha (but abandoned the plan when a force of 60 men arrived to investigate), then burnt the monument to Wi Popata, the Te Arawa mailman who had been killed the previous year. Early in February 1868, there was a skirmish between Tamaikoha's people and Colonel St John's in which each side sustained some casualties; soon afterwards, all the survey pegs at Waimana were pulled up.⁶²

Some attacks were directed at Maori rather than Crown forces: at Whakatohea on their new Crown reserve at Opape; at the newly completed stockade at Puketi Hill (April 1868) manned by Ngati Pukeko; at Rakuraku's pa on Okianga Island and at Whakarae. The purpose appears to have been to underline Tuhoe resentment at the confiscation, and at the same time to irritate the Crown forces and keep them in a state of unease without actually confronting them. Rakuraku, in his pa within the confiscation zone at Ohiwa, played an 'ambiguous' role in this period. He had experienced the difficulties of holding a frontier position in the pa he abandoned at Waimana, where he was always open to Crown suspicion; now he kept up a string of warnings to the Government, attempting to protect both his

57. Tamaikoha was said to have admitted later being involved in the attacks, though what he said is not a clear statement of personal guilt. He stated to Te Keepa that, if any Pakeha, settler, or surveyor came to Waimana, he would 'serve them the same way he had served Bennett White, Moore, Beggs and others'. Judith Binney points out that he may have been 'speaking with a chiefly eye, or the collective eye, as is most common in Maori oral speech': Judith Binney, under cross-examination by Crown counsel, Tataiahape Marae, Waimana, 26 November 2003 (transcript 4.2, p12).

58. Judith Binney, 'Encircled Lands, Part 1: A History of the Urewera from European Contact until 1878' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A12), p151

59. Mair's view was reported in St John to Army Department, 5 June 1867 (Binney, 'Encircled Lands, Part 1' (doc A12), p152)

60. Binney, 'Encircled Lands, Part 1' (doc A12), p169

61. *Ibid.*, p159

62. *Ibid.*, pp 159–160

Okianga / Hokianga Island

The claimants told us of variations in the name of Okianga. Counsel for Nga Rauru o Nga Potiki, for example, said that the island has been misnamed since the late nineteenth century as 'Hokianga'. Rather, to Tuhoe, the island is called 'Okianga', and counsel referred to it as such in their submissions.¹ Hohepa Kereopa told us that at the end of Te Kooti's life, he was injured and taken to the island to convalesce. And so it was named Te Motu Okianga – 'the place of rest'. Mr Kereopa said that it was later erroneously called Hokianga.² In another variation, Upokorehe kaumatua Charles Aramoana told us that his people know the island as 'Okihanga'.³

When we discuss Tuhoe's claims, we adopt their name for this island.

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1. Counsel for Nga Rauru o Nga Potiki, closing submissions, June 2005 (doc N14), pp 254, 259
 2. Hohepa Kereopa, oral evidence, Tataiahape Marae, Waimana, 26 November 2003
 3. Charles Aramoana, brief of evidence, 14 January 2005 (doc J46), p 10

own community and Tuhoe while also seeming too close to the Government for the comfort of some Tuhoe leaders. Rakuraku was thus a target of attacks, but not, it seems, with the purpose of inflicting casualties on him.⁶³ He and his people, after all, were whanaunga.

During this period, the Crown was anxious to avoid any escalation of hostilities. After Moore and Beggs went missing, T M Haultain, the Minister of Colonial Defence, accepted that the motive for the attack might have been utu for two Whakatohea men, Pirihiaki and Paora, who died of their wounds after attacks on their parties led by St John.⁶⁴ In Haultain's view, once utu had been obtained that might be the end of it. He would authorise operations to recover Moore and Beggs only if they were still alive. St John's attempts to secure permission to take an expedition up the Waioweka, as well as to Waiotahe and Waimana which he thought the 'rebels' could use as a base, were not met with enthusiasm. St John had wanted to 'obliterate the rest of the rebellious tribe of the Whakatoheas which now bids it [the Government] defiance'; Haultain reiterated that no further trouble was likely.⁶⁵

By September 1867, Te Makarini and others had been taken away from Puketī, the horses and cattle of Ngati Pukeko had been stolen by a 'mob of Ureweras' from Ruatoki, and there was growing suspicion of Rakuraku. St John wished to march on Ruatoki to stop the 'depredations' of Hauhau who had 'openly avowed their

63. Ibid, pp 157, 165–167, 170

64. John Battersby, 'Conflict in the Bay of Plenty and Urewera Districts, 1864–68' (commissioned research report, Wellington: Crown Law Office, 2003) (doc B2), pp 117–118

65. Ibid, p 124

intention to fight the Government.⁶⁶ But the Government replied that it would not authorise any expeditions which were not essential for the security of Opotiki, and St John was to reduce his force. By November 1867, it had been reduced to 26.⁶⁷

Even at the beginning of 1868, when military settlers volunteered to go after a small party of 'armed Maoris' seen near the Otara River, St John was cautioned 'not to do anything that would bring about a collision', as it was 'the desire of the government to avoid further hostile operations if possible'. Only self-defence was permissible without explicit orders from the Government.⁶⁸ The Government reiterated that it did not want 'to make any sort of hostile demonstration, as the political effect of such a demonstration on the country at large must be mischievous'.⁶⁹

It was only after February 1868 that St John, who had been pressing for greater latitude in dealing with such raids, gained more traction in Wellington. He embarked on widespread crop destruction, evidently extending well behind the confiscation line.⁷⁰ By April, he was finally granted a greater degree of discretion to 'chastise these rebels'. He and Major James Fraser (who commanded a newly established Armed Constabulary unit on the Whakatane River, along with a force of the Arawa Native Contingent) moved inland to Ruatoki on 1 May 1868. On this occasion, he destroyed potato pits along the road, recording that 'Any parties coming now . . . down either the Waimana or Whakatane, will find themselves pushed for food'.⁷¹ By the end of May, he was suggesting an expedition up the valleys to 'make a complete sweep of Maungapohatu and Ruatahuna districts, and of course destroy all cultivations'. Such an expedition over some six weeks would suffice, he thought, 'to root the Uriwera out of the country they have held hitherto as impregnable against all native foes'.⁷² But the Government did not act on this suggestion.⁷³

We turn now to consider the Crown's broader strategic imperatives at the time.

5.5.1.2 *Hostilities on the west and east coasts: the Crown's changing strategic considerations*

The Crown's wariness of St John's suggestion (made in late May) of a sweep through Te Urewera may well have been because it was overtaken by other crises: first by Titokowaru's challenge to the confiscation in Taranaki; and then by Te Kooti's escape from Wharekauri and his attack on Turanga. Titokowaru preoccupied the

66. Battersby, 'Conflict in the Bay of Plenty', pp 133–134

67. Ibid, pp 134–135

68. Holt to St John, 28 January 1868, AJHR, 1868, A-8A, p 5 (Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 139)

69. Richmond to Clarke, 17 January 1868, AJHR, 1868, A-8A, p 22 (Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 141); see also Haultain to St John, 7 February 1868, AJHR, 1868, A-8A, p 10 (Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 144); Haultain to St John, 6 March 1868, AJHR, 1868, A-8A, pp 14–15 (Binney, 'Encircled Lands, Part 1' (doc A12), p 165)

70. St John to Holt, 17 March 1868, AJHR, 1868, A-8A, p 17 (Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 149)

71. Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 152

72. St John, 'Information Collected From Different Natives, 25 May 1868' (Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 153)

73. Battersby, 'Conflict in the Bay of Plenty' (doc B2), p 153

Government in south Taranaki from the beginning of June 1868. McDonnell and Whitmore, both of whom would be military commanders against Te Kooti, were successively the commanders in chief on the west coast. Titokowaru's victory at Te Ngutu o te Manu in September 1868 was a disastrous defeat for the Government and was followed in November by a second disaster for Crown forces at Moturoa, which James Belich describes as heralding 'an acute national emergency'.⁷⁴ There were fears of an attack on Wanganui.

It would be three months before the tide turned. It did so first, as far as the colonial government was concerned, at Ngatapa, where Crown forces were sent in accordance with Whitmore's plan to concentrate 'a decisive superiority at a single point' and move against Te Kooti before facing Titokowaru. Whitmore returned to Wanganui in January 1869 to confront Titokowaru in his strongest pa, Tauranga-ika.⁷⁵ But, for reasons that are still debated, the pa was abandoned early in February. Over the following weeks, the threat posed by Titokowaru quickly dissipated.⁷⁶ The result was that when news emerged of Te Kooti's forays in the Bay of Plenty, the Government and its military commander, Colonel Whitmore, felt able to split their resources and turn their attention to Te Kooti.

In our view, it was only the threat posed by Te Kooti – particularly after it emerged that he had the support of 'the Urewera' – which produced Government determination to move decisively in Te Urewera. Possibly, had there not been pressure from Titokowaru and then Te Kooti from mid-1868, the Government would have turned its full attention to Tamaikoha earlier. We cannot rule this out. But on the facts before us, though there was growing impatience with Tamaikoha during early 1868, he was not – and had not been considered – a sufficient threat to warrant the expense of a military expedition. Over the winter of 1868, there appears to have been a lull, with only a short-lived attack by Tamaikoha in September, this time on Rakuraku's pa at Whakarae. The Government was aware that these forays were conducted with limited manpower which – at least on the ground – did not represent the whole tribe. Mair knew, for instance, that a group of 70 men from Ruatahuna had arrived at Whakarae, and was told that they had come to make sure no harm befell Rakuraku. St John, on the other hand, thought the group had arrived in time to prevent an actual confrontation.⁷⁷ Either way, it was evident that the Ruatahuna group was a restraining influence.

There had also been moves towards establishing a formal peace in the district. The first was made by Paerau Te Rangikaitupuake of Ruatahuna in 1867. He was deputed by a hui of some 400 people at Waikaremoana to proffer a broad peace, which would cover not just Tuhoe but also 'the section of his people connected with the Whakatohea of Opotiki'. In November, Paerau took this offer to Napier, where he met with Donald McLean, the general government's agent. McLean supported the peace on the basis of the people's coming in to take the oath of

74. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin, 1998), p 254

75. *Ibid*, pp 258–260

76. *Ibid*, pp 268–273

77. Binney, 'Encircled Lands, Part 1' (doc A12), p 170

allegiance and giving up some of their arms ‘in token of submission’. Premier Stafford supported McLean, although Defence Minister Haultain insisted that those who had killed Moore, Beggs, and Bennett White should not be included in any such arrangement.⁷⁸

Professor Binney considered that Haultain’s opposition was decisive.⁷⁹ Battersby, on the other hand, noted the Premier’s approval, and argued that ‘What seemed to be a remarkable meeting of the minds between the government and the Urewera people went no further.’⁸⁰ Binney and Battersby agreed that circumstances were still favourable in late November and December 1867. Although Paora Kingi Tamaiti, a grandson of Paora Kingi I, warned of a possible Christmas attack, this did not transpire, and a large hui at Ahikereru had endorsed the Paerau–McLean agreement. Soon after that hui, circumstances were less favourable and, as we discussed above, Tamaikoha resumed his harassment of those seen as involved in the confiscation of Tuhoe lands.⁸¹ In our view, a critical opportunity was lost for a lasting peace, and for the commencement of a relationship between the peoples of Te Urewera and the Crown, because the Government failed to follow up the Paerau–McLean agreement, as ratified at the Ahikereru hui.

No Government representative went to Te Urewera to talk to the chiefs – a move which might have made all the difference in a delicately poised situation. Tuhoe had many concerns: the confiscation itself, the circumstances in which the oath of allegiance was to be taken, the detention of Te Makarini and others, and the Government’s attitude to those who had been involved in killings in 1867. It is perhaps not surprising, in the absence of any face-to-face discussions, that Paerau’s initiative did not proceed further. Government policy appears to have been to rely on Tuhoe withdrawing behind the confiscation line (as in May 1868 St John reported they largely had⁸²), their acceptance of confiscation, and abandonment of spasmodic attacks. By October 1868, the Government might have been encouraged by William Mair’s reports that some leaders, notably those of Ngati Manawa and Ngati Haka Patuheuheu, were considering making peace with each other. Ngati Whare were said to be strongly in favour of peace with Ngati Manawa, and there was ‘even’ talk of peace being made with Ngati Pukeko. Mair secured some oaths of allegiance as far inland as Ahikereru.⁸³ But time was running out for the Government’s wait-and-see policy towards its relations with the peoples of Te Urewera. Te Kooti’s arrival on the edges of the district, his descent on Turanga, his major defeat at Ngatapa in January 1869, and his subsequent move into Te Urewera changed the whole situation.

Te Kooti’s armed attacks in the Bay of Plenty in March 1869 forced a change in the Government’s approach. It was no longer dealing with a local situation. Te Kooti’s

78. Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), pp 135–137

79. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 156–158

80. Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), p 137

81. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 158–160; Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), pp 137–144

82. St John to Army Department, 10 May 1868 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 168)

83. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), pp 16–18

arrival raised security concerns that had national implications. In particular, the Government was anxious that Te Kooti should not be able to pass through the centre of the island to join with the Kingitanga. Colonial fears of the continuing hostility of the Kingitanga were reinforced in February 1869 by a small-scale Ngati Maniapoto attack on Pukearuhe redoubt at White Cliffs, north Taranaki, in which several people were killed, including the missionary John Whiteley.⁸⁴ A large number of Maniapoto fighting men then assembled at Mokau, adding to concerns that the 'Kingites' might join with Titokowaru, who still eluded capture. In this context, as we have said, the Government was especially nervous that Te Kooti might move inland and join with the 'Kingites', reigniting a more general war which would be difficult for the Government to deal with. Late in March, given the situation on the west coast, it still seems to have been hoped that a small-scale military encounter in the Bay of Plenty might achieve the Government's aims. Henry Tacy Clarke, civil commissioner in Tauranga, sent instructions to Captain St George on 21 March 1869 which stressed the importance of stopping Te Kooti: St George should assist Major Mair to 'destroy Te Kooti'. But, he added, 'you are distinctly to understand that the Government wish to avoid anything like a campaign.'⁸⁵

From early April, however, the Government's options expanded. According to Belich, the collapse of Titokowaru's support had finally become evident.⁸⁶ James Crowe Richmond, the de facto Native Minister,⁸⁷ and Colonel Whitmore turned their attention to Te Kooti, and planned the next moves from the other side of the island. Richmond diverted troops from Mokau, deciding to advance inland from the Bay of Plenty. Whitmore, leaving some 1,600 men in south Taranaki, transferred the core of his field force to the Bay of Plenty, arriving himself at Tauranga on 15 April. At that time, his main goal was to prevent Te Kooti 'crossing to Taupo', and his strategy was developed accordingly. Only when he reached Rangitaiki did he learn of the attack on Mohaka (which we discuss below). From that point, the Government decided to attack 'Uriwera fastnesses'.⁸⁸ The 'complicity of the Uriwera' had already been identified in the attack on Rauporoa, where Te Whenuanui, Paerau, Ihakara, and 'other leading chiefs' had been recognised.⁸⁹ At Mohaka, local military reports referred to attacks by Te Kooti and his 'Hauhaus', and to their withdrawal into Te Urewera.⁹⁰

84. Belich, *New Zealand Wars*, p 269

85. H T Clarke to St George, 'Instructions to Captain St George', 21 March 1869, enclosed in Clarke to Cooper, 26 March 1869, AJHR, 1869, A-3, p 38. As Clarke explained in his letter of 26 March, events overtook these instructions – Te Kooti's escape to Ahikereru had put any arrangements 'in abeyance': Clarke to Cooper, 26 March 1869, AJHR, 1869, A-3, p 36.

86. Belich, *New Zealand Wars*, pp 275–276

87. Although there was no official Native Minister in the Stafford Government at this time, James Richmond was known to be the de facto Minister responsible for Maori affairs.

88. Whitmore to Haultain, 23 April 1869, AJHR, 1869, A-3, pp 43–44 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 60)

89. W Mair to Clarke, 23 March 1869, AJHR, 1869, A-3, p 37 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 42)

90. See, for example, Russell to Haultain, 11 April 1869, AJHR, 1869, A-3B, p 3; Russell to Haultain, 12 April 1869, AJHR, 1869, A-3B, pp 6–7.

These events – and their implications both for the safety of Bay of Plenty and Hawke's Bay settlements and for the long-term security of the North Island – explain why the Crown decided to launch an attack into Te Urewera in April 1869. Tuhoe's evident support for Te Kooti, such that he could establish a safe base there, was a crucial factor in the Crown's decision. We turn next to consider the reasons for that support.

5.5.1.3 *Why did Tuhoe and Ngati Whare commit themselves to Te Kooti?*

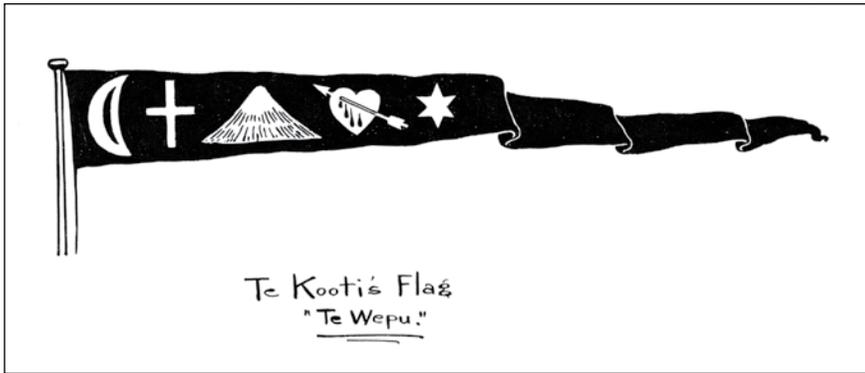
The arrival of Te Kooti in Te Urewera after his defeat by Crown forces at Ngatapa in January 1869, following so closely on the heels of Tuhoe adjustment to the realities of confiscation on the ground, was to be of very great significance for the iwi of Te Urewera.

Te Kooti, to outsiders that most enigmatic of leaders, cannot be considered simply as a man who gathered malcontents about him to commit murder and depredation. On the evidence before us, that makes no sense. The Turanga Tribunal received evidence from Professor Judith Binney (as did we), and acknowledged her scholarly biography of Te Kooti, *Redemption Songs*, written on the basis of her work with senior elders of the Haahi Ringatu, and of texts of the Ringatu faith, Te Kooti's notebooks, letters, and waiata (of which he composed many), as well as official sources. That Tribunal pointed to the significance of Te Kooti's Old Testament vision, and to his growing anger towards the State, the result not just of his lengthy incarceration without trial, but of his understanding, after he and the Whakarau⁹¹ returned to the mainland, of the Crown's forceful colonisation of the Turanganui region. By then, Captain Reginald Biggs, the senior military officer in the district, had been deputed to secure a 'cession' of Turanga land to punish the people for their 'rebellion'. He persistently sought a large block, and had occupied land in which Te Kooti's own whanau had interests and which had passed into settler ownership in disputed circumstances. He also played a role in the Crown's forcible acquisition of the beautiful carved house Te Hau ki Turanga.⁹² Te Kooti's righteous anger also extended to those of his own iwi whom he saw as enjoying advantages denied those who had been detained on Wharekauri.

From Te Kooti's anger, the Turanga Tribunal found, he developed a 'battle plan that reflected his religious vision'. Drawing on Old Testament texts, he preached to his followers that dispossessors would be justly dealt with, and that the land of the Whakarau would be restored to them. God's anger would be

91. The term 'Whakarau' refers literally to the 'exiles' or banished ones'; within the Ringatu Church, it is the term used for those who shared detention on Wharekauri, along with Te Kooti, and escaped with him. As his first followers, they have a special place in the history of the Haahi Ringatu: Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p170 n1.

92. Te Hau ki Turanga, which is in the care of Te Papa museum, was the subject of claims to the Waitangi Tribunal and recommendations to the Crown by the Turanga Tribunal: see Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 587–697.



Te Kooti's 52-foot long triangular red-silk pennant, 'Te Wepu' (the Whip). The flag, which had been made by the Roman Catholic nuns of Napier, was captured in an earlier attack on a Ngati Kahungunu force in 1868. In *Redemption Songs*, Judith Binney explains the symbolism of the design: 'the crescent moon stood for the Old Testament, the cross for the New Testament, the bleeding heart for the Maori people, and the mountain for the land'. Te Kooti flew 'Te Wepu' in battle till 1870.

turned against the colonial state of New Zealand and its agents, and He would kill the inhabitants of Turanganui, Wairoa and Napier (the homes of those who had been held on Wharekauri), and 'give them all the land when the Government people were dead'. Auckland, Wellington, and Napier (the three centres of Government power) would ultimately fall too.⁹³

It was on the basis of these statements, as well as Te Kooti's targeting of Biggs ('the chief of the Pakehas') and his fellow militiamen in his attacks on Matawhero in November 1868, that the Turanga Tribunal found those attacks were 'at first blush at least partly acts of rebellion', even if they also had 'an element of reprisal or retribution.'⁹⁴ The evidence before us fully supports the finding of that Tribunal in this regard.

The adherence of Tuhoe and Ngati Whare peoples to Te Kooti can be understood only in the context of his compelling spiritual authority and his promise of God's deliverance from the injustice they had experienced at the hands of the Crown. Their own position at this time meant that such a message was highly persuasive. They had never had the opportunity to establish a relationship with the Government; their best lands had been confiscated without cause (and some given over by the Crown to Ngati Pukeko, their traditional enemies); and the face of the Government in the eastern Bay of Plenty had in recent years been a military one. Tuhoe had received no approach from the Government or its officials to acknowledge their lack of involvement in the acts for which the confiscation had

93. Ibid, vol 1, p 215

94. Ibid, p 217

taken place, to establish the extent of their loss in land, or to offer them return of land or compensation. The failure of their cases in the Compensation Court had been followed by the immediate detention of Tamarau Te Makarini, Te Ahoaho, Te Ahikaiata, Hemi Kopu, and others.⁹⁵

The timing of their support for Te Kooti in itself says a great deal about the significance the peoples of Te Urewera attached to his spiritual message, and about the appeal of that message in the wake of their own unhappy experience with the Crown. As Dr Battersby pointed out, Te Urewera support came at a time when Te Kooti was a wanted man and had just suffered a heavy defeat at the hands of the Crown. On the face of it, it was not a propitious time to come to his aid. But such an interpretation would miss the point. This was underlined for us at our hearings by kaumatua Mahue Te Waara of Maungapohatu, who explained the importance of the relationship between Te Kooti and the people of Te Urewera:

Ko wai a Te Kooti? He patai pai tera, a, kua roa hoki ahau e ata whakaaro ana i tera.

E pataitia ana hoki e etahi i pehea ta Te Kooti whiwhi i te tawharau o Te Urewera. Kia hoki whakamuri aku whakaaro mo nga korero, i korerohia mai ai ki ahau. E mea ana etahi i te kimi a Te Kooti i te Urewera hei tawharau mona i muri tata iho i te wetenga o ana here whakarau ki Wharekauri, ka murere te ahua o te tawharau i a ia, otiia penei ano ki mua tonu i te aroaro o te Karauna i hiahia ra ki te whakamau i nga mekameka o te ture ki runga i a ia.

Ki te kore e ata titiro atu ki te hononga o Te Kooti ki Te Urewera e kore ke e hura katoa mai i te hononga wairua i waenga i a ratau. E mohio pai ana ahau ki etahi hua i puta mai i te mahi ngatahi a Te Kooti me etahi atu rangatira i mua noa atu i tona taenga atu ki Te Urewera. Ehara ia i te rawaho ki Te Urewera, he whanaunga ia. Kaore i taea e matau te pei atu i a ia.⁹⁶

Who was Te Kooti? Who was this man? And what was he? . . . The question is often asked, how Te Kooti was able to gain refuge in Te Urewera, how did he achieve that . . . ? It has been said by some that Te Kooti sought refuge in Te Urewera shortly after escaping from Te Wharekauri (Chatham Islands) and that nga hapu o Te Urewera insolently harboured him in the face of the resolute Crown whose desire [was] to shackle him once again under their authority.

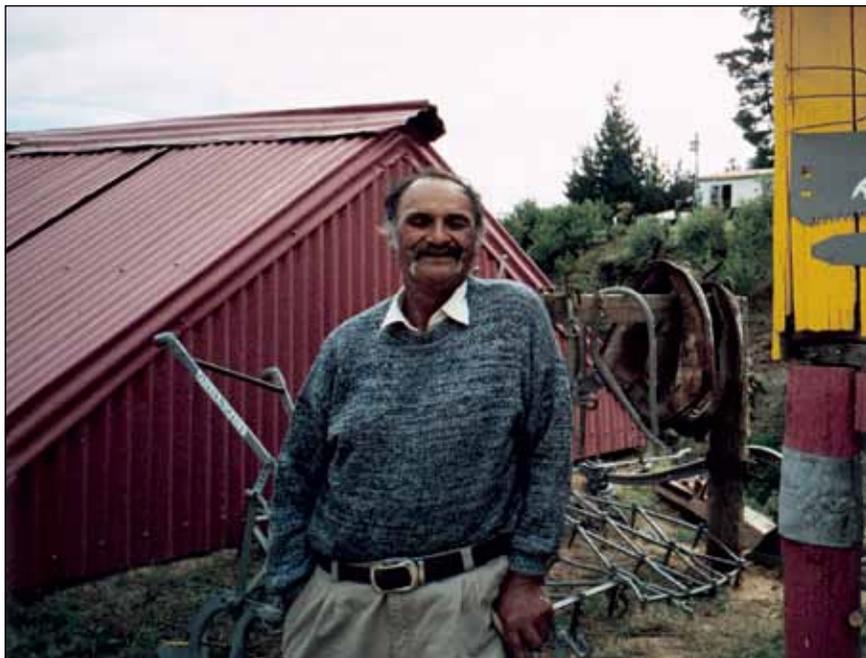
To view the relationship between Te Kooti and Te Urewera with such shallowness fails to reveal inextricable connections leading to misinterpretation of actions and motive on the part of Nga Hapu of Te Urewera . . . Te Kooti was no outsider to Te Urewera, he was kin.⁹⁷ We could not turn him away.⁹⁸

95. Te Wharehuia Milroy and Hirini Melbourne, 'Te Roi o te Whenua: Tuhoe Claims under the Treaty before the Waitangi Tribunal' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1995) (doc A33), p164

96. Mahue Te Waara, brief of evidence, 10 December 2003 (doc B26), paras 12–13

97. Mr Te Waara referred particularly to relationships between Te Kooti and certain rangatira of Tamakaimoana.

98. Mahue Te Waara, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 11 December 2003



The Reverend Mahue Te Waara, a Presbyterian minister and a tohunga in the faith of Rua. The Reverend explained to the Tribunal that the peoples of Te Urewera offered shelter to Te Kooti after he escaped from the Chatham Islands not to challenge the Crown but because of the spiritual protection his Ringatu faith offered them, at a time when they had no trust whatever in the Crown.

As we understood Mr Te Waara, although nga hapu o Te Urewera offered Te Kooti shelter, his spiritual teachings afforded them protection from a Crown they could not trust:

I refer back to the scriptures and Te Kooti's message: 'I saw the Spirit and the cloak that you had was from Nebuchednezzar [the king of Babylon] who tried to usurp the prophets of the Lord, and that was Daniel who was thrown into the lions' den' and we are similar, the Maori people, we are in the lions' den. And they were separated and they stood silent before the Lord, four of them, and they were thrown unto the fires. But because of their firm belief in their God, they were not burnt/consumed.⁹⁹

From the first time Te Kooti came into Te Urewera, Mr Te Waara said,

Te Kooti was the shield that protected us from the gathering hand of the Crown . . . He saw the Crown as an upside down claw that would come along ripping us from our land, disconnecting us from our connection to each other, our values, our

99. Ibid

identity, and our way of life . . . Te Kooti sought to protect those that he loved from the raping and pillaging claw that was the Crown. A spiritual sustenance was a shield to protect his people in their darkest moments.¹⁰⁰

Binney noted that, after his defeat at Ngatapa, Te Kooti and those who survived with him fled to the headwaters of the Motu River and then to Maraetahi, where he was expecting messengers from Maungapohatu. On 20 February, he left Maraetahi to meet the Tuhoe leaders at Maungapohatu, and there he received their support.¹⁰¹

Binney cited Tuhoe sources about the significance of the Tawhana pact, entered into between Te Kooti and the leaders of Tuhoe in March 1869. Akuhata Te Kaha described later in the nineteenth century how

[Te Kooti] entered into a covenant with the Tuhoe people, at Te Tawhana; it was to rest on the chiefs of Tuhoe, ie Kereru, Paerau, Te Purewa, Te Makarini Tamarau, Te Whenuanui, Te Ahikaiata, Tutakangahau, Te Haunui, & Te Puehu; these people gave their mana to be under the guidance of Te Kooti; and a piece of land including this block [Ruatoki], & extending from Waimana to Maungapohatu, was given over to Te Kooti . . . Te Kooti said ‘Under this oath, let the people be one.’¹⁰²

Te Kooti’s words on this occasion were remembered over the generations. He spoke also of the promise that God gave to Moses:

Nau ahau i kukume mai i roto te pouritanga. Kua tukua e koe te tangata i roto i te mura o te ahi, i roto i nga whakamatautauranga, mai ano e te unga mai e haere nei. Whakarongo, – ko te kupu tenei ‘Ka tango ahau i a koutou hei iwi mooku a, ko ahau hei Atua mo koutou, a ka mohio koutou ko Ihowa ahau.’

Ko koe hoki te iwi o te kawenata.

You drew me out of darkness. You have sent the people into the flames of the fire, into the tests, since the landing [at Poverty Bay] [this] has gone on. Listen, this is what I have to say, ‘I take you as my people, and I will be your God; you will know that I am Jehovah.’

You are the people of the covenant.¹⁰³

100. Mahue Te Waara, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 11 December 2003

101. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 191–192

102. Akuhata Te Kaha, Whakatane Native Land Court, minute book 5, 6 May 1897, fol 190 (Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 192–193)

103. Binney states that this text is derived from the old men (‘koroua’) of Tuhoe, among them Te Purewa: Robert (Boy) Biddle: private MSS, vol 1 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 193). Although the manuscript is dated 20 March 1869, Binney stated ‘It should probably be dated 2 March.’

Tawhana, at the junction of the Tawhana and Tauranga Rivers, became ‘a sacred place of Tuhoē’ as a result of the pact.¹⁰⁴

Te Kooti received the support of the majority of Tuhoē and Ngati Whare. Within the first two months of his entering Te Urewera, there is evidence to show that he went to Ahikereru, Maungapohatu, Ruatahuna, and Waikaremoana to spread his message and to reinforce the pact forged at Tawhana. It is highly likely that he visited other settlements in Te Urewera.

The extent of Tuhoē and Ngati Whare support for Te Kooti is shown in a statement by one of Te Kooti’s followers, Wiremu Kingi Te Paia, regarding the planning for the attack on Mohaka. Kingi suggests that the attack was planned at Ruatahuna and that a number of key Te Urewera leaders were present at the meeting. He named them as Rakuraku Rehua, Te Whenuanui, Kawana Kereru Te Pukenui, Hapurona Kohi, Paerau Te Rangikaitupuake, Tamarau Te Makarini, and Te Puehu.¹⁰⁵ The notable exception from this list is the Ngai Tama leader, Erueti Tamaikoha. Tamaikoha appears to have maintained his authority independent of Te Kooti, refusing to join him in the March and April attacks. Mahue Te Waara emphasised to us that the visionary leaders of Te Urewera – he included Te Kooti, Te Whatu, Rakuraku, Te Makarini, and Tamaikoha – were ‘unique universes unto themselves’:

Ahakoā a ratau hononga ki Te Urewera, ehara i te mea he rite tonu ta ratau i whakaae ai . . . Ko te tirohanga rautaki a Tamaikoha kia whakaruruhautia i te mana motuhake o tona iwi, a ehara ko te tautoko i a Te Kooti i tetahi mea e whaiwahanga ana ki roto i ona whakaaro.¹⁰⁶

Their connections to Te Urewera did not necessarily mean that they always agreed . . . The strategic vision that Tamaikoha had to protect the Mana Motuhake of his peoples did not include supporting Te Kooti. He saw Te Kooti’s presence as a catalyst for potential harm to those he loved.¹⁰⁷

But Te Kooti was also supported by the Ngati Hinemanuhiri rangatira, Te Waru Tamatea, of upper Wairoa, who had pledged himself in July 1868. The story of Tamatea and his upper Wairoa people is considered in chapter 6, which deals with claims about the ‘Four Southern Blocks’ and the confiscation of land in the Lake Waikaremoana and upper Wairoa district. Here, we note briefly that Tamatea had assisted Rongowhakaata in 1865, which made him (and those Rongowhakaata who took refuge with him) a target for Crown forces later in 1865 and 1866. Fighting in

104. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 194

105. Statement of Te Kingi Te Paia, AJHR, 1870, A-8B, p 27 (Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 200–201)

106. Te Waara, brief of evidence (doc B26), paras 28–29

107. Mahue Te Waara, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 11 December 2003

upper Wairoa was followed by numerous surrenders, Te Waru's among them, and a 'cession' of land to the Crown. This looming second 'confiscation' helps explain the support Te Kooti received from Ruatahuna and Waikaremoana, and from upper Wairoa, including that of Te Waru Tamatea.¹⁰⁸

Support from Tuhoe and Ngati Whare chiefs translated into the support of a majority of Te Urewera communities. Only Ngati Manawa appear to have dissented at this time. Binney stated that between 130 and 140 men went from Tawhana and Otara in the Waimana Gorge and occupied Whakararae Pa near Ohiwa Harbour.¹⁰⁹ According to a statement by Tamati – who had been held by the Whakararae, but escaped – Te Kooti had with him about 300 men, although some of them were prisoners; about 200 were of a fighting capability.¹¹⁰ Wiremu Kingi Te Paia said that Te Kooti took about 300 men to Mohaka, of which two-thirds were from Te Urewera. The remaining third, according to this estimate, were apparently part of Te Kooti's original Whakararae, but may also have included some exiled Upokorehe and Whakatohea.¹¹¹ It is also unclear whether Wiremu Kingi's estimate represents an increase in support for Te Kooti between the March attacks on Ohiwa and Whakatane and the April attack on Mohaka. What these statements tell us, however, is that the number of Te Urewera men who supported Te Kooti at this time ranged between 130 and 200. This was a substantial proportion of the Urewera fighting force. It made up a majority of Te Kooti's fighting men, in fulfilment of the solemn pact entered into at Tawhana in March 1869, when Tuhoe joined Te Kooti in a series of attacks in the eastern Bay of Plenty and at Mohaka.

5.5.1.4 What was the nature and scope of the attacks at Ohiwa, Rauporoa Pa, Whakatane, Motumako, and Mohaka?

We turn next to consider the kinds of attacks Te Kooti and his kokiri carried out, in order to evaluate the Crown's response to them. The first three were against Ohiwa, Rauporoa Pa, and Whakatane. According to Binney, they were 'carefully planned'.¹¹² On 2 March, the kokiri descended upon Ohiwa Harbour, taking Rakuraku's pa at Whakararae. But Rakuraku appears to have been an accomplice in these events, allowing Te Kooti to enter the pa without opposition. This does not seem surprising: Mahue Te Waara explained to us that there was a 'deep connection' between Te Kooti and Rakuraku arising from an earlier meeting between them, when Rakuraku was introduced to Te Kooti's spiritual teachings.¹¹³

108. Binney, 'Encircled Lands, Part 1' (doc A12), pp 187–188

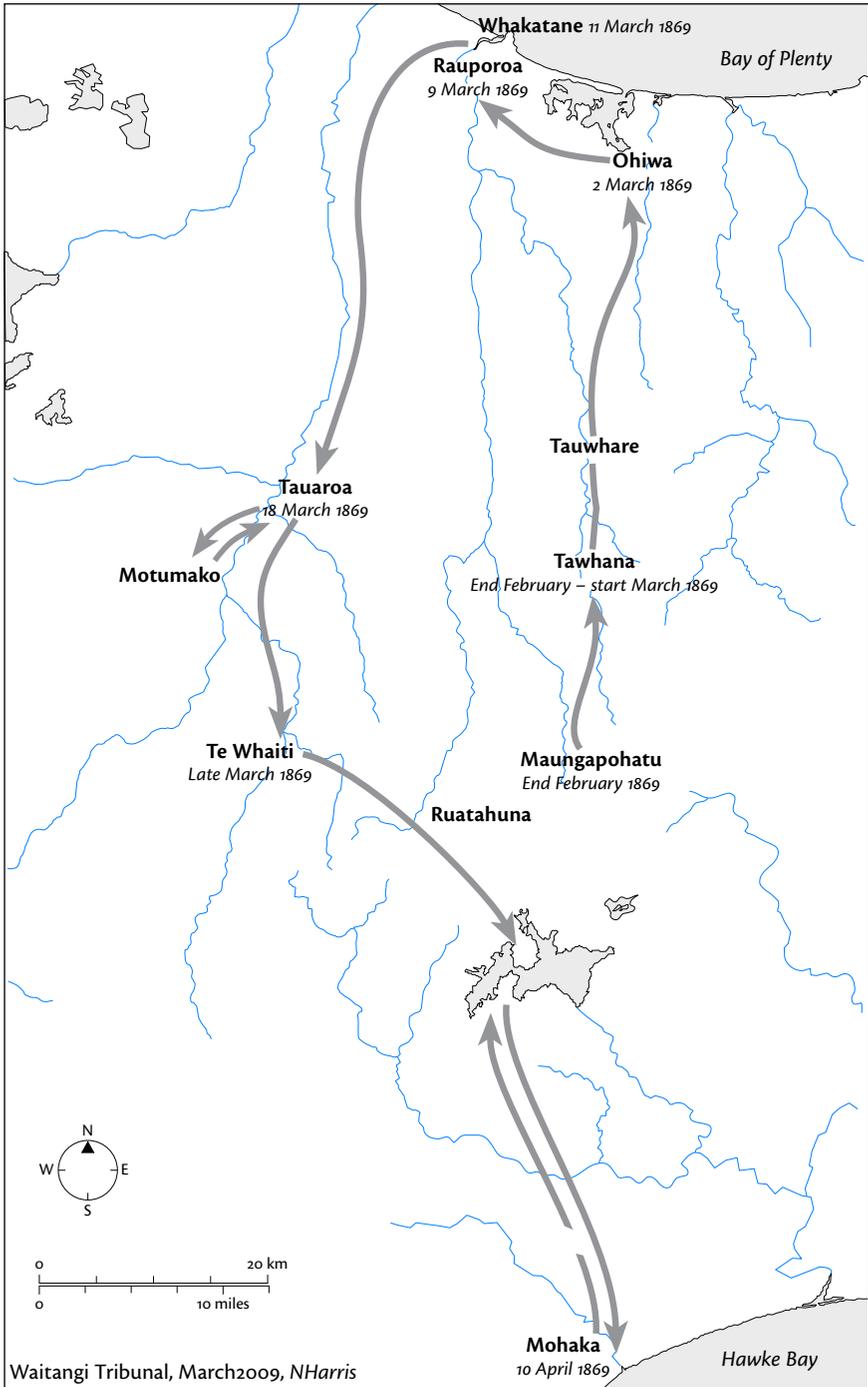
109. *Ibid*, p 192

110. [Statement of Tamati Ngatiporou], memorandum to Clarke, 26 March 1869, AJHR, 1869, A-10, p 20 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 46)

111. Binney, 'Encircled Lands, Part 1' (doc A12), pp 200–201. The figure of 100 may be an overestimate for the Whakararae. The Turanga Tribunal noted that 45 to 65 male Whakararae survivors escaped Ngatapa with Te Kooti, though this figure may include some men taken prisoner by them: Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 243.

112. Binney, 'Encircled Lands, Part 1' (doc A12), p 194

113. Mahue Te Waara, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 11 December 2003



Map 5.1: Te Kooti's movements in Te Urewera, February–April 1869

Subsequently, the kokiri moved across to Okianga Island, where they encountered and took prisoner a group of Upokorehe whom they moved to Whakarae. Binney suggested that there were two reasons for this: Tuhoe opposition to Upokorehe's claim to be sole owners of the island in the Compensation Court; and Te Kooti's wish to convert the prisoners to his cause and to his faith – a tactic he had used before.¹¹⁴ We note, however, that the search for the surveyor Robert Pitcairn on nearby Te Uretara Island was led by Hemi Kakitu, a leader of both Tuhoe and Upokorehe. Pitcairn was killed, in circumstances which Binney and Battersby have disputed. Binney suggested it was in retaliation for his role in surveying the confiscation boundary and the Puketi reserve.¹¹⁵ Battersby argued, however, that a report by the Rotorua resident magistrate W K Nesbitt indicates that Pitcairn's death was a 'chance event'.¹¹⁶ Nesbitt wrote:

Te Kooti's party had arrived at Rakuraku's pa on Sunday night, took it without opposition, and made prisoners of everyone on [sic] it. He then asked if there were any Europeans about there, and Rakuraku's party answered there was one, a surveyor. He then told off a party of twenty men, ten of Rakuraku's (amongst whom were some of Mr Pitcairn's own men), and ten of his own people. These men pulled to the island and laid an ambush till evening.¹¹⁷

While it is possible that Pitcairn was killed simply because he happened to be in the area at the time, it is also possible that his fate was sealed when it was discovered he was a surveyor. The laying of an ambush suggests some determination that he should not escape.

The kokiri turned next to Ngati Pukeko's pa and redoubt at Rauporoa. The seriousness of their mission, and its conduct in accordance with tikanga, is underlined by the fate of Ripeka Kaaho, whose misfortune it was to fall into their path. She was captured and killed as the kokiri crossed the Opouriao flats in the direction of Whakatane.¹¹⁸ The Tuawhenua researchers explained that anyone who cut across the path of a war party was killed lest they endanger the tapu of the warriors and so jeopardise the mission; hence the proverbial saying 'he maroro kokoti ihu waka taua' (a flying fish crossing the prow of the war canoe).¹¹⁹ Ripeka Kaaho was a Tuhoe woman who had married into Ngati Pukeko. The task of killing her was given to two of the kokiri: her brother, Te Tupara, and her brother-in-law, Makarini Te Waru.¹²⁰

114. Binney, 'Encircled Lands, Part 1' (doc A12), p195

115. *Ibid*, p194

116. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p39

117. Nesbitt to Wilson, 5 March 1869, AJHR, 1869, A-10, p16 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p39)

118. James Cowan, *Tales of the Maori Bush*, 2nd ed (Wellington: Reed, 1966), pp81–85

119. Tuawhenua Research Team, 'Ruatahuna, Te Manawa o Te Ika, Part 1: A History of the Mana of Ruatahuna from Early Origins to Contact and Conflict with the Crown' (English) (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc B4(a)), p323 n1; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p189

120. Cowan, *Tales of the Maori Bush*, pp 82–83

At Whakatane, it is clear that the attack was directed against Ngati Pukeko. The kokiri first laid siege to Rauporoa Pa. The pa was fortified, however, and within range of the Ngati Pukeko mill and redoubt on the eastern bank of the river. According to historian James Cowan, the kokiri split into three: one group concentrated on Rauporoa Pa, a second attacked the mill and redoubt, and a third descended upon Whakatane township.¹²¹ After two days, Te Kooti's force penetrated the mill, capturing its Ngati Pukeko inhabitants and killing the owner, Jean Guerran (whose wife, Irihapeti, was of Ngati Pukeko). On 11 March, the remaining Ngati Pukeko inside Rauporoa Pa, according to William Mair, 'made a sort of Treaty with Te Kooti' and evacuated the pa.¹²² It is unclear whether Te Kooti allowed Ngati Pukeko to escape or whether they achieved their own escape. According to Mair, however, the kokiri destroyed Ngati Pukeko wheat crops, houses, tools, and ploughs, and drove off 'great numbers' of their horses and cattle.¹²³ Two of the principal chiefs of Ngati Pukeko, Hori Tunui and Heremia Mokai, were killed, and the Ngati Pukeko deaths amounted to 13, including three women and two children.¹²⁴

The kokiri then liberated a number of Tuhoe chiefs – notably Te Makarini Tamarau, Hetaraka Te Whakaunua, and Hemi Kopu – who had been detained for 18 months under the supervision of Ngati Awa and Ngati Pukeko. Best says that Te Kooti 'took away with him to the interior' these three leaders 'on leaving Rauporoa'.¹²⁵ However, it is equally possible they could have been taken from Whakatane township. Wherever the location, as we saw in chapter 4, it is certain these leaders had been held as prisoners. Mahue Te Waara, referring to this rescue, stated 'For two years Ngati Pukeko held our chief prisoner in a cave, at Whakatane. They ill-treated and starved Te Makarini'.¹²⁶ Te Makarini became one of the key supporters of Te Kooti in the period immediately following his release.

Thirdly, the kokiri turned its attention to Whakatane. According to Cowan, it 'burned the store and most of the other places in Whakatane'.¹²⁷ HT Clarke wrote shortly after the attack that 'the European settlements at the mouth of the Whakatane had been destroyed'.¹²⁸ Clarke also described Whakatane as a 'ruined settlement'. We are not aware of any reports of casualties.

121. James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 3rd ed, 2 vols (Wellington: Government Printer, 1983), vol 2, pp 317–324

122. W Mair to Clarke, 23 March 1869, AJHR, 1869, A-3, p 38 (Binney, 'Encircled Lands, Part 1' (doc A12), p 196)

123. W Mair to Clarke, 23 March 1869, AJHR, 1869, A-3, p 38 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 42)

124. Clarke to Cooper, 26 March 1869, AJHR, 1869, A-3, p 35

125. Elsdon Best, *Tuhoe: The Children of the Mist – A Sketch of the Origin, History, Myths, and Beliefs of the Tuhoe Tribe of the Maori of New Zealand; with Some Account of Other Early Tribes of the Bay of Plenty District*, 2nd ed, 2 vols (Wellington: AH & AW Reed, 1972–73), vol 1, p 609

126. Mahue Te Waara, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 11 December 2003

127. Cowan, *The New Zealand Wars*, vol 2, pp 324–325 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 42)

128. Clarke to Cooper, 26 March 1869, AJHR, 1869, A-3, p 35



Daniel Louis Mundy (ATL, 1/2-020010-F)

Captain Gilbert Mair and his Arawa Flying Column at Kaiteriria camp, Rotokakahi Pa, July 1870

As it withdrew – with a force of some 450 men led by William and Gilbert Mair in pursuit – the kokiri turned next towards Ngati Manawa. It bypassed Kokohinau Pa, a fortified Ngati Awa settlement. Instead, it cut inland to the Ngati Haka Patuheuheu pa Tauaroa, whose people chose to ally themselves with the kokiri.¹²⁹ Then it launched an attack on the Ngati Manawa pa at Motumako. What happened there is not clear; even at the time, a Government official drew attention to conflicting accounts.¹³⁰ According to one account, 10 Ngati Manawa were killed. As Peter McBurney shows, there were also conflicting reports by officers and in the press about whether Ngati Manawa had willingly surrendered or had been taken prisoner, and about the number of people killed.¹³¹ David Armstrong's research suggests that there may have been only a dozen people at Motumako; the rest were away attending a Native Land Court hearing.¹³² McBurney concluded that those Ngati Manawa who left with Te Kooti had been taken prisoner but managed to escape in the ensuing days and weeks. Ngati Manawa were later said to have completely deserted their settlements.¹³³ With Mair's force in pursuit, the kokiri left the area to travel east, further into Te Urewera. Te Kooti then established his base at Te Harema, Ngati Whare's pa at Ahikereru (in the Te Whaiti district).

There were persistent rumours at this time that Te Kooti intended to attack a

129. Binney, 'Encircled Lands, Part 1' (doc A12), p197

130. Clarke to Cooper, 26 March 1869, AJHR, 1869, A-3, pp35-36

131. Peter McBurney, 'Ngati Manawa and the Crown, 1840-1927' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc C12), pp98-101

132. David Armstrong, 'Ika Whenua and the Crown, 1865-1880' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A46), p17

133. Clarke to Cooper, 11 April 1869, AJHR, 1869, A-10, p22 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p44)

number of settlements in the region from the safety of his base in Te Urewera. Clarke, for example, noted that Te Kooti could attack settlements to the west, north, and east:

The present position of Te Kooti's party at Ahikereru will be a matter for serious consideration of the Government. With his head-quarters at Ahikereru, Te Kooti could fall upon any of our settlements in the Bay of Plenty, choosing his own time; he is only a day and a half's march from Rotorua, or should he choose to cross over the Waikato he can do so in the same time. He can fall on Napier and Wairoa. The fact of his having such a large body of men mounted will enable him to move with rapidity and secrecy.¹³⁴

In fact, Te Kooti chose Mohaka. He moved to Ruatahuna to begin his preparations.¹³⁵ On the night of 9 April 1869, Te Kooti and a party of 200 to 300 crossed Lake Waikaremoana and descended along a track towards the coast. *The Mohaka ki Ahuriri Report* lays out the sequence of events in detail:

In early April 1869, Te Waru Tamatea led a raid on the upper Wairoa. The Ngati Kahungunu contingent there, which included some Ngati Pahauwera, responded in force. This raid was, however, simply a diversion, and while it attracted all the attention, Te Kooti took his opportunity and descended from the Urewera mountains to Te Arakanihi, a kainga by the crossing place on the Mohaka River near Raupunga. On 10 April, Te Kooti's force attacked the kainga, killing at least 31 Ngati Pahauwera, including many women and children. The attackers then swept down both banks of the river, killing more Ngati Pahauwera at Mangaturanga and a number of Europeans at the Mohaka settlement on the south bank of the river mouth. The Ngati Pahauwera survivors were driven into two pa, Te Huki and Hiruharama. There, they were besieged over night but were offered the chance of being spared if they surrendered in the morning. Despite some serious misgivings, the decision was made to surrender. However, for some unknown reason, when the gates at Te Huki were opened, Heta Te Wainohu of Ngati Pahauwera fired upon Te Kooti's men, who returned fire and killed another 26 people, mainly women and children. Te Kooti also secured enough ammunition from the pa to attack Hiruharama, where he believed the main ammunition reserve was located.

Te Kooti then attacked Hiruharama, but he made his retreat as Ngati Pahauwera reinforcements began to arrive from Wairoa in response to an urgent message. The sudden explosion of the buried ammunition reserve at Te Huki, when the house above it caught fire, rendered any further attack on Hiruharama pointless. In all, nearly 60 Maori and seven Europeans were killed in the attack. As Loveridge pointed out, many more must have been wounded, and the majority of Ngati Pahauwera's stock was looted and their crops destroyed. Te Kooti regrouped his forces, now replenished with

134. Clarke to Cooper, 26 March 1869, AJHR, 1869, A-3, p 36 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 36)

135. Binney, 'Encircled Lands, Part 1' (doc A12), pp 200-201

some ammunition and supplies, at Mangaturanga on 12 April, and they retreated to Waikaremoana along the same route that they had come in on.¹³⁶

The overall impact of the forays of March to April 1869 cannot be downplayed. They left about 80 people dead, including many women and children. The destruction of property, both Maori and settler, was widespread. If we are looking at motives for the attacks, we would have to discount any intention to challenge the Crown directly. We note that Crown forces were not attacked (though Government officials had always expected any attack would be made against Opotiki) and it does not seem that settlers were primarily targeted either. A number were killed at Mohaka, and we agree with Binney that it is possible the militiaman John Lavin and his family were singled out because he had fought in upper Wairoa in early 1866.¹³⁷ Settlers, however, seem to have been collateral casualties of the main attack on Ngati Pahauwera.¹³⁸ Te Kooti's force and Major Mair's were in close proximity near Whakatane and at Tauaroa from about 11 to 19 March. There was some skirmishing and an exchange of fire on 12 March, but no major engagement took place. Basically, the two forces retreated from each other. Mair retired on the first occasion because he thought his force too small to engage with Te Kooti's; and at Tauaroa Te Kooti withdrew successfully, and Mair could not persuade his Arawa force to pursue him to Ahikereru.¹³⁹

Rather, the attacks which Te Kooti led, with Tuhoe support, seem to have been aimed at iwi – Ngati Pukeko, Ngati Manawa, and Ngati Pahauwera – who were perceived as either aligning themselves with the Crown in or after the hostilities of the past few years, or profiting from Crown confiscation policies. In some cases, they were also iwi with which Tuhoe had long had tense relations. Thus, the confiscation of their lands at Ruatoki and Waimana, and the removal of Tuhoe back behind the confiscation line, triggered their participation in attacks which essentially were aimed at hapu and iwi who were seen as contributing to, or benefiting from, their own defeat. This was an indirect way of expressing outrage at the Crown's confiscation. We add that the same was true of Te Waru Tamatea of Ngati Hinemanuhiri, facing a separate confiscation in upper Wairoa, even if there the lands to be taken had not yet been defined.

The speed and unpredictability of the attacks suggests a regard to the element of surprise and an intention to inflict widespread damage before a response could be mustered. This was clearly a serious matter. In the wake of these attacks, the Government decided to send its forces into Te Urewera. We turn now to consider the basis for this decision.

136. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, pp 414–415

137. Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press and Bridget Williams Books, 1995), p 160

138. Binney, 'Encircled Lands, Part 1' (doc A12), p 201

139. W Mair to Clarke, 23 March 1869, AJHR, 1869, A-3, pp 36–38 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 43)

An Eyewitness Account of the Attack on Mohaka

Peita Kotuku, who took part in the attack, provides the following account:

‘Now Te Kooti led us on a very rapid march right across to the East Coast by way of Waikaremoana and down to the Mohaka Valley, his object was to work vengeance upon the Ngati-Pahauwera tribe, because they had opposed our march inland after we landed at Whareongaonga from the schooner we had captured at the Chatham Islands. I took part in the fighting at Mohaka. We attacked two pas there; one surrendered to us, the other held out. Many men, women and children were killed after being captured in the undefended open kaingas; it was the Tuhoe chiefly who killed these people, who were imprisoned in a woolshed, because they and Ngati-Pahauwera were ancient enemies. A number of Europeans were also killed. There was a hotel in Mohaka and this was looted. Three of our men got very drunk on the rum in the hotel, and when they joined in the attack on the pa near the mouth of the river, they behaved recklessly, [so] heedless of cover that they were shot dead. Te Kooti was very angry at his men getting drunk while they were fighting. But after the return march was commenced, with our looted horses and other plunder, we halted a few miles inland to enjoy the liquor from the hotel.’¹

1. ‘Te Kooti’s Scout: A Hauhau Warrior’s Story’, MS-papers-0039-4A (John Battersby, ‘The Government, Te Kooti and Te Urewera’ (commissioned research report, Wellington: Crown Law Office, 2003) (doc B2), p 53)

5.5.1.5 Findings on whether the launch of the Crown military expedition of 1869 was justified

Having set out the historical events which led to the Crown’s attack on Te Urewera in 1869, we now return to our central question for this section: was the launch of that military expedition justified? The attacks made by Te Kooti and Tuhoe led, as we have seen, to a decisive shift in Crown policy in respect of Te Urewera. Its military response was immediate. In our view, the decision to send Crown forces to Te Urewera was indeed justified, given the circumstances at that time.

In March and April 1869, Te Kooti was commanding a large armed body which was moving with speed against a range of communities. He was moving far afield, and his targets were not predictable. The death toll was mounting, and it included many women and children. Some settlers had been killed, including a surveyor. Substantial amounts of property had been destroyed. Above all, Te Kooti’s leadership was still clearly a threat, as it had been in 1868. It seemed that despite the heavy defeat he had sustained at Ngatapa he had regrouped, gained new support, and might strike anywhere he chose with devastating results. The defiance and military success of Titokowaru, which had left Crown forces looking so vulnerable

only a few months before, had underlined the limitations of those forces and the tenuous protection they could offer citizens. In these circumstances, it is not surprising the Government decided to turn its full attention to stopping Te Kooti's attacks at the source and to denying him a safe base of operations to which he could retreat. Whitmore wrote that the 'tragical occurrences' at Mohaka showed the importance of undertaking an attack on Te Urewera.¹⁴⁰ By early May, he was ready to launch that attack.¹⁴¹

The disagreement between the claimants and the Crown as to whether the Crown was justified in sending military expeditions into Te Urewera in 1869 stems from their differing views of whether Te Kooti and those Tuhoe and Ngati Whare who were with him were in rebellion. The claimants argue that there was no rebellion, because neither Tuhoe nor Ngati Whare, tribally, had any intention of overthrowing the authority of the Government. Though some individuals may have been responsible for destruction of property and other offences (counsel for Wai 36 Tuhoe claimants specified murder), none of these criminal acts could justify the nature or the scale of the expeditions the Crown mounted against the peoples of Te Urewera. Rather, the Crown should have taken policing action to capture Te Kooti. For its part, the Crown maintains that 'Te Kooti and those with him were in open rebellion',¹⁴² and this justified the ensuing military campaign within Te Urewera. Te Kooti was not simply a criminal, as some claimants suggested, but set out to win support to 'incite further resistance.' The acts of Te Kooti and those with him constituted a serious threat to law and order.¹⁴³

Underlying the parties' differing views is a debate about the law's definition of rebellion, a matter that has been considered in previous Tribunal inquiries.¹⁴⁴ The Crown's position is that rebellion is not restricted to violent conduct aimed at overturning the Government's authority, but extends to a wider range of behaviours. Crown counsel suggested that the reason previous Tribunals have favoured a narrower definition of rebellion is that they believed that 'the exercise of such draconian powers as confiscation must require a high threshold to be met rather than lesser actions that might be more in the nature of breach of the peace, or commission of a criminal act.'¹⁴⁵

The principal rationale for supporting a wider definition of rebellion, Crown counsel submitted, 'is the fact that law and order are indispensable to effective constitutional government.'¹⁴⁶ Counsel argued that governments have a wide dis-

140. Whitmore to Haultain, 23 April 1869, AJHR, 1869, A-3, p 44

141. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 59–61

142. Crown counsel, closing submissions (doc N20), topic 4, p 6

143. *Ibid*, pp 2, 6

144. See, for example, Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, pp 116–118; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, pp 246–250; and Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), pp 108–116.

145. Crown counsel, closing submissions (doc N20), topic 3, p 16

146. *Ibid*, p 17

cretion, under domestic and international law, to determine whether a state of emergency exists and how to respond to it.¹⁴⁷ The source of these powers is not entirely settled, but, the Crown submitted, it is clear that ‘where a state of civil unrest exists the Crown has the ability, and indeed the duty, to take necessary action to restore law and order.’¹⁴⁸ Noting that private individuals have the power to take ‘all measures that are absolutely and immediately necessary for the purpose of dealing with an emergency’, counsel submitted that the Crown has the same power, and that its officers may use ‘the amount of force necessary in the circumstances to restore order.’¹⁴⁹ The Crown accepted that it would be ‘held to a high threshold’ of behaviour in its response to an emergency.¹⁵⁰

We agree that the Crown has broad powers to respond with force to breaches of the peace. That this was so in the latter part of the nineteenth century – the period with which we are concerned – is clear from Professor Albert Venn Dicey’s contemporary account of English constitutional law.¹⁵¹ Dicey explains that England does not recognise ‘martial law’ in the strict sense of that term.¹⁵² But, he continues, the term ‘martial law’ is sometimes used to refer to something that is ‘most assuredly recognised’ by English law, namely, the common law right of the Crown and its servants to repel force by force in the case of invasion, insurrection, riot, or generally of any violent resistance to the law. This power to put down breaches of the peace is ‘essential to the very existence of orderly government’:

The Crown has the right to put down breaches of the peace. Every subject, whether a civilian or a soldier, . . . not only has the right, but is, as a matter of legal duty, bound to assist in putting down breaches of the peace. . . .

. . . the occasion on which force can be employed, and the kind and degree of force which it is lawful to use in order to put down a riot, is determined by nothing else than the necessity of the case. . . . Even however as to this kind of martial law one

147. Ibid

148. Ibid

149. Ibid, p 18

150. Ibid, p 17

151. Until given a statutory basis in the English Laws Act 1858, English law was in force in New Zealand from 1840 as a result of the common law rule that English settlers take with them to a new colony as much English law as is applicable to the circumstances of the colony. We note that the Turanga Tribunal relied on the 1915 edition of Dicey’s constitutional law text to help it understand the concept of rebellion: Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 116. We have been fortunate to sight the 1886 edition, written much closer in time to the 1860s with which years we are concerned, although in fact there is very little difference between the 1886 and 1915 editions’ discussions of rebellion.

152. The strict meaning of martial law is ‘the suspension of ordinary law and the temporary government of a country or parts of it by military tribunals’: Albert Venn Dicey, *Lectures Introductory to the Study of the Law of the Constitution*, 2nd ed (London: MacMillan and Co, 1886), pp 296–297; see also Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed (London: MacMillan and Co Ltd, 1915), p 182.

The Legal Distinction between a Rebellion and a Riot

The renowned legal commentator Sir William Blackstone, writing in the late 1760s, explained the distinction between a rebellion and a riot as follows. Rebellion involves ‘a general defiance of public government’: it is ‘the universality of the design’ that makes it ‘a rebellion against the state, an usurpation of the powers of government, and an insolent invasion of the king’s authority.’ By contrast a riot, or ‘a tumult’, has a narrow aim, such as ‘to pull down a particular house, or lay open a particular enclosure’. Thus, ‘if two subjects quarrel and levy war against each other, it is only a great riot and contempt, and no treason [ie, no rebellion].’¹

1. Sir William Blackstone, *Commentaries on the Laws of England*, bk 4, p 82

should always bear in mind that the question whether the force employed was necessary or excessive will, especially where death has ensued, be ultimately determined by a judge and jury, and that the estimate of what constitutes necessary force formed by a judge and jury sitting in quiet and safety after the suppression of a riot, may differ considerably from the judgment formed by a general or magistrate who is surrounded by armed rioters, and knows that at any moment a riot may become a formidable rebellion, and the rebellion if unchecked become a successful revolution.¹⁵³

We note that Dicey identifies what may be regarded as a descending hierarchy of violent behaviours to which the Crown might respond with force – from invasion by external forces, to insurrection (a synonym for rebellion), to a riot, to any other ‘violent resistance to the law’. He also emphasises that the degree of force necessary to suppress a particular violent incident will vary according to the circumstances.

On our analysis, the Crown’s submissions on rebellion consist of two main contentions. The first is that ‘rebellion’ should be more broadly defined than the Tribunal has accepted in the past. The second is that the Crown possesses broad powers to restore peace and order whenever these have broken down in an emergency. The Crown used those two contentions to suggest that, because the Crown has broad powers to restore order in an emergency, any disorder that the Crown can lawfully suppress is properly regarded as a rebellion. We do not accept that suggestion. Rather, we believe the Crown’s wide powers to restore order range over a number of possible emergency situations, of which rebellion is but one kind. Other kinds of emergency situation that are not rebellion but that could justify a

153. Dicey, *Lectures*, pp 297–298, 300; see also Dicey, *Introduction*, pp 183, 185

forcible response from the Crown include, for example, a violent conflict between two groups of citizens, or a violent protest by citizens against a single policy of the Government. We agree with earlier Tribunals that rebellion is a particular, and very serious, kind of disorderly behaviour: it is behaviour designed to overthrow the authority of the Government by force of arms or the threat of such force.¹⁵⁴

Further, and significantly in the present context, we note that the crime of rebellion, being a form of high treason, is founded on the renunciation of the allegiance that every subject owes to the King and his government. As Sir William Blackstone explains, treason imports a betraying, treachery, or breach of faith.¹⁵⁵

Accordingly, we do not agree with the Crown that earlier Tribunals have defined rebellion narrowly because they have regarded land confiscation as so draconian a consequence. Rather, we consider, it is because rebellion is conduct of such a uniquely serious nature that it has attracted certain draconian legislative measures. The Suppression of Rebellion Act 1863, with its direct focus on rebellion and the punishment of individual rebels, is the clearest example. The New Zealand Settlements Act 1863 is of a different ilk. Given the Act's stated aim of securing peace through military settlements, established in the wake of what the Crown perceived to be rebellion, it may appear that the punishment of rebels is an incidental purpose of that Act.¹⁵⁶ But it is draconian for authorising the confiscation of land, whether or not it belonged to those deemed rebels.

We see no need for us to make further comment on the law of rebellion in order to assess the Crown's military operations in Te Urewera between 1869 and 1871 against the principles of the Treaty of Waitangi. There are three reasons for this. First, we consider that the law's view of rebellion is not readily applied to the leaders of Te Urewera. Those leaders had not signed the Treaty of Waitangi, which was the source of the Crown's authority to govern, and by 1869 the Crown had not otherwise established a relationship with them from which a meaningful duty of allegiance to it could derive. In these circumstances, we consider that the principles of the Treaty of Waitangi hold it to be unfair for the Crown to rely on any 'rebellion' of the Te Urewera leaders in order to justify its decision to use military force against them.

Our second reason is that there is no need for the Crown to rely on 'rebellion' by Te Kooti's followers to justify its decision to respond with military force. As Dicey's explanation makes plain, it was lawful for the Crown to launch a military response if that was reasonably necessary to suppress the threat to law and order posed by Te Kooti and his followers, whether or not they were in rebellion. And it is our conclusion, from the evidence recited so far in this section, that the

154. See, for example, Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, p 248; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, pp 116–117, relying on the evidence of Emeritus Professor F W Brookfield commissioned by the Waitangi Tribunal in 1995 for the Taranaki inquiry: F W Brookfield, opinion on raupatu, 26 January 1996 (Wai 143 ROI, doc M19(a)), para 16.2.

155. William Blackstone, *Commentaries on the Laws of England*, 4 vols (Oxford: Clarendon Press, 1765–69), vol 4, pp 74–87

156. Brookfield, opinion on raupatu (Wai 143 ROI, doc M19(a)), para 16.2

The Suppression of Rebellion Act 1863

The Suppression of Rebellion Act authorised the Governor to issue orders to people to take 'the most vigorous and effectual measures' to suppress a rebellion and punish those responsible for certain acts of 'atrocious and outrage'. The powers capable of being given included powers to arrest and bring to trial by courts martial those responsible for the acts. Courts martial could impose the death penalty (section 2). The ordinary courts could not investigate anything done under the Governor-in-Council's order, and the Governor could declare that any acts done were done in conformity with the order (section 3). The legality of detaining a person for trial by court martial could not be challenged (section 5).

threat posed by Te Kooti and his followers was sufficiently serious to justify a military response from the Crown. Though we accept that nga hapu o Te Urewera were operating under their own authority and laws, the time had passed when kokiri could operate out of their rohe to inflict death and destruction of property on other iwi as they chose. The Crown's authority on the ground extended well beyond what its limits had been in the immediate post-Treaty years, and Maori in many areas expected the Crown to protect them. The Crown was bound to meet those expectations.

Our third reason for not pursuing an analysis of rebellion is that the situation under examination is, in important respects, unlike other situations in which the Crown has asserted there was a rebellion and the claimants have denied it. Here, the consequences of the situation did not include the confiscation of tribal land or the formal prosecution of any particular person.¹⁵⁷ Certainly, the impact of the Crown's military operations for Tuhoe, Ngati Ruapani, and Ngati Whare was devastating in other ways, as will be seen. However, in the absence of land confiscation or trials and executions for rebellion, the prejudice suffered by the people as a result of the Crown's conduct is not inextricably connected to their being regarded as rebels.

In these circumstances then, there is no purpose in our seeking to determine whether the Te Urewera followers of Te Kooti were rebels. What is clear is that the Crown was justified in launching a military, as opposed to a police, response. The critical issue, which we now proceed to examine, is whether the degree of force used by the Crown to suppress the threat posed by Te Kooti and his followers was necessary or excessive in all the circumstances. The answer to that question is vital to our assessment of the Crown's conduct in terms of the principles of the Treaty of Waitangi.

157. There was one informal drumhead 'court martial' of an individual – see below.

5.5.2 What standards apply to the Crown's conduct of its military expeditions?

SUMMARY ANSWER: The Crown accepted in our inquiry that its actions, including the forced evacuation of Te Urewera and the burning and destruction of kainga and cultivations, were 'draconian'. Such actions, the Crown submitted, would have been in breach of the Treaty had not the Treaty itself been suspended in the circumstances of rebellion. In our view, the Crown is entitled to use appropriate force during a state of emergency, but – even in those circumstances – fundamental Treaty rights endure, such as the rights not to be arbitrarily deprived of life or to be punished outside the law. Nor, in any case, do we accept that the circumstances justified the suspension of the Crown's Treaty obligations. The fundamental principles of active protection and good government, and the obligation to act in good faith, apply to the conduct of the Crown's military expeditions in Te Urewera.

Further, the Crown at the time considered itself bound to act according to some, at least, of the accepted laws and usages of war. It accepted that prisoners should not be summarily executed, that non-combatants should not be killed, and that women and children should not be treated as prisoners.

Applying the standards of Treaty-consistent and lawful behaviour in war, we conclude that actions taken with the avowed aim of 'punishing' the whole population of Te Urewera were not appropriate. Destruction of property that did not have (and could not have had) any military use was not acceptable. Killing of non-combatants – elderly men, women, and children – was never permissible. Execution of prisoners without due process was unlawful. Destruction of homes and food was permissible only insofar as it was essential for depriving Te Kooti of a base. There had to be both a reasonable expectation that the resources would be used by Te Kooti and a prevailing state of war. In circumstances where such destruction was essential, non-combatants had to be provided with safe alternative accommodation and necessities. The degree of threat posed by Te Kooti, and the degree of force necessary to apprehend him or prevent further attacks, had to be re-evaluated as circumstances changed. Utmost endeavours were required for the restoration of peace as early as possible.

In the preceding section, we found that the Crown was justified in sending military expeditions into Te Urewera in 1869 – not only to apprehend Te Kooti but also to prevent him from conducting further attacks. The question before us here is how we assess the Crown's conduct of the expeditions which then took place over a prolonged period (from 1869 to 1871). This is an issue of great importance to the claimants, whose pain well over a century later was very evident to us. As we noted above, the Crown accepted that the conduct of its expeditions was 'draconian', resulting in a loss of life, destruction of homes and property, and the destruction of food supplies. Such actions, it argued, were not 'uncommon in war', and permissible because rebellion had suspended the operation of the Treaty in Te Urewera:

The government forces did use measures that were draconian. The campaign within Te Urewera was largely concerned with depriving Te Kooti of a secure base. This involved the evacuation of people out of the district, and the burning and destruction

of kainga and cultivations. It cannot be said that such measures were consistent with the duties of the Crown towards its Treaty partners. What must be remembered is that Te Urewera district became the location for the pursuit of a leader of rebellion. Government set aside treaty obligations towards Tuhoe in order to achieve its goal of depriving Te Kooti of a safe haven.¹⁵⁸

Even so, the Crown accepted that some standards still applied and that certain actions, such as the execution of prisoners, were illegal.

5.5.2.1 The Crown's conduct in relation to Treaty standards

The Crown's argument rested on the proposition that the Treaty of Waitangi was suspended in Te Urewera during this time of war. The Crown was entitled, it argued, to set aside its Treaty obligations toward Tuhoe in order to meet its strategic goal of capturing or neutralising Te Kooti. We begin our discussion by assessing this fundamental argument.

As we discussed in chapter 3, it is a well-accepted proposition that in 1840 the Crown undertook to all Maori the promises of the Treaty, whether or not they or their rangatira had signed it. The question of whether duties, concessions, and promises were made by Maori to the Crown is more complex where Maori did not sign or had not even had the opportunity to sign. The law regards the proclamations of sovereignty as unassailable. In Te Urewera, even 25 years after British authority had been established in New Zealand, the reality on the ground was very different. No cession to the Crown had taken place. The people still operated under their own laws and authority, and there was no Crown presence at all. There were no police, no courts, no roads, no public services or infrastructure. The Crown had not chosen to establish a relationship with the peoples of Te Urewera, who for their part had no relationship with the Crown. Much less did they regard themselves as subjects of anyone.

This, then, describes a relationship without symmetry. The Crown was bound to act according to the Treaty, but it cannot be said that the peoples of Te Urewera were constrained in the same way. They acted in accordance with their tikanga. Colonel Haultain, as we have seen, acknowledged the importance of tikanga – at least within the wider district – when he commented that the murders of Moore and Beggs might be interpreted as *utu* for two Whakatohea men who had died as a result of attacks led by St John.¹⁵⁹ This is not to say that Haultain accepted Maori had a right to take *utu* or that he did not consider them bound by colonial law. But he did acknowledge that their own sanctions were operating. We reiterate, however, that the peoples of Te Urewera could no longer expect either the Crown or other *iwi* to accept their right to kill or to inflict injury (in accordance with *tikanga*) outside their *rohe*.

In section 5.5.1, we outlined the Crown's right, indeed duty, under law to

158. Crown counsel, closing submissions (doc N20), topic 4, p 6

159. Battersby, 'Conflict in the Bay of Plenty' (doc B2), pp 117–118

TAMAIKOHA fought in his own way for our Mana Motuhake. The acts he carried out were in accordance with our laws and way of life.

Te Kiato Sonny Biddle¹

1. Te Kiato Sonny Biddle, brief of evidence, 10 December 2003 (doc B25), p 6

respond to a breach of the peace with force appropriate to the circumstances. The major question before us here is whether the military operations that followed were conducted in a Treaty-consistent manner. The Crown asserted that those subject to the military action were in rebellion and therefore the Treaty was suspended: there was no operative Treaty and so no Treaty principles to breach. On this basis, the Crown acknowledged that certain things done by its military forces in Te Urewera would have been inconsistent with its Treaty obligations to Maori had the Treaty been in force. These included the evacuation of people out of the district and the burning and destruction of kainga and cultivations. From this, we deduce that the Crown's position is that, when the Treaty's operation is suspended, the Crown owes nothing at all to Maori under the Treaty. That line of reasoning brings to mind the law of contract, where a serious breach by one party may allow the other party to repudiate the contract and act as if it never existed.

We do not agree with the Crown's view of the Treaty's effect in an emergency situation such as prevailed in Te Urewera in 1869. Our reasons stem, first, from the nature and terms of the Treaty itself. We note the Taranaki Tribunal's comment that 'the specific terms of treaties, the rule of law, and civil rights may all be suspended in an emergency *to the extent that is absolutely necessary*' (emphasis added).¹⁶⁰ To explain what it meant, that Tribunal pointed to a modern version of the same idea in article 4 of the International Covenant on Civil and Political Rights, which reads:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant *to the extent strictly required* by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. [Emphasis added.]¹⁶¹

160. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 131

161. International Covenant on Civil and Political Rights, art 4(1)

The covenant also makes plain that even in an emergency the State cannot override certain other rights that it protects, including the rights not to be arbitrarily deprived of life, not to be tortured, and not to be held in slavery.¹⁶² Therefore, when a nation has accepted an international agreement protecting the civil and political rights of all people, then it must always uphold the most fundamental of those rights. The rights that may be denied or curtailed in an emergency are those of lesser importance to human life and liberty.

We consider that the same fundamental principle applies to the operation of the Treaty of Waitangi in an emergency situation. The undertakings made in a treaty do not all evaporate in emergency conditions: certain fundamental rights persist. This is especially the case, we consider, when the treaty in question is a protective arrangement between a colonising power and an indigenous people. The very nature of that arrangement means the protections promised to Maori by the Crown must persist to the extent that good faith requires. The Taranaki Tribunal put it this way:

While the specific terms of the Treaty may be suspended in an emergency, the general principles enure to the extent that they provide criteria for assessing the circumstances. The Treaty furnishes a superior set of standards for measuring the propriety of the State's laws, policies, and practices.¹⁶³

Further, we highlight article 3 of the Treaty, in which the Crown promised Maori 'the rights and privileges of British subjects'. The killing of innocents is an obvious violation of the fundamental right of British subjects not to be arbitrarily deprived of life by the State. Also fundamental for British subjects is the right of an alleged criminal to the due processes of law – a fair trial and, if found guilty, punishment in accordance with the law. The summary execution of prisoners without a trial for their alleged crimes, and so without the death sentence being lawfully pronounced, violates that fundamental right. We do not accept that the suspension of the Treaty would remove such extreme Crown conduct from this Tribunal's scrutiny. By the Treaty's very nature, its guarantee of protection from such conduct is enduring, regardless of the immediate circumstances.

A further flaw in the Crown's position is revealed if we apply to the Crown's own conduct the notion that a serious breach of the Treaty completely suspends its operation. The confiscation of land is one of the most serious possible Treaty breaches. On a contract-based line of argument, it would surely lead to the complete suspension of the Treaty and the rightful repudiation of the Crown's governance authority by Maori whose lands were confiscated. If the Crown does not support that outcome of its line of argument – and we believe it does not – its position may be seen to be merely expedient.

162. International Covenant on Civil and Political Rights, arts 4(2), 6, 7, 8

163. Waitangi Tribunal, *The Taranaki Report*, p 132

In addition, we consider that the conduct relied on by the Crown as causing the suspension of the Treaty – namely, the ‘rebellion’ of Te Kooti and his followers – does not have that effect at all. As explained earlier, we find it inconsistent with the Crown’s Treaty undertakings that it should seek to raise the charge of ‘rebellion’ against Maori who did not have the chance to sign the Treaty and who had virtually no contact with the Crown. Also, it had confiscated much of their best land and failed even to grant any compensation. To endorse the Crown’s argument would be to accept that it is appropriate to apply British legal standards (the law of rebellion) to the peoples of Te Urewera, who knew nothing about those standards and who had no reason to owe allegiance to the Crown but ample reason not to. It would also be to accept that the Crown should be entitled to rely on that situation to excuse its own failure to respect its undertakings to protect those peoples – a failure that extended to the arbitrary killing of a number of them. In plain terms, the Crown’s argument would unfairly deliver the worst of all possible outcomes to Maori and the best of all possible outcomes to itself. We cannot agree that the Treaty allows that result.

In sum, then, we do not accept the Crown’s contention that the Treaty of Waitangi was suspended because of the conduct of Te Kooti and his followers from Te Urewera. But, even if we were to accept that contention, it does not follow that all aspects of the Crown’s conduct would be immune from our scrutiny. That is because the fundamental guarantees made by the Crown to Maori in the Treaty, including the guarantee of such fundamental rights as the right not to be arbitrarily deprived of life, would endure.

In the previous chapter, we outlined the Treaty principle of active protection deriving from:

- ▶ the article 2 guarantee of protection of the lands and properties of Maori, and their authority over them;
- ▶ the preamble to the Treaty setting out the Queen’s wish to avert the ‘evil consequences’ of colonisation; and
- ▶ the article 3 promise to Maori that they should enjoy the rights and privileges of British subjects.

The principle of good government, proceeding from the Crown’s obligation to act within the law, is also important. These are the principles we bear in mind as we consider the conduct of the Crown’s expeditions in Te Urewera.

5.5.2.2 *The Crown’s conduct in relation to standards of lawful behaviour in war*

Although the Crown argued that the Treaty was not in force during this time of war, it accepted that certain standards of behaviour were still required of it. Counsel submitted:

It was not Crown policy of the time to allow its troops to execute prisoners. However, while the Crown cannot be said to have condoned the execution of prisoners, there were a series of Crown failures in these events. The Crown is responsible for providing those who act on its behalf with appropriate instructions and making

it clear that such executions are not condoned by the Crown, and ensuring that any illegal actions are penalised.¹⁶⁴

This brings us to the question of what actions were considered ‘illegal’ in these particular circumstances. What standards were considered appropriate at the time?

In its closing submissions, the Crown pointed to an 1867 statement of Defence Minister Haultain criticising the unlawful execution of four prisoners: ‘putting these men summarily to death without regular trial and without the signification of the Governor’s assent was an unlawful act, and is repugnant to the feelings and customs of civilised people.’¹⁶⁵ And, yet, Gilbert Mair later recalled that there were ‘scores of cases during the war when prisoners, innocent as angels by comparison with Wi Heretaunga, were shot off hand without the faintest show of proving their guilt beforehand’.¹⁶⁶

In his evidence for the Crown, Dr Battersby argued that the actions of Crown and Maori mirrored one another in the kind of war that was waged: ‘What one side does, the other will generally reciprocate. The excesses perpetrated by the Indian mutineers in 1857, led to excesses perpetrated upon them by British forces seeking to quell the mutiny.’¹⁶⁷

Nonetheless, Battersby suggested that there were still certain standards the Crown had to meet. Colonial forces in Te Urewera ‘did emphasize a difference between men, as combatants, and women and children as non-combatants’. Although Te Kooti’s forces did not always make such a distinction, ‘this did not lead the [colonial forces] to alter their observation of the distinction.’¹⁶⁸ Officials couched their reports of Government action in terms of what was considered permissible. To give one example, H T Clarke’s description of the Government’s attack on Te Harema recorded that women and children were taken prisoner and that only men who were ‘armed and resisted’ were killed.¹⁶⁹ ‘All men with arms in their hands were killed,’ he reported.¹⁷⁰

In Battersby’s view, the Crown expected the same standards – at least officially – of its Maori forces. The Government’s instructions to Major Rapata Wahawaha in 1870 showed that the ‘normal European rules of conduct were to apply.’¹⁷¹ Battersby’s specific example of this was the instruction ‘Should fighting take place,

164. Crown counsel, closing submissions (doc N20), topic 4, p 14

165. *Ibid*, p 13

166. Mair to Cowan, MS-papers-0039, folder 6, Alexander Turnbull Library. Wi Heretaunga was executed in 1871 after a court martial, although the officers concerned did not know whether martial law had been proclaimed. Heretaunga was accused of attacking Mair after a battle, while the latter was treating his injuries.

167. Battersby, ‘The Government, Te Kooti, and Te Urewera’ (doc B3), p 9

168. *Ibid*

169. Clarke to Cooper, 1 June 1869, AJHR, 1869, A-10, p 63 (Battersby, ‘The Government, Te Kooti, and Te Urewera’ (doc B3), p 65)

170. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, pp 132–137 (Battersby, ‘The Government, Te Kooti, and Te Urewera’ (doc B3), p 65)

171. Battersby, ‘The Government, Te Kooti, and Te Urewera’ (doc B3), p 91

remember to save the women and children.¹⁷² We note further that, in April 1870, Defence Minister McLean explained to his Maori forces that ‘the Government did not consider women and children in the light of prisoners’. They could not be allowed to return to the war zone, but nor could they be imprisoned or sent somewhere against their will; they had the right to choose with which of their relations they would seek refuge.¹⁷³

In cross-examination by claimant counsel, however, Battersby accepted that women and children were killed by Government forces in Te Urewera. Counsel for Nga Rauru o Nga Potiki suggested that Mair’s description of recent Maori actions as a ‘murderous system of warfare’ applied to some of the Crown’s own actions against Tuhoe non-combatants. Battersby accepted that the summary execution of prisoners was ‘probably’ murder.¹⁷⁴ He also accepted that some of the Crown’s actions were ‘excessively cruel’.¹⁷⁵

Battersby questioned, however, the extent to which the laws and customs of war actually applied to the Crown’s conduct in Te Urewera. Counsel for Wai 36 Tuhoe claimants put to him that the summary execution of prisoners was contrary to the ‘rules of war’. Battersby replied that that was the case in international conflicts but that the rules of war did not generally or always apply in the case of rebellion. He referred to the example of a rebellion in Jamaica in 1865 in which 350 prisoners were tried by courts martial and executed; one prisoner was found not guilty but executed anyway.¹⁷⁶ In response to questions from counsel for Ngati Manawa, however, he accepted that the Government’s actions in Jamaica were ‘hugely controversial’ at the time and ended the career of the Governor concerned.¹⁷⁷ Overall, his view was that the British Empire commonly was ‘more brutal’ in the repression of internal conflict than in international warfare: ‘And, as tragic as it is, it seems to be a recurring theme, in these kinds of internal situations.’¹⁷⁸

There is some doubt, therefore, as to what standards of conduct the Crown was following in Te Urewera. That doubt was expressed at the time. Reports of summary executions and the offer of a reward of ‘£1 per head’ (and £500 for the head of Te Kooti) were dismissed by the Colonial Office as unbelievable.¹⁷⁹ Yet, as we discuss below, Mair believed that Whitmore did in fact ‘Subrosa [secretly] offer

172. McLean to Wahawaha, 19 February 1870, AJHR, 1870, A-8B, p 1 (Battersby, ‘The Government, Te Kooti, and Te Urewera’ (doc B3), p 91)

173. Clarke to Native Department, 18 April 1870, AJHR, 1870 A-8B, p 34

174. John Battersby, under cross-examination by counsel for Nga Rauru o Nga Potiki, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), pp 206–209)

175. *Ibid*, p 111

176. John Battersby, under cross-examination by counsel for Wai 36 Tuhoe, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p 115); Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), pp 192–193

177. John Battersby, under cross-examination by counsel for Ngati Manawa, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), pp 206–209)

178. John Battersby, under questioning by the Tribunal, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p 218)

179. Granville to Bowen, 20 April 1869, AJHR, 1869, A-1A, pp 31–32

The Use of the Term 'Hauhau' in 1869

Gilbert Mair believed that Colonel Whitmore offered '£5 per head for Hauhau 'eds'.¹ By 1869, officials and officers were using the word 'Hauhau' to describe any Maori person or group who was perceived as an enemy of the Crown. We heard from counsel for Ngati Whare:

it is submitted that matters had moved on even further from the mid 1860s when from the perspective of the Government and the colonial troops there was no distinction between adherents to Pai Marire faith and the Hauhau; by 1869 there was no apparent distinction drawn by the Crown between Pai Marire, Hauhau, members of nga hapu o Te Urewera (including Ngati Whare) and rebels. In May 1869 it was essentially 'open season' in Te Urewera.²

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1. Mair to Cowan, 4 June 1928, MS-papers-0039-folder 6, Alexander Turnbull Library
 2. Counsel for Ngati Whare, closing submissions, no date (doc N16), p 27

£5 per head for Hauhau 'eds'.¹⁸⁰ The Secretary of State, Lord Granville, did request an explanation of the New Zealand Government's offer of a reward for the capture, dead or alive, of Titokowaru. Granville observed that this was contrary to the laws of war.¹⁸¹ In response, the Government sought a legal opinion from the Attorney-General, who advised that Maori were not foreign belligerents and were not entitled to the customary protections afforded in international conflict.¹⁸² A Government 'engaged in the suppression of a revolt, accompanied as such revolt has been, with all the unrelenting cruelty of savage nature' was entitled to undertake 'the utmost severities.' That would be the case, argued the Attorney-General, even against foreign enemies if they violated the laws of humanity and the usages of war.¹⁸³

Governor Bowen added that Titokowaru and Te Kooti had to be treated in 'an exceptional manner, so as to make clear a broad distinction between them and those insurgents who, like the Waikato tribes, have waged a comparatively honourable warfare'.¹⁸⁴ More severe measures had been taken in other colonies

180. G Mair to Cowan, 4 June 1928, MS-papers-0039, folder 6, Alexander Turnbull Library

181. Granville to Bowen, 26 February 1869, AJHR, 1869, A-1A, p 26

182. Associate Professor Boast referred us to this legal opinion: see Richard Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi: A History' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A27), p 64.

183. 'Opinion of the Attorney-General as to the Legal Status of the Maoris Now in Arms as Regards their Rights as "Belligerents"', AJHR, 1869, A-14, p 4

184. Bowen to Granville, 7 July 1869, AJHR, 1870, A-1B, p 21

and in Ireland, he argued, with the approval of the British Government.¹⁸⁵ Lord Granville replied that severe actions taken in India and elsewhere had not in fact been applauded by the British authorities, and that they were considered ‘in some instances very lamentable.’¹⁸⁶ As claimant counsel and Dr Battersby agreed, the actions of Governor Eyre in Jamaica were so controversial as to end his career as a colonial governor.¹⁸⁷ The practice of passing annual Indemnity Acts excusing unlawful (but ‘necessary’) actions by military forces in a ‘rebellion’ was discontinued from 1868 as a result.¹⁸⁸ In any case, Lord Granville reminded the Governor that military action still had to be ‘mitigated’ by the laws of war, even in an ‘internal’ war, insofar as those laws were ‘applicable to rebels and savages.’¹⁸⁹ This was hardly a clear or stringent piece of advice.

The ‘rules of war’ referred to by claimant counsel and Battersby made up a body of customary international law. Attempts to codify that law were under way at the time, ranging from the Lieber Code of 1863 to the Brussels Declaration of 1874 and the Oxford Manual of 1880. These early attempts at codification resulted ultimately in the Hague and Geneva Conventions of the early twentieth century. We were not presented with detailed evidence or submissions on the content of this law. Battersby argued that the Government reciprocated the ‘excesses’ of Te Kooti’s forces but nonetheless abided by the ‘normal European rules of conduct’ regarding the treatment of prisoners and of women and children. He did not, however, provide evidence on exactly what constituted those rules of conduct. We note, for example, his statement that the forced removal of whole communities is a ‘commonly used counter-insurgency technique,’ but that his comparative examples are drawn from the twentieth century. He noted the particular brutality of the concentration camps formed during the Boer War.¹⁹⁰ In response to questions from the Tribunal, Battersby said he knew of no legal justification for detaining people in this way.¹⁹¹

From our own information, we are aware that international law at the time provided for the non-molestation of non-combatants and their property, and the humane treatment of surrendered prisoners and unarmed men, and set standards for the behaviour of an occupying force. Battersby accepted that looting and destruction that had no military purpose took place in Te Urewera.¹⁹² Otherwise, he asserted in his report that the Crown conducted itself according to the laws

185. Ibid

186. Granville to Bowen, 4 November 1869, BPP, 1870, vol 50 [c.83], p199 (IUB, vol 16, p 229)

187. John Battersby, under cross-examination by counsel for Ngati Manawa, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p 219)

188. Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), pp 189–193

189. Granville to Bowen, 4 November 1869, BPP, 1870, vol 50 [c.83], pp 199–200 (IUB, vol 16, pp 229–230)

190. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), pp 85, 121

191. John Battersby, under questioning by the presiding officer, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p 219)

192. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 71; see also Crown counsel, closing submissions (doc N20), topic 4, p 12

Two Opinions on Whether the Laws of War Applied in a Conflict between the Crown and Maori in 1869

Lord Granville, Secretary of State for the Colonies:

The late Maori insurrection, as we are all aware, had assumed the dimensions of an internal war, justifying the employment of military methods for its repression, and requiring the application of some modification of the laws of war, as these laws are applicable to rebels and savages. The present disturbances appear, at first sight . . . to be a revival of that internal war, likely to call for the same military methods, and requiring that those methods should be mitigated by the same rules.¹

James Prendergast, Attorney-General of New Zealand:

The Maoris now in arms have put forward no grievance for which they seek redress. Their object, so far as it can be collected from their acts, is murder,

1. Lord Granville to Governor Bowen, 5 November 1869, BPP, 1870, vol 50 [c.83], pp 199–200 (UP, vol 16, pp 229–230)

of war. Under cross-examination, however, he accepted that this had not always been the case, although he suggested that military necessity required actions at which we may ‘look aghast’ today.¹⁹³ We keep these points in mind when assessing evidence of the Crown’s conduct towards the peoples of Te Urewera from 1869 to 1871.

Suffice to say that there was debate over exactly what conduct could be expected from the Crown by the peoples of Te Urewera, including the non-combatants who made up the majority of the communities whose persons, homes, and property were attacked by the Crown in 1869. To accept some of the Crown’s actions, we would have to accept an argument that the people of Te Urewera – combatants and non-combatants alike – had, ‘owing to their own savage cruelties, forfeited, by the law of nations, all right to be treated according to the “usual laws of war”’. That was the argument as Governor Bowen put it to the Colonial Office at the time.¹⁹⁴ We reject that argument. Where excesses had been committed (such as at Mohaka), it was up to the Crown to take appropriate steps to capture the persons concerned and see them tried in the courts. Murders did not justify retaliatory murders. Even

193. John Battersby, under cross-examination by counsel for Nga Rauru o Nga Potiki and under questioning by the Tribunal, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), pp 211–218)

194. Bowen to Granville, 7 July 1869, AJHR, 1870, A–1B, p 19

cannibalism, and rapine. They form themselves into bands, and roam the country seeking a prey.

In punishing the perpetrators of such crimes, is the Sovereign to be restrained by the rules which the laws of nature and of nations have declared applicable in the wars between civilized nations? Clearly not. Even if those in arms had not been guilty of such enormous atrocities, it does not appear to me that those who, having taken part in it, are captured ought to be treated as prisoners of war. I see no reason why they should not be treated as persons guilty of levying war against the Crown. No doubt, in so treating them, the Crown would exercise its power with mercy: the numbers of those in arms, and who have been and are likely to be captured, and the fact that the men are of a savage race, afford sufficient reasons for confining the highest penalties of the law to those who are the leaders of the revolt, or have actually participated in the atrocities that have been committed. Unfortunately, however, the revolt has been carried on in defiance of all the laws of nature, and there can be no doubt that all who have taken part in it have forfeited all claim for mercy: certainly, all title to the observance towards them of the usages of war, if they ever had such title.²

2. Opinion of James Prendergast, Attorney-General, 1869, AJHR, 1869, A-14, p3

less could the peoples of Te Urewera – whole communities including women and children – be considered to have ‘forfeited’ their legal and moral rights to just and humane treatment. Nor did the evidence of the Crown’s historian support such a proposition.

That brings us to the issue as we posed it above: whether the degree of force used by the Crown to suppress the threat posed by Te Kooti and his followers was necessary, or excessive, in all the circumstances. Answering this question requires us to evaluate the strategic aims of the Crown’s expeditions, which we do in the following sections.

In short, the Crown’s strategy was to capture or kill Te Kooti and his followers, or, failing that, to deprive them of the means of carrying out further attacks, which means were defined to include food, shelter, and support from bases inside Te Urewera. We evaluate this strategy for each campaign between 1869 and 1871. Applying the standards of Treaty-consistent and lawful behaviour outlined above, we conclude that actions taken with the avowed aim of ‘punishing’ the whole population of Te Urewera were not appropriate. The destruction of property that did not have (and could not have had) any military use was not acceptable. The killing of non-combatants – elderly men, women, and children – was never permissible. The execution of prisoners without due process was unlawful.

The destruction of homes and food supplies was acceptable only insofar as it

was necessary to meet the strategy of depriving Te Kooti of a secure base. In other words, there had to be:

- ▶ a reasonable expectation that the community concerned planned to provide shelter, food, or arms to Te Kooti and his fighting men, or that those things might fall into his hands; and
- ▶ a prevailing state of war – kainga and food supplies could not be destroyed in areas where peace had been established.

At all times, the provision of protection and alternative means of survival in safe and secure locations was required for non-combatants – they could never be left to survive as best they could with no homes or food.

Finally, and given the Treaty obligations owed by the Crown to the peoples of Te Urewera, we consider that utmost endeavours were required both for the restoration of peace as soon as was practicable and for the restoration of communities. This meant that the degree of threat posed by Te Kooti and his followers – and the degree of force required to apprehend him or to prevent further attacks – had to be re-evaluated as circumstances changed. And the restoration of peace, and the establishment of a proper Treaty-based relationship with the peoples of Te Urewera, had to be an urgent priority.

We turn next to the conduct of the Crown's first campaigns in 1869, and we measure it against these standards.

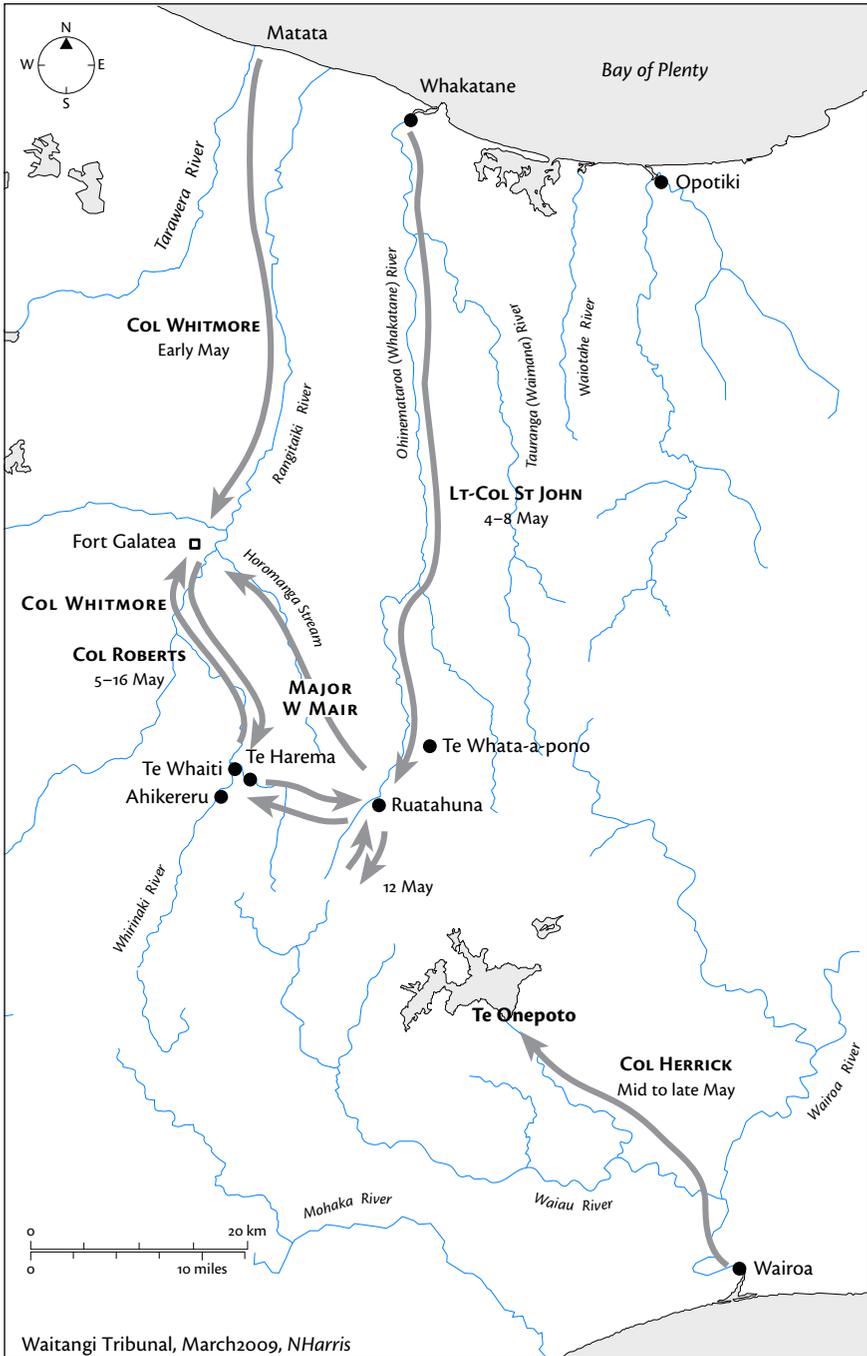
5.5.3 How did the Crown conduct its military expedition of 1869?

SUMMARY ANSWER: The military expedition of 1869 had the dual purpose of depriving Te Kooti of a secure base (and capturing or killing him if possible), and punishing the peoples of Te Urewera. It was war waged against a whole population. Everything in the path of the expedition was destroyed, whether it had a military application or not. This destruction was visited on many communities and as far inland as Ruatahuna, although Maungapohatu and Waikaremoana were not attacked at this time. Non-combatants were sometimes killed, and there was an instance in which prisoners were summarily executed and their bodies desecrated. No provision was made for non-combatants after the thorough destruction of their homes and food supplies. At Te Harema, the women and children were captured, taken prisoner, and sent off against their will with their Te Arawa captors. Taonga and wahi tapu, including urupa, were deliberately destroyed and desecrated.

These actions went far beyond what was necessary or appropriate in depriving Te Kooti of a base, and were in breach of Treaty principles.

What were the Crown's intentions when its forces entered Te Urewera? In the wake of Te Kooti's attacks in the Whakatane area, Major William Mair urged that, 'to prevent further disaster, no time should be lost in following up Te Kooti, and at the same time punishing the Uriwera'.¹⁹⁵ H T Clarke suggested that 'no time should be lost in attacking Te Kooti, and destroying the Uriwera settlements in detail'.

195. W Mair to Clarke, 23 March 1869, AJHR, 1869, A-3, p 37



Map 5.2: Colonel Whitmore's May 1869 military campaign

This should be done with speed, before winter made an expedition impracticable.¹⁹⁶ James Richmond, the de facto Minister of Native Affairs, made the decision early in April to ‘penetrate the interior from the Bay of Plenty’.¹⁹⁷ As we have seen, Colonel G S Whitmore, the head of the Armed Constabulary, had already sent a force on ahead of him, and arrived himself at Matata before he learned of the attack on Mohaka. He regretted

that the movement of troops had not been early enough, by threatening Te Kooti in the Uriwera country, to prevent his making another foray on the Coast. The tragical occurrences at Mohaka – a spot so safe from harm, to all appearance, that even the Maoris of the place had not considered it in enough danger to leave a sufficient guard for their kainga, while absent on an expedition themselves – show how necessary it is to undertake, however late in the year, the attack upon the Uriwera fastnesses, from which troops had always hitherto recoiled, and which has afforded Te Kooti a refuge hitherto.¹⁹⁸

Richmond decided then on an immediate assault. Three columns were to be organised to penetrate Te Urewera. One column would enter from the west via the Rangitaiki River and Ahikereru; one from the north via the Whakatane River; and one from the south-east from Wairoa. According to Richmond’s own account:

- ▶ the first column, Whitmore’s, would comprise 150 Europeans and 300 Arawa;
- ▶ the second (commanded by St John and Fraser), 300 Europeans and 150 Ngati Pukeko ‘and others; and
- ▶ the third, he hoped, 180 Armed Constabulary and 250 ‘Natives of all tribes’ (including Henare Pota’s Ngati Porou).¹⁹⁹

The first two columns, according to Whitmore, were to rendezvous at Ruatahuna, where the ‘main stand’ was anticipated. If the force was successful there, he hoped part of it might also go on to link with the Wairoa column at Maungapohatu.²⁰⁰ As Whitmore explained to Haultain, a military expedition would serve as a signal warning that Te Kooti could no longer use Te Urewera as a refuge. Crown forces had to show that they would not always ‘recoil’ from unknown country. He did not refer explicitly to the capture of Te Kooti, though he anticipated attacks by Te Kooti’s men and ‘the whole Uriwera tribe.’²⁰¹ As he wrote to Daniel Pollen, ‘I believe Te Koti [*sic*] is not killed and I feel sure his force is small. It is the Uriwera [*sic*] I look upon as formidable.’²⁰²

196. Clarke to Under-Secretary, Native Department, 26 March 1869, AJHR, 1869, A-3, p 36

197. Whitmore to Haultain, 23 April 1869, AJHR, 1869, A-3, p 43 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 60)

198. Whitmore to Haultain, 23 April 1869, AJHR, 1869, A-3, p 44

199. Richmond to Haultain, 24 April 1869, AJHR, 1869, A-3, p 57

200. Whitmore to Haultain, 23 April 1869, AJHR, 1869, A-3, p 44 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 62)

201. *Ibid*

202. Whitmore to Pollen, [1 May 1869] (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 64)

Whitmore emphasised the difficulties his forces would face. He reminded the Government that this was a unique expedition, fraught with such challenges that no one had yet achieved success in Te Urewera. As he put it to Haultain, 'The difficulties of such a campaign are chiefly those due to long land carriage, and to the unknown character of the country. It is known to have stopped the Ngapuhi long ago, and it has hitherto been impossible to bring troops to its outskirts.'²⁰³

In addition to official accounts of planning for the expedition, we have a private letter from HT Clarke, civil commissioner at Tauranga. Clarke's letter gives a stark account of Whitmore's explanation of his views and intentions to a group of Te Arawa and Whanganui military leaders preparing to accompany the Armed Constabulary. A sinister note was struck by Whitmore as to both his purpose and his expectations of them:

The principal men present were Fox [Te Pokiha], Matene, W Kemp[,] Arawa [Arama] Karaka, Rewi Tereanuku, and three or four others. The Col began by telling them of the great crimes and misdemeanours of the Urewera, that they had intermeddled with all the quarrels against the Pakeha, without any cause of provocation and now to crown all they were sheltering the scoundrel Te Kooti and had assisted him in his late raids. I will say this, that the little man did speak to the point and took a correct view of the thing – Well now he said 'I am going to punish them, they must be exterminated. I am going to do so and so – then to do so and so. I ask for your cooperation' etc etc.²⁰⁴

In short, to Whitmore the people of Te Urewera were clearly a target; they were to be punished not just because of their recent support of Te Kooti but because they had long defied the Crown. Whitmore clearly had no concern with understanding the causes of Te Urewera involvement in battles like Orakau, the fact that many of their chiefs had assisted in the search for Kereopa Te Rau, or their anger at the confiscation of their lands. He aimed to march his forces into the most distant settlement of Te Urewera so that the people should not think themselves beyond the Crown's reach. It was time a fractious yet powerful people were subdued.

In evidence of this kind, we are faced with the dilemma of varying motivations and intentions among civil and military leaders. In 1869, however, it was Whitmore who was ultimately in control of events. His motives and intentions dominated what occurred on the ground. His forces moved into the Urewera with the intention of destroying whatever they found. Settlements and food supplies were targeted; the people were to be either captured or killed. This approach makes sense only if it was believed that Te Kooti might be anywhere in Te Urewera and might use any food sources or shelter there. The motive was both to punish the people and to deprive Te Kooti of any possible infrastructure or support. As Dr

203. Whitmore to Haultain, 23 April 1869, AJHR, 1869, A-3, p 44 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 61)

204. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p 132 (Battersby, 'The Government, Te Kooti, and Te Urewera' (doc B3), p 61)

Battersby explained, one result was destruction of property that could never have had a military application. This was the waging of war against a whole population.

The Crown itself, in its closing submission, noted doubts about this strategy. It submitted that ‘There was dispute even within Crown forces about the efficacy of such measures.’²⁰⁵ This was a reference to the views of Colonel Lyon, who had earlier considered whether these kinds of tactics might ‘pacify’ the peoples of Te Urewera and enable the capture of Kereopa Te Rau. Lyon came to the view that expeditions to destroy kainga and property would probably unite Te Urewera against the Crown and so obstruct the capture of Kereopa. In his opinion, such expeditions were likely to be self-defeating.²⁰⁶

In the speech recorded by Clarke, Whitmore conveyed to the Maori leaders that retribution against the peoples of Te Urewera was acceptable. In other words, this was not strategy so much as punishment. If his language was as unguarded as Clarke records, the standard he set for his forces was hardly consistent with what Dr Battersby called the ‘normal European rules of conduct’. Given that Whitmore’s force included men from Ngati Pukeko and Ngati Awa, traditional enemies of Tuhoe who had also suffered recently at their hands, he was obliged to exercise particular care in his verbal instructions to them. His emphasis on retribution, however, is consistent with his view of the summary executions of prisoners at Ngatapa (by forces under his command). He wrote, in respect of that earlier occasion: ‘Thus the murders of our unfortunate countrywomen and their helpless children have been avenged on the spot chosen as the strongest in a very rugged forest country by the wretches who perpetrated these crimes.’²⁰⁷ The Turanga Tribunal concluded that both the senior officer in the field – Whitmore – and the senior politician responsible – James Richmond – were ‘clearly aware’ of the many executions that took place at Ngatapa and ‘acquiesced (at the very least) in their commission.’²⁰⁸ The Tribunal calculated the number of executions to be between 86 and 128.

Crown forces were thus led into Te Urewera in May 1869 by a commander who was intent both on forcing Te Kooti out of the area by shattering his support base, and on punishing the iwi who sheltered him and who, in any case, had a history of defying the Crown. He evidently wished to inflict maximum damage. One result, as the Crown submitted, was looting and destruction of property that ‘served no military purpose.’²⁰⁹ This reinforces our view that, from the beginning, this was a campaign conducted in a manner only partly directed at the defeat or capture of Te Kooti and his forces. On the other hand, as we found in section 5.5.1, almost the whole of Te Urewera had agreed to support Te Kooti at Tawhana in March 1869. In the circumstances of May to July of that year, it was not unreasonable for the

205. Crown counsel, closing submissions (doc N20), topic 4, p 12

206. Ibid; citing Binney, ‘Encircled Lands, Part 1’ (doc A12), p 128

207. Whitmore to Haultain, 8 January 1869, BPP, 1868–69, vol 44 [307], p 346 (IUB, vol 15)

208. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, pp 243, 246

209. Crown counsel, closing submissions (doc N20), topic 4, p 12

Crown to expect that kainga and food supplies along the routes of the intended expedition were potential bases of support for Te Kooti and his forces. We turn next to the details of this expedition.

5.5.3.1 *Te Harema*

On 5 May, Major Roberts' column, which Whitmore accompanied (not wishing to leave a 'junior officer' to deal with a large Arawa contingent by himself), marched east from the newly erected Fort Galatea up the Whirinaki River towards Ahikereru (the Te Whaiti district). This Ngati Whare settlement had become a prime target of the Crown's focus since reports emerged in late March that Te Kooti was sheltering there.²¹⁰

The first engagement of the war took place at Te Harema Pa. In the early hours of 6 May, the main column approached Te Harema, arriving about 9 am. From cover, they watched the inhabitants of the pa go about their business. Over the next few hours, 100 of Te Pokiha Taranui's men and 50 of Gilbert Mair's broke off from the main group and attempted to surround the pa to cut off any line of retreat. According to HT Clarke, who was with the Crown force, Whitmore ordered the attack after their tracks were discovered:

The natives in the pa sent two young fellows to the Cultivations close to us. Fox's [Pokiha's] people had passed that way about 2 hours before. I could hear their voices – evidently scared out of their wits. They had discovered the war trail. I went to the Col told him that we had been discovered and suggested that we should go on at once. He said 'Yes' and off they went.²¹¹

Clarke's letter provides a detailed description of the attack on the pa:

I got on to a high ground fern hill just opposite. Fox's people had taken possession. Firing still going on. Our people chasing some two or three who had escaped but I will back up the Urewera at running against any people in New Zealand. I rode up to the pa passed three or four dead bodies and met Fox. He had taken about 30 women and children prisoners, not one was hurt. All the men with arms in their hands were killed. The Hauhau's commenced firing. The great prophet Matiu was the first to fire and the first to fall. Gilbert Mair was the third into the pa. As they went in the enemy went out at the other end but were hampered with their women and children. The men were soon shot down and the women brought away. Fox had the fine thought to put all the women and children into one house and he and his brother mounted guard, when Natives are excited they are more like demons – and the noise and excitement is

210. St George to Clarke, 23 March 1869, AJHR, 1869, A-3, p 39; Clarke to St George, 25 March 1869, AJHR, 1869, A-3, p 39

211. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p 132 (Battersby, 'The Government, Te Kooti, and Te Urewera' (doc B3), p 65)



Thomas Ryan (ATL B-159-008-2)

The Whirinaki River valley from Te Harema Pa, Ngati Whare's fighting pa at Ahikereru. Having sacked a number of settlements in the Bay of Plenty and being pursued by Mair's forces, Te Kooti established his base at the pa in March 1869. It was from this strategic position that he launched his devastating attack on Mohaka.

something excruciating to one's nerves. We had some narrow escapes but no one hit. The hauhaus lost five that we know of and thirty women and children.²¹²

Clarke's official report to the Native Department was less graphic:

Two hours had just elapsed, when we heard loud speaking on our left (the cultivation from which Te Pokiha had started his division). The cause of the exclamation proceeded from two of the enemy, who had discovered the trail of Te Pokiha's force. An attempt was made to intercept them, but without avail. I reported the matter to the Colonel, who immediately ordered the advance of the main body. Just as our forces emerged from the forest, several volleys were fired on our left, and in a few minutes the pa was rushed and taken possession of by Te Pokiha's division. From Mr Mair's account, the track which the attacking party passed over was of the roughest

212. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p132 (Battersby, 'The Government, Te Kooti, and Te Urewera' (doc B3), p 65). The final statement in this quotation appears to use the word 'lost' in two different senses; the men who were 'lost' had been killed, but the women and children who were 'lost' had been taken prisoner.

description; that, after great exertion, they succeeded in climbing the hill on which Te Pa Tapu was situated, to find that the place was unoccupied – indeed it apparently never was intended for any other purpose than a sacred enclosure in which Hauhau ceremonies were to be performed; that Te Pokiha's men approached towards the pa (Harema) with caution, but were discovered; Matiu, the Hauhau prophet, of Ahikereru, was the first to fire and the first to fall; that they entered the fighting pa at one end, and the occupants fled the other; they were pursued, and all the men that bore arms and resisted were killed, four or five only making their escape; between thirty and forty women and children were taken prisoners.²¹³

Whitmore's official report added further details:

The Hauhaus were scattered about in the valley collecting their crops, so that all could not be killed. They made a show of resistance, but were speedily driven off – Fox's Arawas being the nearest, and getting first into the pa, which was fairly fortified in a mixed Native and European manner. Six men were shot, among whom was Matthew, a noted prophet and cannibal. It was unfortunate that some of the men were absent ambuscading another road, by which the column was expected, and others assisting Te Kooti. About fifty prisoners were taken, women and children, with much plunder and very large stores of provisions.²¹⁴

The claimants submitted to us that the Crown's attack on Te Harema Pa constituted the very worst of its exploits. Counsel for Ngati Whare argued that the Crown's actions at Te Harema 'confirm not only excess of intention, but excess of action on the part of Whitmore and those under his command.'²¹⁵ Counsel for Tuawhenua argued that Clarke's report 'provides a description of a massacre of unarmed men.'²¹⁶ Binney described as cruel Whitmore's nonchalant reference to the fact that 'all could not be killed'; it was evidence of his willingness to see as many 'Hauhau' as possible die.²¹⁷ Counsel for Ngati Whare described Whitmore's comment as evidence of his 'disappointment' that more people had not been killed.²¹⁸

The attack on Te Harema was a surprise attack, carefully prepared before day-break. Clarke wrote that they watched hangi fires in the early morning 'from which we supposed the pa full of men.'²¹⁹ The attack was supposed to take place in the middle of the day, allowing three hours for Mair and Te Pokiha to encircle the pa and cut off any retreat to Ruatahuna. In the event, it had to be launched

213. Clarke to Cooper, 1 June 1869, AJHR, 1869, A-10, p 63

214. Whitmore to Haultain, 18 May 1869, AJHR, 1869, A-3, p 48

215. Counsel for Ngati Whare, closing submissions (doc N16), p 30

216. Counsel for Tuawhenua, closing submissions (doc N9), p 45

217. Binney, 'Encircled Lands, Part 1' (doc A12), p 202

218. Counsel for Ngati Whare, closing submissions (doc N16), p 32

219. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p 134

prematurely because two young men discovered the presence of the Crown's force when they came out to the gardens.²²⁰

It is clear that when the attack was launched, those men who were inside the pa tried to get the families safely out, but they were shot as they did so, and the women and children taken prisoner. Peter McBurney, in his evidence for Ngati Manawa, suggested that the men in the pa were elderly.²²¹ Harehare Atarea of Ngati Manawa later recalled: 'I led the attack on Harema (pa). I went in front to save my people [the inhabitants were close relations of Ngati Manawa], but Te Pokiha and Ngati Pikiāo killed my elders, Matiu and others. Great shame came upon me through their killing my people.'²²²

We cannot expect military operations to have been conducted without some casualties, particularly when Te Urewera men were defending their families and homes. The attack, however, highlights our concern about the conduct of expeditions in circumstances where whole communities were targeted. No men were taken prisoner, and Whitmore, we agree, sounded disappointed that he had not been able to kill more. But there does not appear to be evidence of a 'massacre of unarmed men.' Clarke specifically notes that the men were armed, although he did not mention, as Harehare Atarea later testified, that they were 'elders.' They were, as everyone agrees, in retreat – trying to get the women and children to safety.

One of the major claims against the Crown relating to these expeditions concerns the treatment of Ngati Whare women during and following the attack on Te Harema Pa. (In referring to Ngati Whare women, we are aware that among the women of Te Harema there may have been some who identified as Tuhoē.²²³) Claimants allege that Te Arawa Crown forces committed acts of 'molestation and rape' against the women of Ngati Whare. It was also argued before us that these women were then taken away by Te Arawa troops as 'hostages' of the Crown.²²⁴ According to Binney, the Crown's actions concerning the women taken from Te Harema Pa amounted to 'calculated genocide', because 'the women prisoners were handed over to Te Arawa in order to "exterminate" their hapū.'²²⁵

Crown counsel argued against the claim of 'genocide', but did not directly address allegations of rape in their submissions:

We reject the argument of genocide given the actions taken by Clarke to inform their husbands of their location and that they would be treated well if they joined them. Evidence has been given that some of these women did not return. The claimants consider some may have committed suicide, but it is likely that some of the women who did not return married Te Arawa.²²⁶

220. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p 134

221. McBurney, 'Ngati Manawa and the Crown' (doc C12), p 102

222. Ibid

223. Hiraina Hona, brief of evidence, 6 September 2004 (doc G44), pp 7–9

224. Counsel for Ngati Whare, closing submissions (doc N16), pp 33, 35

225. Binney, 'Encircled Lands, Part 1' (doc A12), p 204

226. Crown counsel, closing submissions (doc N20), topic 4, p 12

However, counsel did concede that some of the women and children ‘may not have returned’.²²⁷ We tread with caution through the evidence presented to us on this difficult issue.

Claimants Jack Ohlson of Ngati Whare and Ani Hare of Ngati Haka Patuheuheu gave evidence on these matters, relating korero from their tipuna. Ohlson spoke directly about stories of the fate of Ngati Whare women at Ahikereru:

Mereru Mason’s father, Maruiwi Iraia would sometimes talk about the troops at Ahikereru. He told me that they interfered with some of our Ngati Whare women, and that the men hit back at them. A lot of the women that were interfered with by the troops committed suicide, by drowning themselves in the river. We knew . . . that something very bad had happened because it made the old people very sad to talk about it.²²⁸

Mr Ohlson also told us that a number of the women who were taken away to Te Putere reserve ‘never came back’: ‘They were ashamed.’²²⁹

Ani Hare, who spoke about the ‘invasion by the Crown . . . soldiers into Te Urewera’, conveyed to us how closely stories of rape were held by the elder women of the hapu:

He nui nga korero i ahu mai i nga kuia, koroua, kaumatua. Ko enei Korero karekau i puta ki te Ao. Engari, i kawea tonutia e nga hoia taua a Te Karauna, enei mahi tukino. Ko te ‘Aitanga Kino’ (rape), ko te ‘Pawheratanga’ (violent rape), ko te ‘Tukinotanga’ (ill-treated rape), i nga wahine, i nga kotiro o te pa.

I waiho noa iho enei korero, he korero huna (secret) ke, he korero muna (secret). Na nga kuia, taipakeke, i whakaputa enei korero, engari, karekau i rongu whanuitia. Kua matemate ratou i tenei ra.²³⁰

According to our Kaumatua, the elders of the iwi, there were many stories handed down through the ages. Historically, some of those stories were never told. They were related only in confidence by the kuia of the iwi, the elderly women. Perhaps, now is the time to reveal those stories that happened during those invasions to our ancestral lands.

The Crown forces executed those misdeeds during the destruction and plundering of the ancestral pas and villages. They were the onslaught of the raping and violation of the women and young girls.

Those events involved the raping of our women folk. There were violent raping, and the ill-treated raping throughout the entire village. Those sordid stories were never

227. Ibid

228. Jack Ohlson, brief of evidence, September 2004 (doc G36), p 9

229. Jack Ohlson, under cross-examination by Crown counsel, Murumurunga Marae, Te Whaiti, 14 September 2004 (transcript 4.10, p 65)

230. Ani Hare, brief of evidence, 8 December 2003 (doc B27), pp 17–18

told, were never revealed but kept secret, and locked away in their hearts. Those kuia, those elderly women, the repositories of those revelations, must be acknowledged today and we paid tribute to those grand old ladies, those kuia, whose information of our tipuna, will live on in the pages of our historical minds.²³¹

To these kaumatua, the stories that were passed down – but which, because of their very nature, were kept from common knowledge – are an indictment of a Crown that saw no need to protect women and children in time of war.

The claim in this respect is closely linked to the point that all the women and children were sent off as prisoners of Te Arawa when the expedition left Te Urewera. This, in Binney's view, amounted to an act of 'calculated genocide'. In support of this contention, Binney quoted from a telegram of 11 May 1869 in which Whitmore commented: 'I have handed the women over to the Arawa tribe who will remove them to their own Country so that this hapu will be destroyed.'²³²

Binney drew a parallel between Whitmore's speech to Maori leaders in April 1869, in which he was recorded as saying the people would be 'exterminated', and this reference to the projected fate of Ngati Whare. Taken together, Whitmore's statements, Binney argued, reveal that the underlying motive of the expedition was to attack non-combatants as well as those actively engaged in battle. Binney also cited information from Clarke who, in his official report, described leaving a message for the husbands of the women taken away by Te Arawa. Clarke said that, if they chose, the men could rejoin their partners 'in the Arawa country, where they were to remain.'²³³ This, Binney argued, amounted to a hostage situation: Ngati Whare women were being used by the Crown as pawns to secure the surrender of their men. She concluded, 'I would not consider the procedure of taking female hostages by government forces to be lawful.'²³⁴ In her view, Whitmore's telegram, coupled with Clarke's letter to the men of Ngati Whare, justified the use of the term 'genocide'.²³⁵

In arguing against Binney's claim, Crown counsel and the Crown's historian relied heavily on other letters written by Clarke shortly after the completion of the first expedition. In their view, Clarke's private letter to his sisters proves that forces acting under the Crown's authority in fact acted with the best intentions. Clarke, who unlike Whitmore was present when the decision was made to send the Te Harema women away with Te Arawa, wrote of the conduct of the Te Arawa men at that time:

231. Counsel for Ngati Haka Patuheuheu, closing submissions (doc N7), pp16–17

232. Whitmore to Army Department, 11 May 1869 (Judith Binney, comp, additional document bank to 'Encircled Lands, Part 1', various dates (doc A12(b)), p 207)

233. Clarke to Cooper, 1 June 1869, AJHR, 1869, A-10, p 65 (Binney, 'Encircled Lands, Part 1' (doc A12), p 204)

234. Judith Binney, statement in response to statement of issues 3, 4, 6, and 7, 17 November 2003 (doc B1(a)), p 30

235. Judith Binney, statement in response to questions of clarification filed by the Crown, 26 November 2003 (doc B1(c)), p 2

The principal [Te Arawa] chiefs had a child each on their backs and were cheering the women up. I should have said that these chiefs suggested that I should write a letter to the husbands of these women telling them that their women would be properly kept and offered them a home if they should like to join their wives in Arawa country. This I thought very commendable. Col Whitmore was not there but I took the responsibility which from my position in the Government I could do. I wrote them a letter telling them the terms upon which they would be received. I also left a 'pass' in English so that our officers would know the position of these men.²³⁶

Based on this evidence, and on Clarke's official report, Battersby made the following comment:

Despite Whitmore's comment about the hapu being destroyed, there appears to have been no intention of destroying the hapu, nor any action taken that might have had that result. Indeed, the actions of Clarke appear more than anything aimed at preserving the hapu from further detriment.²³⁷

In addition, Battersby noted a discussion between the chief Hapurona Kohi and Clarke in June 1870 at Tauranga.²³⁸ During this discussion, Kohi (the Ngati Whare leader) acknowledged that he had received the letter left at Te Harema Pa about joining the women, but explained that the men 'were unable to avail themselves of it' at the time due to 'fear inspired by Te Kooti.'²³⁹ (We observe here that Clarke himself did not use the word 'fear', but rather referred to the men's great awe of Te Kooti and his 'supposed supernatural powers', and his insistence that they accompany him to Taupo and Waikato, which they obeyed.²⁴⁰)

Clarke noted that the families that had been separated in May 1869 were reunited. 'The women and children taken by the Arawa last year, have been, for the most part, restored to their husbands and parents, in accordance with the promise given, or left at Ahikereru.'²⁴¹ Battersby also examined Whitmore's statements, but argued that because Whitmore's communication was a telegram it was 'necessarily brief'. He did not spell out his full purpose.²⁴² Battersby concluded from the evidence that there was never any intention on the part of the Government to 'destroy' the hapu: 'Binney's comments regarding "genocide" and "extermination" were misconceived, and should be set aside.'²⁴³

236. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, pp 132-137 (Battersby, 'The Government, Te Kooti, and Te Urewera' (doc B3), pp 68-69)

237. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 69

238. Clarke to Under-Secretary, Native Department, 25 June 1870, AJHR, 1870, A-8B, p 87 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 69)

239. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 69

240. Clarke to Native Department, 25 June 1870, AJHR, 1870, A-8B, p 87

241. Clarke to Under-Secretary, Native Department, 25 June 1870, AJHR, 1870, A-8B, p 87 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 69)

242. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 68

243. *Ibid*, p 69

Crown counsel put to Binney in cross-examination the proposition that Clarke's private correspondence refuted her argument. In particular, counsel suggested that the idea to send the women away was in fact that of Te Arawa leader, Te Pokiha Taranui. Counsel then sought Binney's view as to whether rape could have taken place:

Professor, Te Pokiha made this suggestion. He has taken responsibility for the protection of the women and children. He has stated their women would be properly kept. Do you think that rape would occur in that context where a chief of his stature has taken responsibility for these women?²⁴⁴

Binney replied that such a question was 'speculative'.²⁴⁵ However, she added that Clarke's letter to his sisters (which Crown counsel read out to her) in fact offered further evidence in support of her argument that the women were taken hostage:

the one point I did notice in listening to that, where it was stated very firmly that the men could come in and that's where they would be kept. So you do have a suggestion that there is, again, the point I was making, that the women are being used as hostages for the men and that the letters are being left for the men to, as it were, come in.²⁴⁶

Binney elaborated on these matters in response to written questions from counsel. She acknowledged Clarke's letter of June 1870, in which he stated that most of the families had been reunited. However, this was 'government speak' – most of these men had surrendered from April 1870 onwards, and so had been reunited with their families:

After he had surrendered, Hapurona Kohi, a senior chief at Ahikereru, told Clarke that they had received the letter left at Ahikereru but that they could not then take up the terms. In other words, at that time they were not prepared to surrender. Once they did, the families could be reunited – in exile, living for the most part under the surveillance of the Government-allied Te Arawa chiefs.²⁴⁷

Binney countered Battersby's argument that the claim of genocide should be 'set aside':

I consider that the tone of the correspondence, particularly that of the commanding officer Whitmore, makes it clear that the women and children were removed, initially with the idea of destroying the hapu as an entity, and then later used as hostages

244. Crown counsel, cross-examination of Judith Binney, Tataiahape Marae, Waimana, 28 November 2003 (transcript 4.2, p 57)

245. Judith Binney, under cross-examination by Crown counsel, Tataiahape Marae, Waimana, 28 November 2003 (transcript 4.2, p 57)

246. Ibid

247. Judith Binney, statement of response to questions of clarification regarding evidence of Battersby on Te Kooti, 10 May 2005 (doc K33), p 4

for the men's surrender. Their communities were physically destroyed (torched), so that the families had nowhere to which to return. These actions come very close to 'extermination.'²⁴⁸

Sending the women away with Te Arawa troops, Binney stated, needs to be seen in its proper context of war.

Counsel for Ngati Whare added a further layer of interpretation in his closing submissions. Counsel stated that the 'evidence provided by Mr Ohlson and Mrs Hare provides a more disturbing image of the events described by Clarke where the women had to be guarded in a single whare.'²⁴⁹ According to counsel, silences in the written evidence are telling. In particular, counsel quoted from a portion of Clarke's letter to his sisters that had gone unexamined in previous assessments. After commenting on how the men at Te Harema Pa 'were soon shot down and the women brought away', Clarke made the following observation: 'Fox had the fine thought to put all the women and children into one house and he and his brother mounted guard, when Natives are excited they are more like demons – and the noise and excitement is something excruciating to one's nerves.'²⁵⁰

Counsel argued that there is 'something untoward' in the fact that the women had to be guarded by Te Pokiha and his brother during the attack on Te Harema Pa – the implication being that these Te Arawa leaders were aware of what might happen if the women were not placed under guard.²⁵¹ Counsel also noted that Clarke's reference to 'cheering the women up' may have been made deliberately, as such conduct was in 'stark contrast to what had occurred days before during the attack on Te Harema'. In addition, the women who were taken away 'were clearly hostages': 'The letter left for the Ngati Whare men was a hostage letter, especially since Arawa had formerly been an enemy, not ally, of Ngati Whare.' Finally, counsel noted that the evidence of Jack Ohlson about Ngati Whare women not returning to Te Putere was supported by Gilbert Mair's census of Te Urewera in 1874. According to counsel, Mair's census showed that 'there was an unusual[ly] large number of Ngati Whare women who apparently did not return to Te Urewera.'²⁵²

This is a particularly difficult issue before this Tribunal. It involves serious allegations that have been a source of continuing grief to the claimant community. In addition, we are faced with the problem of reconciling strong oral traditions from Ngati Whare and Tuhoe with incomplete official accounts. We have no reason to doubt the integrity of the claimants' oral histories.²⁵³ Having reviewed the evidence that has been presented to us, we agree with Binney that the events need to be seen in the broader context of Whitmore's strategy for the first expedition. As we have seen, Whitmore stated before and after the expedition that one of its primary aims was to punish the people who inhabited the area. By informing officers under his

248. Ibid, pp 4–5

249. Counsel for Ngati Whare, closing submissions (doc N16), p 34

250. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p 134

251. Counsel for Ngati Whare, closing submissions (doc N16), p 33

252. Ibid, pp 33–35

253. We note that we did not receive oral evidence or submissions from Te Arawa.

command of this goal, Whitmore set a very broad code of conduct for his troops. By ‘destroying’ the hapu, we take it, Whitmore meant that the women would be absorbed into Te Arawa and, since their men had been or would be killed, Ngati Whare would cease to exist.

At this point, we turn to consider the claims of rape, hostage-taking, and genocide separately. Claimant allegations of rape have largely gone unaddressed in the commissioned reports submitted to us. As noted above, the issue was briefly touched upon in cross-examination when the Crown put a proposition to Binney that rape could not have taken place. From the nature of the question, it appears that the Crown considers the ‘molestation and rape’ of women could not have occurred at Te Harema. The Crown’s historian, John Battersby, questioned on the issue by claimant counsel, could not refute claims of rape and sexual violation, or categorically deny that rape had taken place. He stated, however, that he was unaware of any documentary evidence to support such allegations.²⁵⁴

While this is not a matter on which the Tribunal can find conclusively for the claimants, we consider that all the necessary conditions were in existence for such abuse to have occurred – that is, in the context of Whitmore’s instructions before the expeditions, and the fact that Te Arawa were the enemies of Ngati Whare. Clarke informed his sisters that the expeditionary force had behaved like excited ‘demons’ during the taking of the pa, and that in the evening Te Pokiha had to stand guard over the women and children to protect them. In such a context, rape could certainly have occurred during the period between the taking of Te Harema and the expedition’s departure some two weeks later, and in the months that followed.

We make two further points. We note that Clarke records that at Te Harema the expedition learned from the women prisoners the whereabouts of 10 of the absent men: they were at Heruiwi, near Te Tapiri, having expected the attack to come from that direction. We assume that such information would not have been volunteered very readily. The women and children were by now powerless prisoners. None of their men were left, and the women must have been fearful for their children. Secondly, we note the number of days between the attack on the pa (on 6 May) and the final departure of the forces from Ahikereru, evidently on 18 May, when Clarke recorded the Arawa men carrying the children. Clarke, whose account of the expedition is the most detailed we have, did not mention where the prisoners were during that time. Whitmore had set off with his force towards Ruatahuna the day after the attack; on 8 May, Clarke returned to the pa with some men wounded in an ambush and 33 Arawa men.²⁵⁵ It seems most likely that the women and children had been left at the pa, under guard, when the force moved on.

254. John Battersby, under cross-examination by counsel for Ngati Haka Patuheuheu, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p182) (counsel for Ngati Haka Patuheuheu, closing submissions (doc N7), p16)

255. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, pp 134–136

On the matter of genocide, we note that Whitmore's decision to send the women away with Te Arawa forces was injudicious in the extreme. It was reasonable, and indeed necessary, for some arrangements to be made for them. Given that the women, however distressing their position, would have been counted hostile non-combatants, Whitmore may have seen no alternative to taking them away from Te Urewera. But Te Arawa were an enemy of Ngati Whare. Sending the women away to Te Arawa territory would have appeared sinister.

Nor was it appropriate for a Government officer to have 'handed over' the women to anyone, let alone their traditional enemies. We compare Whitmore's decision to that of the Defence Minister, Donald McLean, when confronted with a similar situation the following year. On that occasion, the Crown's Maori forces had captured a number of women and children during their approach to (and assault on) Maraetahi. The disposition of these non-combatants was warmly contested among the Government's 'allies'. Commissioner Clarke reported that

Mr McLean explained that the Government did not consider women and children in the light of prisoners, and that, therefore, the women might elect with which of their relatives amongst the loyal Natives they would remain, the only condition being that they did not return to the disaffected Natives. This decision was acquiesced in and carried out, the chief part of the women choosing to remain under the charge of Wiremu Kingi . . .²⁵⁶

In our view, this standard (as articulated by the Government of the day) should not have been violated in the case of the women and children captured at Te Harema. The Government ought not to have acquiesced in Whitmore's decision.

It is also difficult to assess the evidence before us in isolation from Whitmore's comment in an official telegram that the women were to be removed to another tribal territory so that the 'hapu would be destroyed'. This comment, at once casual and calculated, can only be described as chilling. If the consequences ultimately were not as Whitmore evidently hoped, it seems that this was not for want of effort on his part. The term 'calculated genocide' is one that New Zealanders today might find difficult to associate with a policy that, in practice, affected a relatively small group of people. But for descendants of Ngati Whare who have their own oral histories, and who read Whitmore's words, the Crown's stated intention to oversee their extinction, whatever terms are used to describe it, cannot be mitigated because they were and are not a larger entity. Whitmore's purpose was simply unforgivable. Whitmore, as military commander, was never reprimanded by the Government, or required to moderate his language or behaviour. The most senior civil authority present, Commissioner Clarke, made the decision to leave the letter advising Ngati Whare men that they could recover their families if they surrendered and went to live with Te Arawa. The Government did not overrule this

256. Clarke to Native Department, 18 April 1870, AJHR, 1870, A-8B, p 34

arrangement or provide an alternative. These actions were thus condoned by the Government of the day.

Dr Battersby suggested that comments made in a telegram were necessarily too brief to convey the author's full intent, and that Whitmore was in any case not present when 'the decisions regarding the prisoners taken at Ahikereru were made'; hence, the decision was actually made by Clarke, whose motives and account are therefore to be preferred.²⁵⁷

We do not accept either of these arguments. First, Whitmore's telegram was 16 pages in length, and recorded his views simply and clearly.²⁵⁸ Secondly, Whitmore did make the decision to send the women and children away with Te Arawa. He reported that he had 'handed the women over to the Arawa tribe who will remove them to their own Country' – a decision that must have been made soon after the taking of Te Harema, as it was reported by Whitmore on 11 May. He was the senior officer; it was his decision. The occasion evidently referred to by Battersby occurred on 17 May, when Clarke made a separate decision to leave a letter offering Ngati Whare men the opportunity to surrender and join their families. Whitmore was not involved in that decision – a point which Clarke himself recorded.²⁵⁹ We do, however, accept Battersby's conclusion that Whitmore's objective was not achieved. Ngati Whare were not destroyed by his actions. There was no genocide.

The full story of the fate of these women is another matter, one that has not been satisfactorily resolved by the evidence presented to us. According to Battersby, Clarke's June 1870 letter stated that 'the families that had been separated in May 1869, were reunited.'²⁶⁰ We note, however, that Clarke's statement was less comprehensive: he said that the women and children had been restored to their husbands and parents 'for the most part'. He did not explain why there were exceptions, or how many women and children had been kept by Te Arawa.²⁶¹

Also, as Binney correctly pointed out, this reunification did not happen in Te Urewera. Rather, the women, along with those Ngati Whare who surrendered in 1870, were relocated to Te Putere reserve west of Whakatane. We review the Crown's policy of removing people from Te Urewera and the conditions of the reserve below. For now, we note that not all Ngati Whare women returned to the Te Whaiti region at the conclusion of hostilities in 1872. Some, Jack Ohlson told us, were 'ashamed' and remained at the reserve at Te Putere. Other women, claimants told us, committed suicide. The Crown conceded that some women did not return from Te Putere, but it rejected the claim that they committed suicide and suggested instead that they had married into Te Arawa. No evidence was presented to support this contention. We must conclude that what appears to have been a

257. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 68

258. For the full text, see the copy in David Armstrong, comp, supporting papers to 'Ika Whenua and the Crown', 3 vols, various dates (doc A46(b)), vol 2, pp189–204.

259. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p137

260. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 69

261. Clarke to Native Department, 25 June 1870, AJHR, A-8B, p 87

diminished population of Ngati Whare women was the result of the Crown's actions during and following the attack on Te Harema Pa.

Finally, there is the question of whether the women and children were used as hostages in an effort to obtain the surrender of the men. It was not in the realm of accepted military practice at the time to use prisoners to such an end. According to Clarke's account, the idea of leaving a letter for the women's husbands came from Te Arawa, not from himself. He wrote that the Te Arawa chiefs had 'suggested that I should write a letter to the husbands of these women telling them that their women would be properly kept and offer[ing] them a home if they should like to join their wives in Arawa country'.²⁶²

Before agreeing to this suggestion, Clarke made an 'inquiry as to the actual part taken by these men in late events'.²⁶³ Such an inquiry must have satisfied him that Ngati Whare had not committed any particular crime. As a result, he agreed to what he called 'Pokiha's considerate and humane request'.²⁶⁴ He left a 'document in Maori stating the terms on which they would be allowed to join their families', and an explanatory letter in English for them to show to any Government forces.²⁶⁵ He noted that Colonel Whitmore had not been involved in this decision (the colonel having left Te Harema a couple of days earlier), but that 'I took the responsibility which from my position in the Government I could do'.²⁶⁶ In our view, Whitmore was unlikely to have agreed to such a proposal, because it would have interfered with his stated intention to punish and 'destroy' the hapu. In Clarke's account, this invitation to the men of Te Harema was an act of humanity, carried out at the 'commendable' request of Te Arawa. Under cross-examination from counsel for Ngati Whare, Dr Battersby rejected the term 'hostages', stating: 'I think, normally, if you were expecting hostages to be taken, that you would say that "we have the women and children and we're going to endanger their security if you don't do something," and that's not really what the letter was about'.²⁶⁷ In Battersby's view, Clarke would have made overt threats if he had intended to use the women as hostages. Nonetheless, he accepted that Clarke's intention was to use the women to 'encourage the men to come out'.²⁶⁸

We accept that no overt threats were made in Clarke's letter, and that the original idea came from Te Arawa and not the Government. Indeed, the stated intention was to reassure the men that their women and children would be 'properly

262. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p137 (Battersby, 'The Government, Te Kooti, and Te Urewera' (doc B3), pp 68–69)

263. Clarke to Native Department, 1 June 1869, AJHR, 1869, A-10, p 65

264. Ibid

265. Ibid

266. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p137 (Battersby, 'The Government, Te Kooti, and Te Urewera' (doc B3), p 69)

267. John Battersby, under cross-examination by counsel for Ngati Whare, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p 196)

268. Ibid, p197

kept.²⁶⁹ Counsel for Ngati Whare pointed out that such reassurances might not be very convincing, coming from traditional (and current) enemies.²⁷⁰ In any case, we think the use of the women as hostages did not require threats to harm them. The Crown's historian accepted that the families were used to try to get the men to surrender and 'come out', and that the overall goal of doing so was to deprive Te Kooti of all support.²⁷¹ By informing the men of Te Harema that the only way they could be reunited with their families was to surrender and go into exile with Te Arawa, Clarke (on behalf of the Government) was using these families as hostages.

Finally, we note that both Whitmore's and Clarke's strategies failed. First, by sending all the women and children of Ngati Whare away with Te Arawa, Whitmore did not succeed in his stated intention of destroying the hapu. That is not to undervalue, however, the lives of those women who never returned. Secondly, the letter informing the men that they could be reunited with their families only if they came out to Te Arawa did not have the desired effect; the men did not surrender in 1869 as a result of it. Nonetheless, it does appear to have influenced their decision to surrender and 'come out' in 1870. According to Clarke's understanding of events, they waited for an 'opportunity' to separate themselves from Te Kooti and to obey the letter's instructions but were prevented from doing this for some time by the 'awe' in which they held Te Kooti and by their fear of confiscation.²⁷² Neither Whitmore's nor Clarke's actions were consistent with the honour and good faith required of the Crown. We return to this point in our findings below.

5.5.3.2 *Te Whata-a-pona*

At about the same time that Whitmore and Roberts left for Ahikereru, St John and his troops began their march from Opouriao up the Whakatane River. St John left Opouriao on 4 May, and was joined by his Native Contingent the following day.²⁷³ He marched his troops (280 Europeans and 181 Maori) through the Ruatoki Gorge, thence to Waikare-whenua, and up the Wharau 'mountain' to the settlement at Omaruteangi and the Ngati Ha pa Te Whata-a-pona. The official account St John sent Whitmore is very brief:

On the 6th I began the ascent of Te Wharau hill, and in the afternoon, at the foot of it on the further side, surprised the kainga called Omaru Teangi, where we killed

269. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p137 (Battersby, 'The Government, Te Kooti, and Te Urewera' (doc B3), p 69)

270. Counsel for Ngati Whare, cross-examining John Battersby, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p196)

271. John Battersby, under cross-examination by counsel for Ngati Whare, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p197)

272. Clarke to Native Department, 25 June 1870, AJHR, 1870, A-8B, p 87

273. St John to Whitmore, 9 May 1869, AJHR, 1869, A-3, p 50 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 66)

six men (Lieutenant White, Opotiki Volunteers, who had charge of the scouts, killing two himself).²⁷⁴

In his official report, written later in the month, William Mair (who assembled the Maori contingent of St John's force, comprising Ngati Pukeko, Te Patuwai, Ngai Tai, Whakatohea, Te Whanau-a-Apanui, and Ngati Awa) gave a more detailed account of the events of that day:

Descending rapidly, the advanced guard surprised the village of *new* Omaruteangi at 4 pm; as far as I can judge, there were some half-dozen men and from twenty-five to thirty women and children, of whom three men, two women, and two children were killed, and one woman and three little children captured.²⁷⁵

Mair did not describe the attack further, or explain the circumstances in which the three men were killed, or why women and children were also killed. In fact, he made no comment on the deaths of women and children at all, merely noting this as if it were a normal fact of war.

In a private letter to his sister, however, he gave additional details:

Descending suddenly we surprized a village called Omaruteangi, killing three men, two women, and two children, and taking one woman and three kids prisoners. It was evening, and they were just about to 'huke' the hangi (uncover the oven), and if the thing had been done properly we would have bagged everybody, as they had not the slightest idea of our approach. As they retired I followed with half a dozen of my boys, being anxious to catch a prominent young cub for a 'tiger' [ie, a trophy]. Well, we drove them out of a little village, where we caught a lot of tame kakas who were quietly eating their supper. When they, having been reinforced, opened fire upon us from across the river, we wished them good-night and went back to camp.²⁷⁶

According to the account given by Tuhoe to Elsdon Best, six men, two women, and a child were killed when they were surprised in the act of digging potatoes. Best was told that Captain Gundry shot 'a man who was carrying a child in his flight, and killed both'.²⁷⁷ These accounts from Mair and Tuhoe agree that the people were surprised in the act of obtaining food (either digging potatoes or preparing a hangi) and that non-combatants were killed.

One of Elsdon Best's informants, Paitini, recalled:

274. Ibid

275. W Mair to Clarke, 27 May 1869, AJHR, 1869, A-10, p 68 (Binney, 'Encircled Lands, Part 1' (doc A12), p 203)

276. William G Mair to his sister Laura (Jackson), 6 June 1869 (Armstrong, supporting papers to 'Ika Whenua and the Crown' (doc A46(a)), pp 148-149)

277. Best, *Tuhoe*, vol 1, p 623

The men of the Arawa contingent amused themselves at Te Whata-a-pona with placing the slain men and women of Tuhoe together as though embracing each other, hence a young girl of Tuhoe was given the name of Te Rua-huihui, in order to keep green the memory of that insult.²⁷⁸

The Tuawhenua research team concluded: 'From the start, then, the *kupapa* were allowed, under the cover of the Crown's invasion, to mete out their revenge on Tuhoe.'²⁷⁹

Mair's and Paitini's accounts highlight the silences in St John's. The latter's failure to report the killing of women and children on this occasion must raise questions about what else he omitted. Paitini's disturbing account also speaks volumes about the general tenor of the expedition. It was certainly not befitting of a Crown force to allow such desecration of tupapaku. Mair records that the village was fired after the assault, as were a number of huts the troops found on their route up the Ruatahuna River.

Mair reported that 25 to 30 women and children escaped from Te Whata-apona. One woman and three small children were captured. Colonel Whitmore also reported the escape of these non-combatants. He told the Defence Minister:

Lieut-Colonel St John surprised Omarateani much as Major Roberts' column did Ahikereru, and killed about as many, though the women escaped. He had been way-laid at Hukanui very much as the other column was, and after that I feel sure that the parties before each column were recalled to Ruatahuna, to cover the retreat of the women.²⁸⁰

The local people were retreating from the advancing forces, avoiding giving open battle but doing their best to ensure the safety of non-combatants. The colonel's strategy of surprise attacks on the settlements they came across, and the destruction of such settlements and of all food supplies, was undertaken without any regard to non-combatants. The Tuawhenua researchers reported Whitmore's description of how thorough he had tried to be:

The main object of the expedition was the destruction of the food supply in the mountains, and in carrying out this service the troops were aided by the season and the wild pigs. Every potato garden was securely fenced, and the removal of a small portion of the enclosure ensured the co-operation of the troops of pigs running in the forest. By next morning in every case the whole of the ground was turned over, and all the potatoes they did not devour were spoiled by the heavy frosts, which occurred every night. A few cattle were found and shot for consumption by the men, and in

278. Best, *Tuhoe*, vol 1, p 632

279. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 235

280. Whitmore to Haultain, 18 May 1869, AJHR, 1869, A-3, p 49

The Account of George Hamilton-Browne

In his account of the attack on Te Whata-a-pona written in 1911, George Hamilton-Browne reconstructed the events of that day:

Completely surprised as the Uriwera were, still they made a stout resistance, but they could not stand for long against our impetuous charge, for we swept through the village like a flooded reservoir bursting its dam, so that the surviving men, and there were not many of them, turned their backs and bolted for the bush. A number of men, however, unable to escape, took refuge in their huts, from which they still continued to fire. These were ordered to come out, and so as to expedite their movements their huts were set on fire. It was however only granting the inmates a polite choice of deaths, as those who came out were immediately shot, and those who remained in were quickly burned to death.¹

Hamilton-Browne was not an eyewitness to these events, having joined the Colonial forces in 1872. He made fraudulent claims to have served earlier in the war, and Gilbert Mair challenged the truthfulness of his book. According to Hamilton-Browne's biographer, Dr Bryan Gilling, his account was 'accurate in general terms, derived from bar and barrack-room reminiscences, probably improved by some research on a visit to New Zealand in the late 1890s'.² Although based on the recollections of the soldiers, gathered soon after, Hamilton-Browne's account is not a work of history and we do not rely on it for the particulars of events in Te Urewera. It provides an impression, at least, of how the soldiers may have seen the events in which they participated.

1. George Hamilton-Browne, *With the Lost Legion in New Zealand* (London: T Werner Laurie, [1911]), p 335 (counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), p 46)

2. Bryan Gilling, 'George Hamilton-Browne', *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.dnz.govt.nz>, last modified 22 June 2007

some instances stray Uriweras, endeavouring to drive them off, were killed by the foraging parties.²⁸¹

The women who escaped from Te Whata-a-pona, along with other non-combatants living in the area, were expected to survive on nothing. The Government had made no provision for them.

281. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 238

5.5.3.3 Tahora and Tatahoata

On 7 May, St John's column continued travelling up the Ohinemataroa River. On the same day, Roberts' column began its journey from Te Harema towards the scheduled rendezvous point with St John at Ruatahuna. St John's forces met

Wartime Desecration

On 6 June 1869, Major William G Mair wrote to his sister Laura:

The next day we resumed the march up the Ruatahuna river; at the foot of a high hill called Hukanui got into an ambush, and Lieut White of Henry's corps, who was leading the scouts, was shot dead. We halted for half an hour to give him a soldier's funeral, St John reading the service, interrupted now and then by the crack of a rifle: poor White, he was one of the quietest and bravest men living; he it was who carried William McDonnell off when he was wounded: he had killed more Maoris than any other man in the service. In the skirmish the evening before he had been slightly wounded in the hip, but shot the man who did it. The enemy now were firing on us from the front and left, and Gundry and I were ordered to outflank them: for about a mile we had to fight every foot of the way, and had two more men knocked over: however, we got to the top of Hukanui at last, had a feed, and in the afternoon came upon a large pa called Te Tahora. By this time the HNS (Hauhaus) were getting pretty plentiful. Fraser and I turned the position, and we soon took it without any loss: it was rather a jolly place, and is famous as being the burial-place of M[urakareke], the ancestor of the Urewera. In the morning a nigger came close to the edge of the bush and called: two of my fellows rushed out, and taking cover invited him in the politest manner to come along; as he came out of the bush they saw he was armed, and knocked him over. Making a big fire over old M[urakareke's] grave we put on a pig to roast, and firing the place, advanced to the next place, Tatahoata ...¹

Mair understood the cultural significance of cooking food on this tapu site. He also cooked food at the burial site of expedition members, in the hope that this would conceal their remains from any Maori retaliation, since the Te Urewera people would not believe that he had buried his dead at a place where he had cooked food.

Murakareke, as we have seen in chapter 2, was the son of Tuhoë-Potiki and one of the prominent tipuna of the Tuhoë people. His descendants became the hapu known as Te Urewera.

1. David Armstrong, comp, supporting papers to 'Ika Whenua and the Crown', 3 vols, various dates (docs A46(a)-(c)), vol 1, p 149

with stiff resistance as they approached Tahora, one of Te Whenuanui's pa.²⁸² They reached it in the evening.

St John's description of the attack on Tahora reveals that the element of surprise was foremost in his planning:

After letting the men have dinner on the top of the hill, I moved on for about three miles, when I came in sight of Whenuanui's pa, Tahora. I halted on a ferny ridge about 600 yards from it, an open plain being between the enemy and myself. Perceiving that an advance along this must entail heavy loss, I sent Lieut-Colonel Fraser with No 1, and Major Mair with Natives, to my left, to make their way through a bush and seize a cleared plateau commanding the pa; at the same time I directed Sub-Inspector McDonnell with No 2, and Sub-Inspector Gundry with No 8, to work round through scrub to the right, so as to reach the edge of the bush lining the clearing round the pa. The first movement was decisive. As soon as the enemy saw Colonel Fraser's men surmount the ascent, and bound along the plateau, he made a precipitate retreat, and at sundown I had the whole force in the pa.²⁸³

St John recorded that one Maori man was killed in the attack. Mair recorded that the 'place' was completely destroyed by fire. But, before burning it down, Mair and his men desecrated what they believed to be the burial place of the 'famous Urewera ancestor', Murakareke, by roasting pork on it.²⁸⁴ The expeditionary force then went on to Puhirake, 'the site of Te Whenuanui's great *whare whakairo*', which was also burned.²⁸⁵

The following morning, St John led the column out of Tahora and travelled further up the river to Ruatahuna. Here, he came upon Tatahoata, the pa of Paerau. Paerau, like Te Whenuanui, was known to have participated in the March attacks. St John tried to get close to the pa to start a sap, but the people were keeping a close watch on him:

At about 11 am I came in sight of Pata Hoata [*sic*], Peiroa's [Paerau's] pa. Seeing a hill commanding it on the further side, I endeavoured to work round to it through the bush by my left. Lieut-Colonel Fraser however found that he would have to fight his way through this, it being held by the enemy who thus flanked me. In consequence of this I ordered him to send No 4, and part of No 1, under Sub-Inspector Travers into this bush, and went round to the other flank. Here, with No 8, and a sub-division of No 2 I managed to get within ten yards of the pa, and here I determined to establish a sap. However, before the tools could be got, the enemy guessed my intent and bolted.²⁸⁶

282. Mair to his sister Laura (Jackson), 6 June 1869 (Armstrong, supporting papers to 'Ika Whenua and the Crown' (doc A46(a)), p 149)

283. St John to Whitmore, 9 May 1869, AJHR, 1869, A-3, p 51

284. Mair to his sister Laura (Jackson), 6 June 1869 (Armstrong, supporting papers to 'Ika Whenua and the Crown' (doc A46(a)), p 149)

285. Mair to Clarke, 27 May 1869, AJHR, 1869, A-10, p 68

286. St John to Whitmore, 9 May 1869, AJHR, 1869, A-3, p 51

Roberts' column descended upon Ruatahuna shortly after St John's column had arrived. Whitmore wrote of the day's events: 'The enemy made a very poor fight at Ruatahuna, abandoning it about the time the other column came in sight, but inflicted some loss upon Lieut-Colonel St John's advance.'²⁸⁷

Over the next two days, the combined force set about the systematic destruction of homes and food stores in the Ruatahuna region. According to Whitmore's report, 'foraging parties explored the country, destroying kaingas and food.'²⁸⁸ The Tuawhenua researchers described how even the local horses were killed and eaten.²⁸⁹

On 11 May, the troops had their first encounter with 'Te Kooti's advanced guard', as Whitmore described it, engaging in skirmishes in the dense bush over two days. It was during these engagements that forces acting under the Crown's authority may have executed prisoners. That is the strong inference we draw from the evidence.

In Gilbert Mair's 1928 account of events of 13 May, he noted that the Te Arawa troops he accompanied decapitated six of the opposing force: 'Henare [Pukuatua]'s men cut off 6 of the heads and we started back feeling very elated.' The Arawa troops were initially uncertain how Whitmore would take the decapitations but were soon reassured. Two heads were left 'on stones in the creek, not knowing how the Colonel would take it'. But the other four heads were 'made a great display of' in front of Te Pokiha and Whitmore. It was at this point in the narrative that Mair added: 'I believe that Whitmore really did Subrosa [secretly] offer £5 per head for Hauhau 'eds tho' I was not the interpreter conveying the offer.'²⁹⁰

Whitmore suggested that Te Arawa troops executed the prisoners: 'H Pukuatua . . . led the Arawas, and, as the Arawas generally do, made a dashing advance. Te Kooti was drawn up on a spur, and fired a volley. The Arawas replied, and pushed on, capturing and killing three men who could not escape.'²⁹¹ Whitmore made no record of condemnation of this act. Given what we know of him, this is perhaps not surprising.

5.5.3.4 Oputao

After the events at Ruatahuna, Te Arawa refused to go on to Waikaremoana. According to Clarke, they were exhausted and feared they might have to fight their way to the lake; nor did they know whether there would be food there.²⁹² Whitmore was also gravely ill with dysentery.²⁹³ Before withdrawing from Te Urewera, the column went to Oputao in the Ruatahuna Valley. According to Whitmore, it was 'the only considerable kainga not destroyed as yet'.

287. Whitmore to Haultain, 18 May 1869, AJHR, 1869, A-3, p 49

288. Ibid

289. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 238

290. Mair to Cowan, 4 June 1928, MS-papers-0039, folder 6, Alexander Turnbull Library

291. Whitmore to Haultain, 18 May 1869, AJHR, 1869, A-3, p 49

292. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p 136 (Battersby, 'The Government, Te Kooti, and Te Urewera' (doc B3), p 67)

293. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 67

George Hamilton-Browne's Portrayal of Destruction

George Hamilton-Browne records how acts of destruction tended to be viewed by the soldiers who participated:

Previous to returning, however, he [Whitmore] determined to attack and destroy a big kainga that my scouting-party had discovered while spud-hunting. This expedition, trivial though it might be, and of no importance, was yet a very popular one, all hands eagerly volunteering to take a part in it, not on account of any glory that might be reaped from its capture, but the men were all so hungry that they were only too anxious to undergo the extreme hardships of a long, bitterly cold night's march through rugged bush on the chance of being able to get a few mouthfuls of pork and potatoes; as for the chance of being knocked over or wounded, that was not taken into consideration at all.¹

1. George Hamilton-Browne, *With the Lost Legion in New Zealand* (London: T Werner Laurie, [1911]), pp 346–347

In a 1920 account, Gilbert Mair admitted that further sacrilege was committed by the expedition as it left Oputao.²⁹⁴ In 1871, he discovered that six expeditionary force members killed during fighting in the Ruatahuna region in May 1869 had been disinterred and their heads mounted on palisades of the (rebuilt) Tatahoata Pa. He recorded:

When I upbraided Te Whenuanui and others for this sacrilege they replied 'Aee[?], when Colonel Whitmore and your Pakeha's retired they disinterred all our dead at Oputao &c which had been buried by the missionaries as far back as 1845.' Of course this reply was true and I could but admit the same. Any way they made amends by reverently collecting the remains which we then re interred with full military honors and I planted two poplars, one of which has since died.²⁹⁵

Mair provided additional information in his 1913 account of this incident (as told to Cowan):

When I slated the Tuhoe for desecrating our dead, they retorted: 'Did not your expedition in 1869 (Whitmore and St John) desecrate all our sacred places? Did they not make a hangi on our holy of holies, the grave of our famous ancestor Murakareke to cook pigs in? Did they not disinter all our dead, which the missionaries had buried

294. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 239

295. G Mair to E Best, 15 March 1920, MS-papers-0092-41, Alexander Turnbull Library

many years before our various villages?’ Of course I had no answer for their just reproaches.²⁹⁶

A pattern had thus emerged by the end of the 1869 expedition in which, in addition to the destruction of homes and food supplies, taonga, urupa, bodies, and human remains were made the target of desecration and destruction. At Te Whata-a-pono, the bodies of slain men and women were desecrated. At Tahora, the urupa of an important ancestor was deliberately defiled (its tapu rendered noa) by cooking pork on it, and Te Whenuanui’s carved meeting house was destroyed. In the Ruatahuna district, the heads of six men (probably surrendered prisoners) were cut off and taken away as prizes. And at Oputao (and elsewhere in the Ruatahuna district), urupa were desecrated and bodies disinterred. Dr Battersby argued that one side’s actions tend to mirror the other’s in war. As Mair noted, Tuhoe also desecrated the bodies of six expeditionary members killed in 1869 in retaliation for these events.

As we discussed above, the Crown’s conduct was required to meet certain standards. We think it significant that the desecration of urupa, bodies, and human remains was not reported to the Government in Wellington – the evidence about it emerges from private sources. Major Mair, for example, wrote of his desecration of Murakareke’s burial site in a letter to his sister but not in his official report. In this respect, it is notable that Civil Commissioner Clarke’s official account of events made no mention of the desecration of the dead.²⁹⁷ In his private letter to his sisters, however, he recorded the decapitation of bodies. He described the confrontation between Henare Pukuatua and Colonel Whitmore about continuing to Waikaremoana: the chief ‘ran up and down with a breach loading carbine he had just taken from a dead hauhau in one hand and a hauhau head in the other.’²⁹⁸ In his official report, Clarke merely wrote: ‘I will not attempt to describe the scene which followed.’²⁹⁹

After burning Oputao, the force under Whitmore’s command returned to Te Harema. There, they destroyed the pa (which Clarke described as being so large it would take 200 men to defend), leaving it a ‘mass of flames.’³⁰⁰ At this point, Whitmore’s force had split in two, with Mair’s column (carrying the wounded) destroying kainga around the Horomanga area.³⁰¹

Whitmore’s and St John’s forces then left Te Urewera. The third column from Wairoa under Major Herrick was thus marooned. Herrick had had great difficulty getting his force together. Both Henare Tomoana and Wahawaha proved less than willing (perhaps because McLean was no longer in charge), and the Maori component of the force was ultimately drawn from Ngati Porou rather than from Wairoa,

296. G Mair to J Cowan, 13 July 1913 (Binney, additional supporting papers (doc A12(b)), pp 658–659)

297. Clarke to Native Department, 1 June 1869, AJHR, 1869, A-10, pp 62–65

298. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p 136

299. Clarke to Native Department, 1 June 1869, AJHR, 1869, A-10, p 65

300. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p 137

301. Whitmore to Haultain, 18 May 1869, AJHR, 1869, A-3, p 50

though Ihaka Whaanga of Ngati Kahungunu provided some men.³⁰² Herrick found the march to Lake Waikaremoana, carried out in bad weather, slow and difficult. He reached Onepoto only on 24 May, and began to build a redoubt as well as boats and rafts.³⁰³

Herrick hoped to launch an attack by water against a strong pa at Tikitiki across the lake, but Te Kooti's departure from Te Urewera led Whitmore to give up on Herrick's expedition (unless he could quickly cross the lake and 'destroy kaingas and pas').³⁰⁴ According to Binney, the ambush of Government troops at Opepe on 7 June dramatically announced Te Kooti's arrival at Taupo.³⁰⁵ Whitmore subsequently ordered Herrick to retire to Taupo.³⁰⁶ Herrick thought it very unwise to leave a small fortified post at Onepoto, where it might easily be attacked. On 25 June, he advised that he still needed another fortnight to finish his boats, and advocated at least trying to destroy all the lake pa and kainga before retreating.³⁰⁷ With a new ministry about to be sworn in, Haultain agreed that Herrick should carry out the original plan, 'if the enemy are still in his front'.³⁰⁸ Even so, the projected assault on Waikaremoana never took place. By the time Herrick finished building his boats in July, Ormond judged it too dangerous to proceed. While 'the enemy' had an easy line of retreat to Ruatahuna, winter conditions (and the perceived strength of the Waikaremoana pa) made attacking them look too difficult for no certain gain.³⁰⁹ On 8 July, the expedition was withdrawn, and the completed boats were sunk in the lake as the force left.³¹⁰

5.5.3.5 Conclusion: Treaty findings on Crown conduct of the 1869 expedition

Whitmore gave positive accounts of the success of his expedition, stressing the strategic problems he had overcome. To the Minister for Colonial Defence, he wrote:

The prestige of this unknown and difficult country has been lessened, and for the first time in their history the 'Tuhoē' (the old and favourite name of the Uriwera) have seen a war party enter their country, pass completely through it, sit down and occupy their principal settlement, and leave it without any serious loss.³¹¹

302. McLean had been removed as agent for the general government in April 1869: Mary Gillingham, 'Maori of the Wairoa District and the Crown, 1840–1880' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc 15), p 228.

303. Russell to Haultain, 27 May 1869; 29 May 1869; 10 June 1869, AJHR, 1869, A-3, pp 63–64

304. Whitmore to Russell, 19 June 1869, AJHR, 1869, A-3, p 65

305. Binney, 'Encircled Lands, Part 1' (doc A12), p 205

306. Whitmore to Russell, 19 June 1869, AJHR, 1869, A-3, p 65

307. Herrick to Haultain, 25 June 1869, AJHR, 1869, A-3, p 66; Russell to Haultain, 27 June 1869, AJHR, 1869, A-3, p 66

308. Haultain to Russell, 27 June 1869, AJHR, 1869, A-3, p 66

309. Ormond to McLean, 8 July 1869, AJHR, 1869, A-3E, p 3. McLean had taken over from Haultain as Defence Minister.

310. Binney, 'Encircled Lands, Part 1' (doc A12), p 205

311. Whitmore to Haultain, 18 May 1869, AJHR, 1869, A-3, p 50 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 68)

And, at the end of June, he spoke in Parliament:

The Urewera country is a succession of fortresses, by nature made easily defensible, and the Urewera tribes, if they were to defend their country as desperately as they have done in former times, and if they were not assailed with very great resolution, would find it possible to keep out not only 400 or 1,200 men but pretty nearly the whole British army. I am firmly convinced that there are valleys in that part of the country, which any officer of experience would acknowledge 400 men could defend against forty times their number, and that without any risk. Knowing that, although their country is so strong, we have penetrated it and destroyed all the food in it[.]³¹²

Whitmore received the grateful thanks of the Government in the Governor's speech delivered at the opening of Parliament:

The thanks of the Colony are due to Colonel Whitmore and to the officers and men of the Colonial Forces, European and Native, for the conspicuous courage with which they have encountered the enemy wherever he presented himself, and for the indomitable energy and zeal with which they have tracked and dispersed his retreating forces; arduous and harassing duties, in the course of which they have penetrated forests and inhospitable wilds hitherto unvisited by any European force . . . The difficulties they have surmounted have had no parallel in the military history of this country. No troops could have displayed a more gallant spirit – no officers could have conducted campaigns with more enterprise, skill, and prudence.³¹³

For the peoples of Te Urewera, the experience of Whitmore's expeditions was rather grimmer. His first expedition cost Tuhoe and Ngati Whare not only a number of their fighting men but also some 50 women and children, who were taken prisoner. It was highly destructive of their pa and kainga, their homes and property, their crops and gardens, and their animals. Whitmore's strategy was most evident in the amount of destruction caused by the troops. In his official report, he stated that 'Immense quantities of provisions have been consumed or destroyed, and every kainga of note, except the settlements of Maungapowhatu and Waikare, have been destroyed.' This included all the major settlements up the Whakatane Valley as far as Ruatahuna, and all the settlements in the Te Whaiti region.

Whitmore's description of the activities of the Maori forces during periods when they were not fighting also testifies to the devastation they caused: 'If there was anything to be done they were at once ready; and when no duty was required from them, roamed about the country foraging, destroying crops, burning kain-gas, and seeking the enemy's scouts in their several hiding-places in the vicinity.'³¹⁴

Clarke stated that, at Ahikereru, 'Our great object [was] to destroy all we

312. Whitmore, 25 June 1869, NZPD, vol 5, p 311. Colonel Whitmore had been a member of the Legislative Council since his appointment in 1863.

313. Governor's speech, 1 June 1869, NZPD, vol 5, p 2

314. Whitmore to Haultain, 18 May 1869, AJHR, 1869, A-3, p 50

could.³¹⁵ W G Mair wrote: ‘That the Urewera have suffered heavily in the late operations there can be no doubt . . . the damage done to property in the shape of houses, cattle, horses, pigs, potatoes, &c, is very great.’³¹⁶ Whitmore’s report also shows the extent to which the expedition lived off the land: what it did not consume, it destroyed.

When kainga were burnt, other property was of course destroyed too. From the beginning, there was little distinction between the destruction of food and the destruction of property, including taonga of great value. As Battersby himself acknowledged, this looting and pillaging generally served no military purpose: ‘It was a feature of warfare of the time, however, and generally indulged in by all belligerents.’³¹⁷ That is not an argument that can be used to justify the Crown forces’ retributive behaviour. We note in particular the destruction of Te Whenuanui’s carved meeting house, which was reported by Mair. This general devastation was deliberate policy condoned at the highest level of military authority.

We have no doubt that destruction on this scale was consonant with Whitmore’s goal to make Te Urewera uninhabitable, and thus to deny its people the opportunity of sheltering Te Kooti. Years after the expedition, Whitmore wrote that the ‘main object of the expedition was the destruction of the food supply in the mountains.’³¹⁸ But he also admitted that he intended much more than this. The expedition had the ‘double object of punishing the mountain tribe and of destroying the stores of provisions.’³¹⁹ This ‘double object’ is seen in some of the extremes of the expedition and in the failure to make any provision for the non-combatants – they were left with no choice but to try to survive amid the ruins of their destroyed kainga in the middle of winter. It also explains both the apparent lack of concern in the reports of military officers that women and children were killed in some attacks (and prisoners executed) and the lack of Government condemnation of these actions. Further, there were repeated acts of desecration performed on urupa and human remains. While these acts were not officially reported to the Government, Clarke could not have been ignorant of them.

In respect of the punitive aspects of this expedition and the destruction of property that served no military purpose, we note our agreement with the Turanga Tribunal, which found:

While it is entirely understandable that individuals would feel a strong need for vengeance, the Crown was in a quite different position. As we have said, the moral authority of the Crown to require its subjects to comply with a standard of conduct

315. Clarke to his sisters, 31 May 1869, *Whakatane Historical Review*, vol 10, no 4, 1962, p135 (Battersby, ‘The Government, Te Kooti, and Te Urewera’ (doc B3), p71)

316. Mair to Clarke, 27 May 1869, AJHR, 1869, A-10, p 70

317. John Battersby, summary of ‘The Government, Te Kooti and Te Urewera’, 14 March 2005 (doc M3), pp 4–5

318. Sir George S Whitmore, *The Last Maori War in New Zealand under the Self-Reliant Policy* (London: Sampson Low, Marston and Co, 1902), p 165 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 203)

319. Whitmore, *The Last Maori War*, p 175 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 205)

prescribed by law depends on the Crown itself adhering to that standard. The Crown had to be above revenge. How else could it claim to govern in the name of all New Zealanders?³²⁰

We accept the Crown's submission that its strategy of destroying kainga and food supplies did serve a military purpose. As we found in section 5.5.1, the Crown was justified in sending an expedition into Te Urewera. We also accept Battersby's argument that leaving cultivations intact at Ahikereru 'would have allowed Te Kooti to continue to use Ahikereru as a headquarters for launching attacks similar to those of March and April 1869'.³²¹ This was because, as Battersby noted, the women and children were being removed from Ahikereru, which meant that the food supply 'could only have been used' by their men (who were with Te Kooti).³²² This argument holds good only for Ahikereru. It was clear that, for all other food supplies and kainga destroyed, whole communities would be affected.

What we cannot accept is the Crown's lack of consideration for the consequences of the actions deemed necessary to achieve its strategic purpose. The purpose which Whitmore so often referred to – punishing the people – was not one which befitted the commander of the Crown's forces. It may, however, explain why he failed to make any preparations for the safety of non-combatants, despite the fact he was entering a district that was home to so many families. This meant that he had not made preparations for the future of prisoners taken, nor had he made any for the survival of non-combatants, most of whom were still in Te Urewera. His view was that they should all be left to starve, combatants and non-combatants together:

the most we can fairly say is that we shall leave this corner of the island in a state of complete blockade. If I can carry out my plans this can be done efficiently while at the same time Taupo is held in force and the line of supply quite safe. The starvation of the Uriweras and Te Koti [*sic*] we must make rigorous and directly the season breaks it will be possible to complete what has been well begun.³²³

Whitmore proposed surrounding the Urewera country with bases along the Napier to Taupo route and at Hawke's Bay, Poverty Bay, and the Bay of Plenty to secure the 'settled districts' from harm over the winter, after which a further pursuit could be undertaken. Battersby states that the bases were occupied, some only briefly, and that they were garrisoned by the Armed Constabulary.³²⁴

At the end of May, Whitmore wrote to Premier Stafford in the same vein, reporting that the peoples of Te Urewera were 'shut up in a country where the

320. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 736–737

321. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 71

322. *Ibid*

323. Whitmore to Haultain, [May 1869], MS-2392, pp 108–114, Alexander Turnbull Library (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 71)

324. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 72

food is destroyed.³²⁵ They were evidently supposed to face a rapidly approaching winter among the ruins of their settlements and without food. Whitmore hoped that they would be starved out. He spelt out his longer-term objective at the end of June, when Te Kooti had left Te Urewera. He told the House of Representatives that he expected the peoples of Te Urewera, who had been subjected to a military expedition and who faced the possibility of another, to surrender and ‘come in’ to the coast:

feeling that the hardships which fell upon them once before are coming upon them again, I have hopes that the Ureweras may make such terms of submission as will be considered sufficient to allow them to come in. Te Kooti’s force, as I have recently heard, has been compelled to go out of the mountains altogether into the open country where they are comparatively at our mercy.³²⁶

If Crown forces were to enter a populated district with the aims of destroying villages, pa, and food supplies, and of taking women and children prisoner – in other words, with a strategy which could not but have dire effects for a civilian population – provision had to be made for the well-being of that population. As people promised the rights of British subjects in article 3 of the Treaty, they were entitled to no less. Women and children, the elderly – that is, non-combatants – should thus have been provided with a place where they would have the necessities of life: food, shelter, and security. This was, perhaps, the only viable option, given the Crown’s strategy at this early stage of the hostilities. We stress that sending off women and children as captives of an enemy tribe, as happened with Ngati Whare, does not constitute any kind of protection.

Having reviewed the extensive evidence provided to us, we find that the Crown breached the principles of the Treaty in its conduct of the 1869 expedition. The sending of an expedition itself was justified in Treaty terms. The strategy of depriving Te Kooti of a secure base was defensible in military terms, but it was carried out in a manner that breached the Treaty. Unable to distinguish sufficiently between punishment and strategy, the military authorities made no satisfactory provision for non-combatants. This was in breach of the Treaty principle of active protection, and of the article 3 rights of British subjects. Acts of retribution against a whole people – even if some of those people had committed crimes and excesses – could never be consistent with the Treaty or a law-abiding Crown.

The unlawful desecration of the bodies of those who had been killed, of urupa and of human remains, causing cultural offence to the peoples of Te Urewera, and carried out at Te Whata-a-pono, Tahora, Oputao, and in the Ruatahuna district generally, was an obvious breach of Treaty principles. Destruction of property that served no military purpose, including that of taonga such as Te Whenuanui’s carved meeting house, was in breach of the plain meaning of articles 2 and 3 of the

325. Whitmore to Stafford, 31 May 1869 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 71)

326. Whitmore, 25 June 1869, NZPD, vol 5, p 311



Unknown (ATL, 1/2-003480-F)

Treaty, and of the principle of active protection. The killing of elderly men and of women and children, which took place at Te Harema and Te Whata-a-pona, was in flagrant breach of the Treaty. The execution of up to six prisoners by the Crown's Te Arawa forces was in violation of the fundamental rights of British subjects. Nor is it the case that these things were concealed from the civilian authorities (notably Commissioner Clarke). The Government's failure to rebuke or restrain its forces, or to insist on the protection of (and provision of food and shelter for) non-combatants, compounded the Treaty breaches. The peoples of Te Urewera – men, women, and children alike – were left to starve. That could never have been consistent with the Crown's Treaty duties, even in time of war.

Finally, we note that the Crown's actions at Te Harema – the sending of women and children into exile with a tribe who were enemies of Ngati Whare, and the attempt to use that fact to secure the men's surrender – was a flagrant breach of Treaty principles.

5.5.4 Was the Crown justified in launching further expeditions in 1870, and in its conduct of them?

SUMMARY ANSWER: The Crown was justified in sending its second expedition to Te Urewera in 1870. Events in Taupo in 1869 showed that Te Kooti was still a serious threat, fighting there with the support of Tuhoe. The Government could not have known that Tuhoe would turn away from Te Kooti and send him out of Te Urewera in February 1870. The Government entrusted the campaign to Kawanatanga Maori leaders, which ultimately proved beneficial when Te Rangihiwini established a rongopai (peace) with Urewera leader Tamaikoha at the very beginning of the campaign, in March 1870. Major Rapata Wahawaha, who was leading the second Crown force in Te Urewera, accepted the rongopai. Their segments of the expedition inflicted very little damage on Tuhoe before they withdrew accordingly.

The Crown accepted in this inquiry that it had a Treaty obligation to restore peace as quickly as possible. It breached the rongopai, however, on two occasions in 1870. First, Colonel St John attacked Tamaikoha at Whakarae in April, killing Tamaikoha's uncle (Tipene). This was widely considered by Maori to have been a treacherous attack. Crown counsel conceded that it was a 'notable mistake'. Defence Minister McLean was culpable in that he failed to instruct his officials and officers properly. The attack was a clear breach of the Treaty. Tamaikoha and other Te Urewera leaders, however, protected the rongopai by foregoing any retaliation.

◀ Meiha Te Keepa Te Rangihiwini (Major Kemp) of Whanganui iwi. Te Keepa led one of the Crown's two expeditionary forces into Te Urewera in search of Te Kooti in 1870 – unaware initially that Te Kooti had already left the district. The other expedition was led by Rapata Wahawaha of Ngati Porou. In March 1870, at an early stage of the expedition, Te Rangihiwini concluded a rongopai (peace) with Urewera leader Tamaikoha. Wahawaha and nearly all Te Urewera leaders accepted the rongopai, and the two forces withdrew from Te Urewera. The Crown, however, breached the rongopai twice, then accepted it, but also subverted its terms, insisting on the surrender and relocation of Urewera communities to small reserves on the coast.

Secondly, a force under the command of colonial officers attacked Waikaremoana from late April through to June. It comprehensively destroyed all property and food supplies at the lake. In military terms, this attack was unnecessary. Peace had been made (and was being discussed and confirmed in the rest of Te Urewera). Te Kooti was not at Waikaremoana, and the local people offered almost no resistance. The attack could not be justified on any reasonable grounds of emergency, and was therefore unlawful. It was also an impediment to peace negotiations. In both respects, it was a breach of Treaty principles. Crown counsel conceded that the attack was an impediment to peace.

From May to December, McLean harnessed the movement for peace but also subverted its fundamental terms. He insisted on unconditional surrender and the evacuation of the district, removing all surrendered communities to small coastal reserves where they were detained under the supervision of Kawanatanga chiefs. Given the circumstances of the rongopai, the Tuhoe decision not to provide Te Kooti with further military support, and the fact that the Government felt no need to insist on Tamaikoha 'coming in', there was no justification for this insistence on unconditional surrender. The Crown clearly failed to uphold its guarantee of the claimants' mana motuhake and tino rangatiratanga. Nor was there sufficient justification for overriding the Treaty rights of the peoples of Te Urewera by removing them from their rohe and detaining them on the coast. Having done so, however, the Crown had an obligation to ensure that their needs were properly provided for. The Crown failed to do so at Te Putere, in breach of the principle of active protection.

In section 5.5.1, we posed the question whether the Crown was justified in launching military expeditions into Te Urewera. We concluded that, in 1869, it was. In 1870, the Crown launched further expeditions. The second expedition comprised two columns, one under Te Keepa Te Rangihwinui which entered Te Urewera from the Bay of Plenty, and the other under Major Rapata Wahawaha which left from Turanganui, moving up the Horomanga Stream towards Maungapohatu.

These two forces would combine in April in an attack on Maraetahi, at the eastern fringe of our inquiry district. A third expedition conducted operations at Waikaremoana from May to July 1870.

In this section, we consider whether the sending of further expeditions was justified in light of events during the latter part of 1869 and the first part of 1870. We examine the conduct of these expeditions on the ground. In particular, we ask whether the Crown took appropriate steps to bring hostilities to a close, or responded appropriately to opportunities for peacemaking which presented themselves in 1870. The most important of these opportunities was the rongopai (peace) negotiated between Te Rangihwinui and Tamaikoha in March. This rongopai influenced events throughout 1870 and 1871. We address the issue of whether it was held to apply to all peoples and places in Te Urewera, and how it was tested or strengthened by subsequent events. We examine the Crown's attacks on Whakarae (at Ohiwa) and Waikaremoana in light of the rongopai and the Tuhoe decision not to provide further military support to Te Kooti. We also assess Defence Minister

Donald McLean's response to the rongopai. When he made peace contingent on the unconditional surrender and removal of all communities out of Te Urewera to coastal reserves, was that necessary and was it consistent with the Treaty?

The making of peace is a critical issue for the rest of this chapter. As we noted above, the Treaty required the Crown's utmost endeavours to restore peace as soon as practicable. The Crown's performance in this respect is the focus for much of this and the following sections. Before beginning our substantive analysis, we pause here to recapitulate Crown counsel's position on the issue.

In closing its case, the Crown accepted that it had had a duty to try to restore peace as early as possible and to 'repair its relationship with Tuhoe'.³²⁷ Counsel argued that the Crown attempted to 'reach a peaceful outcome to the conflict throughout 1864 to 1872'.³²⁸ This was allegedly shown in May 1869 by the terms Clarke left for the Te Harema men, which 'planted the first seed' of peace.³²⁹ Relying on the evidence of its historian, the Crown argued that it made further attempts to make peace with Te Waru Tamatea of Ngati Hinemanuhiri and Urewera chiefs in the summer of 1869 to 1870 but that these failed because Urewera leaders could not develop a 'momentum for peace' at that time. The Government 'continued to look for options of peace' in 1870 and 1871. This was one of its two objectives, the other being the removal of the military threat posed by Te Kooti. The Government was always acting with both objectives in mind; hence, it was submitted, McLean censured Te Keepa for offering peace terms to Tamaikoha in 1870 while 'at the same time trying to harness the movement towards peace that Te Keepa had initiated'.³³⁰ The Government continued to seek peace at all times, was flexible (it was argued) about whether surrender and 'coming in' had to be part of it, and was ultimately successful in 1871. After that, counsel argued, the Crown immediately set about trying to 'repair' a relationship with Tuhoe. We test these submissions in this and the next section of this chapter.

It is evident from Whitmore's statements in Parliament in June 1869 that he was anticipating a further expedition after winter of that year. By the spring, however, circumstances in Te Urewera had changed. Te Kooti himself left Te Urewera in the wake of Whitmore's departure. According to Binney, citing Tuhoe elder Robert Biddle, he was told to go. But 'some of the key Urewera fighters' accompanied him to Taupo.³³¹

Te Kooti and his followers were at Opepe by 7 June 1869, after crossing the Kaingaroa Plains. There, a body of cavalry scouts was ambushed, and nine were killed. Although 100 of the Urewera fighters went home some two weeks after Opepe, many of the chiefs returned by July. They included Paerau, Te Makarini, Rakuraku, Kereru, Hamiora Potakurua, Hapurona Kohi, and Te Waru Tamatea, as well as 50 fighting men. Paerau went to Tokangamutu (at Te Kuiti) with Te Kooti

327. Crown counsel, closing submissions (doc N20), topic 4, p 6

328. *Ibid*, p 10

329. *Ibid*, p 9

330. *Ibid*

331. Binney, 'Encircled Lands, Part 1' (doc A12), pp 205-206

(who hoped to see King Tawhiao), and was one of his spokesmen in the negotiations with Ngati Maniapoto there in July.³³²

Te Kooti, however, was rebuffed and failed to see the King. On 25 September, after his return to Taupo, he mounted a pre-emptive attack on constabulary and native contingents at Te Ponanga, behind Tokaanu, and Rakuraku fought with him there. Most of the Urewera chiefs, Binney stated, were also with Te Kooti at the siege of Te Porere (west of Lake Rotoaira) on 4 October, where his force of 300 men (including Ngati Tuwharetoa) suffered heavy casualties at the hands of an attacking force of over 500. The majority of that force was Maori.³³³ Lieutenant-Colonel McDonnell reported that 37 of Te Kooti's force were killed (that is, 37 bodies were found).³³⁴ Including these casualties, Binney estimated that 52 of Te Kooti's men were killed in Taupo, amounting to about one-sixth of his fighting force. It was a serious defeat for him.³³⁵ Te Kooti was wounded but escaped once again, moving from the upper Whanganui district to Patatere, in the hills behind the western Bay of Plenty.³³⁶ He was at Ohinemuri on 20 January 1870, then moved down the Kaimai Ranges.³³⁷ There were further encounters and casualties at Tapapa, a pa belonging to Kereopa and Hakaraia (of Tapuika), before Te Kooti emerged near Rotorua in early February 1870. It was clear by then that he was on his way back to Te Urewera.³³⁸

During this period, the Government kept a careful eye on Te Kooti and his party. There were constant reports or rumours of their whereabouts and possible intentions. In particular, the Government was nervous about Te Kooti's approaches to the Kingitanga. There were fears about a hostile alliance (of Waikato and Ngati Maniapoto, upper Whanganui, and Te Urewera) forming in the centre of the island should Te Kooti obtain 'the control of Taupo'.³³⁹ When it seemed that there would be no immediate alliance – after the King refused to meet Te Kooti and Rewi Maniapoto escorted him out of the King Country – hopes increased of defeating Te Kooti in the easier Taupo terrain. JD Ormond, the general government's agent on the East Coast, wrote that Te Kooti was 'hemmed in between our forces and Waikato'.³⁴⁰

The Government then became preoccupied with ensuring there would be no incident which might lead to hostilities with the Kingitanga. McDonnell was told not to follow Te Kooti into the King's country, though by the end of September Ormond was wondering if they might get Kingitanga consent to go to west Taupo if it 'could be made plain . . . that our sole object was to secure Te Kooti'.³⁴¹ McLean

332. Binney, 'Encircled Lands, Part 1' (doc A12), p 206

333. Major Kemp to Meti Kingi, 7 October 1869, AJHR, 1870, A-8, p 23

334. McDonnell to Ormond, 5 October 1869, AJHR, 1870, A-8, p 22

335. Binney, *Redemption Songs*, p 190

336. Binney, 'Encircled Lands, Part 1' (doc A12), p 207

337. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 81

338. *Ibid*

339. Ormond to Colonial Secretary, 6 October 1869, AJHR, 1870, A-8, p 19

340. Ormond to Colonial Secretary, 20 September 1869, AJHR, 1870, A-8, p 15

341. *Ibid*

wrote: ‘The reports I get from the King country are satisfactory; still I am anxious to guard against Te Kooti getting there. Of the two evils, I would sooner he got to the Urewera country, bad as it is for fighting. I trust he may be caught before he attempts either.’³⁴²

During the same period, concern persisted about a perceived threat from Te Urewera. Ormond wrote that ‘the Urewera’ were ‘moving about in the country behind Wairoa and Poverty Bay’. He thought they were more likely to attack Poverty Bay:

As the summer advances, the Urewera will no doubt recommence hostilities, and keep the East Coast in constant commotion. I feel satisfied that no security of life and property will exist for the East Coast settlements until the Urewera have been dealt with and punished . . .³⁴³

Ormond was thus anxious to organise an expedition to that end, and he wanted Wahawaha and Ngati Porou to undertake it. In fact, the Urewera chiefs, as we have seen, stayed with Te Kooti at Taupo and then moved back to their own rohe with him after the defeat at Te Porere. The Government was now able to concentrate its military efforts against both Te Kooti and Te Urewera at the same time.

5.5.4.1 Opportunities for peace? Te Kooti’s meeting with Firth, February 1870

One of the questions we consider in this section is whether the Crown took appropriate initiatives for peace or responded appropriately when opportunities presented themselves to bring the conflict in Te Urewera to an end.

As noted above, the Crown submitted that it always pursued what it called its ‘dual objectives’ of peace and neutralising Te Kooti. If that submission is correct, then we would expect that in June 1869 the Crown would have made some attempts to explore the option of establishing peace with Te Urewera. It had succeeded in destroying much of the infrastructure in the district, in severely ‘punishing’ Ngati Whare in particular, and in driving Te Kooti out towards a hoped-for haven at Taupo. On the other hand, the leaders of Te Urewera were clearly still firmly supporting Te Kooti, and many of their fighting men had gone with him. Battersby argues that there is nothing to suggest that Whitmore’s blockade or the destruction caused by the expedition had had ‘a significant impact on the “political” viewpoint of Urewera people. No one “came in” or appealed for talks, and Urewera groups remained with Te Kooti for the coming summer.’³⁴⁴

In any case, the Government offered no incentive for peace at the conclusion of the first expedition in 1869. On what conditions could these ‘groups’ have ‘appealed for talks’? The only terms offered by the Government were those of HT Clarke when he wrote to the husbands of women taken at Te Harema. This offer did not extend to other communities. We do not accept the Crown’s submission

342. McLean to Branigan, 2 February 1870, AJHR, 1870, A-8A, p 56

343. Ormond to Colonial Secretary, 20 September 1869, AJHR, 1870, A-8, p 16

344. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 72

that Clarke's terms were in any way a 'first seed' that 'started to introduce the possibility of peace with Te Kooti's Urewera supporters if they came away from Te Kooti.'³⁴⁵

Rather, the first offer of peace came from Te Kooti himself, in the wake of his visit to Taupo and the fighting there. It came unexpectedly and was made through an intermediary, JC Firth, a settler at Matamata who had earned some respect among Maori. Having arrived in the Patatere Ranges near Matamata, Te Kooti sent a messenger to Firth to say that he wished to meet him. Firth, who had already refused to leave his home when he knew Te Kooti was passing through the area, rather bravely agreed to do so. He made it clear that he did so in a private capacity and had no authority from the Government. Te Kooti first guaranteed Firth's safety and then stated the purpose of the meeting: 'I wish also to say to you that I am weary of fighting, and desire to live quietly at Tapapa. If I am let alone I will never fight more, and will not hurt man, woman, or child.'

Firth pointed out that Te Kooti had committed 'many crimes' and killed both Pakeha and Maori without mercy. Te Kooti replied, 'The deeds I have done may be considered by your Europeans to be murders, but not by the Maoris, and even for them (ie the killing of women and children) the Government is to blame.' The Government had pursued him, he argued, from the time he landed at Turanga after his escape from captivity at Wharekauri; soldiers had continually been sent after him. Firth called on him to surrender to the Government, to ask that his life and those of his followers be spared, but to give up their 'bodies and arms'. But Te Kooti refused to surrender, saying he would nonetheless 'remain at peace.'³⁴⁶

Subsequently, Firth received an answer to the telegram he had sent to Daniel Pollen, the agent for the general government in Auckland. Pollen replied that, if Te Kooti would surrender unconditionally, he would guarantee his safe conduct to Auckland. Firth, who sent this message to Te Kooti, received a reply the following day:

To Dr Pollen – I have seen your letter. My word to you. I have already promised Mr Firth to cease fighting. Afterwards your letter reached me. I will stop fighting – stop entirely. But as for me, I will not go to Auckland. Let me remain at peace. The killing shall cease. But if you follow me up, let it be so. Sir, cease your punishing of me. This is all.³⁴⁷

Was Te Kooti's offer an opportunity the Government should have explored? The Premier, William Fox, certainly did not think so: he censured Pollen on various grounds, particularly his endorsement of Firth's 'treating with' Te Kooti by promising to restrain the Government forces until the interview was over. The

345. Crown counsel, closing submissions (doc N20), topic 4, p 9

346. JC Firth to Defence Minister, 20 January 1870, enclosed in Pollen to Fox, 29 January 1870, AJHR, 1870, A-24, pp 5-6

347. Firth to Defence Minister, 20 January 1870, AJHR, 1870, A-24, p 6

Government repudiated any endorsement of Firth's negotiations with a 'monster' who had victimised Maori and settler alike, and informed Pollen that it would not be bound by Firth's act or any pledge made.³⁴⁸ Privately, Fox put his position in even stronger terms: 'I had rather the war went on for ten years than that we should come to any terms with Te Kooti other than hanging.'³⁴⁹

Pollen replied:

It appeared to me then, and does still appear, by the light of subsequent events, clear, that a bloodless surrender of Te Kooti and his followers to take their trial for their crimes, by whomsoever accomplished, was a consummation greatly to be desired, and I could not take the responsibility of closing any opening to such an end.³⁵⁰

There had been no Minister in Auckland when Firth's telegram had arrived reporting his intention to meet with Te Kooti; hence, Pollen's decision to act on his own authority as agent of the general government.³⁵¹

In fact, of course, Te Kooti was not prepared to surrender. His offer was to make peace on terms that would allow him to remain a free man. We understand the reasons why he could not bring himself to surrender to a Government determined to execute him. Nonetheless, the Government was justified in not accepting his offer at this time. In light of the number of killings – particularly of women and children – for which Te Kooti was held responsible, the shock of which was too recent to have faded, it is unlikely that any government would have made peace on such terms. Fox distinguished between 'rebels whose offence has been merely an armed resistance to lawful authority based on political grounds', with whom the Government would 'treat for surrender and submission', and 'a man of Te Kooti's character'.³⁵² In the political context of the time, that was a distinction few – other than those who believed in Te Kooti's mission from God and who were committed to his leadership – would have disputed.

We think it has to be accepted that the Government could not have defended a decision to make peace with Te Kooti in February 1870. It is also likely that Te Kooti's clear refusal to surrender would have strengthened Government resolve to continue his pursuit. His position was seen to have weakened in the wake of the fighting at Taupo. Te Heuheu had 'come in'. The Government considered it had secured the Tuwharetoa ariki's surrender, and it did not want to alienate him because of his influence at Taupo and with the Kingitanga.³⁵³ It no longer consid-

348. Fox to Pollen, 24 January 1870, AJHR, 1870, A-24, p 3

349. Fox to Gisborne, 20 January 1870, IA 70/156, Archives New Zealand, Wellington

350. Pollen to Fox, 29 January 1870, AJHR, 1870, A-24, p 4

351. Pollen offered his resignation as agent of the general government at once; in mid-March he was advised that he should withdraw his offer, which he then did: Pollen to Fox, 23 March 1870, AJHR, 1870, A-24, p 7.

352. Fox to Pollen, 24 January 1870, AJHR, 1870, A-24, p 3

353. Fox to Ormond, 18 October 1870, AJHR, 1870, A-8, p 25; McLean to Ormond, 27 October, AJHR, 1870, A-8, p 26

ered the southern Tuwharetoa chiefs threatening, and Taupo had been closed to Te Kooti as an escape route. Further, Te Kooti had been defeated, and the number of those with him was believed to have fallen to 40 to 50 Whakarau and 50 'Ureweras'. McDonnell reported Te Kooti's total casualties as 79 between September 1869 and February 1870.³⁵⁴

Clearly, the Government thought this might now be the time to move decisively against Te Kooti and against the peoples of Te Urewera who supported him. Te Kooti was still perceived as a threat. Over the preceding months, he had ranged across the central North Island, to Ohinemuri and then towards the western Bay of Plenty. He could still mount surprise attacks with lethal effect, as at Opepe. His movements generated widespread fear (evident as he moved away from the Taupo district).³⁵⁵ As a result, the Government remained determined to secure him.

McLean had hoped Te Kooti might be cut off at the Rotorua passes on his way to Te Urewera.³⁵⁶ He was not, and soon arrived at Ohinemutu. At this point there were further negotiations, this time between Te Urewera chiefs and Ngati Whakaue. The Urewera chiefs, according to Gilbert Mair, 'offered terms of peace' to Ngati Whakaue, returning to them the brother of one of the chiefs who had been captured in 1869. Battersby notes that the contents of the terms are not clear, but that Mair recorded privately that the terms included the safe passage of Te Kooti back to Te Urewera. The offer purported to come from Tuhoe rangatira, but Mair felt it was the work of Te Kooti, whom he believed had forged their names on a letter he wrote himself.³⁵⁷

Some of the Te Arawa chiefs, Mair reported, 'believed in the sincerity of the proposals made' and 'strongly opposed an attack being made on Kooti's force'. Petera Pukuatua, according to Mair, fiercely resisted his attempt to abrogate their 'maungarongo'. The elders tried to stop their younger men from joining Mair in the pursuit.³⁵⁸ Mair, who was certain the letter was a forgery, thought the whole episode was just a delaying tactic. It is hard to judge whether it was or not, given the quick unfolding of events, but it is not surprising the Urewera party would have tried to negotiate safe passage. The anger of the Ngati Whakaue chiefs at their own people who tried to join the pursuit suggests that they had agreed to the terms. In any case, Te Kooti moved at great speed ahead of Mair and made his escape across the Kaingaroa Plains and up the Horomanga Gorge, ultimately heading to Ahikereru.³⁵⁹ We consider that Mair was justified in his attempt to stop Te Kooti's return to Te Urewera, because it was still reasonable to consider him a significant threat at this time.

354. McDonnell, 'Return of Killed and Wounded', AJHR, 1870, A-8A, pp 75-76

355. See, for example, Moule to Branigan 13 January 1870, and Clarke to Defence Minister, 13 January 1870, AJHR, 1870, A-8A, p 28.

356. See, for example, McLean to McDonnell, 31 January 1870, AJHR, 1870, A-8A, p 55; McLean to Fraser, 31 January 1870, AJHR, 1870, A-8A, p 55.

357. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 81

358. Binney, 'Encircled Lands, Part 1' (doc A12), pp 207-208

359. *Ibid*, p 208

5.5.4.2 *The planning of a second expedition*

For the peoples of Te Urewera, Te Kooti's decision to return to their lands and the chiefs' decision to shelter him again meant an immediate resumption of hostilities. As soon as Te Kooti's return to Te Urewera was confirmed in early February 1870, Donald McLean, now the Minister of Native Affairs and Minister of Defence in the Fox Ministry, began preparations for a second military expedition.

The Government's aims were spelt out starkly:

to follow him [Te Kooti] and the notorious murderers and promoters of rebellion associated with him into the Urewera country, and, by a well-devised co-operative movement, crush effectually the sources of the disturbances which have for the last few years distracted this Colony.³⁶⁰

In his evidence for Ngati Whare, Richard Boast pointed out that McLean, too, spoke of punishment and retribution directed at the Urewera population as a whole. Shortly after becoming Minister of Defence, McLean stated in August 1869 that the Waikaremoana expedition had been conducted 'with a view of punishing the Uriwera tribe.'³⁶¹

In fact, the second Te Urewera expedition would be markedly different from the first. The key reason, as it turned out, was the decision that Maori forces should take over the pursuit of Te Kooti. This decision was made in the context of the demilitarisation of the Armed Constabulary and its reconstitution as a national policing unit under a new police commissioner. There was a growing view also that the inexperience of Pakeha officers in bush warfare had resulted in the failure of Crown forces to capture Te Kooti.³⁶² Because of this, special arrangements had to be made for continuing military operations in the region. Maori forces would take the major offensive role, supported by 'defensive' Pakeha Armed Constabulary units manning a small number of crucial posts on the borders.³⁶³

Three columns were planned to enter Te Urewera. The first, McLean decided, would be a Ngati Porou contingent, led by Rapata Wahawaha, and would approach Waikaremoana from Turanga. The second would approach Onepoto from Wairoa in a move designed to cut off lines of retreat. The third would be made up 'almost entirely of Natives' and, though it would be commanded by Lieutenant-Colonel McDonnell, the Maori leaders 'should be consulted on all occasions.'³⁶⁴

McLean negotiated in person with the Kawanatanga chiefs to whom he entrusted the expedition. After his meeting with Wahawaha and the leaders of Te

360. McLean to McDonnell, memorandum of instructions, 11 February 1870, AJHR, 1870, A-8A, p 74

361. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc N16), p 60

362. See, for example, Porter, diary, enclosed in Porter to McLean, 28 April 1870, AJHR, 1870, A-8B, p 46.

363. Richard SHill, *The Colonial Frontier Tamed: New Zealand Policing in Transition, 1867-1886* (Wellington: GP Books, 1989), pp 1-63

364. McLean to McDonnell, 11 February 1870, AJHR, 1870, A-8A, p 74

The Names of the Kawanatanga Leaders

In 1870, the Crown entrusted command of its forces to two Maori leaders. The first was Rapata Wahawaha of Ngati Porou. His name was pronounced 'Ropata' by settlers and he is usually referred to in the documents of the time as Major Ropata. The second leader was Te Keepa Te Rangihiwini of Whanganui. He too held the rank of major, and was usually referred to in nineteenth-century documents as Major Kemp (the English form of his name, Te Keepa).

Arawa at Tauranga, it was agreed that the Maori leaders would command their forces in the pursuit of Te Kooti. Wahawaha wrote in a memorandum dated 11 February that:

No Europeans are to take part in any of these movements, lest confusion should arise from there being two different commands; and moreover the Maoris are very impatient, and incapable of obeying and carrying out the instructions or commands of European officers while engaged in field operations.³⁶⁵

This reflected Wahawaha's own impatience with the arrangements for the first expedition. As we discussed above, both he and Tomoana had been reluctant to serve under the arrangements set up for the Wairoa column in 1869. He clearly appreciated his new bargaining power since the change of government and the pull he had with McLean. McLean rather brusquely informed McDonnell that the chiefs of the various tribal divisions would report to the Government through him on the nature of their operations.³⁶⁶

The new arrangements for Maori leaders to take full command of their own forces were formalised by McLean in letters of instruction addressed to Major Wahawaha, to Mohi Turei, and to Te Rangihiwini and Topia Turoa. The purpose of the expedition was clearly spelt out: the forces were 'to pursue these murderers, Te Kooti and others'. In particular, McLean hoped that Kereopa would also be taken.³⁶⁷ In his letter to Mohi Turei of Ngati Porou, McLean wrote: 'Mohi, this is my idea: these murderers ought to be exterminated as soon as possible, so that the quietness, prosperity, and peace of the former days may return.'³⁶⁸

McLean's instructions to Wahawaha were more detailed:

365. Ropata Wahawaha, memorandum, 11 February 1870, AJHR, 1870, A-8B, p 3

366. McLean, memorandum of instructions, 11 February 1870, AJHR, 1870, A-8A, p 74

367. McLean to Mohi Turei, 18 February 1870, AJHR, 1870, A-8B, p 3; McLean to Wahawaha, 19 February 1870, AJHR, 1870, A-8B, p 3

368. McLean to Mohi Turei, 18 February 1870, AJHR, 1870, A-8B, p 3

You alone have the management and to give orders to your tribe; there will be no European over you. . . .

There are provisions on board the *Sturt* for your soldiers.

Should fighting actually take place, remember to save the women and children.

There is no other word to you, because you know the objects of the fighting: that evil is to be exterminated, so that peace may be in our places.³⁶⁹

A third letter to Te Rangihwinui urged the chiefs to ‘work together in unity’ so that the expedition would be successful.³⁷⁰

In his instructions to Mohi Turei, McLean directed that ‘these murderers’, meaning ‘Te Kooti and others’, should be ‘exterminated’. His orders to Wahawaha were more ambiguous: ‘evil’ was to be ‘exterminated’ but the women and children spared. These letters, read together, show (and conveyed) an intention to ‘exterminate’. This was a serious failure on the part of the Minister to ensure that strict or proper parameters were put on the conduct of the expedition.

The emphasis the Government now placed on capturing or killing Te Kooti was underlined by its decision to replace daily rates of pay for the Maori forces with a £5,000 lump sum payable if this were achieved.³⁷¹ The money would be shared among ‘all who have taken part in the work’. The shift to payment by results was not universally popular, and Te Arawa decided as a result not to take part.³⁷² But it underlines McLean’s anxiety to ensure that his new approach was successful. He had staked a great deal on the success of the Maori forces and was doubtless aware that many would be prepared to criticise him if they failed. In any case, McLean’s innovation was later abandoned and the Maori forces were in fact paid.³⁷³

Few instructions were given as to the conduct of the expedition. It may be inferred that the size of the payment offered for Te Kooti indicated that no stone was to be left unturned to secure him. McLean’s two specific instructions were that ‘murderers were to be exterminated’ (here he echoed Whitmore’s term) and that the women and children should be ‘saved’. There was no reference to the fate of prisoners. It is evident from later correspondence that instructions were also issued to record the names of those killed and wounded. A strict casualty count was thus sought.³⁷⁴

One aspect of the planning had significant implications for the kind of hardships that might be inflicted on Urewera communities. The Government accepted

369. McLean to Major Ropata Wahawaha, 19 February 1870, AJHR, 1870, A-8B, p 3. These letters are printed in the AJHRs only in English.

370. McLean to Major Kemp, 19 February 1870, AJHR, 1870, A-8B, pp 3–4

371. McLean to Wahawaha, 19 February 1870; McLean to Majors Kemp and Topia, 3 March 1870, AJHR, 1870, A-8B, pp 3–4; Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B30), p 83. This replaced McLean’s first proposal that a lump sum would be granted in addition to pay.

372. Te Kepa Te Rangipuwahē to McLean, 11 March 1870, AJHR, 1870, A-8B, p 5; McLean to Majors Kemp and Topia, 3 March 1870, AJHR, 1870, A-8B, p 4

373. See, for example, Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 62.

374. See, for example, ‘Memorandum by Major Ropata Wahawaha’, 11 February 1870, AJHR, 1870 A-8B, p 3; Te Kepa to McLean, 30 March 1870, AJHR, 1870 A-8B, p 24.

only limited responsibility for provisioning its forces. As McLean noted, some provision was made for Ngati Porou. McDonnell reported at the end of February that the Maori forces gathering at Ohiwa were 'very short of provisions, and only restrained by Topia and Major Kemp from attacking the Ureweras, so as to obtain possession of the food'.³⁷⁵ It was understood that there would be particular difficulties providing for the forces moving to Lake Waikaremoana, because the country on the way was 'destitute of cultivations'. A supply line up the Wairoa River with two posts (Te Kapu and Te Ariki) was established, but at Te Ariki it stopped. F E Hamlin, who, as we shall see, ended up in charge of the Waikaremoana expedition, was instructed that he was 'only to issue food when it is found impossible to obtain supplies from the enemy's country'. Otherwise, he should 'endeavour to feed the expedition upon the enemy as much as possible'.³⁷⁶

In fact, peace broke out almost before war in this second expedition. It is to that development which we turn next.

5.5.4.3 Opportunities for peace? The rongopai between Tamaikoha and Te Rangihwinui at Tauwharemanuka

Surprisingly, the Government was presented with an opportunity for peace right at the start of this expedition. On 26 February 1870, Wahawaha's force of about 400 Ngati Porou, accompanied by Lieutenant Porter, marched inland from Turanganui.³⁷⁷ After McDonnell's retirement in March, Ormond and Locke began organising a force to march from Wairoa to Waikaremoana, where they and a section of the Armed Constabulary would establish a post at Onepoto.³⁷⁸ This force, however, was delayed, and only scouting expeditions were sent out from Wairoa in March.³⁷⁹

On 4 March, a force of 428 men, including some Ngati Awa and Whakatohea, and led by the Whanganui chief Te Rangihwinui, departed Ohiwa, heading ultimately to Maungapohatu.³⁸⁰ They marched to Waimana, taking the track from there inland. At Otara, Te Rangihwinui's forces engaged in a brief exchange of fire with a small group of Tamaikoha's men, indicating that hostilities were imminent. But, as Te Rangihwinui recorded in his official account, the 'Hauhau' had first shouted down a question: 'Who are you?'³⁸¹ This was the first indication that dialogue was sought – Tamaikoha later revealed that he had hoped to meet with Topia Turoa, a Kingitanga leader who might have been more receptive to negotiations.³⁸² Te Rangihwinui reported that 'the question was not answered', after which shots were exchanged. The column then pushed further upriver. On 9 March, the Crown's force came upon Tauwharemanuka – one of Tamaikoha's main

375. McDonnell to McLean, 18 February 1870, AJHR, 1870, A-8A, p 75

376. Ormond to Gisborne, 5 March 1870, AJHR, 1870, A-8B, p 9

377. Westrup to McLean, 27 February 1870, AJHR, 1870, A-8B, p 8

378. Ormond to Gisborne, 5 March 1870, AJHR, 1870, A-8B, p 9

379. Ormond to McLean, 1 April 1870, AJHR, 1870, A-8B, p 15

380. Te Rangihwinui to McLean, 4 March 1870, AJHR, 1870, A-8B, p 4

381. Te Rangihwinui to McLean, 13 March 1870, AJHR, 1870, A-8B, p 10

382. Ibid

settlements on the Tauranga River. In a remarkable development, Te Rangihiwini then sent a message to Tamaikoha under a ‘flag of truce’, offering to korero.³⁸³ All the chiefs of his force discussed the move first.³⁸⁴

The hui that followed came to be a signal event in the relationship between Tuhoē and the Crown. Te Rangihiwini began by asking the whereabouts of Te Kooti. Tamaikoha replied that Te Kooti had gone to Waioweka, and was now threatening Whakatohea and Opotiki. Te Rangihiwini then asked about ‘the Urewera’, to which Tamaikoha replied, ‘They have been taken thither [to Waioweka] by (gone with) Te Kooti, as they think they will be put to death by Government. The chiefs only remained. Rakuraku has separated from Te Kooti.’³⁸⁵

Te Rangihiwini asked, ‘Have you no thought (desire) to make peace?’ Tamaikoha replied, ‘I am willing.’ That was why he had asked who they were a few days before. Tamaikoha had taken the first step towards the Crown forces, hoping to deal with Topia Turoa. Te Rangihiwini and his rangatira, after much discussion among themselves, responded.

Te Rangihiwini thus brokered a significant agreement with a key Tuhoē rangatira. Matthew Te Pou explained that, while Tuhoē were determined to defend themselves against Crown forces, rangatira such as Tamaikoha ‘initiated a number of political, diplomatic and physical self-defence strategies to retain mana motuhake o Ngai Tuhoē.’³⁸⁶ McDonnell’s account, written shortly after the historic meeting, gave some details of the discussions between Te Rangihiwini and Tamaikoha as he understood them. Tamaikoha had accepted peace but had made his position clear: ‘if any Pakeha came up the Waimana, either to settle or survey, he would serve them the same way he had served Bennett White, Moore, Beggs, and others.’³⁸⁷ His determination to defend his mana motuhake clearly underlay this position.

There were two days of discussion, the details of which were not recorded. We know from Tamaikoha’s letters that it was agreed that the Government was not to ‘occupy or take possession of land’, nor was it permitted to send forces into Te Urewera unless Te Kooti were truly present.³⁸⁸ McDonnell wrote, ‘Peace was then made, and Major Kemp presented him [Tamaikoha] with a revolver and ammunition.’³⁸⁹ Binney emphasised the importance of this gifting to seal the peace: ‘in a primarily oral society (as Maori society was), [this] gift and its associated meaning

383. McDonnell to Clarke, 19 March 1870, AJHR, 1870, A-8B, p 19

384. Te Rangihiwini to McLean, 13 March 1870, AJHR, 1870, A-8B, p 10

385. *Ibid.* Square brackets have been inserted by the Tribunal. Round brackets were inserted by the nineteenth-century translator.

386. Matthew Te Pou, brief of evidence, 10 December 2003 (doc B24), p 60

387. McDonnell to Clarke, 19 March 1870, AJHR, 1870, A-8B, p 19. It was this statement which has sometimes been interpreted as Tamaikoha’s claim of responsibility for the four killings. In our view, this may be interpreted, given cultural norms, as only a broad such claim; it does not necessarily imply his personal culpability.

388. Tamaikoha to Kemp, Topia (and others), 18 April 1870, AJHR, 1870, A-8B, p 39 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 102)

389. McDonnell to Clark, 19 March 1870, AJHR, 1870, A-8B, p 19



Gottfried Lindauer

Tuhoerangi Ariari of Te Whakatane, Ngai Tama Tuhirae, and Upokerehe. Both Tamaikoha and Rakuraku Rehua had to deal with the immediate impacts of the 1866 confiscation on their communities, as surveyors laid out the lines on the ground. Tamaikoha challenged the surveyors in various ways in 1867 and 1868. He held aloof from Te Kooti and did not join in his raids from his Te Urewera base in March and April of 1868. In March 1870, he and Te Rangihiwini (who led one of the forces which constituted the Crown's second expedition into Te Urewera) negotiated a rongopai to which the peoples of Te Urewera remained committed from that time on. He met Major Mair to ensure that the terms of the peace were understood as between him and the Crown and that he might continue to live at Waimana rather than being relocated. Tamaikoha continued to work for peace in 1871, ensuring that the Maungapohatu people were included.

seals the word'.³⁹⁰ (Further gifts, including pounamu, were later exchanged between other leaders, as we shall see below.) Te Rangihiwini and his men then returned to Ohiwa.

Such was the mana of Tamaikoha and Te Rangihiwini, and such was the force of a peace agreement of this kind in the Maori world, that Wahawaha himself also observed it when news of it reached him. Wahawaha's force had meanwhile marched towards Maungapohatu, where it had expected to meet Te Rangihiwini. Wahawaha had reason to believe a large number of 'Urewera' might be there, and he decided to make a surprise attack and take the people prisoner so that none could escape to warn other kainga. His intention was to take the prisoners to Waikaremoana, from where they would be sent to Wairoa, while he would remain at the lake and make it his base for the search for Te Kooti.

Following this decision, on 13 March the force mounted twin attacks on different pa at Maungapohatu. The first was taken 'without a shot being fired'; 40 men, women, and children were taken prisoner. Wahawaha, nearby at Toriatia Pa, found it evacuated; one man was killed.³⁹¹ That night a messenger arrived from Te Rangihiwini: 'a man called out that he was a *rongo pai* from Major Kemp, and telling us that it was to Major Ropata'.³⁹² The man was afraid to come closer, but the next day the message was confirmed. An advancing enemy kokiri sent word that they had received a flag of truce from Te Rangihiwini and that 'they would adhere to the terms if we returned to our wives and families at once'.³⁹³

Porter wrote at the time that Wahawaha was 'greatly annoyed at the steps Kemp has taken'.³⁹⁴ In a later letter, Porter elaborated that Wahawaha was 'greatly perplexed by this proceeding of Major Kemp's, as all his plans are frustrated by the false peace'.³⁹⁵ Clarke also wrote later that Te Rangihiwini's action was 'to Ropata's great disgust and annoyance'.³⁹⁶ Wahawaha seems to have been genuinely confused by the appearance of a kokiri which yet carried a rongopai, until he established that the kokiri was from Ngati Huri rather than from Ruatahuna. The party sent 'a wooden *meremere* as a token of peace' ('maunga rongo'). Porter stated that Wahawaha would not accept it, though Porter himself kept it.³⁹⁷

Despite his irritation, reported in several sources, Wahawaha clearly recognised the force of the rongopai. He decided to return to Tawhana to find out what had happened, and he left on 16 March. Letters addressed to the Tuhoe chiefs were left

390. Binney, 'Encircled Lands, Part 1' (doc A12), p 210

391. Porter to McLean, 21 March 1870, AJHR, 1870, A-8B, p 17

392. Porter, diary, 14 March 1870, enclosed in Porter to Defence Minister, 28 April 1870, AJHR, 1870, A-8B, p 44. The account followed here is that from Porter's diary, which differs in some details from that in Porter's correspondence; the diary account, which is much more detailed, is preferred.

393. Porter, diary, 14 March 1870, enclosed in Porter to Defence Minister, 28 April 1870, AJHR, 1870, A-8B, p 44

394. Ibid

395. Porter to Defence Minister, 21 March 1870, AJHR, 1870, A-8B, p 18

396. Clarke to Under-Secretary, Native Department, 18 April 1870, AJHR, 1870, A-8B, p 32

397. Porter, diary, 13-14 March 1870, enclosed in Porter to McLean, 28 April 1870, AJHR, 1870, A-8B, p 44; Porter to McLean, 21 March 1870, AJHR, 1870 A-8B, p 18

at Toriatai: 'couched in unmistakeable language, [they were] to the effect that he reluctantly yielded to the truce made by Major Kemp, but that if he heard anything more of them and their hostile proceedings, he would return next summer and destroy them utterly'.³⁹⁸

In April 1870, Lieutenant Porter reported Wahawaha's parting threat to the people of Te Urewera: 'if he had to return in the summer, he would not leave a man or a woman alive'.³⁹⁹ Such a threat went unremarked and uncontested by the Government. This was the context in which McLean's earlier instruction to 'exterminate' must be considered. It was a recurrent theme in 1870 and 1871.

At Taueka Pa, Wahawaha's force found a letter from Te Rangihiwini to Wahawaha that had been taken there for him by Tamaikoha. 'Kemp tells us that he has left with the Urewera a *rongo pai*, and wishes us to respect it, and to follow on and join him as soon as possible'.⁴⁰⁰ With this direct word from Te Rangihiwini, some 'Urewera' prisoners were released, and Wahawaha refrained from capturing others. Although he released his Tuhoe prisoners, he did not liberate the Ngati Kohatu people whom he had captured at Maungapohatu.⁴⁰¹

Wahawaha wrote to McLean after he had returned to the coast. He had made peace at Maungapohatu, he said, although it was not a peace like Te Keepa's. He had brought his Ngati Kohatu prisoners from Maungapohatu with him, and would take them back to his own place, but because of the peacemaking he would not 'make slaves of them'.⁴⁰² He recorded his scepticism about whether the peace would hold, though it is not clear whether he meant Te Rangihiwini's or his own, or both. Nevertheless, he observed Te Rangihiwini's *rongo pai*.

There was one striking exception: it was clear that no one considered the *rongo pai* to include Te Kooti. There was thus one further major engagement during the expedition. In mid-March, Te Kooti's men were reported to have descended upon the Whakatohea reserve at Opape, capturing 150 people (mostly women and children) and retiring to the Waioweka Gorge.⁴⁰³ Wahawaha, on returning to Ohiwa, reproached Te Rangihiwini for not having done more since their mission had begun.⁴⁰⁴ Te Rangihiwini set out immediately, on 20 March, for the Waioweka Gorge, where Te Kooti was believed to be. Wahawaha followed a day later. On 25 March, Wahawaha and Te Rangihiwini attacked the main pa in the valley, called Maraetahi, where Te Kooti, his followers, and the Whakatohea captives were entrenched.

398. Clarke to Under-Secretary, Native Department, 18 April 1870, AJHR, 1870, A-8B, p 32

399. Porter, diary, enclosed in Porter to Defence Minister, 28 April 1870, AJHR, A-8B, p 44

400. Porter, diary, 16 March 1870, enclosed in Porter to Defence Minister, 28 April 1870, AJHR, 1870, A-8B, p 44

401. Ngati Kohatu are a Ngati Kahungunu-affiliated group based at Te Reinga, who had sought refuge in Te Urewera, including at Maungapohatu: see Richard Niania, brief of evidence, 22 November 2004 (doc 138), p 9.

402. Wahawaha to McLean, 21 March 1870, AJHR, 1870, A-8B, p 18

403. Te Rangihiwini to McLean, 13 March 1870, AJHR, 1870, A-8B, p 10; Walker to Fraser, 8 March 1870, AJHR, 1870, A-8B, pp 11-12; McDonnell to Clark, 19 March 1870, AJHR, 1870, A-8B, pp 19-21

404. Clarke to Under-Secretary, Native Department, 18 April 1870, AJHR, 1870, A-8B, p 32

Binney noted that Te Kooti had gone to Ruatahuna after his arrival in Te Urewera back in February, but that his return divided the people and the majority had asked him to leave. There were ‘very few Urewera men’ still with him at Maraetahi. Rakuraku seems to have been the only chief.⁴⁰⁵ This is confirmed by the identity of the prisoners taken at Maraetahi after the Kawanatanga forces’ successful attack. They were over 300 in number, most of them either Te Kooti’s Whakarau or Whakatohea. Although the majority of the people in the pa were captured, and as many as 19 summarily executed, Te Kooti himself escaped with about 20 or 30 followers. Eleven of the 19 executed prisoners were of Te Kooti’s own iwi, Rongowhakaata.⁴⁰⁶ It was Topia Turoa, not the colonial authorities, who prevented more executions. Colonel St John commented: ‘Among them [the prisoners] are about twenty of Te Kooti’s immediate followers, whom Topia refused to give up to Ropata for execution according to their merits.’⁴⁰⁷

The summary execution of prisoners is of grave concern to this Tribunal. It occurred at Waikaremoana in the aftermath of the siege of Waerenga-a-hika, and again at Ngatapa and at Maraetahi, and there are direct and implicit references to it in Te Urewera in 1869 that we have indicated earlier in this chapter. We have no doubt that the Crown’s senior officials and military officers knew of it and condoned it. At a central government level, proper steps were not taken to ensure that it did not happen. We have no doubt that such executions were used both to eliminate captured prisoners and to strike terror into the hearts of those who might be minded to support Te Kooti. We make no specific findings on the executions at Maraetahi, however, as the descendants of those affected were not claimants in this inquiry.

5.5.4.4 The rongopai: Government and Te Urewera responses

The Maori leadership of the 1870 expedition fundamentally reshaped its purpose and conduct. The rongopai forged between Te Rangihwinui and Tamaikoha, two rangatira, one of whom was in command of a Crown force, was a remarkable development. We note how quickly negotiations were established between the two at Tauwharemanuka, before hostilities got under way. Te Rangihwinui – given an opening by Tamaikoha – chose, with the backing of his rangatira, to respond. He did not see Tamaikoha in the same way that local military officers did – namely, as an enemy who had made raids in the district and who should be quashed. What he doubtless knew was that Tamaikoha did not support Te Kooti. He realised therefore that Tamaikoha’s independence provided an opportunity to open a path to peace and that his mana could protect the spread of peace. This, we think, is the important point, and it is one that is critical to our discussion of the claims.

405. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 211

406. Clarke to Under-Secretary, Native Department, 18 April 1870, AJHR, 1870, A-8B, pp 33–35; Porter, diary, 26 March 1870, enclosed in Porter to Defence Minister, 28 April 1870, AJHR, 1870, A-8B, p 46; ‘Te Kooti Rikirangi: The Real Story of the Rebel Leader’, *Auckland Star*, 6 June 1914, p 16

407. St John to Lyon, 30 March 1870, AJHR, 1870, A-8B, p 17

The Crown had a fundamental choice from this point on. It could continue to try to prevent Te Kooti using Te Urewera as a base by undertaking further expeditions of the Whitmore variety or it could isolate him by promoting and entrenching the rongopai. The latter was Te Rangihiwini's deliberate strategy and was more effective than fighting: 'a peace which he hoped might pull Tuhoe out of the conflict, and thereby isolate Te Kooti'.⁴⁰⁸ From March 1870, the Crown therefore had a reasonable alternative to war. Battersby accepted much of the force of this argument, although he maintained that the Crown still had to hunt down and neutralise the threat of Te Kooti himself.⁴⁰⁹

The claimant and Crown historians, however, did not agree on the immediate force and application of the rongopai. Binney stated that 'both men [Te Rangihiwini and Tamaikoha] understood it extended to the entire Urewera'.⁴¹⁰ Battersby, however, challenged the view that Tamaikoha could have committed all Tuhoe to peace by the agreement.⁴¹¹ This is an important matter to resolve, as it is critical to how we interpret the choices faced by the Crown in April 1870. How realistic was it to expect that peace, rather than war, would be the strategy to neutralise Te Kooti as a threat from then on? And was it possible to reach agreement with the Urewera communities only slowly and incrementally, as Battersby maintained, or was the whole of Tuhoe committed by Tamaikoha's word?

We agree with Binney's inference about Te Rangihiwini's reasoning. There were more ways than one to achieve the Government's objective of isolating Te Kooti. It is possible that the rongopai was underlain by relationships of which we are not aware, or by broader political considerations emerging from discussions among Maori leaderships in the central North Island in the wake of Te Kooti's movements through the region with Tuhoe in 1869. Those leaders must have had their own concerns about the impacts of the continuing war, and how to contain it or bring it to a close. As Binney put it, 'within the Maori world, there were huge efforts being made to curb and contain this spiralling war'.⁴¹² We agree with Binney that Wahawahā's observation of the rongopai, and the Te Arawa leaders' willingness to give Tuhoe and Te Kooti right of passage back to Te Urewera at the beginning of 1870 (discussed above), are also evidence of the concern of Maori leaders about the war.⁴¹³

On the Government's side, McLean had entrusted the Kawanatanga leaders with broad powers to conduct the campaign as they chose. Did they therefore speak for the Crown, and could they commit it to the rongopai? The Government's initial response was not positive. McLean, who visited Opotiki at the beginning of April, spoke to the Whanganui leaders at their camp. Te Rangihiwini explained his peace with Tamaikoha, but McLean did not give him a warm reception. He told Te

408. Binney, 'Encircled Lands, Part 1' (doc A12), pp 210–211

409. Battersby, summary of 'The Government, Te Kooti and Te Urewera' (doc M3), pp 6–18

410. Binney, response to statement of issues (doc B1(a)), p 24

411. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 89

412. Binney, 'Encircled Lands, Part 1' (doc A12), p 210

413. *Ibid*

Rangihiwini that he had 'acted on his own responsibility, without the sanction of the Government.'⁴¹⁴

Why did McLean choose not to endorse the rongopai? Given his huge expectations of this expedition, he was likely to have been taken aback by Te Rangihiwini's unexpected peacemaking. We are also certain that he would have been taken aback simply by Te Rangihiwini's interpretation of the extent of his authority – that his strategic decisions might extend to the making of peace as well as to the conduct of hostilities. McLean would without question have been disappointed that Te Kooti had so narrowly made his escape at Maraetahi. It is clear that McLean would have faced criticism within Government and military circles. HT Clarke commented forcefully in his report to the Native Department on Wahawaha's disappointment at the 'truce', though we note that Clarke did not condemn Wahawaha for his 'respect of it.'⁴¹⁵ According to McDonnell, Ngati Awa, Whakatohea, and Te Arawa were disgusted with the apparent 'apathy' being displayed towards prosecuting the war. This was especially so for Whakatohea, who were angry that Te Kooti had been able to capture so many of their people in early 1870.⁴¹⁶ Yet we note that Te Rangihiwini's force was made up of a number of tribal groups and leaders, including Ngati Awa, and he was careful to report that all had agreed to peace before the approach was made to Tamaikoha. For some Pakeha officers and officials, the matter became caught up with their resentment at the autonomy McLean had entrusted to leaders such as Te Rangihiwini.⁴¹⁷

At the highest level of Government, the Premier, William Fox, accepted in April 1870 that peace was the way forward. He wrote to Te Rangihiwini (in a published letter):

That man Te Kooti is defeated, and his evil deeds are defeated. Your feet, and the feet of Whanganui have trodden him down. You have fulfilled the promise which you made in the Aomarama. My belief is that the war is now over; let us turn our thoughts, you and I, to the works of peace.⁴¹⁸

In a letter to Topia Turoa, which was also published, the Premier wrote: 'You have driven forth that pest (Te Kooti), and quenched his power. I have heard of your deeds at Tuhua, at Tapapa, at Opotiki, and at all the other places from whence you have driven Te Kooti. Our work now is to be a work of peace.'⁴¹⁹

Fox wrote these letters on 16 April, eight days after McLean had told Te Rangihiwini at a hui that he had 'acted on his own responsibility, without the sanction of the Government.'⁴²⁰ We agree with Battersby that McLean, as the Minister in control of events on the ground, was not prepared publicly to accept the terms of the

414. Clarke to Under-Secretary, Native Department, 18 April 1870, AJHR, 1870, A-8B, p 31

415. *Ibid*, p 32

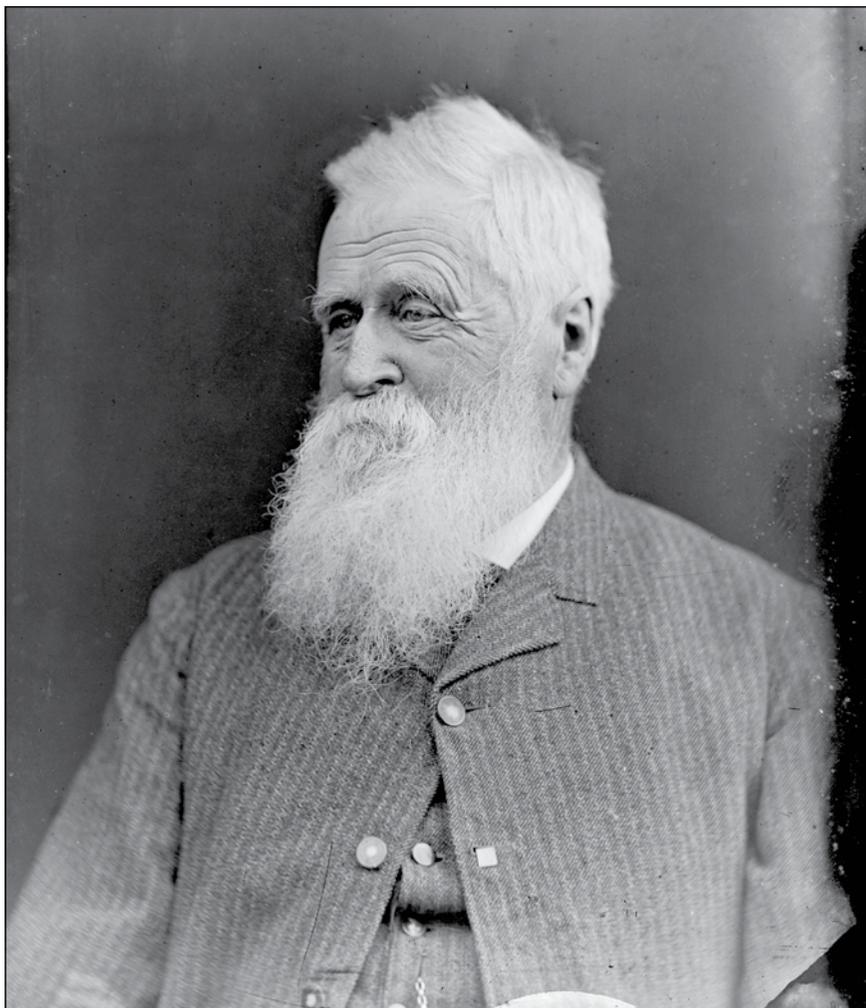
416. McDonnell to Clarke, 19 March 1870, AJHR, 1870, A-8B, p 20

417. Clarke to Under-Secretary, Native Department, 18 April 1870, AJHR, 1870, A-8B, p 35

418. Fox to Kemp, 16 April 1870, AJHR, 1870 A-8B, p 62

419. Fox to Topia Turoa, 16 April 1870, AJHR, 1870, A-8B, p 63

420. Clarke to Under-Secretary, Native Department, 18 April 1870, AJHR, 1870, A-8B, p 31



William James Harding Studio (William James Harding Collection, ATL, 1/4-006776-G)

Sir William Fox. In June 1869, Fox became Premier for the third time. While he expressed general support for the state of peace that the rongopai made by Tamaikoha and Te Rangihiwini augured in April 1870, his government took no concrete steps to implement its terms. Instead, the hunt for Te Kooti in Te Urewera and the sporadic conflict this entailed dragged on until the end of 1871.

peace, though he was 'unwilling to let the prospect of peace diminish altogether'.⁴²¹ Hence, his instructions to St John to concentrate his operations around Waioweka and to focus directly on the capture of Te Kooti.⁴²² In particular, we note that McLean said later (when he faced Ngati Awa criticism of an attack by Crown

421. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 98

422. Ibid

forces on Tamaikoha's pa) that, despite his rebuke of Te Rangihwinui, he had not said the peace 'should not be kept'.⁴²³ It is probable that McLean, who had plenty of opportunity during his Opotiki visit to talk to Wahawaha and to his own officials, was struck by Wahawaha's respect of the rongopai, and this would have weighed with him. He may have talked to the Ngai Tai chief Wiremu Kingi, as Clarke did. Clarke reported that in Kingi's view none of the Pakeha officers he had served with could compare with Te Rangihwinui, who, he said, was 'a man of judgment, and one I would follow to death'.⁴²⁴ The Premier's public approval of Te Rangihwinui's actions later in April must also have had an effect.

McLean, noting Te Kooti's escape yet again, may have begun to wonder if it was realistic to assume he could ever be killed or taken. After all, the first expedition into Te Urewera had shown – despite all Whitmore's rhetoric – that an 'invading' force found the conditions very difficult and that those who lived there would take advantage of that and fight on their own terms. They would not present a sitting target. In light of all the facts before him, McLean equivocated. We are sure he chose his words to Te Rangihwinui carefully to allow himself room to move later if he decided to support the peace.

But, while McLean hesitated, an attack took place which seemed to indicate that the Crown had no respect at all for the rongopai. St John decided to move against Tamaikoha, and did so on 24 April. As Battersby explained, St John acted on the basis of information from Major William Mair that there were 'Hauhau' at Whakarae, at Ohiwa. Tamaikoha was said to have written a 'bouncing letter' to local chiefs, indicating defiance.⁴²⁵ Tamaikoha's son did in fact bring letters to the Arawa chiefs with 'a view to confirming the peace or truce made by Kemp'.⁴²⁶

Battersby explained that Mair sent St John only a 'quick translation' of the letter. The key sentences were: 'The Urewera will abide by their agreement. If you intrude in my places there will be trouble. If you invade me when Te Kooti is not here, there will be trouble.'⁴²⁷

From the limited information before him, Battersby concluded that St John 'appears unaware of any intention (by anyone) to confirm Te Keepa's peace'. He was aware of the rongopai but 'appears not to have suspected that he might be acting contrary to instructions'. McLean, Battersby argued, would have been aware of St John's intentions. Mair wrote in his diary on 24 April, without comment or

423. 'Notes of Speeches', 24–25 May 1870, AJHR, 1870, A-16, p 9 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 107)

424. Clarke to the Under-Secretary, Native Department, 18 April 1870, AJHR, 1870, A-8B, p 35

425. In the nineteenth century, settlers and officials used the word 'bounce' to describe a Maori stance that they believed to be mere bluster or lacking in any substance or merit. It was a dismissive term which justified either a repressive response or the ignoring of the content of Maori letters and korero.

426. Mair to Clarke, 25 April 1870, AJHR, 1870, A-8B, p 39 (Battersby, 'The Government, Te Kooti and Te Urewera', pp 101–103)

427. Tamaikoha to Te Keepa and Topia (and others), 18 April 1870, AJHR, 1870, A-8B, p 38 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 101–102)



Unknown (ATL, 1/2-028,459-F)

Lieutenant-Colonel John Henry Herbert St John, the Crown forces officer responsible for one of the Crown's breaches of the rongopai. In April 1870, St John led the attack on Tamaikoha's pa at Whakarae in which Tipene, the rangatira's elderly uncle, was killed. Tamaikoha did not retaliate, thus protecting the rongopai. St John, clearly committed to the scorched-earth policy, had led a column into Te Urewera as part of Whitmore's first expedition. He was dismissed from his post after the attack on Whakarae.

criticism, that St John had gone to Ohiwa ‘to catch Tamaikowha.’⁴²⁸ St John had long regarded Tamaikoha with antipathy and perhaps could not readily have seen him as a peacemaker.

St John arrived at Whakarae in the early hours of 25 April on his ‘misconceived mission’, as Battersby termed it, but was discovered before he could surround the pa.⁴²⁹ Most of the people escaped, but Tamaikoha’s elderly uncle Tipene was killed. According to Captain Rushton (who was present), Tipene was killed by Ngati Pukeko chief Tamihana Tahawera as utu for the killing of the latter’s niece on Te Kooti’s orders in 1869.⁴³⁰ According to Gilbert Mair, Tamaikoha accused St John of permitting Tipene’s execution ‘after he had surrendered’, which Mair agreed was ‘a fact’.⁴³¹

Both accounts agreed that the Ngati Pukeko chief Tahawera killed Tipene. In other respects, Rushton’s account was different. As the Crown’s force was in the act of surrounding the pa,

Suddenly an old man appeared and came right up to us; he had a calabash in his hand, and was going down to a spring for water. He passed on, and Tamihana Tahawera led him down the track, and before we could prevent the deed he had killed the old man with a whalebone *patu*. It was a deliberate murder; it was Tahawera’s way of obtaining revenge for the murder of his niece . . .⁴³²

According to Rushton, this ‘murder’ occurred before the attackers were discovered. St John’s account was different again. Reporting to the Minister on 26 April 1870, he stated that Tipene was ‘tomahawked while attempting his escape’ during the general flight from the pa.⁴³³

Tamaikoha, however, did escape. Tuhoe kaumatua who spoke to anthropologist Jeffrey Sissons stated that this was because Tamaikoha was forewarned by a dream. Nino Takao, a grandson of Tamaikoha, related that in the dream ‘a soldier offered him [Tamaikoha] some whisky in a bowl and that as he brought the vessel to his lips he noticed blood running down the side.’⁴³⁴ Whakarae was renamed Matakerepu as a result. The name refers to ‘the chilling numbness (Matakerekere) which came over Tamaikoha when he learned of the coming treachery through his dream (“Matakerekere” = “benumbed” and “pu” = “gun”).’⁴³⁵

As with the original negotiation of peace between Te Rangihwinui and Tamaikoha, the attack on Whakarae and the killing of Tipene had dramatic

428. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 104

429. *Ibid*, p 105

430. Cowan, *New Zealand Wars*, vol 2, pp 420–421

431. G Mair to J Cowan, 13 July 1913 (Binney, additional supporting papers (doc A12(b)), p 655)

432. Cowan, *New Zealand Wars*, vol 2, pp 420–421

433. St John to Defence Minister, 26 April 1870, AJHR, 1870, A-8B, p 38

434. Jeffrey Sissons, *Te Waimana: The Spring of Mana, Tuhoe History and the Colonial Encounter* (Dunedin: University of Otago Press, 1991) (doc B23), p 144

435. *Ibid*, pp 144–145

consequences. In his diary, Mair initially recorded St John's return and Tipene's death without any hint of concern. But Maori reaction rapidly changed his mind. On 29 April, he noted in his diary that Ngati Awa were 'indignant' at St John's attack.⁴³⁶ On 2 May, Clarke signalled his disapproval:

I submit that the action taken, and the attempt made to capture Tamaikowha and party, was hardly judicious.

A truce was concluded by Major Kepa with Tamaikowha. The latter does not know that Kemp exceeded his powers, and that the Government could not acknowledge the terms made. It will be considered a 'Kohuru,' and nothing will convince the Natives to the contrary. I think means should have been taken to inform Tamaikowha that Kemp's truce could not be acknowledged.⁴³⁷

On 6 May, Mair wrote to Clarke that the 'injudicious raid' had 'called forth the strongest expressions of disapproval from one end of the district to the other.'⁴³⁸ With his support, the Ngati Awa and Ngati Pukeko chiefs wrote to the Urewera chiefs 'to try to assure them that it had not been with their agreement or knowledge and to urge them not to take Tipene's death as a cause for revenge.'⁴³⁹

On 7 May, McLean wrote to St John dismissing him from his post on the grounds that he had acted contrary to instructions given him a month earlier.⁴⁴⁰ Those instructions were to pursue Te Kooti to Waioweka Gorge and make 'every effort' to capture him. Instead, St John's actions had endangered Bay of Plenty settlements and 'impress[ed] the Natives with the conviction that an act of treachery has been committed by an English officer.'⁴⁴¹

In Battersby's view, the failure to ensure that the rongopai was observed should not rest only on St John's shoulders. It is possible that Mair failed to ensure that St John understood the rongopai and its implications.⁴⁴² But we consider it more likely that McLean did not convey to his senior officers any clear instruction that the rongopai was to be upheld. In his dialogue with Te Rangihiwini, he did not commit himself as to whether the Government's disapproval meant the peace would not be put into effect. He may not have made up his mind how to respond to the rongopai.

As noted above, the Premier had expressed approval of 'peace' on 17 April but not approval of any particular terms. Nonetheless, if McLean thought Government recognition was a possibility, he should at least have taken steps to ensure that no Crown action would jeopardise it in the meantime. His failure to do so, which in

436. Mair, diary, 29 April 1870 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p105)

437. Clarke to McLean, 2 May 1870, AJHR, 1870, A-8B, p 39

438. Mair to Clarke, 6 May 1870, AJHR, 1870, A-16, p 7

439. Binney, 'Encircled Lands, Part 1' (doc A12), p 215

440. McLean to St John, 7 May 1870, AJHR, 1870, A-8B, p 40 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p106)

441. McLean to St John, 7 May 1870, AJHR, 1870, A-8B, p 40

442. See, for example, St John to McLean, 23 April 1870, AJHR, 1870, A-8B, p 37.

our view reflected not just bad judgement but also a failure to recognise the cultural significance of the rongopai so widely kept by Kawanatanga iwi, was to have far-reaching ramifications. It was appropriate, in our view, for the Crown to concede in our hearings that the attack on Whakarae was a ‘notable mistake’.⁴⁴³

Within Te Urewera and in the wider Bay of Plenty, St John’s actions caused a very strong reaction, which came shortly after Tamaikoha, as we have seen, wrote to the Kawanatanga Maori leaders on 18 April to reaffirm the peace he had made with Te Rangihwinui. A second and, Battersby suggests, ‘more careful translation’ of the letter than that which Mair sent to St John indicates that Tamaikoha stated:

The arrangement you proposed or made with me has been made good. The Ureweras also join in that agreement or law – that is to say, if you should occupy or take possession of land within my district, then trouble will arise, or it will be a signal for fighting. Then again, should you invade my country, Te Kooti not being within its bounds, fighting will be the consequence . . .⁴⁴⁴

The two matters weighing with Tamaikoha at this time were fear that the Crown might compound its earlier actions by confiscating more Te Urewera land and fear that the Crown might send its forces into Te Urewera even if Te Kooti were not there. He signalled broad Te Urewera willingness to observe the rongopai. He had been discussing it with other leaders and obtaining their agreement. As Binney points out, he excepted two hapu that he said had joined Te Kooti (probably Ngati Huri of Maungapohatu and Ngai Tama, their kin in the Waimana–Tauranga Valley), and also Waikaremoana, because he had not yet been able to talk to the chiefs there.⁴⁴⁵

In our view, and in light of later evidence, there is no question but that Tamaikoha’s rongopai was adopted by almost all the peoples of Te Urewera in March and April 1870. One critical exception, which we address below, was the Waikaremoana peoples.

At the same time, Tamaikoha wrote to Mair stating that ‘The Urewera have made a law, which, if observed, will prevent trouble’. Europeans were not to occupy Te Urewera land because Te Kooti was not in the district. Binney suggests that this was a reassertion of the aukati which Tuhoe had laid after the confiscation in an attempt to keep the peace and protect themselves. The aukati was designed to keep out Te Kooti, as well as Crown forces.⁴⁴⁶ In any case, the letter appears to spell out to Mair how he should interpret the rongopai if it were to be upheld by ‘Europeans’.

The rongopai was widely publicised within Te Urewera. Binney cited a memorandum by Wilson indicating that Te Rangihwinui’s notices of peace were posted

443. Crown counsel, closing submissions (doc N20), topic 4, p 10

444. Tamaikoha to Kemp and Topia (and others), 18 April 1870, AJHR, 1870, A-8B, p 39 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), pp 101–102). Battersby states the original of this letter does not appear to have survived.

445. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 213

446. *Ibid.*, pp 213–214

on trees 'on every route leading into Te Urewera.' And the Ngati Whare chiefs Kohi and Potakurua referred later to its publication in their district: 'the proclamation of peace of Kemp's and Tuhoes' had been posted at a pa near Fort Galatea.⁴⁴⁷

In light of all this, Tamaikoha's reaction to the attack on Whakarae and the killing of his uncle is very telling. On 7 May, he replied to Wepiha of Ngati Awa, agreeing to the Ngati Awa proposal that Tipene's death should remain unavenged: 'Friend, this is the word to you: the peace will not be set aside; no, it will always be firmly established in your presence and that of your friends the chiefs of the tribes who are living in peace, whether Maori or European.'⁴⁴⁸

The rongopai would stand. This was a remarkable decision, given that even a Government official like Clarke could understand that the death would widely be seen as a kohuru (murder). But it is further testament, in our view, to the importance Tamaikoha attached to the rongopai, and to the wider purpose behind it – bringing the war to an end. Communications from other Urewera chiefs indicate the general dismay at what had happened, but also the chiefs' wish to adhere to the rongopai. A letter from 'Tuhoes-Potiki, that is to say from the whole tribe' to the Arawa chiefs (who had evidently sought to reassure them), stated: 'Blood has been shed during the peace with Tamaikowha . . . and now because of this go you back to the sea. Te Kooti is not here, but only me (the Urewera). I am at rest (lying down). Go your way.'⁴⁴⁹

And a later letter of 16 May, also in the name of 'Tuhoes-Potiki' – 'all the Tribe' as assembled at Ruatahuna – was addressed to Captain George Preece in response to his call for them to surrender:

As for us we will not go out. Let us alone here . . . Don't come this way . . . if you come here the law will have been broken by you and by me also. I am afraid because the peace made with Eru [Tamaikoha] has been covered with blood by you yourself. What matters it if you say that peace was made by Te Kupa only; no, that law which you yourself have broken was made by the Governor.⁴⁵⁰

The same day, Te Whenuanui and Paerau and 'all the chiefs of Tuhoes' wrote to Ngati Awa, reiterating that they abided by the rongopai. As they put it:

Friends, I have become a Government man through Te Keepa and through your letters. Well, I will always be a Government man at my own place. This is a word from us to you: Cease slaying the land and the people; let your sword and my sword be laid aside . . . Should you come in here we will all be in trouble again, for Te Kooti is not here.⁴⁵¹

447. Ibid, p 214

448. Tamaikoha to Hoani Ngamu, 7 May 1870, AJHR, 1870, A-8B, p 64

449. Tuhoes-Potiki to Te Karamuramu, 29 April 1870, AJHR, 1870, A-8B, p 54

450. Tuhoes-Potiki to Preece, 16 May 1870, AJHR, 1870, A-8B, p 63

451. Paerau and Te Whenuanui to Arama and Tukehu, 16 May 1870, AJHR, 1870, A-8B, p 63

Tamaikoha's Descendants Call for Justice

Kirituia Tumarae and Maraea Te Ratauhina Te Pou, descendants of Tamaikoha, gave evidence at our Waimana hearing on 11 December 2003. Speaking of their distress at the historical labelling of their tipuna as a 'savage', a 'murderer', and a 'cannibal', they put the following challenge to the Crown representatives:

Here is another question for you, if you were the leaders, chiefs, guardians for your families, clans, tribes, what would you have done?

I will never believe that you will leave your beloved families to such treatment I have spoken of which really did happen. I would really like to hear your response to this question also.

Tama I koha didn't leave his family, but fought on their behalf, and stood in front of them as their shield. The blood of some of the family members he loved so much was shed. He refused to leave them all to die.

Due to the tremendous hardships he was not able to save some of his family members, for example his uncle Tipene. He was murdered. He [Tamaikoha] transferred his feelings of grief through using words and waiata. Servants of the Crown, to us he was a hero alongside the other heroes of our tribe like our other ancestors, Te Whiu Maraki, Rakuraku Rehua, Te Pou Papaka, Te Pairi Tuterangi and many others within the closed borders of Tuhoe. If not for them where will we be now?¹

1. Kirituia Tumarae and Maraea Te Ratauhina Te Pou, brief of evidence, 11 December 2003 (doc B28), pp 9–10

The Tuhoe chiefs' mistrust of the Crown was very evident. Its actions had jeopardised the rongopai, and they feared that another expedition might now be sent. All the letters stressed that Te Kooti was not in Te Urewera – in effect, that they were no longer sheltering him. In their view, that assurance, and the rongopai, should have laid the basis for a lasting peace. The initiative now lay with the Crown.

5.5.4.5 *The Crown's next move: From the rongopai to unconditional surrenders*

In the wake of the Whakarae attack, McLean clearly reassessed the situation. He recognised that the Government was widely regarded as being in the wrong. He doubtless recognised that the attack, and Tipene's killing, might well have led to a disastrous reigniting of hostilities. Tamaikoha's response must have impressed him, and there was widespread evidence of the commitment of the Te Urewera leadership to peace.

McLean moved first to acknowledge the Crown's mistake. He removed St John

– who perhaps was a useful scapegoat – from his command. In Battersby's view, this action was on a par with the earlier censure of Te Rangihiwini for having made the peace in the first place.⁴⁵² Secondly, during a meeting with Ngati Awa chiefs in May 1870, McLean faced not only criticism of St John's actions but also an appeal for the rongopai to be upheld.⁴⁵³ He responded:

The Colonel and William Marsh [Wiremu Maihi of Te Arawa] were wrong in what they did at Ohiwa, they acted without authority in that matter; you all heard me rebuke Kemp for making peace with Tamaikoha, but I did not say that it should not be kept. If I had intended to fight Tamaikoha after that peacemaking, I should have warned him, lest people say that there had been treachery . . .⁴⁵⁴

This was a public acknowledgement that the Crown had not handled the rongopai well and had been in the wrong at Whakarae. But McLean's damage control was a reaction on one level. The larger question was whether the Crown accepted that the rongopai had sufficient force to bind the chiefs of Te Urewera and to ensure that the threat Te Kooti posed could be neutralised. As always, Te Kooti was the difficulty for the Crown: giving up its pursuit of him was still not an option. As McLean said to Ngati Awa in May, 'Te Kooti cannot be forgiven, it is he who has brought trouble on the land, and every effort will be made to capture or kill him.'⁴⁵⁵

It was one thing to accept that Te Urewera chiefs might not join further attacks, such as those at Mohaka and Taupo. It was another to be certain that Te Kooti would not continue to use the resources of Te Urewera communities to support himself, and possibly to continue to mount attacks (though by now they could only be small scale) on Crown forces or on unsuspecting communities. All the letters cited above stressed that Te Kooti was not in Te Urewera (for the chiefs knew as well as the Crown that he was the sticking point). The Government, however, could never be certain that he would not return. What McLean had to be sure of was that, if or when Te Kooti did return, there would be no base of support for him. The Government's fear for the security of its citizens throughout the region explains Crown policy from this point, as Battersby outlined. We see no evidence of a determination to wage a 'war of conquest' against Te Urewera.⁴⁵⁶ But we understand why the claimants have viewed the Crown's policies as evidence of a single-minded determination to subdue them.

The question turns on whether the Government sought to occupy the district, establish military posts or settlers, or impose unwanted laws and administration. On the whole, it did not. In essence, the policy from this time was to secure the

452. Battersby, summary of 'The Government, Te Kooti and Te Urewera' (doc M3), p 20

453. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 107

454. 'Notes of Speeches', 24–25 May 1870, AJHR, 1870, A-16, p 9 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 107)

455. 'Notes of Speeches', 24–25 May 1870, AJHR, 1870, A-16, p 9

456. Binney, response to statement of issues (doc B1(a)), p 24

surrender of every Te Urewera community and to remove them from their homes to reserves on the coast, where they would live under supervision. As Crown counsel conceded, and we think rightly so, this was draconian, even in the context of war. Substantive Crown authority – government and administration – was not imposed on Te Urewera at this time. The claimants are correct, however, to the extent that the Crown assiduously sought a formal recognition of its authority. It wanted surrenders, and it wanted surrendered leaders to take an oath of allegiance to the Queen. This was not an attempt to obtain legitimacy for the Crown by creating a relationship between the Government and Te Urewera Maori resting on the consent of the ‘governed’; rather, the Crown sought to impose a formal recognition of itself as the price of peace. To that extent, we accept the submission of counsel for Tuawhenua, who quoted Whitmore’s own words on the matter: the Crown’s intent was ‘to make the Maori feel, once and for all, that the struggle against British supremacy was a useless one’.⁴⁵⁷

We consider here how the policy worked in practice. In his speech to Ngati Awa, cited above, McLean sought in effect to capitalise on the rongopai but to impose peace on the Crown’s terms. He noted that the peace should be kept and that Tamaikoha should not have been attacked without warning, but he added: ‘as for Tamaikoha, he is very guilty; but after what has passed, I promise that if he should surrender and trust to the clemency of the Government, he shall not be punished’.⁴⁵⁸ McLean told Ngati Awa that they ‘must assist me in bringing out the Urewera, and then there will be peace in this land’. Those among the peoples of Te Urewera who had ‘fought against us fairly and openly’ would have to ‘come in and surrender’. They would be treated ‘kindly’. Those who had surrendered and come out so far would be placed at Te Putere, where McLean expected Ngati Awa to ‘watch them and encourage them to be well conducted’.⁴⁵⁹

Thus, the rongopai was undermined. Te Rangihiwini, drawing on the model of traditional peacemakings, offered the Crown a path to a lasting peace through the establishment of a relationship with the rangatira of Te Urewera. But the Crown’s basis for peace was the surrender and relocation of Urewera communities. It was still ‘peace’, but the change was a crucial one for the claims before us. Was the rongopai – which left Te Urewera peoples in their own homes under their own authority, but committed not to support Te Kooti – enough to neutralise his threat? The Government clearly did not think so. Its policy did change from war – from Whitmore-style attacks on Urewera communities – to negotiated surrenders. A key component of those surrenders was an insistence that Te Urewera be emptied. Its people must move out until any possible support base for Te Kooti was gone. In the claimants’ view, that policy breached the rongopai, entered into in good faith, and it breached the Treaty. As the Tuawhenua researchers put it: ‘These terms were unacceptable to Tuhoe. This would mean living under the control of

457. Counsel for Tuawhenua, closing submissions (doc N9), p 67

458. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p107

459. ‘Notes of Speeches’, 24–25 May 1870, AJHR, 1870, A-16, p 9

kupapa Te Arawa chiefs who had traditionally been Tuhoe enemies – yet another insult to the mana motuhake o Tuhoe.⁴⁶⁰

We were assisted by Crown counsel, who noted that peace was actually finalised with Tamaikoha in October 1870 on different terms: ‘he was not disarmed and did not come in.’⁴⁶¹ We take from this that in the circumstances of 1870 the Crown could have afforded to be flexible on this point. We assess the claims with that fact in mind.

In order to examine this aspect of the claims, we outline the surrender-relocation policy in some detail. The first community to ‘come in’ was Ngati Whare. Whether the initiative came from them or from the Crown, through George Preece, is not clear.⁴⁶² Preece was engaged with Gilbert Mair and a section of Te Arawa in scouting missions on the western edges of Te Urewera.⁴⁶³ He saw the advantage of advancing terms of peace with both Ngati Whare and Tuhoe. On 24 April, Mair and Preece were told that Paraone Te Tuhi and four others had ‘come in’ and were at Fort Galatea. The next day the officers arrived at the fort and found the ‘prisoners’ – 15 in all – waiting for them.⁴⁶⁴ Te Tuhi indicated that other surrenders would follow: ‘I am the rope, pull me and the horse will follow.’⁴⁶⁵

But it was 20 May before a large party of Ngati Whare (23 men, and 22 women and children) ‘came in’, led by their chiefs Hapurona Kohi and Hamiora Potakurua. The delay was evidently the result of two factors: both disquiet at the attack on Whakararae, and dislike of the Crown’s terms (conveyed in a letter from Mair and Preece) weighed with Ngati Whare. Preece said that he could give ‘no promise of mercy, but told them that they must trust to the Government.’⁴⁶⁶ They did not want to go out to the coast, and were afraid that, if they did, the Government would not be able to look after and feed so many people.⁴⁶⁷

In particular, the rangatira were acutely aware of the difference between the nature of the rongopai and the terms they were now being offered. As they put it to Mair and Preece,

Listen: the first peace was Kemp’s to Tamaikowha, that is, to all Tuhoe (Urewera). We think your peace-making ought to be like that. We also, Tuhoe, are very much pleased with Kemp’s peace. Kemp was a stranger (a man apart); his peace was good. *Nothing satisfies you but taking us bodily away . . .* [Emphasis added.]⁴⁶⁸

460. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 317–318

461. Crown counsel, closing submissions (doc N20), topic 4, p 10

462. Boast discusses the difficulties with the sources, Preece’s diary, and his later recollections: Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 66.

463. Mair to Clarke, 7 April 1870, AJHR, 1870, A-8B, p 30

464. Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), pp 66–67

465. *Ibid*, p 66

466. Preece to McLean, 18 May 1870, AJHR, 1870, A-8B, p 62

467. Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 68

468. Hapurona Kohi and Hamiora Potakurua to Mair and Preece (and others), 29 April 1870, AJHR, 1870, A-8B, p 54 (Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 68)

The rongopai had been agreed between rangatira. But, as Mair made very clear, Ngati Whare were to surrender and the Crown would impose terms: ‘The Natives who have come in will be sent to Awa-o-te Atua to-morrow, and handed over to their relations, the Ngatirangitahi and Ngatimanawa Natives, who will be responsible for them till the Government decides what is to be done with them.’ He added that Ngati Whare had now been told that ‘none should be punished except those who were connected with Te Kooti’s murders.’⁴⁶⁹

At the end of May, McLean travelled to Opotiki to meet Ngati Awa (as we described above). On arriving, he heard about the surrender of Ngati Whare. On 25 May, when he met Ngati Awa, McLean described the arrangements he was putting in place for Ngati Whare:

I have decided to treat them kindly, as an inducement to others to follow their example; they are men who have borne arms against us, but theirs has been fair open fighting. I am going to place them at Te Putere, where they can get plenty of fish and eels, and cut flax for the Pakehas; I will supply them with seed potatoes for planting; and I will look to you, with Arama Karaka and Rangitukehu, to watch them and encourage them to be well conducted.⁴⁷⁰

On 26 May, McLean wrote to William Mair detailing how this policy would work in practice:

The Whakatohea are already provided with land; and as it is highly important that the Urewera tribe should be got out of their mountain fastnesses, land for cultivation will be assigned to them on the coast, in positions where they can in a great measure support themselves by fishing and cutting flax for sale to Europeans.

The reserve at Putere, near Matata, will be devoted to this purpose, and the following chiefs will be responsible for the future good conduct of the Natives placed under their charge:—Major Kemp of Tuhourangi, Tukehu, Arama Karaka, Te Apanui, Wepiha, Kawakura.

For the better security of the Urewera, the above named chiefs may take parties of them to reside at their respective kaingas, it being understood that they have the Putere reserve to cultivate upon.

A distinction should be made between those Natives who surrender of their own accord, and those who are compelled to do so by force of arms; in the latter case the Natives should be tried under the Disturbed Districts Act, 1869, in the former the giving up of their arms and an assurance from themselves and the chiefs under whom they may be placed, will be deemed a sufficient guarantee for their future good conduct.

469. Gilbert Mair to Ormond, 28 April 1870, AJHR, 1870 A-8B, p 67 (Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 67)

470. ‘Notes of Speeches’, 24–25 May 1870, AJHR, 1870, A-16, p 9

The Urewera who surrender will be protected from ill-treatment, but no conditions can be made with those who choose to ignore the clemency of the Government by continuing a hostile attitude in the Waikaremoana country; or who have committed such unprovoked murders or outrages as are inconsistent with the laws of humanity and justice.

Those who have fought openly in accordance with the recognized usages of war as understood by the Natives, will not be subjected to any conditions beyond those previously referred to, viz:—the surrender of their arms and withdrawal from the Urewera country.⁴⁷¹

Several points are notable in this statement of policy. For the first time, the Crown made formal provision for those Urewera peoples who surrendered. The rongopai had shown that Urewera rangatira would make peace. McLean's response was a new emphasis on encouraging the fighting men to give up any resistance and to lay down their arms. Those who refused were to be threatened with the Disturbed Districts Act 1869, under which they could be charged with treason. But we doubt whether the Crown wanted more trials. Thirty-four men (those captured at Maraetahi) were tried in the Supreme Court in Wellington in June 1870; 30 were convicted and sentenced to death, though their sentences were commuted to terms of imprisonment.⁴⁷² This was probably deemed sufficient.

What the Crown really wanted at this point was a speedy end to resistance, because of the huge political and financial cost, and it clearly hoped that disarming the men and securing their surrender would be an effective way of removing any potential support for Te Kooti. But this, in its view, was not enough. The Crown was not prepared to leave functioning communities in Te Urewera which might act as a magnet to Te Kooti. Should they do so, Te Urewera determination to abandon him might falter. McLean's answer was to move those who surrendered out of Te Urewera. A further danger then loomed: namely, the concentration of large numbers of fighting men in one place.⁴⁷³ The decision was therefore taken to hold the people at more than one location.

Arrangements for those who surrendered expanded over time. Some Ngati Haka Patuheuheu were sent to live with their Ngati Manawa relations, while others from Ngati Haka Patuheuheu and Ngati Whare cultivated land on either side of the military redoubt at Te Teko. Some people from Te Waru Tamatea's hapu were relocated at Matata, and some were located at Kutarere on Ohiwa Harbour. Others who surrendered were kept under surveillance at Whakatane and Ruatoki, as well as at Te Putere.⁴⁷⁴

By June 1870, Crown officials and military officers were optimistic about securing further surrenders. On 7 June, 19 men and 23 women and children of Ngati

471. McLean to Mair, 26 May 1870, AJHR, 1870, A-8B, pp 72–73

472. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 64

473. Moule to Commissioner Branigan, 10 June 1870, AJHR, 1870, A-8B, p 74

474. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 123–124; Binney, 'Encircled Lands, Part 1' (doc A12), pp 242–243

Haka Patuheuheu surrendered to Preece; they were located at Parawai. The key question for the Crown, however, was whether there would be more widespread Tuhoe surrenders. Preece thought the tribe was close to making that decision: ‘I am of opinion . . . that with a little management a large portion of them will surrender.’⁴⁷⁵

We consider this important issue in the next section, because it became caught up in the Crown’s expedition of April to July 1870 against the peoples of Waikaremoana. The peace policy, based on surrenders and relocation, was greatly complicated by this Whitmore-style campaign. But we pause here to address a question of importance to the claimants – the conditions in which those who surrendered were held at the Te Putere reserve. This needs to be understood in order to assess the very real reluctance to ‘come in’ that shadowed the remainder of 1870.

5.5.4.6 *The reserve at Te Putere*

For claimants, the forced removal of their tipuna from Te Urewera is a considerable grievance.⁴⁷⁶ Not only were their tipuna required to leave their homes, but they were also confined to reserves without adequate resources and put under the surveillance of Ngati Awa. Crown counsel, as we have noted, stated that the ‘evacuation of people out of the district’ was one of the ‘draconian’ measures taken by the Crown in its efforts to deprive Te Kooti of a ‘secure base.’⁴⁷⁷ But counsel did not specifically address the conditions at Te Putere.

Much of the debate regarding the conditions at Te Putere has stemmed from the respective arguments of Professor Binney and Dr Battersby. Binney described the coastal reserve at Te Putere as ‘Tuhoe’s “concentration” camp, where they were expected to live without gardens, seeds, equipment or boats.’⁴⁷⁸ According to Binney, Tuhoe leaders were aware of the conditions at Te Putere and, for this reason, they rejected an ‘unpalatable offer’ in favour of remaining in Te Urewera. The conditions at Te Putere, therefore, became a serious impediment to peace.⁴⁷⁹ In reply to questions from Crown counsel, Binney explained her use of the term ‘concentration camp’: ‘I used the term “concentration camp” for Te Putere to highlight its inhumane conditions.’⁴⁸⁰

Battersby, however, challenged Binney’s use of the term, citing comparisons with the original concentration camps in the Boer War:

During the latter stages of the Boer War, General Kitchener established relief camps for Boer women and children. These were for the protection of those whose menfolk had surrendered, and to intern those whose menfolk were active in hostilities against British forces. The camps were badly run, and inadequate for the numbers of people

475. Preece to Moule, 7 June 1870, AJHR, 1870, A-8B, p 74

476. Robert Pouwhare, brief of evidence, 14 March 2004 (doc C15), p 11; Hare, brief of evidence (doc B27), pp 20–21

477. Crown counsel, closing submissions (doc N20), topic 4, p 6

478. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 212

479. *Ibid.*, p 228

480. Judith Binney, response to questions of clarification, 17 November 2003 (doc B1(b)), p 20

Oral Traditions of Conditions at Te Putere

A Ngati Haka Patuheuheu witness, Ani Te Whatanga Hare, told the Tribunal:

‘Now the land “Te Putere”, it’s just like a prison camp. It was a prison camp according to our ancestors, our old people. It was only recently they passed on. No one could leave that camp to go anywhere else. You were held captive, our ancestors were held captive, our hapu for many years afterwards and for many months.

‘Another aggravating feature was that the place was poor for cultivation because it was swampy and the soil was sandy and you could not grow anything. They had to resort to looking for food in the swamps and in the sandy soils. And so they sickened and ailed and they succumbed to the illnesses that were ravaging the world because of their hunger and lack of drinking water and because of lack of medical supplies.’¹

1. Ani Te Whatanga Hare, oral evidence, Tataiahape Marae, Waimana, 11 December 2003

who were interned in them. Over 100,000 people were placed in the camps, in appalling conditions, and large numbers died of disease.

‘Binney’s description of Te Putere,’ Battersby argued, ‘and of the conditions for surrendered Tuhoe, appears bleak, and is put forward despite considerable evidence to the contrary.’⁴⁸¹ We address these arguments below on the basis of the historical evidence.

Te Putere was the most significant of the reserves established by the Crown in the coastal eastern Bay of Plenty region. It consisted of 275 acres of confiscated land, located west of Whakatane, between the Rangitaiki and Tarawera Rivers. As we have seen, the reserve was established following the surrender of Ngati Whare men and women. McLean enlisted the support of chiefs from Tuhourangi, Ngati Awa, and Ngati Pahipoto, who were to guard those kept at Te Putere. Many of these groups had a history of animosity with the peoples of Te Urewera. These traditional rivalries, as we have seen, were exacerbated by the confiscation of eastern Bay of Plenty land in 1866 and aggravated further by the wars of the previous years. Wepiha Apanui, who was both Ngati Awa and Tuhoe, revealed some of this in the hui with McLean on 25 May 1870: ‘I am an Urewera chief, and yet I have been foremost on the Government side fighting against my own blood, while they

481. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 121

too have been killing my relations of Ngatiawa.⁴⁸² By July 1870, Ngati Whare had been relocated to Te Putere. Potatoes were issued to them.⁴⁸³ Over the next few months, more of those who surrendered were sent to Te Putere.

One of the most significant pieces of evidence regarding conditions at Te Putere comes from a letter written by George Preece in September 1870. The people at the reserve were short of food, Preece wrote, and ‘they had no spades with which to start spring gardens.’⁴⁸⁴ Binney cited this letter as evidence that Te Putere was ‘little better than a military prison camp.’⁴⁸⁵ Battersby countered this by saying that the Government was aware of the food shortages and responded with appropriate actions. Battersby noted that Preece also recorded his intention to organise ‘some spades and a quantity of potatoes’ for the people at Te Putere. Subsequently, three days later, Henry Clarke organised a shipment of food.⁴⁸⁶

Battersby also argued that the admittedly poor conditions at Te Putere need to be seen in a wider context. There was a general lack of food in the coastal Bay of Plenty region in the winter of 1870. Floods destroyed crops at Whakatane, resulting in food shortages for Ngati Awa and Ngati Pukeko. In addition, the summer of 1870–1871 was unusually dry in the Bay of Plenty, contributing to food shortages across the district.⁴⁸⁷ Sub-inspector Gundry noted these conditions in a report written in January 1871. Writing from Te Teko, Gundry complained about the lack of equipment, explained why the crops had failed, and offered a suggestion as to why more people did not ‘come in’.

I have the honour to forward enclosed application from several Urewera chiefs for agricultural implements; and also to inform you, for the information of the Hon the Defence Minister, that the crops put in by the Urewera have failed, owing to the early part of the season being dry. They are complaining that the provisions issued to them are insufficient – only getting a little now and then – and are totally dependent on them, as they cannot get anything else at present. The remainder of the Urewera have heard this; and the consequence is, that those who are desirous of coming in have hesitated, preferring to remain where they are, and live on the second growth of last year’s crops of potatoes, and pigs to the uncertainty of getting sufficient rations here. I may say that they do not get a daily ration; and between the intervals of issue of rations, they are wandering about over the country digging fern root, hunting for

482. ‘Notes of Speeches at a meeting of Ngatiawa Tribe, at Whakatane’, 24–25 May 1870, AJHR, 1870, A-16, p 9

483. Mair, diary, 19 June 1870, MS-papers-1470, Alexander Turnbull Library; G Mair to Lieutenant-Colonel Moule, 14 July 1870, AJHR, 1870, A-8B, p 91 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 228)

484. Preece to Moule, 4 September 1870, AJHR, 1871, F-1, p 5 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 228)

485. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 228

486. Moule to Branigan, 7 September 1870, AJHR, 1871, F-1, p 5 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 123)

487. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), pp 124–125

pigs, getting honey, &c. This has been a great source of trouble to me, as my men were very nearly making mistakes while out scouting; but as they were in very small parties, nothing serious happened.

Notwithstanding my endeavours to prevent them from wandering, I find it impossible to do so without the usual remedy, and that I fear to do without the necessary authority. Te Kooti might pass through with his men as a scattered hunting party, if this is allowed.⁴⁸⁸

Battersby suggested that in February 1871 McLean authorised the implements and provisions that Gundry requested.⁴⁸⁹

The issue of surveillance at Te Putere was thoroughly canvassed during our hearings. Counsel for Ngati Haka Patuheuheu submitted that Battersby, under cross-examination, accepted the following propositions regarding the situation at Te Putere:

- ▶ Crown officials described Tuhoe at Te Putere as ‘prisoners’.
- ▶ A report by Gundry referring to movement around the ‘country’ could refer to movement around the region of Te Putere.
- ▶ The reference by Gundry to Tuhoe moving about the country did not make any reference to whether or not those persons had been provided with passes to do so.
- ▶ The example by Gundry does not refer to whether the Tuhoe persons were accompanied by members of Ngati Awa or other iwi.⁴⁹⁰
- ▶ Hapurona Kohi and others went to a hui in Tauranga under the escort of Te Arawa, and ‘in April 1871 Ngati Haka Patuheuheu and Ngati Whare sought permission to go to Ruatahuna for a hui, but a Crown official only permitted a few chiefs to attend and explicitly refused permission for the people generally’.
- ▶ There is ‘evidence of hardship or complaints being made’ (although qualified as ‘only made during the summer of 1870/71’) in addition to evidence that Ngati Haka Patuheuheu crops at Te Putere had failed over both summers of those years.⁴⁹¹
- ▶ There is evidence that Ngati Haka Patuheuheu ‘experienced a general lack of food, equipment, and inadequate clothing while at Te Putere’ and that ‘the provisions supplied to Te Putere were insufficient’.⁴⁹²

Binney also addressed this evidence in reply to questions from the Crown: ‘They were probably not placed under armed guard, as such, although the government

488. Gundry to Moule, 26 January 1871, AJHR, 1871, F-6A, pp 9–10 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 124)

489. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 124

490. Counsel for Ngati Haka Patuheuheu, closing submissions (doc N7), p 21

491. *Ibid.*, p 22. Battersby further qualified his agreement by asserting that the Crown took action to remedy the complaints.

492. *Ibid.*, pp 21–23

allied chiefs and their forces were all armed. They were certainly placed under a watchful surveillance, and with restriction on their movements.⁴⁹³

In sum, the consensus about this issue appears to be that the people at Te Putere were under ‘surveillance’ rather than strictly imprisoned as such. The issue of surveillance by other iwi – particularly by those with whom Te Urewera peoples had long had strained relations – is itself a difficult one. The Crown was not clear about its motives. Preece thought there were benefits in putting Ngati Haka Patuheuheu with their relatives, Ngati Manawa. Otherwise, it seems to have been purely a pragmatic decision: there were few Armed Constabulary in the district and it may have been assumed that Maori could do the job more efficiently. But little consideration was given, in our view, to the long-term effects of such demeaning surveillance either on relations among other iwi and the peoples of Te Urewera or on the latter’s confidence in the Crown.

In terms of the physical conditions at the reserve, we take it as a given that the Crown, in removing Te Urewera people from their own homes, had an obligation to ensure that they were adequately provided with food, shelter, and security. If their detention happened to coincide with a region-wide food shortage, that obligation was no less. Officials did attempt to meet shortages, but such attempts had to be sustained to ensure there was no hardship. Gundry’s report, quoted above, does suggest engrained shortages: he stated that when people discovered how difficult it was to get sufficient food at the scattered camps in the Bay of Plenty, they were less likely to leave their homes (where they knew how to best gather food). We consider that the concessions made by Dr Battersby, as outlined by counsel for Ngati Haka Patuheuheu, were correctly made. The question remains, however, as to whether – as Battersby argued – the Crown took sufficient steps to remedy the situation.

The sequence of documentary evidence that has been put before the Tribunal is as follows. In May 1870, McLean announced his intention of keeping the surrendered ‘Urewera tribe’ at Te Putere, where they could support themselves by growing food, fishing, catching eels, and ‘cutting flax for sale to Europeans.’ The Government would supply seed potatoes for planting.⁴⁹⁴ Any money that the people needed to buy clothing and supplies, therefore, would come from harvesting flax. The possibility of making money from flax, however, was never mentioned again by anyone. We conclude that this part of the Government’s plan did not eventuate.

On 19 June 1870, Mair reported that some potatoes had arrived for the ‘lately surrendered Urewera,’ and on 14 July he wrote to Lieutenant-Colonel Moule that he was going to Whakatane to see about ‘the supply of potatoes for the Urewera and Ngatiawa, who are located on the Putere Reserve.’⁴⁹⁵ At some point, seed

493. Binney, response to questions of clarification (doc B1(b)), p 20

494. Armstrong, ‘Ika Whenua and the Crown’ (doc A46), pp 39–41

495. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), pp 122–123

potatoes were planted but the crop failed. In September 1870, Preece reported that the 'prisoners now at Te Putere are badly off for food.'⁴⁹⁶ He was, however, sending a further 60 people there. He asked for a large supply of seed potatoes and spades to be sent so that the new arrivals could plant crops.⁴⁹⁷ Commissioner Clarke arranged for food to be sent, but we have no information on the quantity.⁴⁹⁸

The situation reported in September 1870 – that people at Te Putere were badly off for food – had not improved by January 1871. In that month, Gilbert Mair reported to the Government that he had found a small party of about 16 Ngati Whare and Warahoe still living at Te Whaiti. They had just planted a large crop of potatoes, and asked not to be sent to Te Putere: 'they have heard that there is a scarcity of provisions for those of their tribe who had already come out'.⁴⁹⁹ Mair agreed to their staying at Te Whaiti. McLean clearly knew of the situation at Te Putere, because he approved this decision, noting that Mair had 'acted judiciously in leaving the Natives at Ahikereru, where they had plenty of food'.⁵⁰⁰

On 26 January 1871, Sub-inspector Gundry wrote the report quoted above. The salient points were that there were insufficient tools, the crops had failed (attributed by Gundry to the unseasonably dry weather), and the people complained that the provisions supplied by the Government were insufficient. This situation had become notorious – it was a factor preventing the 'coming out' of more Tuhoe.⁵⁰¹

This report was followed in February 1871 by a hui at Whakatane. Hapurona Kohi, the Ngati Whare leader, described the situation of the surrendered people on the coastal reserves:

He stated that the land provided for them was most of it either swamp or sand, and that they could not grow a sufficiency of food. He asked that some lands in Whakatane might be allotted them. The request of Hapurona Kohi was seconded by Hamiora, a chief of the same hapu. He said that it was a fact that they needed both food and clothing.⁵⁰²

Tamaikoha spoke also:

I do not like the invitation to come out here; I will remain in my own country. I do not like the appearance of these people who have surrendered; they are living upon the Government, and we have heard that they are even now begging for food and clothes. I cannot beg; I do not know how . . .⁵⁰³

496. Preece to Moule, 4 September 1870, AJHR, 1871, F-1, p 5

497. Ibid

498. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 123

499. Gilbert Mair to Moule, 20 January 1871, AJHR, 1871, F-1, p 11

500. McLean to Moule, 28 January 1871, AJHR, 1871, F-1, p 11

501. Gundry to Moule, 26 January 1871, AJHR, 1871, F-6A, pp 9–10

502. Clarke to Native Department, 3 February 1871, AJHR, 1871, F-6A, p 8

503. Ibid

As we noted above, it was a demeaning experience to be detained under the supervision of Ngati Awa chiefs; more so now that begging the detaining authority for food and clothing had become part of the experience.

McLean had thus received two disquieting reports – Gundry’s account (dated 26 January), and the chiefs’ complaints at this February hui. In response to the chiefs’ ‘request that they should have land in Whakatane’, McLean promised that ‘inquiry should be made, and, if it were possible, some arrangement should be made’. He also promised that ‘they should have a supply of clothing, and also of food’.⁵⁰⁴ In response to Gundry’s report, however, he noted only the lack of tools, and asked Commissioner Clarke to inquire into whether tools were really needed and, if so, to send them.⁵⁰⁵ Clarke, who recorded the February hui, added from his own knowledge that ‘the complaint of these surrendered Natives was not without reason’. The land ‘upon which they have been settled is not of the best quality – a great deal of it being sand, and the other part swampy’.⁵⁰⁶ It was clearly evident by February 1871 that the coastal reserves were unsuitable, and that the surrendered peoples would continue to struggle with insufficient food and necessities unless they were given better land – or allowed to go home.

The stopgap was Government ‘rations’. In July 1871 Preece commented that ‘during the last 14 months it has cost Govt over £1000 feeding them’.⁵⁰⁷ As noted above, Gundry’s report showed that – from the recipients’ complaints – this assistance was inadequate. They were totally dependent on this assistance, and they got only ‘a little now and then’. Gundry admitted that rations were irregular and that the people had to survive between rations by digging fernroot and obtaining wild resources. This was insufficient. Gundry provided no evidence that these complaints were unjust – indeed, he did not even suggest they were wrong.⁵⁰⁸ McLean’s highly inadequate response to Gundry’s report was to ask Clarke to make inquiries and to send more tools.⁵⁰⁹ Yet, as we have seen, the February 1871 hui exposed the underlying problem that the land was too poor – a problem attributed to all the coastal reserves. Commissioner Clarke accepted that this was so.

Did the Crown take action to remedy the situation? There is a scarcity of documentary evidence on this point for 1871. In July of that year, Preece suggested that the Urewera exiles should work on roads. This would end their dependence on Government rations and at the same time provide the Government with a return for money that it would have to spend anyway.⁵¹⁰ His suggestion was not followed up until 1872.

504. *Ibid*, p 9

505. McLean to Clarke, 8 February 1871, AJHR, 1871, F-6A, p 9

506. Clarke to Native Department, 3 February 1871, AJHR, 1871, F-6A, p 9

507. Preece to McLean, 7 July 1871 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p125)

508. Gundry to Moule, 26 January 1871, AJHR, 1871, F-6A, pp 9–10

509. McLean to Clarke, 8 February 1871, AJHR, 1871, F-6A, p 9

510. Preece to McLean, 7 July 1871, MS-papers-32–514, Alexander Turnbull Library

In August 1871, Governor Bowen reported to the Colonial Office that the surrendered 'rebels' at the coast 'have already several hundred acres under crops for their own subsistence, that they are behaving in a very satisfactory manner, and are gradually acquiring the habits of peaceful industry'.⁵¹¹ The reality was rather different. We have documentary evidence that the situation had not improved by 1872. In January, a year after Gundry's report, Preece sent a telegram to McLean: 'The Ureweras at Te Putere complain of want of food. Their crops failed and they want to be allowed to return to the Urewera country. Would suggest that they be given road work to enable them to buy food.'⁵¹²

In another letter the same month, Preece urged that the people would be badly off if they were not given paid labour making roads.⁵¹³ Inspector Moule of the Armed Constabulary responded that the 'Ureweras' were not allowed to return home but that the Government would arrange for food and work on roads. David Armstrong could find no evidence of food having been supplied.⁵¹⁴ Two months later, in March 1872, Preece reported that the exiles still lacked sufficient food and clothing. He also confirmed what Clarke had reported back in February 1871: 'I have myself observed that the land at Te Putere is very poor and can certify as to the crops having failed during the last two seasons.'⁵¹⁵ Paid work on roading was supplied in early 1872 as a result of Preece's reports.⁵¹⁶ The people had little choice about accepting this work.

Finally, in April 1872, the people were released (see section 5.5.5). At the April 1872 hui to resolve their fate, we note that there were further appeals about the inadequate provision for 'the Uriwera', this time from their traditional enemies. Puia of Te Arawa said to McLean: 'We have been very good to the Uriwera; they have killed & eaten our people and they have been forgiven. What I have to say is, give them a larger piece of land than Te Putere.'⁵¹⁷

Ngati Awa leader Wepiha Apanui pointed out that the problem was not confined to Te Putere: 'You brought out the Uriwera and have given them Te Putere and [40 acres at] Hawera, but there are other Uriwera who are living on a small piece of your land, give them some more.'⁵¹⁸ This was all the more remarkable because the Tuhoe exiles had been settled on land confiscated from Ngati Awa. In the event, McLean agreed to let the Urewera exiles go home after almost two years' detention.

From this documentary evidence, we note reports from September 1870 through to March 1872 that the people detained on the coastal reserves, especially at Te Putere, had inadequate food and clothing. Government rations were

511. Armstrong, 'Ika Whenua and the Crown' (doc A46), p 50

512. *Ibid*, p 52

513. Preece to McLean, 11 January 1872, MS-papers-0032-0514, Alexander Turnbull Library

514. Armstrong, 'Ika Whenua and the Crown' (doc A46), p 52

515. *Ibid*

516. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 125

517. 'Notes of a meeting held at Whakatane on 15th April 1872' (Armstrong, supporting papers to 'Ika Whenua and the Crown' (doc A46(a)), p 163)

518. *Ibid*

insufficient to remedy the situation. From early 1872, labour on roads was provided as a source of income. Even so, the people were still short of food and clothing in March of that year. It has to be remembered at all times that the people suffering privation on the coast were there because the Government would not let them leave. Both Preece and Clarke agreed with Hapurona that the fundamental problem was the poor quality of the land that had been provided: it was either swampy or sandy, unsuitable for growing crops. As a result, the crops failed repeatedly and the people were dependent on Government rations. These rations were clearly inadequate. By April 1872, even Te Arawa and Ngati Awa recognised the detainees' plight and asked that they be given more land. We conclude that the Crown failed to provide properly for the physical needs of the people detained at Te Putere (and elsewhere on the coast).

Whether conditions were such that the term 'concentration camp' is appropriate is another matter. Binney defended her choice of the term both as indicating the Crown's preoccupation with 'concentrating people' outside Te Urewera, and as a comment on the harsh conditions on this reserve. But the term today has long had connotations of such horror that we cannot think it is appropriate in this context. No evidence was brought before us indicating that there were deaths at Te Putere arising from the conditions there. People were not held under close confinement; they were not subjected to forced labour; and they were not physically molested. The term 'concentration camp' is not one that we accept.

What is clear is that the policy of bringing whole communities out of Te Urewera was preferable to leaving large populations of non-combatants at risk in a war zone, when many of their villages had been destroyed and further Crown expeditions might yet be sent in. There is no evidence before us, however, that the policy was dictated by a concern for the safety of non-combatants. Rather, the determination was to ensure the surrender and relocation of combatants. That is clear from the documentary evidence. One side-effect may well have been the removal of non-combatants from a potential war zone. Such a policy would have had strong justification in 1869. But did the same justification exist in 1870?

As Professor Binney noted, the peoples detained at Te Putere were drawn from western Te Urewera. This was the district most clearly covered by the rongopai. As shown by McLean's apology for Whakarae, the Government did not intend to send further expeditions into that part of the country unless Te Kooti took refuge there again. Instead, the planned campaigns of Te Rangihiwini and Wahawaha, which would otherwise have turned the western Te Urewera into a war zone and resulted in the kind of destruction meted out at Maraetahi, had been abandoned virtually before they were begun. In the Waioweka district, where these rangatira had attacked Te Kooti's pa at Maraetahi, they had plundered all the food stores and destroyed all kainga and buildings.⁵¹⁹ But there was no prospect of that happening in 1870 in the area where people were being required to surrender and accept exile.

519. Clarke to Under-Secretary, 18 April 1870, AJHR, 1870, A-8B, p 33; Porter, diary, 25 March 1870, AJHR, 1870, A-8B, p 46

On balance, it appears to us that the policy was not necessary to protect the peoples of Te Urewera from Crown forces. The question arises whether it was necessary to protect them from Te Kooti, and to meet the Crown's strategy of depriving the charismatic leader of a (now only potential) support base. We return to that question below. Here, we note that the policy has been remembered in Te Urewera as evidence not of Crown intent to ensure the well-being of their communities, but of its determination to subjugate them. It is difficult to reconcile these perspectives.

In any case, the peace policy – based on surrenders and relocation – was greatly complicated by the Crown's decision to launch a Whitmore-style campaign against Waikaremoana. We turn to that attack in the next section.

5.5.4.7 The third Crown expedition: Operations in the Waikaremoana district, April to August 1870

We referred earlier to the Crown's military expedition into the Waikaremoana district, sometimes referred to as the Crown's third Te Urewera expedition. This expedition began in April 1870, and its timing and nature are crucial in assessing the commitment of the Crown to ensuring peace in Te Urewera.

The claimants argued that the Crown had disregarded peace efforts by Te Urewera rangatira. Ngati Ruapani and the Tuawhenua claimants submitted that the Government received repeated information from Te Urewera leaders, in five separate letters from April to May 1870, that Te Kooti was not in Te Urewera. Nonetheless, the Government persisted with its Waikaremoana campaign and its perception that the area was 'hostile'. Peace negotiations for the whole region came to rest with FE Hamlin, the leader of this expedition, whose inflexibility delayed true peace. He also refused to accept that Te Rangihwinui's compact applied in Waikaremoana, despite the local people's insistence that it did. Not only was peace prevented, but huge destruction and hardship were also inflicted on the inhabitants of Waikaremoana.⁵²⁰

In response, the Crown acknowledged that large-scale destruction of crops at Waikaremoana 'may have impeded progress towards peace' but 'not for long'. Its interpretation of this campaign, though, was very different from the claimants'. It argued that the action was 'limited' and Hamlin was open to talks with Waikaremoana leader Te Makarini. But, when these talks failed, the Crown had to 'eliminate' the 'militant potential' of the Waikaremoana people, hence the large scale destruction of crops that followed.⁵²¹

The Waikaremoana expedition comprised two columns under the command of FE Hamlin and James Witty, which departed Wairoa at the end of April after long delays. Hamlin's force was made up of 120 Maori (plus a further 70 of Ihaka

520. Counsel for Tuawhenua, closing submissions (doc N9), pp 53–59, 66–67; counsel for Wai 945 Ngati Ruapani and Te Heiotahoka 2B, Te Kopani 36, and Te Kopani 37 (Wai 1033), closing submissions, 31 May 2005 (doc N13), pp 19–22

521. Crown counsel, closing submissions (doc N20), topic 4, p 10

Wahaanga's group). Hamlin was at Te Kapu on 26 April, and on 29 April went on after Wahaanga's force came up (bringing Hamlin's total force to 190 men).⁵²² At the beginning of May, Wahawaha and a force of 300 Ngati Porou, accompanied by Lieutenant T W Porter, departed Turanganui.⁵²³

Various purposes of the expedition were referred to at different times: the capture of Te Kooti; ensuring he could no longer make surprise raids; and destroying any remaining support he had among the peoples of Te Urewera (including that provided by Te Waru Tamatea of Ngati Hinemanuhiri). But, in many ways, Te Kooti was not really the object of this expedition, which was ultimately conceived and directed by JD Ormond, the Government's general agent at Napier. At first, in February 1870, it had the limited goal of occupying Onepoto, after which Ngati Kahungunu would take such further 'action against the enemy as you [Hamlin] may find possible'.⁵²⁴ But, by the time the expedition actually set out (late April), Ormond quite specifically intended the destruction of the Waikaremoana communities. On 18 April, he informed McLean that the goal was to 'assist in disposing of the tribes' at Waikaremoana who were seen as a threat to Wairoa and Poverty Bay.⁵²⁵ The strategy was simple. The Waikaremoana settlements were to be raided and, if possible, destroyed.⁵²⁶

From late April on, Ormond referred to the intention:

- ▶ to 'go and clear out the Waikare-Moana kaingas';⁵²⁷
- ▶ to 'clear out the Hauhau kaingas on the Lake';⁵²⁸
- ▶ to 'root out the Hauhau kaingas on the Lake';⁵²⁹
- ▶ to 'succeed in clearing out and destroying the remnant of the Waikare-Moana Hauhau band';⁵³⁰ and
- ▶ to 'make sure that they have really left the Lake district and then thoroughly destroy all the kaingas and food you [Hamlin] can find round the lake'.⁵³¹

Te Kooti, of course, was not forgotten. There were occasional (false) rumours that he was at the lake or on his way there, and Ormond pursued the Government's strategy of depriving him of any possible support: 'it is evident that so long as Te Kooti is at large we shall continue to have to provide against continual raids on his part, and also that he can still calculate upon the support of a section of the Urewera'.⁵³² As part of this strategy, Wairoa people in Te Urewera were a particular target: 'should Ropata succeed in getting behind Waikare, and capturing the band

522. Newland to Ormond, 28 April 1870, AJHR, 1870, A-8B, p 52; Hamlin to Newland, 4 May 1870, AJHR, 1870, A-8B, pp 58-59

523. Porter to Ormond, 18 May 1870, AJHR, 1870, A-8B, p 68

524. Ormond to Hamlin, 15 February 1870, AJHR, 1870, A-8B, p 6

525. Ormond to McLean, 18 April 1870, AJHR, 1870, A-8B, pp 36-37

526. Ormond to Witty, 16 April 1870, AJHR, 1870, A-8B, p 41

527. Ormond to Colonial Secretary, 2 May 1870, AJHR, 1870, A-8B, p 48

528. Ormond to Newland, 7 May 1870, AJHR, 1870, A-8B, p 59

529. Ormond to Hamlin, 7 May 1870, AJHR, 1870, A-8B, p 60

530. Ibid

531. Ormond to Hamlin, 15 June 1870, AJHR, 1870, A-8B, p 79

532. Ormond to McLean, 3 May 1870, AJHR, 1870, A-8B, p 49

now with Te Waru, the [Urewera] tribe would be practically powerless for further mischief.⁵³³

It seems, therefore, that the presence of Te Waru was sufficient to indict all the communities scattered around Lake Waikaremoana as ‘hauhau’. This seems particularly unfair, given the rongopai made between Te Rangihiwini and Tamaikoha, which had been recognised by both Crown forces and Urewera chiefs, and given also the repeated information to the Government that Te Kooti was not in fact in Te Urewera (which was correct). In our view, what distinguished Waikaremoana and its leaders from other parts of Te Urewera was not any greater likelihood of their forming a base of support for Te Kooti. Rather, while the Crown’s face in the other parts of the district was the Kawanatanga forces, acting with considerable autonomy but answering to McLean, the Waikaremoana part of the Crown’s forces was controlled by Hamlin and Witty, answering to Ormond. Although the Wairoa Ngati Kahungunu chiefs were influential,⁵³⁴ they were not in control. Thus, whereas Wahawaha felt himself bound by Te Rangihiwini’s word, Hamlin did not (and, indeed, struggled to understand it).

Originally, the Government had planned to give full autonomy to the Wairoa chiefs, with Hamlin in an advisory capacity. This was the same arrangement that was made with the other Kawanatanga forces.⁵³⁵ The Wairoa chiefs, however, refused to set out for Waikaremoana. This was partly because of disputes with the Government, including over whether they would be paid a daily rate. Bad weather also hampered matters. Hamlin was sent to arrange a Wairoa force on 15 February but it had still not set out two months later. When it did finally depart at the end of April, it was after McLean had agreed with the other Kawanatanga forces that the fighting was over and they could go home. That it still set out appears to have been the work of Ormond, who had not stopped trying to arrange an attack on Waikaremoana in the meantime. He finally succeeded at the end of April. As part of his efforts, he turned his focus to getting Wahawaha and Ngati Porou to join this attack.⁵³⁶

After experiencing the ‘absence of zeal’ and lack of action from the Wairoa tribes, Ormond took a different approach to the management of this expedition.⁵³⁷ By May, he was treating Hamlin as commander of the force, sending him instructions and receiving his reports. Ormond also informed the Colonial Secretary that the expedition was ‘under the charge of Mr Hamlin.’⁵³⁸ Hamlin was comfortable with this change, although he was not always able to get the chiefs to agree to

533. Ormond to McLean, 6 May 1870, AJHR, 1870, A-8B, p 56; Ormond also wanted Ngati Kohatu cleared out: see Ormond to Colonial Secretary, 2 May 1870, AJHR, 1870, A-8B, p 49.

534. See, for example, AJHR, 1870, A-8B, pp 82–83.

535. Ormond to Hamlin, 15 February 1870, AJHR, 1870, A-8B, p 6; Ormond to Ihaka Whaanga, 15 February 1870, AJHR, 1870, A-8B, p 7; Ormond to Locke, 15 February 1870, AJHR, 1870, A-8B, p 7; McLean to McDonnell, 18 February 1870, AJHR, 1870, A-8B, p 7

536. AJHR, 1870, A-8B, pp 9, 13–15, 30, 36–37, 41, 48–49, 56, 59–67

537. McLean to Ormond, 21 March 1870, AJHR, 1870, A-8B, p 14; Ormond to Newland, 10 March 1870, AJHR, 1870, A-8B, p 14; Ormond to McLean, 1 April 1870, AJHR, 1870, A-8B, p 15

538. Ormond to Colonial Secretary, 12 May 1870, AJHR, 1870, A-8B, p 56

his plans. At first, the Wairoa contingent decided to go home again in early May, before the campaign had really begun. Hamlin was powerless to stop them until reinforced by James Witty and his men, whereupon part of the force turned back to Waikaremoana. Wherever possible, Hamlin persevered without the agreement of the chiefs. Eventually, in June, he informed Ormond that his successes had convinced the Wairoa leaders to cooperate in ‘carrying out my plans, and I think, for the future, I shall have no difficulty in getting them to accede to anything I propose.’⁵³⁹ As far as the Government was concerned, Hamlin and Ormond were in charge of this expedition. As Minister, McLean approved most of Ormond’s plans and actions. On one crucial occasion, however, he did not: later in June, he refused permission for Ormond to send the expedition on from Waikaremoana to Ruatahuna (see below).

On 7 May, as winter approached, Ormond wrote to Hamlin that, if his expedition could get to the other side of Waikaremoana, it would ‘be able to get at some of the enemy’s cultivations, which is of very great consequence.’⁵⁴⁰ Hamlin and Witty took different routes once they got inland. Witty’s party returned 10 days later; it had information which seemed to confirm that Te Waru was at Waikaremoana, but none about Te Kooti. A Tuhoe chief (Pataneane) and his mother were captured.⁵⁴¹ Hamlin’s force destroyed a new plantation at Matikota, and kainga at Whataroa and Ohiwa, including ‘cultivation[s] and canoes’. The following day, a portion of the force came across a camp, killing two men and one woman of rank. Hamlin mentioned the killing of this ‘woman of note’ as if killing non-combatants was unexceptional.⁵⁴² Hamlin reported that, on 7 May, his force ‘passed through five cultivations, found quantities of potatoes . . . and houses, which we left standing, in case they might come in useful to us afterwards.’⁵⁴³

It seems that Hamlin adapted the strategy of destroying crops and settlements as it suited him, leaving them intact if they could be used later. As counsel for Ngati Ruapani submitted, no thought was taken for non-combatants.⁵⁴⁴ At no time during Hamlin’s destructive forays did he bear in mind the short- or long-term well-being of people who lived in the Waikaremoana area. The destruction would have been limited, however, had the expedition ended at this point – and this nearly happened. On 7 May, only a couple of days after arriving at the lake, the Wairoa chiefs decided to return home. Hamlin was unable to change their minds, so the expedition started back on 8 May. On 9 May, the returning party met up with Witty and his Mohaka men. Thus reinforced, it turned back to the lake, stronger – so Hamlin said – for the departure of three unwilling hapu who carried on back to Wairoa.⁵⁴⁵

539. Hamlin to Newland, 8 June 1870, AJHR, 1870, A-8B, p 77

540. Ormond to Hamlin, 7 May 1870, AJHR, 1870, A-8B, p 60

541. Witty to Ormond, 4 May 1870, AJHR, 1870, A-8B, pp 57–58

542. Hamlin to Newland, 4 May 1870, AJHR, 1870, A-8B, pp 58–59

543. Hamlin to officer commanding, 9 May 1870, AJHR, 1870, A-8B, p 60

544. Counsel for Wai 945 and Wai 1033 claimants, closing submissions (doc N13), p 21

545. Hamlin to Newland, 9 May 1870, AJHR, 1870 A-8B, pp 60–61

Meanwhile, in early May, Wahawaha's force, which was in the field only briefly, captured remaining sections of Ngati Kohatu.⁵⁴⁶ Wahawaha had captured a number of them at Maungapohatu, and he evidently wished to complete the task.⁵⁴⁷ They were to be brought out of Te Urewera to reside with the rest of the hapu under his supervision on the East Coast. By the end of May, a total of 86 Ngati Kohatu had surrendered.⁵⁴⁸

Ormond had had great plans for Wahawaha's involvement in the attack on Waikaremoana, but it seemed that – for Wahawaha at least – the rongopai was still holding. Although he encouraged – indeed taunted – Ngati Kahungunu to make a name for themselves in attacking Waikaremoana, and remained determined to capture Te Kooti, his main objective in marching towards Waikaremoana was to hunt and capture Ngati Kohatu. When it looked as though Ngati Kahungunu's advance had forewarned Ngati Kohatu and given them a chance to flee, Wahawaha retired to Wairoa, leaving letters instructing Ngati Kohatu to surrender. Although he expressed his determination to return in the summer to capture Te Kooti, Wahawaha seems to have been careful not to attack any Tuhoe during his advance on Waikaremoana.⁵⁴⁹ Ormond reluctantly 'came to the conclusion that it was undesirable to push Ngatiporou to do more this winter'. He rejoiced, however, that Wahawaha's taunts seemed to have encouraged Ngati Kahungunu to take more action.⁵⁵⁰

In the meantime, Hamlin and Witty, having united their forces, scouted the areas around Lake Waikaremoana through to the end of May, making further plans for attacks on Tikitiki Pa. This occurred at the same time as McLean admitted being in the wrong over Whakarae and pledged his support for a peaceful solution (negotiated surrenders and temporary relocation). Witty reported seeing, on 22 May, a large party of 80 or 100 Maori crossing the lake by canoe. He believed that 'a strong reinforcement had arrived from Ruatahuna, and perhaps Te Kooti himself'.⁵⁵¹

Hamlin and Witty finally pushed across to the other side of the lake at the beginning of June. They took Matuahu Pa, where they had an exchange of fire with the inhabitants who had taken up positions on an adjacent hill. Then, having taken the northern shore of Waikaremoana, the party set about 'examining and destroying all the different kaingas on the Lake'. Hamlin wrote: 'The amount of potatoes on this side of the Lake at the various clearings is something marvellous, and we all estimate the quantity already taken, eaten or destroyed at (including a large quantity of seed potatoes) certainly not less than 200 tons.'⁵⁵²

546. Porter to McLean, 30 May 1870, AJHR, 1870, A-8B, p 72

547. Ormond to McLean, 18 April 1870, AJHR, 1870, A-8B, p 36

548. Porter to McLean, 30 May 1870, AJHR, 1870, A-8B, p 72

549. Wahawaha to Ormond, 19 May 1870, AJHR, 1870, A-8B, p 63; Porter, diary, 4–17 May 1870, AJHR, 1870, A-8B, pp 68–69; Porter to McLean, 30 May 1870, AJHR, 1870, A-8B, p 72

550. Ormond to Colonial Secretary, 23 May 1870, AJHR, 1870, A-8B, p 67; Ormond to Colonial Secretary, 23 May 1870, AJHR, 1870, A-8B, p 69

551. Witty, diary, 22 May 1870, AJHR, 1870, A-8B, p 72

552. Hamlin to Newland, 8 June 1870, AJHR, 1870, A-8B, pp 76–77

The question we need to address is whether the conduct of this expedition was justified, given overall developments in Te Urewera. It began, after all, after the rongopai had been made, and at the very time when St John made his attack on Whakarae. During June and July, peace moves were under way in western Te Urewera, as we have seen. What is evident, however, is that Ormond, who had general oversight of the Waikaremoana expedition, was proceeding as if events elsewhere in Urewera had little to do with his own operation. It is true that this expedition had been planned well before April, and was held up particularly by the weather and by the reluctance of Ngati Kahungunu. It cannot be said, therefore, that its timing in April–May was particularly calculated.

But Ormond's instructions seem largely divorced from any overall understanding of the tentative moves toward peace being made, particularly by the Ruatahuna chiefs. They were based, moreover, on a general assumption that Te Kooti was bound to be in Waikaremoana, or on his way there. Ormond repeated this constantly. Both Hamlin and Witty suggested from time to time that Te Kooti might have arrived there. None of this was based on any real intelligence or information. Officers in the west of Te Urewera consistently reported that Te Kooti remained in the upper Waioweka region, which was true.⁵⁵³ Ormond himself, on occasion, admitted that he had been wrong.⁵⁵⁴ In June, given the military intelligence available, Ormond noted that, even if Te Kooti were at Waikaremoana, 'he would increase very little indeed the strength of the enemy.'⁵⁵⁵

We agree, therefore, with Binney's evidence that the Waikaremoana campaign was unnecessary. We do not accept Dr Battersby's argument that the Government did not know where Te Kooti was and had grounds to consider that he might be at Waikaremoana.

Despite all this, the widespread destruction in which the force was engaged was stated to be designed to deny Te Kooti a base. As Hamlin wrote on 23 June, from Matuahu:

our canoes and boats are daily scouring all the different cultivations, of which there are about 100, and each of them is being denuded of potatoes, tons of which are being brought in here every hour in the day. From the almost fabulous amount of potatoes round this Lake, it is evident that this was intended to be the *dernier resort* [last resort] of Te Kooti and his followers, as the quantity we have already got and destroyed would keep 1000 men for fifteen months.⁵⁵⁶

Hamlin seems not to have considered that the destruction of crops around Ruatahuna the previous year, or the fear of continuing destruction, might lead the

553. See, for example, Preece to Moule, 7 June 1870, AJHR, 1870, A-8B, p 74; Binney, 'Encircled Lands, Part 1' (doc A12), pp 214–230.

554. Ormond to Hamlin, 19 June 1870, AJHR, 1870, A-8B, p 81

555. Ibid

556. Hamlin to Ormond, 23 June 1870, AJHR, 1870, A-8B, p 84

people to plant enormous quantities, both to replenish supplies and in the hope that the Crown would miss some.

The destruction at Waikaremoana served no useful strategic purpose. Though a number of armed men were seen about the lake, they were not engaged in any offensive activity. We considered whether the destruction of kainga and crops might be justified on the grounds that it hastened the willingness of those living round the lake (and perhaps also the people at Ruatahuna and Maungapohatu) to surrender. But the evidence suggests the opposite was the case. All it did was delay peace, as the Crown has in effect conceded.

On 10 June 1870, Inspector Moule disagreed with Captain Preece's suggestion that a party of picked men go up the Waioweka Gorge to Te Pato to try to capture Te Kooti. He reasoned that, since 'the whole of the Urewera seem inclined to surrender', such an expedition 'might have the effect of alarming them'. Major Mair and Captain Mair both agreed with him.⁵⁵⁷ Preece himself had stated that 'with a little management a large portion of them [the 'Urewera'] will surrender'.⁵⁵⁸ But, at the same time, Hamlin reported that he and his Ngati Kahungunu forces might proceed to Ruatahuna after destroying 'all the different kaingas on the Lake'.⁵⁵⁹

On 11 June, Hamlin reported that they had found 100 'Hauhaus' at the foot of Huirau, on the track to Ruatahuna: 'They are very much alarmed, and have been reinforced from Ruatahuna.' Hamlin established communications with them, and gave them time to surrender:

We have had communication now with them two days, and I expect some of them to surrender to-day, and once the ice is broken I think they will all give in. They are dreadfully afraid of our people that, after surrendering, they will be butchered. I have, however, assured them that their lives will be spared, and all terms with them will rest with the Government.⁵⁶⁰

Here, for the first time, Hamlin heard the people speak of the *rongopai*: 'They say that from Ruatahuna out, and down to Maungapowhatu, have accepted the *Rongopai*, and the Taupo side is the *Taha Ngawari* [more peaceful side] to surrender to.'⁵⁶¹ He himself was sceptical of it: 'It is quite evident the *Rongopai* granted to them by Majors Kemp and Ropata are only nominal, and they can turn against any other Government party they think proper.'⁵⁶²

Hamlin held meetings with three leaders, one of whom was Tamarau Te Makarini. Te Makarini, as we have seen in the last chapter, had endured a year and a half's imprisonment at Whakatane under the supervision of Ngati Awa and Ngati Pukeko. Hamlin recorded the chiefs' 'willingness to surrender' but noted their trepidation, and their alarm at the force Hamlin had brought. They 'did not

557. Moule to Commissioner Branigan, 10 June 1870, AJHR, 1870, A-8B, p 74

558. Preece to Moule, 7 June 1870, AJHR, 1870, A-8B, p 74

559. Hamlin to Newland, 8 June 1870, AJHR, 1870, A-8B, p 77

560. Hamlin to Ormond, 11 June 1870, AJHR, 1870, A-8B, p 78

561. *Ibid*

562. *Ibid*

like the idea of being made actual prisoners, as they expected they would then be made gaol-birds, *Mokaikai*, and wished us to return to the Wairoa, and they would then come down and surrender.’

Hamlin informed them that the Government had no wish to ‘exterminate’ them and they ‘need not dread surrendering’. Hamlin’s statements on the rongopai were hardly reassuring: the rongopai could not be acknowledged, he said, because they had not come to the Government to ‘accept any terms’ and continued to fight instead.⁵⁶³

Te Makarini went back to Ruatahuna, however, to try to advance the peace talks – and, in his absence, Hamlin pushed further up the northern end of the lake, moving on the pa at Mangarerewai and Hereheretau, both of which were largely deserted. It was then that he embarked on massive destruction of the many cultivations around the lake.

Ruatahuna dismay was evident in the letter Te Makarini brought from the chiefs when he returned to the lake on 26 June, referring again to the peace established by McLean ‘in Whakatane, Te Waimana, and Ruatahuna’, and challenging Hamlin over whether he too would respect the peace.⁵⁶⁴ Hamlin told Ormond that ‘they harp very much on the peace made with them by Major Kemp, which they now style as Mr McLean’s peace (Rongopai)’. This comment seems to indicate that the chiefs had read McLean’s statements about the rongopai as a commitment to it; perhaps they hoped also to impress this on Hamlin. Hamlin, writing to Ormond, professed ignorance of the terms of the peace – and, he added, of the dealings of Captains Preece and Mair with the chiefs. He complained that he was at a disadvantage, and did not know how to proceed.⁵⁶⁵

Ormond was quick to respond. On 28 June, he wrote to Hamlin that there was no confusion or difference in what was being offered to Tuhoe by the various Government parties. McLean’s peace was on no other terms than that Tuhoe must surrender unconditionally and come out to the coast. There, the Government ‘would determine what is to be done with them’: those who had committed no ‘crimes’ would have their lives spared, and those who had taken part in ‘notorious murders’ would not. Hamlin was ordered not to vary this policy: ‘These instructions are so definite that you can have no difficulty in following them, and you will please inform the Chiefs of the purport of what I have written to you.’⁵⁶⁶

Ormond also supported Hamlin’s request to be allowed to march on Ruatahuna. He suggested to McLean that, if Paerau and Whenuanui did not immediately surrender, an expedition should be sent there from the west: ‘I believe a demonstration of force would suffice to bring them to reason, and would materially assist Hapurona [Kohi]’s negotiations.’⁵⁶⁷ McLean rejected the suggestion, but it seems

563. Hamlin to Ormond, 16 June 1870, AJHR, 1870, A-8B, pp 79–80

564. Te Whenuanui et al to Hamlin et al, 28 [? June] 1870, enclosed in Hamlin to Ormond, 26 June 1870, AJHR, 1870, A-8B, p 85

565. Hamlin to Ormond, 26 June 1870, AJHR, 1870, A-8B, p 85 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 138)

566. Ormond to Hamlin, 28 June 1870, AJHR, 1870 A-8B, p 86

567. Ormond to McLean, 21 June 1870, AJHR, 1870, A-8B, p 83

remarkable that it was made at all. Ormond, it seems to us, was not merely out of touch with Government policy in the rest of Te Urewera; he was actually driving a different policy, with very unfortunate effects for the peoples of Waikaremoana.

Kohi and the Ngati Whare delegation, who travelled to Ruatahuna to see if they might be able to persuade Tuhoe to surrender, were there by mid-July. They carried a letter from Clarke that urged the advantages of ‘coming in’. Clarke gave the chiefs a number of assurances. First, the Government would confiscate no more land. Secondly, McLean had decided to honour the rongopai if Tamaikoha surrendered, ‘and there will be no thought toward him on account of his alleged crime’. In return, they were not to admit Te Kooti into their district, and they were to ‘come outside’. Clarke concluded his letter with a whakatauki: “He kura kainga tena e hokia.” (A proverb meaning that it is but leaving home to be again visited under more prosperous circumstances.)⁵⁶⁸

Of great importance to the chiefs was Clarke’s added promise that he would ask the Government to suspend military operations ‘on the other side [of] Waikaremoana’ to give them some breathing space while they considered their decision.⁵⁶⁹

After they arrived at Ruatahuna, the Ngati Whare chiefs wrote back anxiously to Clarke that the Crown’s military activities at the lake were causing them problems. The people were apprehensive: ‘Friend, make haste and send word to Waikare. Do not allow any expedition there (to advance from that side.) The Urewera are undecided – are looking both ways.’⁵⁷⁰

The decision to come in would not be made quickly, despite a shortage of food at Ruatahuna, where the people from the lake had also assembled. Te Whenuanui and others wrote to the Arawa chiefs on 16 July of their support for the peace. But they would not come in because they were ‘confused by the many words from you, the Government.’⁵⁷¹ Preece had also concluded that Tuhoe were struggling to interpret the Crown’s intentions: ‘The Urewera are undecided what to do; they say we are telling them to come out one side and fighting them on the other, meaning the expeditions to Waikaremoana.’⁵⁷² That was hardly a demonstration of good faith. And Mair also wrote that the ‘Urewera’ were prepared to ‘come out’ but their suspicions of Government treachery made them reluctant.⁵⁷³ He also referred to Tuhoe fears of becoming ‘Mokais’ (slaves) if they were to surrender.⁵⁷⁴ This was hardly surprising. Though Hamlin was finally told to hold off any further action while the Ngati Whare chiefs visited Ruatahuna and Maungapohatu – thus preventing further damage to relations with Tuhoe – it was too late to stop his wide-

568. Clarke to Paerau and others, 7 June 1870, AJHR, 1870, A-8B, p 88

569. Ibid

570. Hapurona Kohi and others to Clarke, 12 July 1870, enclosed in Moule to Branigan, 22 July 1870, AJHR, 1870, A-8B, p 92

571. Te Whenuanui and others to Arawa chiefs, 16 July 1870, AJHR, 1870, A-8B, p 93

572. Preece to Moule, 7 June 1870, AJHR, 1870, A-8B, p 74

573. G Mair to Moule, 22 July 1870, AJHR, 1870, A-8B, p 92 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 227)

574. Mair to Clarke, 28 July 1870, AJHR, 1871, F-1, p 3

spread destruction at the lake.⁵⁷⁵ More hui were held at Ruatahuna through to the end of July, without immediate outcome.

The onset of heavy snowfalls at the beginning of July ended any discussion of military activity. Ihaka Whaanga wrote to Ormond requesting the entire force to withdraw to Wairoa. With the formal surrender of Te Makarini at the end of June, Hamlin agreed.⁵⁷⁶ The arrival of winter meant:

it would be better to return to the Wairoa with Makarini and the others, and not to risk a failure by attempting at the present season to bring coercion to bear on the remainder of the Urewera at large, but rather to try and induce them to come on by means of Makarini's influence.⁵⁷⁷

Te Makarini was anxious to persuade the rest of his people to surrender who were 'at present too frightened to come in'.

Ormond agreed to the withdrawal, though he instructed Hamlin to conduct one last sweep of the lake area: 'Before leaving Waikaremoana, you will, I trust, be able to render the Lake District useless to the Urewera as a place of resort during the present winter, and by destroying the food, make it out of the question that it should become so.'⁵⁷⁸ As in 1869, Ormond hoped to starve the people into submission. Hamlin and Witty withdrew their forces at the beginning of July.⁵⁷⁹

'At this point,' commented Battersby, 'circumstances allowed for consistency in the government's approach, with the preference for dialogue with Urewera groups at Ruatahuna and Waikaremoana coinciding, and with operations suspended pending the outcome of peace attempts.'⁵⁸⁰ Battersby's evidence, however, does not explain why Ormond's military operation was so out of step with Crown policy in the first place (other than, as noted, the unfounded rumours that Te Kooti was always either at Waikaremoana or about to arrive there).

What the Waikaremoana expedition achieved, in our view, was to slow the general peacemaking in Te Urewera, and to cloud the spirit in which it was conducted. The Crown has conceded its destructiveness was an 'impediment' to peace. But it has not acknowledged the difficulties its Waikaremoana expedition created for Tuhoë as they tried to decide on how to respond to the Crown's offers. They had considered themselves bound by the rongopai; and they knew McLean had admitted the Crown's mistake in attacking Whakarae. They did not understand why the Crown would then attack Waikaremoana. This was particularly the case after they received Clarke's letter, which doubtless seemed to confirm their view of the importance of the rongopai as well as the Government's intention to include Waikaremoana within its peacemaking. The chiefs were prepared to make peace,

575. AJHR, 1870, A-8B, pp 81-85

576. Hamlin to Ormond, 2 July 1870, AJHR, 1870, A-8B, p 90

577. Ibid

578. Ormond to Hamlin, 5 July 1870, AJHR, 1870, A-8B, p 90

579. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 138-139

580. Ibid, pp 135-136

but the activities of the forces at Waikaremoana and their potential to strike at Ruatahuna made it a fragile prospect at that time.

5.5.4.8 Further opportunities for peace, August to November 1870

During the second half of the year, the chiefs of northern Te Urewera began to accept peace on the Crown's terms. From the end of July, as Binney has described, the 'trickle of Tuhoe submissions began'.⁵⁸¹ A group of 30 Tuhoe under Te Hunui went with Te Hapurona Kohi to Fort Galatea. Another group of about 10 went with Rakuraku to the north.⁵⁸² But the remaining people at Ruatahuna and Waikaremoana hesitated. This may have been because so many were ill. Te Harau and 'all the chiefs' wrote to Hamlin from Waikaremoana early in August, stating that the main portion of 'Te Urewera have surrendered to Hapurona and Rakuraku, and the remainder are laid up with sickness'.⁵⁸³ But their mistrust of Crown intentions, in the wake of the depredations at Waikaremoana, was obviously a factor.

The chiefs were concerned that the Crown's forces might enter their territory in pursuit of Te Kooti, with similar results as at Waikaremoana. Tuhoe indicated on two occasions that the forces should remain outside, but if Te Kooti were to enter their territory he would be captured. Their letter to Hamlin said as much:

Let the good continue. Should you break faith in our peace, making the offence will be yours; and should I act falsely, the evil will be mine. Now let the good continue. This is a word on another subject to you. Te Kooti has been entirely forgotten by us in these days. Should you desire to follow after Te Kooti, go by outside (of our boundaries). Should Te Kooti come inside (our boundaries) we will advise you of it.⁵⁸⁴

A letter from the assembled leaders at Ruatahuna – including Te Whenuanui, Paerau, and Tamaikoha – echoed these sentiments. The chiefs stated firmly that they no longer supported Te Kooti, and that if he entered their district they would 'take him'.⁵⁸⁵ The letter referred to the peace made at Wairoa in 1867, but its main point was to address the question of Tipene's death and its significance for the rongopai:

I have agreed that the death of Tipene shall become a peace offering. This peace I will not set aside. My address to you [the Wairoa chiefs] and to Mr McLean has been this, viz to spare the European who killed Tipene. It is my particular wish that he

581. Binney, 'Encircled Lands, Part 1' (doc A12), p 229

582. Te Harau and Te Paraone to Te Makarini and Wairoa chiefs, 7 August 1870, AJHR, 1871, F-1, p 4; Wahawaha to McLean, 26 July 1870, AJHR, 1870, A-8B, pp 94–95

583. Te Harau to Hamlin and Wairoa chiefs, 7 August 1870, AJHR, 1871, F-1, p 4

584. Ibid

585. Te Ahoaho, Te Whenuanui, Te Ahikaiata, Paerau, Tamaikoha, and 6 others, 15 August 1870 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), pp 325–330)

should be set free because I have made that killing a peace offering for us both; this peace will not be set at nought by me, never, never.⁵⁸⁶

(We presume that ‘the European who killed Tipene’ referred to St John, who had been dismissed from his post as a result of the attack on Whakarae. In the same way that Tamaikoha described himself as (ultimately) responsible for the men who had been killed in 1867 and 1868, so too was St John seen as responsible for Tipene’s murder.)

Behind the scenes, peacemaking between Maori groups continued. In August, Te Makarini returned from Wairoa to try to persuade the Waikaremoana people to come to the coast. He was accompanied by a senior Ngati Kahungunu chief, Te Hapimana, and his party, and also by Te Paea, the wife of Tiopira Hape, whom Binney says was a skilled mediator. Although this group carried with them the Government’s terms – unconditional surrender and coming out to the coast – Binney suggested that a different outcome was achieved. The Waikaremoana people declined to ‘come out’ at this point, but Te Paea still made a peace agreement between them and Ngati Kahungunu of Wairoa. The latter then took no further part in expeditions to Te Urewera.⁵⁸⁷

For the Government, Te Kooti was still the sticking point. On 27 June, McLean had instructed Ormond that ‘the Urewera must come out to the coast before any peace is concluded’. This was his strategy all along: ‘Peace cannot be made with them on any terms involving their remaining as a back-bone for Te Kooti, and to make future raids on our settlements.’⁵⁸⁸ The question has to be asked whether Te Kooti was still such a threat in mid-1870 that the Crown was justified in taking all authority from the Urewera leaders and removing all the peoples of Te Urewera from their homes.

In fact, Te Kooti was poised to make a new raid on a kainga on the East Coast that would reveal that his circumstances were much reduced. On the morning of 26 July, Te Kooti and about 20 men (the estimate of Te Kooti’s wife, Huhana) descended upon Uawa (Tolaga Bay). The purpose of the attempted attack appears to have been to obtain more people to bolster the size of his group. According to Huhana, Te Kooti said that ‘the *kokiri* was not to kill, but to capture a tribe that he wished to have with him. He did not say what tribe, but he said he wished to bring them safely to our kainga at Te Weranga.’⁵⁸⁹

As the *kokiri* moved towards the pa, a group of Uawa Maori who were out early discovered their approach.⁵⁹⁰ The *kokiri* then began shooting at the pa, injuring two in the process. Having lost the element of surprise, Te Kooti and the *kokiri* withdrew along the same track back to Te Urewera. Porter and Sub-inspector

586. Ibid

587. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 230, 233; Binney, *Redemption Songs*, pp 238–240

588. McLean to Ormond, 27 June 1870, AJHR, 1870, A-8B, p 86

589. Statement of Huhana Whakarau in Locke to Ormond, 8 August 1870, AJHR, 1870, A-8B, p 100

590. Porter to McLean, 26 July 1870, AJHR, 1870, A-8B, p 93

Richardson (of the Poverty Bay Armed Constabulary) soon set out from Turanga with a force of 100 men in pursuit. Having travelled through the bush for some distance, the group came across Te Kooti's camp and began moving to surround it. However, a few of the men began shooting prematurely, thus alerting Te Kooti and his followers of the approaching force.⁵⁹¹ Huhana was captured but Te Kooti once again escaped in the panic.

The interrogation of Huhana provided close intelligence on Te Kooti's circumstances at this time. It will be recalled that Ormond, back in June, had noted that, even if Te Kooti came to Waikaremoana, 'he would increase very little indeed the strength of the enemy'.⁵⁹² This view seemed confirmed by the abortive raid on Uawa by such a tiny force. On the one hand, the Government still had reason for concern about Te Kooti's ability to appear suddenly and make attacks. This particular attack, however, showed that he had few people remaining with him, and that he certainly was not capable of the kinds of attacks carried out in 1868 to 1869. After the raid at Uawa, Sub-inspector Richardson said that there was no danger to be feared from Te Kooti in his 'present despicable condition', with only 20 men and 14 rifles between them.⁵⁹³ It was still considered important to prevent Te Kooti from regaining support in Te Urewera, but it is difficult to find in the evidence any real panic about him after this.

A key question for our inquiry, and for the Government at the time, was the basis on which the Te Urewera peoples had turned away from Te Kooti, whose spiritual leadership had been so important to them. Were their professions of opposition to Te Kooti, now almost universal by mid-1870, solely a result of the military force that had been brought to bear against them? Te Rangihwinui and even Wahawaha trusted the chiefs' word and respected the rongopai, but could the Government trust them as well?

On this question, we were assisted by the Tuawhenua researchers. They told us: 'Te Kooti's legacy became central to Ruatahuna's existence. His faith and his prophetic words and waiata remained through time to guide and support the people of the heartland.'⁵⁹⁴ They also explained that 'The people of Ruatahuna do not blame Te Kooti for their suffering during the military campaigns wrought by the government in the 1860s and 1870s. They point the finger squarely at the government.'⁵⁹⁵ Kaumatua Mihaka Herewini reminded us 'He is the faith of this place.'⁵⁹⁶

Professor Wharehuia Milroy, who is a descendant of Te Makarini, explained his tipuna's choice to turn away from Te Kooti after initially supporting him strongly:

He looked to Te Kooti and to the Ringatu faith as salvation for Tuhoe and to prevent subjugation by the Crown, that is, to prevent surveys and sales of Tuhoe land

591. Richardson to Westrup, 2 August 1870, AJHR, 1870, A-8B, pp98-99; Porter to McLean, 2 August 1870, AJHR, 1870, A-8B, p99

592. Ormond to Hamlin, 19 June 1870, AJHR, 1870, A-8B, p81

593. Richardson to Major Westrup, 2 August 1870, AJHR, 1870, A-8B, pp98-99

594. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p263

595. *Ibid*, p262

596. *Ibid*, p263

Te Ahoaho's Lament

Wharehuia Milroy and Hirini Melbourne described how Tuhoē rangatira Te Ahoaho, faced with Te Whenuanui's surrender in September 1870, composed 'a lament in memory of lost land, of lost lives, of a lost cause'.¹ The Tuawhenua researchers provided the following version of this waiata:

*Noho noa te tinana, ka nuka ki te haere
He turehu naku i te ao, i te po,
Noho ana au i Ruatoki ra,
Te whenua i puritia, te whenua i tawhia,
Kua hurihuri atu ko te roa ko te tau,
Mau tonu te whakaro ke Kaimatahi ra, e
Ka riro a Tuhoē, ka waiho matau e ra,
Hai tiaki ao-rere ki Nga-rewa-nui ra e
Hai whakarongo iere te 'rori' ki Kiri-tahi e
Ka poto i ahau te whenua te haere ra,
Homi mai nei au i raro i Aotea – e
Pau ke te manako ki Whakau ra ia*

*As I sit here a captive, my discontented spirit
Yearns to be free
I remain here in Ruatoki
The land that was fought for, and held.
Throughout the years
I will never forget Kaimatahi
Tuhoē has been vanquished and we the survivors
To maintain the clouds over Ngarewa
And listen to the echoing cries along the path to Kiritahi
I travelled the land in haste
And on my return from Aotea
The longing for the dead that lie at Whakau is over.²*

Tamati Kruger commented: 'The argument of Te Ahoaho was, what was next? What now? Are you just going to sit and gaze at the clouds going past? That was a sign that there was no mana. Te Ahoaho did not want to live without mana and relinquish to the crown.'³

1. Te Wharehuia Milroy and Hirini Melbourne, 'Te Roi o te Whenua: Tuhoē Claims under the Treaty before the Waitangi Tribunal' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1995) (doc A33), p183

2. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p249

3. Tamati Kruger, claimant translation of transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44(a)), p21

Professor James Te Wharehuia Milroy, who filed the original Wai 36 Tuhoe claim in March 1987. Professor Milroy and his whanaunga Dr Hirini Melbourne wrote 'Te Roi o te Whenua', a report setting out Tuhoe's grievances against the Crown for the confiscation of their lands in 1866 and the Crown's failure to respond to their long search for redress. When the Tribunal and the Crown arrived at Waimana for the first hearing of the Te Urewera claims, Professor Milroy delivered a whaikorero at the powhiri conveying the deep anger and anguish of Tuhoe at the losses they had suffered since their first experience of Crown policies and Crown acts in the 1860s.



Unknown

at Waikaremoana. That was the view of Tuhoe and Te Makarini personally . . . It is correct to say that Te Makarini did not remain a close ally of Te Kooti during the period that Te Kooti was pursued by the soldiers at Waikaremoana. Their relationship had become embittered. The first reason was that Te Kooti had taken Te Makarini's wife, Mareta. Secondly, Te Makarini disapproved of Te Kooti bringing the conflict into Waikaremoana. His hapu living there were attacked and so he disclosed to the Crown troops the places where Te Kooti could be found. Much has been written by researchers as to the effect of the campaign by Crown troops, on the inhabitants of Waikaremoana in 1870. They were left homeless in the middle of winter to starve . . .⁵⁹⁷

The very things that Tuhoe had looked to Te Kooti to prevent were now being visited upon them. Professor Milroy's evidence explains the change of heart that resulted. The turning away from Te Kooti as a fighting leader did not mean the people's commitment to his religious teachings was diminished.

But what is clear, despite the doubt and suspicion expressed by officials, is that Te Urewera leaders' rejection of Te Kooti's warfare was permanent from February 1870, when he was sent out of Te Urewera by the people at Ruatahuna. From that point on, and especially after the forging of peace between Te Rangihiwini and Tamaikoha, the peoples of Te Urewera did not resume fighting. Little or no resistance was offered at Waikaremoana. In May 1870, Te Meihana of Ngati Manawa

597. James Te Wharehuia Milroy, brief of evidence (English), 15 October 2004 (doc H51(a)), pp 6-7

advised the Government that the ‘Urewera’ had ‘fixed a boundary for this man’. As Binney explained, an aukati had been set to keep Te Kooti out of Te Urewera.⁵⁹⁸ There were only two hapu of whom Tamaikoha was uncertain, and their situation was resolved in 1871. Even so, Te Urewera leaders sought to maintain their authority, their mana motuhake, in their rohe. They were determined to stop Government forces entering their lands at will, and made every effort to resist the Government’s attempts to remove them from their homes. They tried to maintain this position with the Government in August 1870.

No military operations were in fact conducted inside Te Urewera for the rest of the year – the outcome, in our view, of the Crown’s acceptance that Te Kooti was no longer a really serious threat, and of the repeated Te Urewera assurances that he was not in their territory anyway. Despite illness and trepidation, people continued to leave Te Urewera to the north and west. At the beginning of September, the last of Ngati Whare and Ngati Haka Patuheuheu surrendered. Preece reported that there were no people left at Ahikereru.⁵⁹⁹

At the end of September, the ongoing dialogue with the people at Ruatahuna began to bear fruit. On 25 September, Te Whenuanui, along with a number of other chiefs, travelled down to Whakatane where he was met by William Mair and the chiefs of Ngati Awa. Mair recorded in his diary that the chiefs had ‘to expel TK [Te Kooti] if he went to Ruatahuna, calling upon us to assist and giving us all information of his movements.’⁶⁰⁰ Tuhoe leaders wanted their mana motuhake respected. Professor Wharehuia Milroy and Hirini Melbourne quoted the statement of Te Ahikaiata: ‘Peace has now been laid down between us. You have mana on your side. I have mana on my side. If you trespass on our side you will be wrong, I shall be wrong also if I trespass on your side.’⁶⁰¹

Mair and Te Whenuanui exchanged gifts as a symbol of their agreement:

To make the peace binding, Te Whenuanui gave two greenstone mere (one named Tuhua) and three cloaks. In return, he received a watch (to be named Te Maungarongo), a gold pin, a gold ring, and a shawl.⁶⁰²

Wepiha Apanui of Ngati Awa told McLean: ‘These articles were given as a pledge that the fighting should be over and in token of the peace making.’⁶⁰³

Te Whenuanui then went with Mair to Whakatane. He wrote to McLean that he had ‘come under the wings of the bird of peace’. The nature of this exchange indicates the importance Te Whenuanui attached to it: it was a major step on the path

598. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 223

599. Preece to Moule, 4 September 1870, AJHR, 1871, F-1, p 5

600. Mair, diary, 25 September 1870 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 141)

601. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), p 183

602. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 249

603. Wepiha Apanui to McLean, 27 September 1870 (Binney, additional supporting papers (doc A12(b)), p 638)

to peace. 'I have fulfilled your word,' he wrote, 'and given heed to your laws.'⁶⁰⁴ Now it was for McLean to protect him from Te Kooti, to feed and clothe him, and to give him arms and seed – in other words, to provide for the welfare of his people. Importantly, Te Whenuanui saw himself as remaining in Te Urewera; Ruatoki was far enough to 'come out': 'I have given up my home and Te Kooti's laws, and have come out to live at Ruatoki.'⁶⁰⁵ Paerau joined him there in October.

At the same time, Tamaikoha took steps to resolve his relationship with the colonial government. McLean, it will be recalled, had tried to change the whole basis of peacemaking with Te Urewera, insisting that Tamaikoha surrender unconditionally and come out to the coast. Tamaikoha had not gone to meet McLean.⁶⁰⁶ But he wrote to William Mair in August and September 1870, requesting Mair to visit him at Te Waimana. On 16 October, Mair travelled with a number of Ngati Awa, Ngati Pukeko, and Te Arawa chiefs to Waimana, where they met with Tamaikoha and about 60 men, women, and children.

Tamaikoha's speech at this hui was recorded (in summary form) by Major Mair. According to his account, Tamaikoha stated at once that 'he had called this meeting for the purpose of establishing the peace made with Major Kemp'.⁶⁰⁷ He would never strike another blow against 'either European or Queenite', unless forced to do so. Only three things would cause him to fight again:

- ▶ the forcible taking of his land;
- ▶ the murder of any of his people by 'the Government side'; and
- ▶ the surrounding of his pa at night (a reference to the circumstances in which St John attacked Whakarae).

Clearly, both the confiscation and the killing of his uncle weighed heavily on Tamaikoha. He, however, wished to live in peace. Pakeha and 'Queenites' could come into Waimana and onto Maungapohatu for any purpose; they might search for Te Kooti.⁶⁰⁸ But Tamaikoha insisted that he should be given warning of such expeditions and that his cultivations must be left alone. He added,

The peace made with Kepa had been observed by him, and though broken with blood at Ohiwa, he had not retaliated. He should have liked to see the authors of that *kohuru* here to-day. Why had they not come? This peace applied to all the Ureweras, and they would not be the first to break it.⁶⁰⁹

Mair, on behalf of the Government, assured Tamaikoha that none of his land would be interfered with and that his people would not be killed; they 'would not

604. Te Whenuanui to McLean, 27 September 1870, MS-papers-0032-0694D, Alexander Turnbull Library

605. Ibid

606. Jeffery Sissons, 'Waimana Kaaku: A History of the Waimana Block' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A24), p 25

607. Mair to Clarke, 21 October 1870, AJHR, 1871, F-6A, p 3

608. W G Mair to Clarke, 18 October 1870, AJHR, 1871, F-6A, p 3 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 108)

609. Mair to Clarke, 21 October 1870, AJHR, 1871, F-6A, p 3

The Words of Peace-Making with Erueti Tamaikowha

The agreement between Major William Mair and Erueti Tamaikoha at Te Waimana on 16 October 1870 was recorded in a document, the original of which was given to Tamaikoha. Mair sent an English-language copy to the Government, which is reproduced here:

On the 16th October, 1870, a meeting took place at Waimana called by the other (Tamaikowha's party). These are the words of Erueti: Peace will be established with the Government – Europeans and Maoris – he would lay down his weapon, and that all his roads would be left open; that Te Kooti and Kereopa may be pursued; war parties and single individuals might go anywhere about their boundaries; there is but one thing that would cause difficulty with his peace-making, and that would be taking his lands without cause. Secondly, murdering his children and surrounding his pa in the night.

I said to him, Your words are good; your land will not be interfered with, and your people will not be murdered, because it is the law that sees the crime of man; your pa will not be surrounded in the night; but if you kill people or assist Te Kooti that will cause evil. You remain quiet in Waimana; when you see a fit day, come to Ohiwa and see Te Arawa. Erueti Tamaikowha and war party agreed to this. Difficulties will be put down, and good alone will be for future days.

From Major Mair, RM¹

1. 'The Words of Peace-Making with Erueti Tamaikoha', AJHR, 1871, F-6A, p 4

be arrested for having been in arms against us'.⁶¹⁰ Mair encouraged him to go to Ohiwa, but Tamaikoha was reluctant. However, three days later, he and his people did go to meet with Te Arawa at their pa.⁶¹¹ On this occasion, Mair gave Tamaikoha a document recording that peace had been made.⁶¹² It summarised the results of their earlier hui.⁶¹³ Importantly, Mair agreed to Tamaikoha continuing to live at Waimana rather than having to 'come out'.⁶¹⁴

In Tamaikoha's view, this signified the Government's acceptance of his free and untrammelled authority, his mana motuhake:

610. Ibid

611. Ibid, p 4

612. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 108–109

613. 'The Words of Peace-Making with Erueti Tamaikoha', AJHR, 1871, F-6A, p 4

614. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 109–111

When Major Mair and party came to make peace they proposed that I should go to Whakatane or Opotiki. I objected to [it saying] that I had never been captured and that I would not go to those places to live but would stay where I could preserve my freedom and be a chief.⁶¹⁵

Mair was positive about the prospects for peace – so long as the Government committed itself to achieving it. In a remarkable sideswipe at those who wanted to continue military action, he wrote:

It must be borne in mind that the Urewera generally are a jealous and suspicious tribe, and some little time may reasonably be allowed for this feeling to wear off; but I am of opinion that a good understanding has been established, and that nothing short of the sudden marching of troops into their country or some other equally imprudent act will disturb it.⁶¹⁶

Battersby stressed the point that the Crown did not insist on Tamaikoha ‘coming in.’⁶¹⁷ He argued:

The peace with Tamaikoha also negates a further assertion by Binney; that the Government’s desire to see Urewera people ‘come in’ was uncompromising. This she describes as: ‘its obsessive insistence that Tuhoe must quit their lands.’ In fact, as the example of Tamaikoha clearly demonstrates, the government did not insist on all Urewera people coming in. Tamaikoha and his people remained where they were, nor were they the only ones to do this.⁶¹⁸

This is an important point for our inquiry. From the evidence available to us, we agree with Professor Binney. The arrangement with Tamaikoha was the only one in 1870 in which the Government formally agreed to an Urewera community remaining in place. This is in stark contrast to the treatment of other Urewera leaders in 1870. Although McLean was not willing to use force to remove the people from Ruatahuna (where most of them had congregated, including refugees from Waikaremoana), he continued to insist on exile as a condition of their surrender. Also, as we shall see in the next section, he did not permit the great majority of those who left in 1870 to return until 1872. It may be that Tamaikoha was considered less of a risk because he had never supported Te Kooti, but this seems unlikely. Suspicions continued to be expressed that he would hide Te Kooti nonetheless. What we take from this is that, on its own actions, the Crown did not need to insist on exiling every leader and community that surrendered. The unexplained exception made for Tamaikoha casts doubt on the need for the policy

615. Judge Henry Monro, ‘Notes on the Native Land Court Hearing for the Waimana Block, 1880,’ pp 77–78, Auckland Institute and Museum Library (Sissons, ‘Waimana Kaaku’ (doc A24), p 25)

616. W G Mair to Clarke, 21 October 1870, AJHR, 1871, F-6A, p 4

617. Battersby, summary of ‘The Government, Te Kooti and Te Urewera’ (doc M3), p 11

618. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 111

at all. In its closings, the Crown noted that peace was concluded with Tamaikoha on the basis that he was ‘not disarmed and did not come in’, but it failed to explain why others still had to do so.⁶¹⁹

McLean continued both to avoid direct military operations and to maintain diplomatic pressure on Urewera leaders – with mixed success. With the end of the Waikaremoana campaign and the decision of the Ruatahuna leaders to surrender, the main impediment to people’s coming out was actually a devastating influenza epidemic. In October, Sub-inspector Gascoigne of the Armed Constabulary reported:

Tomo states that Kereru Ahi Kaiata and Rangi Kaitupuake intend to come in some time in December, – that the reason they do not come in at once is that they are suffering greatly from sickness. He further states that many of the Urewera (perhaps 200) have died lately from sickness, among other Turei, Tiopira, and Raharuhi.⁶²⁰

Hoani Paiaka (a nephew of Paerau) explained: ‘The agreement about Tuhoe’s coming out is not settled, on account of the great mortality of the Urewera. Two hundred of them have died; a great many of the rest are confined to their houses.’⁶²¹ Paiaka noted that Tuhoe were troubled because ‘it is not in the power of man to control this evil (sickness)’. McLean would no doubt have agreed, because it frustrated his ability to insist on evacuation.

The surrender of Te Waru Tamatea and his party of 39 men, women, and children on 9 December reinforced the extent to which circumstances had changed over the previous months. Preece, who received Tamatea at Horomanga, reported that his hapu was ‘nearly destroyed by fighting and illness.’⁶²² With most of Tamatea’s people no longer in Te Urewera, and the major communities at Ruatahuna and Waikaremoana in constant dialogue with Crown officials, Te Kooti was almost completely isolated. All that remained for the Crown was to attempt to capture Te Kooti himself – that was to continue into 1871.

Could the Crown have done more to allay the fears of the peoples of Te Urewera, thereby hastening the path to peace? Its policy regarding surrender during the middle months of 1870 was ambiguous, creating unnecessary trepidation among the peoples of Te Urewera. The people at Ruatahuna and Waikaremoana struggled with the ambiguity that stemmed from Ormond’s evident decision to maintain his own hard-line policy. Ormond’s statements did little to ease the pervasive fear held by the peoples of Te Urewera that they would become ‘mokai’ – captives or slaves. All the peoples of Te Urewera would have known the story of Te Kooti and the Whakarau and their detention on Wharekauri without trial. This

619. Crown counsel, closing submissions (doc N20), topic 4, p 10

620. Gascoigne to Moule, 17 October 1870, AJHR, 1871, F-1, p 6

621. Paiaka to Mair, 13 October 1870, AJHR, 1871, F-1, p 6

622. Preece to McLean, 9 December 1870, AJHR, 1871, F-1, p 7. A further 25 people from Tamatea’s hapu surrendered to Preece in March 1871: Preece to Moule, 8 March 1871, AJHR, 1871, F-1, p 13 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 124).

history, combined with Ormond's direction to tell the people 'the government will determine what is to be done with them', made the possibility of surrendering too risky. The Tuawhenua researchers commented that Tuhoe 'were reported to be in genuine terror that if they surrendered they would be "butchered" or sent to the Chathams, and lose their land.'⁶²³

What seems to have spurred the extent of discussions in late 1870, however, was the complete suspension of military activity in Te Urewera from the withdrawal of Hamlin's troops in July 1870 right through to the end of the year. Hamlin still vigorously defended the Crown's right to send forces where it pleased in Te Urewera for the pursuit of Te Kooti.⁶²⁴ Even so, the actual cessation of military activity would have aided the process of peacemaking, especially for the people at Ruatahuna and Waikaremoana. Much credit can be given to McLean, and to Clarke and Major Mair, for preferring diplomacy to a 'show of force' at Ruatahuna. Even so, it must be remembered that – other than for Tamaikoha – this was not a negotiated peace. Although discussions had been going on for many months, the Crown did not budge from its insistence on unconditional surrender and removal from the district. History has shown that, where hostilities are concluded on such unequal terms, the basis for true peace is not laid.

5.5.4.9 Conclusion: Treaty findings on whether the Crown was justified in launching further expeditions in 1870, and on how it conducted them

In our view, the Crown was justified in sending its second expedition to Te Urewera in March 1870. Events in Taupo in 1869 showed that Te Kooti was still a serious threat, acting with the support of Tuhoe despite the 'punishment' inflicted that year. The Government could not have known that Tuhoe would turn away from Te Kooti and send him out of Te Urewera in February 1870. The Government's decision to entrust the campaign to Kawanatanga Maori leaders ultimately proved beneficial. The rongopai established between Te Rangihiwini and Tamaikoha committed both sides to peace. It recognised and respected the tino rangatira-tanga/mana motuhake of the peoples of Te Urewera, who were to retain full authority but would keep Te Kooti out of their district. Wahawaha accepted the force of the rongopai and acted accordingly. Thus, the expedition inflicted very little damage on Tuhoe before it effectively withdrew.

One leg of the expedition, however, was under the control of colonial officers rather than Kawanatanga leaders, and those officers were determined to attack Waikaremoana. In military terms, this attack was unnecessary. Te Kooti was known to be in the Waioweka Gorge. Unfounded rumours that he was at Waikaremoana (or on his way there) did not justify the wholesale destruction of kainga and crops that followed. As far as we can tell from the evidence, the only reason for attacking this part of Te Urewera (and not others) was Ormond's and Hamlin's refusal to accept the rongopai. The attack could not be justified on

623. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 247

624. Hamlin to Harau and Paraone, 18 August 1870, AJHR, 1871, F-1, pp 4-5 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p143)

any reasonable grounds of emergency and was therefore unlawful. It was also an impediment to peace negotiations. In both respects, it was a breach of Treaty principles. The Crown conceded in our hearings that the attack was an impediment to peace, though not (in its view) for long.

Apart from the attacks on Waikaremoana, the year 1870 was dominated by peacemaking rather than war. McLean's initial ambivalence about the rongopai, however, resulted in St John's disastrous attack on Whakarae. The Crown conceded that this was a 'notable mistake'. In our view, McLean's failure to instruct officials properly – he explained that he had rebuked Te Rangihiwini for making peace but had not said the peace should not be kept – was responsible for this attack. It was a clear breach of the Treaty.

From May to December, McLean attempted to harness the movement for peace but also to subvert its fundamental terms. His policy was designed, as in 1869, to prevent Te Kooti from using Te Urewera as a base. To that end, he insisted on unconditional surrender and the evacuation of the district. Unlike the rongopai, peace on this basis did not respect the article 2 guarantee of tino rangatiratanga. The leaders of Te Urewera resisted in the face of the threat of force (at Waikaremoana and aimed towards Ruatahuna). They sought to preserve their mana motuhake, to remain with authority in their home districts, and to exclude Te Kooti from those districts. Some were willing to permit Crown forces entry if Te Kooti did in fact return.

The policy of unconditional surrender and exile has little to recommend it. It cannot be defended as providing for the needs of non-combatants. Our analysis of the claims regarding Te Putere shows that the Government did not provide adequately for the exiles. A choice of privation in Te Urewera or on the coast was not a fair one. Nor did the Government do what it could to reassure the peoples of Te Urewera. The insistence on unconditional surrender was particularly harsh. We are mindful of the exception made for Tamaikoha, whose people were not required to give up their arms or move out of their homes. Instead, Tamaikoha negotiated terms ensuring the Crown's recognition of his authority, while agreeing to permit (and support) Government troops entering his lands if Te Kooti came there. It was inconsistent of the Crown to favour Tamaikoha in this way, and such inconsistency casts doubt on the need for the policy in the first place. If, as the Crown's historian argued, not only Tamaikoha but also others could safely be left where they were, then what justification was there for the policy?

We find that there was no justification for insisting on unconditional surrender. That was a clear failure on the part of the Crown to uphold its guarantee of the claimants' tino rangatiratanga. We also have doubts about the strategic need to insist on the removal of all people from Te Urewera. There was still potential for Te Kooti to raid Te Urewera or to seek to re-establish his base there. But that potential was much reduced from what it had been in 1869, and this was known to the Crown. The exceptions made for Tamaikoha and others suggest that the compulsory evacuation of Te Urewera peoples was unnecessary. It was certainly implemented unevenly (and abandoned in 1871, although those who had been exiled were not permitted to return). On balance, we think there was insufficient

justification for overriding the Treaty rights of the peoples of Te Urewera and insisting on removing them from their rohe.

Finally, we find that the Crown, having removed people from their homes and assigned them to reserves which they were not permitted to leave, had a clear obligation to ensure the people's needs were properly provided for on those reserves. We find the Crown in breach of the principle of active protection for its failure to do so at Te Putere.

Overall, we find that the Crown subverted the rongopai and failed to negotiate peace on Treaty-consistent terms. While there was no war of subjugation, and Te Urewera was not permanently occupied by Crown forces, its people were removed into exile with at least an implied threat of force.

The question of whether peace – and a relationship with the Crown – could be placed on a Treaty-consistent footing in 1871 is the subject of the next section.

5.5-5 How did the Crown conduct its military expeditions in 1871?

SUMMARY ANSWER: At the end of 1870, the Crown reached an agreement with Te Whenuanui and Paerau that the remaining Te Urewera population would not be required to 'come out' and that they would instead be concentrated at Ruatahuna under Wahawaha. There was an element of duress involved in reaching that agreement. The Government now planned to occupy Ruatahuna with a military post, garrisoned by Ngati Porou. The first 1871 expedition soon abandoned this goal. Tamaikoha intervened and diverted the expedition to Maungapohatu instead; there, Ngati Huri were able to make peace with the Crown for the first time. The expedition was then cut short because Wahawaha had to leave to hunt Te Kooti outside of Te Urewera. The second 1871 expedition, led by Mair and Preece, failed to find Te Kooti but further contributed to strengthening the developing peace between the Crown and the peoples of Te Urewera. This was possible because of forbearance and strong leadership on both sides. In April 1871, Te Whenuanui and Paerau were permitted to return to Ruatahuna, where Tuhoe leaders from throughout the district met and affirmed the rongopai with the Crown.

The second half of 1871 saw a deterioration in this developing peace. First, the Urewera leaders were placed under increasing pressure actively to join the hunt for Te Kooti – pressure to which they eventually succumbed. Secondly, Wahawaha – frustrated at his long failure to capture Te Kooti – attacked pa, destroyed cultivations, and took prisoners at Waikaremoana. This attack was unjustified and in breach of the Treaty. Thirdly, Wahawaha occupied Maungapohatu and Ruatahuna late in the year, built redoubts, and announced his intention of not leaving until Te Kooti was captured. Captain Porter put it to the Government that the time had come either to occupy Te Urewera or to withdraw permanently, leaving the policing of the region against Te Kooti to its own leaders. The Government chose the latter option in November. Wahawaha's military outposts and force were removed. Nonetheless, the Government still refused to release the surrendered Urewera peoples, who had been detained at coastal reserves since 1870. Their release was finally agreed to in April 1872, mainly in an effort to break Tuhoe opposition to

the building of strategic roads inside Te Urewera. Their unlawful detention was in breach of the Treaty.

At the end of 1870, the potential existed to put the Crown's relationship with Te Urewera leaders on a better footing and to create a genuine peace between them. We agree with Dr Battersby that the Government considered itself at peace with the Te Urewera peoples by that time and that from then on its focus inside their rohe was to hunt and capture Te Kooti.⁶²⁵ The Crown remained determined to try to capture him, despite the fact that he was a diminished threat by 1871 and had been so for some time. This was true not only in terms of the number of fighting men he could muster but also in terms of how he was perceived by the Crown. Battersby's view was that, by April 1871, the Government was 'content that Te Kooti was rapidly becoming too isolated to be effective'.⁶²⁶

We think this was evident earlier. The Uawa incident demonstrated Te Kooti's hope of acquiring more supporters (evident again at Waikaremoana in July 1871), but it also demonstrated that he had almost no military strength left. Sub-inspector Richardson, it will be recalled, judged that there was no danger to be feared from Te Kooti any more. He lived a precarious existence, hunted by the Crown and Kawanatanga Maori throughout 1870 and 1871. In December 1870, McLean authorised Preece to keep a mere 10 mounted men to watch out for any attempt by Te Kooti to get from Te Urewera to the Waikato. 'Te Kooti must now be very much weakened,' he wrote, 'and I am not without hope that he may fall into our hands.'⁶²⁷

Nonetheless, although militarily weakened, Te Kooti continued to elude the Crown in 1871. As a result, there was a further series of military expeditions in Te Urewera that had the avowed purpose of catching him rather than punishing Tuhoe or depriving him of support. In this section, we consider the Crown's conduct of those expeditions, measuring it against its Treaty responsibilities to the peoples of Te Urewera. We evaluate the Crown's new policy of concentrating the remnants of Tuhoe at Ruatahuna under Wahawaha, its ongoing negotiations with Urewera leaders, and its final abandonment of military expeditions at the end of the year.

The Crown's anxiety to capture Te Kooti, together with the greatly reduced threat he posed, explain developing Crown policy during 1871. First, the Crown gave up its insistence that Te Urewera be emptied of its peoples. But it had to trust that military support for Te Kooti would not be resumed. The claimant and Crown historians agree that some Tuhoe groups hid Te Kooti (albeit fleetingly) and secretly helped him in 1871, but that further military support for him was never contemplated.

Secondly, if the Government was going to accept that some Urewera groups would stay in their own homes, its searches for Te Kooti would have to be

625. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 145

626. Battersby, summary of 'The Government, Te Kooti and Te Urewera' (doc M3), p 11

627. McLean to Preece, 10 December 1870, AJHR, 1871, F-1, p 8

conducted so as not to disrupt the fragile peace with them. The Crown submitted to us that the district had returned to a state of peace and the tactic of destroying kainga and food supplies was no longer appropriate. This is particularly important when we consider Wahawaha's actions at Waikaremoana in August 1871.

Thirdly, there was a price to be paid for the Crown's new approach: the peoples of Te Urewera were expected actively to join the hunt for Te Kooti. Was that price too high to pay?

Fourthly, the Crown had succeeded in imposing its will on many Urewera communities and leaders, who had had to surrender unconditionally and move out to the coast. That situation could not persist forever; a political settlement was required to restore the exiles to their homes and to establish how the Government would relate to the peoples of Te Urewera from then on. In 1871, as at all times after 1840, that relationship had to be based on the Treaty guarantee of tino rangatiratanga.

5.5.5.1 The first 1871 expedition: proposed 'concentration' at Ruatahuna

We turn first to the shift in Crown policy that followed the 'coming in' of Te Whenuanui and Paerau of Ruatahuna. In December 1870, these rangatira were at Napier, where Tareha Te Moananui of Ngati Kahungunu was keeping an eye on them. While there, they held an important meeting with Ormond. Binney and Battersby agreed that the meeting was a turning point in Crown policy towards Te Urewera. It was at this point that the Government gave up its insistence that Te Urewera be emptied, although it continued to refuse permission for those already in exile to return. The forced evacuation to coastal reserves was replaced by a policy of concentrating the remaining people together in one or two locations within Te Urewera. This new policy was in fact never put into effect, but it was significant because the first expedition of 1871 was sent to carry it out.

The origins of this policy, and the role Te Whenuanui and Paerau played in it, were disputed in our hearings. After these chiefs had made their peace at Whakatane, they were ultimately transferred to Tareha's custody in Napier. As noted, they met with Ormond there in mid-December 1870. After the meeting, Ormond gave an account of what the chiefs had asked for:

During our conversation with the Urewera they told us that they wished the remnant of their tribe to live together: that is, those that are now living at Ruatahuna and Maungapowhatu to live at Ruatahuna, there build a redoubt to be inhabited by those approved of by the Government. Their reason for wishing to live together is from fear of Te Kooti, and for the same reason they wish to have some friends to live with them.⁶²⁸

McLean's response was to suggest sending Wahawaha and a Ngati Porou force to garrison the proposed redoubt. He gained approval for the scheme from Cabinet

628. Ormond to Ropata, 20 December 1870, AJHR, 1871, F-1, p 8 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 146)

on 19 December.⁶²⁹ It was at this point, when he cabled Ormond with the news, that he added: ‘This may lead to Te Kooti[,] at any rate it will settle the question as far as the Urewera is concerned.’⁶³⁰ Binney inferred from McLean’s statement that the Crown, capitalising on the chiefs’ worries about Te Kooti, was embarking on a ‘war of intended conquest.’⁶³¹ While the terms of Wahawaha’s proposed occupation of Te Urewera were stark, we cannot agree that the Crown intended at this point to conquer or subjugate the peoples of Te Urewera. But the element of intimidation was ever present.

The decision that Wahawaha should gather ‘the remnant’ of ‘the Urewera’ tribe at Ruatahuna apparently met with the agreement of Te Whenuanui and Paerau. Binney said that the plan was merely ‘presented’ as having been ‘the idea of, or at least as having been agreed to’ by these chiefs.⁶³² Battersby countered this suggestion, arguing that Ormond’s letter shows Te Whenuanui and Paerau were clearly ‘supportive’ of the plan.⁶³³ It does appear that Te Whenuanui and Paerau made the initial proposal to congregate the people at their primary settlements, but it was McLean who insisted that Wahawaha would implement the scheme. As Ormond subsequently explained to Wahawaha, it was ‘thought that by settling the Urewera at Ruatahuna and placing soldiers there, some plan will be devised for capturing Te Kooti.’⁶³⁴ The chiefs’ ‘support’ for hosting Wahawaha would hardly have been enthusiastic. We do not underestimate, however, the significance of the wider change in policy. At last, the Crown had given up its insistence that security was possible only on the basis of the complete evacuation of Te Urewera.

Why did Paerau and Te Whenuanui make their proposal for gathering the people together, and why did they apparently agree to Wahawaha’s role at Ruatahuna? There were various reasons. First, they were clearly concerned about the influenza that was sweeping through Te Urewera that had prevented the remaining people from coming to the coast in the first place. Both chiefs wanted a solution that would allow their people to remain at home. Secondly, they were nervous that Te Kooti might succeed in carrying off their young men to fight for him, if he could get to them. As Binney explained in cross-examination, Te Whenuanui and Paerau were motivated at this time by ‘a genuine fear that Te Kooti might come and try to pick off small groups.’⁶³⁵ Thirdly, they hoped to secure the return to Te Urewera of those held on the reserves as soon as possible. This is evident from later correspondence: after the chiefs returned home, it became clear that they believed the Government had agreed to ‘the immediate return of surrendered Urewera’ held on

629. McLean to Ormond, 19 December 1870 (Judith Binney, summary of ‘Encircled Lands’, 24 July 2003 (doc B1), p 20)

630. *Ibid.*, pp 19–20

631. Binney, summary of ‘Encircled Lands’ (doc B1), p 2

632. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 235

633. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 146

634. Ormond to Ropata, 20 December 1870, AJHR, 1871, F-1, p 8 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 146)

635. Judith Binney, under cross-examination by Crown counsel, Tataiahape Marae, Waimana, 28 November 2003 (transcript 4.2, p 50)

the coast.⁶³⁶ It may have been that the ‘friends’ referred to in their agreement with Ormond were their exiled relations. Their attempts to secure the return of these people in April were immediately rejected by McLean, though he held out some hope if they cooperated in capturing Te Kooti.⁶³⁷

In considering the second reason why the chiefs may have agreed to the role of Wahawaha, we cannot ignore the circumstances in which their talks with Ormond were conducted. Despite Te Whenuanui’s peacemaking with Mair, it was clear once the chiefs got to Napier that they were no longer free agents. We agree with Binney that Ormond ‘extracted’ from Te Whenuanui a ‘promise that he would urge Tuhoe to assist’ in the hunt for Te Kooti; this was, she says, the price of his freedom.⁶³⁸ Battersby points out that the Ruatahuna chiefs returned to Te Urewera some weeks later without Te Kooti having been captured.⁶³⁹ Though we accept this, we note that the chiefs were sent back without the rest of their exiled people to try to get those still in Te Urewera to carry out the Government’s wishes.

Ormond was quite blunt about the situation of these chiefs. He wrote to Wahawaha: ‘You may have heard that Whenuanui and Paerau have come here [Napier] with their men. They will be kept here for the future. They will stop with Tareha [Te Moananui, of Ngati Kahungunu], and their children will be brought here also.’⁶⁴⁰

The Government quickly saw that the detention of the chiefs would give them leverage to secure the capture of Te Kooti. The correspondence at this time shows that Te Whenuanui and Paerau were acting under duress. In February 1871, Ormond wrote to Wahawaha:

The only chance I see of finding him [Te Kooti] is through the Urewera. Whenuanui was with me yesterday, and urged they should be used. He knows the return of himself, Paerau, and people depends upon Te Kooti being caught. Tell his people so, and that he is urgent for them to assist; also for them to collect under your direction at Ruatahuna.⁶⁴¹

McLean signalled his agreement with Ormond: ‘I quite concur . . . that every effort ought to be made to induce the Urewera to assist in the search.’⁶⁴² Ormond also wrote to Porter (who accompanied Wahawaha’s force), explaining that Te Whenuanui ‘urged that his people should be called on to assist in securing Te

636. Te Whenuanui and Paerau to Preece and Mair, 2 April 1871, AJHR, 1871, F-1, p 21; McLean to Ormond, 25 April 1871, AJHR, 1871, F-1, p 20

637. McLean to Ormond, 25 April 1871, AJHR, 1871, F-1, p 20; McLean to Te Whenuanui and Paerau, 13 April 1871, AJHR, 1871, F-1; Binney, ‘Encircled Lands, Part 1’ (doc A12), p 20

638. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 236

639. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), pp 152–1538

640. Ormond to Major Ropata, 20 December 1870, AJHR, 1871, F-1, p 8

641. Ormond to Wahawaha, 5 February 1871, AJHR, 1871, F-1, p 12

642. McLean to Ormond, 13 February 1871, AJHR, 1871, F-1, p 13

Kooti. Urewera can be told Te Kooti's capture would allow return of Whenuanui, Paerau, and rest of tribe to Ruatahuna. Your next report will be from Ruatahuna.⁶⁴³

Even if Te Kooti were not captured, the expedition would have its uses. As McLean said to Ormond,

Whatever may be the result of the present expedition connected with Te Kooti's capture [ie, whether it succeeded in catching him or not], there is no doubt that it will have a wholesome effect in preventing any coalition of disaffected sections of various tribes from undertaking offensive movements of any description.⁶⁴⁴

Thus, the Government told Urewera leaders that they, and their people, would not be allowed to return to the district until Te Kooti had been caught. Those remaining inside the district were to be made responsible for catching him, and had to do so under the direction of a rangatira from another iwi who was appointed by the Crown, Major Rapata Wahawaha. They were to be told that the release of their people and leaders depended on carrying out these instructions.

In its closing submissions, the Crown provided us with no lawful reason for its detention of Te Urewera people in coastal reserves. It provided no lawful reason for using that detention to pressure the relations of the detainees. It provided no reason, lawful or otherwise, why it continued to hold these people in detention after the district had clearly returned to a state of peace. We return to these issues when we make our findings below.

Wahawaha's expedition set out from Turanga in mid-January 1871. His force of about 170 Ngati Porou was accompanied by Captain Porter. Their intention was to search for Te Kooti in the Waioweka region and, if they failed to find him, to proceed to Ruatahuna.⁶⁴⁵ The force scoured the gorge, coming across abandoned pa but no sign of Te Kooti.⁶⁴⁶ But it never reached Ruatahuna. At an early stage in the expedition, Tamaikoha intervened. The result was a shift in focus towards Maungapohatu and, in particular, Ngati Huri.⁶⁴⁷ On 3 February, Porter sent Tamaikoha a letter requesting a hui at his settlement at Waimana.⁶⁴⁸ Porter hoped to 'induce' Tamaikoha to accompany their force to Ruatahuna, collecting Te Whenuanui's people at Ruatoki on the way.⁶⁴⁹ But Wahawaha reached Waimana before Porter. By the time the latter arrived at Waimana, Wahawaha and

643. Ormond to Porter, 5 February 1871, AJHR, 1871, F-1, p 12

644. McLean to Ormond, 8 April 1871, AJHR, 1871, F-1, p 18

645. Wahawaha to McLean, 2 January 1871, AJHR, 1871, F-1, p 10

646. Porter to Ormond, 5 February 1871, AJHR, 1871, F-1, p 12 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 147)

647. Many hapu resided at Maungapohatu. It is unlikely that Ngati Huri were the only focus of the Crown's attention at this time, but this was the tribal name used by Wahawaha, Tamaikoha, and officials. Later, the Ngati Huri chief Te Kereru Te Pukenui was the particular object of Wahawaha's suspicions.

648. Porter, diary, 3 February 1871, AJHR, 1871, F-1, p 31

649. Porter to Ormond, 8 February 1871, AJHR, 1871, F-1, p 12

Tamaikoha had already met; they 'had come to very high words, but eventually had settled their differences.'⁶⁵⁰

It seems very probable that the source of the tension between them was Tamaikoha's protectiveness of the rongopai. Te Kooti may have been outside the peace, but Wahawaha, who was bound by it, was now evidently embarked on an occupation of Ruatahuna. Tamaikoha discouraged this plan. (This may be an understatement: Porter refers to him as a chief 'of a very outspoken disposition.'⁶⁵¹) He told Wahawaha that the people were at Maungapohatu and Ruatoki. They did not need to assemble at Ruatahuna because of the rongopai: 'peace had been made with me at this place'. Tamaikoha, therefore, saw the 'concentration' scheme as a hostile rather than protective act. He would not accept Wahawaha's explanation that it was necessary because Paerau and Te Whenuanui wanted their people protected from attack by Te Kooti. He argued that Te Kooti was not a threat – if he did come to Te Urewera, Tamaikoha could deal with him on his own.⁶⁵²

According to Porter, he insisted, however, 'upon our going through his bounds, lest we accuse him of hiding Te Kooti.'⁶⁵³ Tamaikoha thus appears to have diverted the force from its intended route through Ruatoki, where he said the people were gathered.⁶⁵⁴ He wanted the force to go to Maungapohatu.

Wahawaha and Porter accordingly proceeded further up the Tauranga River to Tauwharemanuka, Tamaikoha's settlement, where on 12 February they were cautiously welcomed by the people. The following day, they went to Tawhana, where they had a remarkable reception.⁶⁵⁵ Porter wrote to Ormond explaining the circumstances of the hui: 'We have met today under Rongopai the hapus of Ngaitama & Tuhoe. They all decline to assist in searching for Te Kooti but say they will remain in peace with the Kawanatangata [*sic*]. They are averse to assemble at Ruatahuna as desired by you.'⁶⁵⁶ The rongopai was a constant theme. At Tauwharemanuka, the chiefs emphasised their neutrality: the Crown's force might pass through their territory (as Tamaikoha had agreed), but they would not assist in military activities. They also opposed the Ruatahuna scheme.

The first interactions with Maungapohatu took place from this point. The initial message sent to the Crown's force (on 13 February) was a defiant one. As Porter explained it, 'From Maungapohatu Ngatihuri tell us they will allow no booted feet through their country. We go there day after tomorrow opposed or not.'⁶⁵⁷

In his diary, Porter noted additional information provided by Tamaikoha: 'We shall wait here until a fresh messenger arrives from Maungapowhatu, by which

650. Porter, diary, 9 February 1871, AJHR, 1871, F-1, p 31

651. Ibid

652. Wahawaha to Ormond, 18 February 1871, AJHR, 1871, F-1, p 15

653. Porter, diary, 10 February 1871, AJHR, 1871, F-1, p 31

654. Wahawaha to Ormond, 18 February 1871, AJHR, 1871, F-1, p 15

655. Porter, diary, 12–13 February 1871, AJHR, 1871, F-1, pp 31–32

656. Porter to Ormond, 13 February 1871 (Binney, summary of 'Encircled Lands' (doc B1), p 20). Binney says that 'Ngaitama' was given as 'Ngaituna' in the original telegram, which she describes as a 'transcript error'.

657. Porter to Ormond, 13 February 1871 (Binney, summary of 'Encircled Lands' (doc B1), p 20)

we shall know whether to expect any fighting or not; if opposed by Ngatihuri, Tamaikowha tells us we may be certain that Te Kooti is among them.’⁶⁵⁸

On 14 February, another letter was received from the Maungapohatu chiefs. Its tone was significantly different from that of the previous message:

We wish to tell you that if you come with your two hundred, we will run away, and so will miss seeing you; for we have said that Te Kooti is not here, yet you persist in coming with hundreds of men. If only you and Erueti [Tamaikoha] come, then we will remain at our places. Do not believe statements made by people that Te Kooti is here; do not believe them. Should you give heed to what is said in this letter, act according to the arrangements made by Te Whenuanui and Paerau.⁶⁵⁹

Porter interpreted this letter as evidence ‘that a feeling of jealousy exists among the several chiefs, and that they question the authority of Whenuanui and Paerau, who arranged matters for them.’⁶⁶⁰ Battersby argued that both letters contained ‘implicit threats’ to Wahawaha that he would be opposed if his force marched on the pa.⁶⁶¹ Binney, on the other hand, noted the conciliatory statement at the end: if Wahawaha and Tamikoha came without their large army, then, as the Maori text put it, they would all ‘haere i runga i te waka’ (journey in the canoe of peace constructed by Te Whenuanui and Paerau).⁶⁶²

The prospect of Wahawaha’s force of 200 armed men descending on Maungapohatu clearly provoked considerable anxiety among the people, who included senior Urewera chiefs such as Kereru. Wahawaha described the people as ‘rather frightened of us.’⁶⁶³ This was a large army, no longer permitted to loot and steal food, but expecting to be fed nonetheless. It is evident from Porter’s diary that local people were prevailed upon to supply that food. He complained:

We are getting very short of food, the Urewera being very niggardly with their supply. Our men are desirous of bringing on hostilities, and are complaining sadly of *rongo pai* (peace) having been made, saying that it causes long marches and empty stomachs.⁶⁶⁴

Wahawaha commented that, if the Maungapohatu people retreated to Ruatahuna, his force would consume their entire winter food supply – no idle threat from an army of this size.⁶⁶⁵ The following day, the entire force marched to

658. Porter, diary, 13 February 1871, AJHR, 1871, F-1, p 32

659. Pure, Kereru, Puehu, Tawhiro to Wahawaha, 14 February 1871 (Porter, diary, 14 February 1871, AJHR, 1871, F-1, p 32)

660. Porter, diary, 14 February 1871, AJHR, 1871, F-1, p 32

661. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 150

662. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 239

663. Wahawaha to Ormond, 18 February 1871, AJHR, 1871, F-1, p 14 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 240)

664. Porter, diary, 14 February 1871, AJHR, 1871, F-1, p 32

665. Porter, diary, 15 February 1871, AJHR, 1871, F-1, p 32

Maungapohatu and on 16 February ‘occupied’ Tauaki Pa without opposition. Unsurprisingly, the occupants of the pa had fled. Wahawaha went on to Te Kakiri Pa – a pa that ‘commands the high ridge that overlooks the valley under Maungapohatu, as well as the inland track from Ruatahuna.’⁶⁶⁶ On 17 February, Porter witnessed the firing of shots coming from across the valley at Te Kakiri Pa. This was a ‘preconcerted signal’ that the people would meet with the force ‘in peace’. It appears to have been arranged by Tamaikoha, whose letters – Wahawaha believed – had convinced Ngati Huri to accept the peace.⁶⁶⁷

From all the evidence available to us, we infer that Tamaikoha wanted the force to go to Maungapohatu in order to protect Ngati Huri (and all of Tuhoē) by giving them the opportunity to make a public commitment to peace. Though he did not shrink from voicing his suspicions of Ngati Huri, this was not surprising: he did not want Te Urewera to bear any further cost on account of Te Kooti. But it seems certain that he sought a peaceful outcome for Ngati Huri, and it was his communications with them that brought them at last to meet with Wahawaha.⁶⁶⁸

At the meeting that followed, the chiefs took the opportunity afforded them and offered their endorsement of peace. They stated that, though Te Kooti was not with them, the Crown force might search for him. Renata Pohokorua, at the conclusion of his speech, ‘threw down his weapons as a token of peace.’ Porter reported:

This is the first time that this tribe has ever consented to consult or communicate with Government people. They said we were not to listen to the words of Te Whenuanui, as he had not power over them, and said if we wished to go to Ruatahuna by his authority they would conduct us, but would not remain; they are cautious of the action of the Government; they relied upon us; they had heard of our good deeds; if we could bring peace among them, we were to do so.⁶⁶⁹

The Maungapohatu chiefs ‘would accept the *rongo pai*’, Porter wrote, on the condition they would remain in their own settlements.⁶⁷⁰ Wahawaha also reported that the chiefs wished for peace. Te Purewa (Renata) had explained ‘his thoughts, which are good also; and that for the future he would remain peaceable. That he had no more to say, except that if he did wrong[,] the wrong would emanate from us. That it would be us who would break the peace made on this land.’⁶⁷¹

Wahawaha replied that the only thing that could break the peace would be if they supported Te Kooti. He called upon the people to prove their good intentions by joining in the search for Te Kooti; only then could he be sure that ‘we are one in this peace which has been brought to this place.’⁶⁷²

666. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 239

667. Wahawaha to Ormond, 18 February 1871, AJHR, 1871, F-1, p 14

668. Ibid

669. Porter, diary, 17 February 1871, AJHR, 1871, F-1, p 32

670. Porter, diary extract, 17 February 1871, AJHR, 1871, F-1, p 16 (misdated in AJHR as 19 February)

671. Wahawaha to Ormond, 18 February 1871, AJHR, 1871, F-1, p 14

672. Ibid, pp 14–15

Ngati Huri did not mince their words, however. Porter commented, ‘Every one who spoke expressed perpetual hatred to the Pakeha.’⁶⁷³ This statement was later used by officials as evidence of Ngati Huri’s enmity towards the Crown. But the conventions of *whaikorero* allowed for frank speech. And McLean did not seem greatly troubled by this particular account. He thought it was easily explained: ‘The fact of [Ngati Huri’s] seclusion in the wildest and most inaccessible part of the Island, many of them never having even seen a European, accounts in a great measure for this feeling of hostility.’⁶⁷⁴ The chiefs also made plain their views of the plan to collect them together. They were concerned about the Ruatahuna leaders committing the people to it without discussion or consent. When the Crown’s force arrived, they were hailed with the words: ‘Haere-mai-ia, haere-mai-ia, haere-mai-ia, Te Manuhiri o Whenuanui haere mai.’⁶⁷⁵ Thus, they were welcomed as the ‘guest of Whenuanui.’⁶⁷⁶ To Wahawaha himself, as they accepted the *rongopai*, the chiefs added: ‘we will remain at our own *kaingas*, lest, when all the wild cows are collected [at Ruatahuna] by the tame ones, you the Kawana [Governor] should turn and destroy all; tame and wild.’⁶⁷⁷ Thus, they echoed the general opposition to the idea of congregating at Ruatahuna under Wahawaha’s surveillance. They did not trust the Crown’s intentions towards them or their relations, regardless of whether they cooperated.

In the wake of this *hui*, and of information as to where Te Kooti might be, the plan for the Ruatahuna redoubt was abandoned. On 7 March, Ormond instructed Wahawaha to focus solely on the pursuit of Te Kooti, for it is ‘the most important work; you should find out where his places are, and should destroy and burn his places and his food.’⁶⁷⁸

Ormond had by then had news from Porter and Wahawaha about Te Kooti’s whereabouts. At Maungapohatu, they had discovered information that seemed to confirm their suspicion that Te Kooti had been there recently and that they were being deceived by Ngati Huri.⁶⁷⁹ Now, however, Te Kooti was believed to be far away, somewhere in the vicinity of Te Haupapa (which is on the fringe of our inquiry district, to the east of Te Urewera near Ngatapa and Waimaha). The Crown force set out in pursuit, relying on cultivations they discovered as they went, including newly planted potatoes, peaches, and apples.⁶⁸⁰ We note that the army was either fed by its unwilling hosts or lived off the land. It thus made its

673. Porter, diary extract, 17 February 1871, AJHR, 1871, F-1, p16 (misdated in AJHR as 19 February)

674. McLean to Ormond, 1 April 1871, AJHR, 1871, F-1, p 16

675. Porter, diary extract, 17 February 1871, AJHR, 1871, F-1, p16 (misdated in AJHR as 19 February)

676. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 239

677. Porter, diary extract, 17 February 1871, AJHR, 1871, F-1, p16 (misdated in AJHR as 19 February)

678. Ormond to Wahawaha, 7 March 1871, AJHR, 1871, F-1, p15

679. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p151; Porter, diary, 18 February 1871, AJHR, 1871, F-1, p 33

680. Porter, diary, 28 February – 30 March 1871, AJHR, 1871, F-1, pp 34–36

own impact on the district's fragile resources, already damaged by the destructiveness of earlier expeditions. The shortage of food eventually forced them to go to Wairoa on 6 March, where they refreshed their supplies.

The expeditionary force remained outside Te Urewera for much of April, hunting for Te Kooti. They destroyed empty settlements and encampments, for their quarry had fled. Te Kooti was near impossible to find because his group was so tiny: 'Te Kooti will not be caught: there are so few of them. Himself and twenty men are all that are with him.'⁶⁸¹

By April 1871, then, the Crown's force had moved through Te Urewera without hostilities; the plan of concentrating the people in a redoubt under Wahawaha's supervision had been given up, and Ngati Huri had committed themselves to peace. They had not dispelled Crown suspicions of their links with Te Kooti – which was not surprising either. Binney and Battersby agree that Ngati Huri had passed letters on to Te Kooti and had offered him assistance.⁶⁸² As we heard at our Maungapohatu hearing, these were the people who had the strongest relationship with Te Kooti. We referred above to Mr Te Waara's evidence of their deep faith in Te Kooti's leadership and spiritual guidance. They faced very difficult choices at this time, when Crown officials were determined to ensure their cooperation.

As far as the Crown was concerned, the people of Maungapohatu might yet face military action. Ormond explained to Te Whenuanui and Paerau in Napier, after he had heard from Porter, that expressions of hostility from Ngati Huri could have only one outcome:

In the late meeting I had with the Urewera at Tareha's pa, and which I have reported to you by telegraph, I spoke of this hostile expression of feeling on the part of Ngatihuri, and of my belief that they were shielding Te Kooti, and I distinctly told Whenuanui, Paerau, and their people, that tribes so acting could not be regarded by the Government as friends, and that they must not complain of want of good faith on the part of the Government if such conduct were punished.⁶⁸³

The Premier himself, William Fox, was consulted at this point. Fox gave his direct approval to investigate the conduct of Ngati Huri. If they were found to be concealing Te Kooti or acting deceitfully, then they were to be treated as enemies and taken as prisoners to the coast.⁶⁸⁴

Even in these circumstances, there were positive signs for the future. Ormond sent instructions to Wahawaha laying out his terms.⁶⁸⁵ But, as Battersby pointed out, despite this, Wahawaha concentrated on hunting for Te Kooti and took no

681. Captain Hotene to Ormond, 14 March 1871, AJHR, 1871, F-1, p 17

682. Binney, 'Encircled Lands, Part 1' (doc A12), p 241; Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 153–154

683. Ormond to McLean, 18 March 1871, AJHR, 1871, F-1, p 16

684. Ormond to Major Ropata, 18 March 1871, AJHR, 1871, F-1, p 17; Ormond to McLean, 23 March 1871, AJHR, 1871, F-1, p 17

685. Ormond to Wahawaha, 18 March 1871, AJHR, 1871, F-1, p 17

action against Ngati Huri.⁶⁸⁶ The affirming of the rongopai by the Maungapohatu chiefs, in Tamaikoha's presence, would have been of great importance to him. The historians also agree that there was no suggestion the Maungapohatu people might fight in support of Te Kooti. They might help to hide and feed him, but military opposition to the Crown was no longer an option. This is a critical point for our interpretation of these events.

Difficulties in the relationship between Te Urewera leaders and the Crown still loomed, however. The Crown was not relaxing its pressure on Tuhoe – despite its knowledge, as Battersby stated, that Te Kooti was no longer a threat.⁶⁸⁷ At this point, in April 1871, Te Whenuanui and Paerau were finally released from Napier and sent back to Ruatahuna. Ormond decided on this move because he suspected that, if Wahawaha harried Te Kooti out of his new hiding place, the latter would flee to Ruatahuna. Paerau and Te Whenuanui were needed there.⁶⁸⁸ They had also made a commitment to Ormond, when he threatened punishment of Ngati Huri, to try to ensure Ngati Huri did not assist him:

The reply of these chiefs was, that immediately on their return they would call a meeting of the whole tribe, including Ngatihuri, and would state that one of the conditions of the peace they had made was not only that Te Kooti should not be shielded, but that he should be regarded as their own enemy. They urged that this meeting should be attended by the Government, and I promised that, if possible, their desire should be complied with.⁶⁸⁹

Binney argued that Te Whenuanui and Paerau had an 'unenviable task': 'to forge co-operation with the government against its enemy among their own people.'⁶⁹⁰ But Battersby noted that the earlier condition for their return to Te Urewera – Te Kooti's capture – was relaxed. 'Instead the government decided to attempt to persuade them to give up their support of Te Kooti.'⁶⁹¹

5.5.5.2 The return of Te Whenuanui and Paerau and the second 1871 expedition

It quickly became apparent, in the wake of these developments, that the Crown would continue its pursuit of Te Kooti, and its pursuit would continue to shape its relations with the peoples of Te Urewera.

Te Whenuanui and Paerau returned in April, proclaiming themselves the Government men for Ruatahuna – 'Kua waiho mana kei Kawanatanga tuturu mo Ruatahuna.'⁶⁹² As promised, they convened a great hui at Tatahoata of the

686. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 153

687. Battersby, summary of 'The Government, Te Kooti and Te Urewera' (doc M3), p 11

688. Ormond to Major Ropata, 18 March 1871, AJHR, 1871, F-1, p 17; Binney, 'Encircled Lands, Part 1' (doc A12), p 241

689. Ormond to McLean, 18 March 1871, AJHR, 1871, F-1, p 16

690. Binney, 'Encircled Lands, Part 1' (doc A12), p 241

691. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 153

692. Binney, 'Encircled Lands, Part 1' (doc A12), pp 241–242

remaining people in Te Urewera. From there, they wrote letters to the Government. They informed Clarke that it was true that Te Kooti had been at Maungapohatu and Waikaremoana – but at both places ‘Te Urewera sent him away [so] that trouble might not come on them.’⁶⁹³ Preece subsequently reported on this meeting and on the united decision of the people to support the Government.⁶⁹⁴ He pointed to a letter written by Kereru Te Pukenui confirming that all of Ngati Huri and Ngati Rongo were now aligned with the Government.⁶⁹⁵ The chiefs of Te Urewera thus made a firm commitment to peace. Kereru stressed, however, that he was not ‘coming in’. In his letters to Clarke, Preece, and Mair, he asserted that he would live in peace but ‘on my land’.⁶⁹⁶ The importance of this hui has been preserved in Tuhoe oral history and was referred to a century later at a 1971 hui with Duncan MacIntyre, the Minister for Maori Affairs, at Ruatahuna.⁶⁹⁷

Despite the general commitment to peace, however, and despite the clear understanding of Te Whenuanui and Paerau that the way was now clear for the return of those who had surrendered and were living on the coastal reserves, McLean would not allow them to go home. As we have seen, he told the chiefs that there had been no agreement to this effect; they had misunderstood the situation. On 2 April, Te Whenuanui and Paerau had written to Preece, Mair, and Clarke:

We have returned from Napier, through the kindness of the Government: we are now to be the Government men for Ruatahuna. Friends, let all the Urewera return. This was the word of the Government to us, – a decided word. If you approve, reply; if you object, inform us.⁶⁹⁸

This brought an immediate response from the Government. Ormond sent a provisional reply to the chiefs on 11 April stating that these were not the Government’s terms.⁶⁹⁹ McLean wrote the following day to the same effect – and he again brought up the plan for collecting the people together at Ruatahuna:

Listen. This is not what the Government wished. Mr Ormond told you to go to Ruatahuna and collect the Ureweras of that district into one place. These instructions were not intended to apply to the Ureweras at Putere, Whakatane, and Ruatoki. My definite instructions to you are – leave the Ureweras that are living at the sea side where they are, but carry out Mr Ormond’s instructions of collecting the Ureweras

693. Paerau and Te Whenuanui to Clarke, 11 April 1871, AJHR, 1871, F-1, p 23

694. Preece to Moule, 14 April 1871, AJHR, 1871, F-1, p 23

695. Kereru Te Pukenui to Clarke, 10 April 1871, AJHR, 1871, F-1, p 23

696. Kereru to Clarke, 10 April 1871, AJHR, 1871, F-1, p 23; Kereru to Preece and Mair, 1 April 1871, AJHR, 1871, F-1, pp 23–24

697. Binney, summary of ‘Encircled Lands, Part 1’ (doc B1), p 21

698. Paerau and Te Whenuanui to Preece, Mair and Clarke, 2 April 1871, AJHR, 1871, F-1, p 21

699. Ormond to Te Whenuanui and Paerau, 11 April 1871, AJHR, 1871, F-1, p 19

that are in the Ruatahuna District into one place. You are not to think about Hapurona [of Ngati Whare] and others, for they are living in the light. I will arrange when they are to return.⁷⁰⁰

Ormond gave the chiefs a ‘promise that the Urewera who are living at Whakatanane will be sent back to their place if Te Kooti is captured.’⁷⁰¹ McLean approved: ‘I quite concur in the promise given by you of the return of the Urewera, provided they assist to seize Te Kooti and hand him over to the authorities, as it may stimulate them to exert themselves in his capture.’⁷⁰²

Clearly, McLean wanted optimum conditions for the continuing hunt for Te Kooti. A new expedition, led by Mair and Preece, would now be sent to Te Urewera to search for him.⁷⁰³ The expedition was on a smaller scale than the one led by Wahawaha earlier in the year. In May and June 1871, a small scouting party of 50, under Ngai Tai chief Wiremu Kingi and with the assistance of Tamaikoha, searched the Waioweka region.⁷⁰⁴ No sign of Te Kooti was discovered.

A force of 110 Te Arawa under Preece and Gilbert Mair searched the Ruatahuna, Waikaremoana, and Maungapohatu regions from 25 May through to mid-June.⁷⁰⁵ On 1 and 2 June, Mair and Preece met with the people at Ruatahuna. Mair reported that, although they were well received, the people declined ‘to assist in the capture of Te Kooti.’⁷⁰⁶ This was not a surprise to Preece, according to Battersby, because Te Whenuanui and Paerau had written to the Government indicating as much on 19 April; Lieutenant-Colonel Moule had also anticipated that no active assistance would be offered.⁷⁰⁷ However, the Ruatahuna leaders pledged themselves to ‘prevent his passing through their country, or taking refuge in it’. The reason for refusing to offer active assistance, Mair said, was their weariness at living with a constant state of war:

They stated that this is the first time for many years that they have been at peace with the Europeans; hitherto they have lived in caves and holes in the ground, but now their only desire is to live in peace and give their undivided attention to building houses and planting food, and as a proof of their sincerity, they invited us to go through the whole of their country.⁷⁰⁸

700. McLean to Whenuanui and Paerau, 13 April 1871, AJHR, 1871, F-1, p 20

701. Ormond to Te Whenuanui and Paerau, 11 April 1871, AJHR, 1871, F-1, p 20

702. McLean to Ormond, 25 April 1871, AJHR, 1871, F-1, p 20

703. McLean to Moule, 22 April 1871, AJHR, 1871, F-1, p 24

704. Wiremu Kingi to McLean, 17 May 1871, AJHR, 1871, F-1, p 24; Rushton to McLean, 13 June 1871, AJHR, 1871, F-1, pp 24–25

705. Preece to Roberts, 3 July 1871, AJHR, 1871, F-1, pp 25–26; Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 156

706. G Mair to officer commanding Tauranga district, 11 July 1871, AJHR, 1871, F-1, p 43

707. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 155

708. G Mair to officer commanding Tauranga district, 11 July 1871, AJHR, 1871, F-1, p 43

The quality of the peace was tested by the incident referred to earlier in this chapter (section 5.3), when Mair discovered the head of Captain Travers adorning the palisades of Tatahoata. His official report was brief: 'Buried the remains of Capt Travers and four men who fell in the attack on Tatahoata, in May, 1869.'⁷⁰⁹ As he later revealed to James Cowan, however, this was part of the reconciliation between those who had been involved in the events of that year:

When I went to Tatahoata I found the inhabitants extremely hostile, and it was only by using great tact and forbearance that we did not have a big go in [fight]. Sir D MacLean [*sic*] had been so strong on making peace otherwise I certainly would have let the Turbulent Tuhoe have another taste of our metal. I recognised on that occasion the head of dear handsome Travers on the pa fence. He had lovely white teeth, one of which had gold stuffing. There were the bones scattered about everywhere. I had them reverently collected – our newly made friends assisting and I buried them in a grave 10 feet deep reading the burial service and my . . . men firing three volleys.⁷¹⁰

At this point in his account, as described earlier in the chapter, Mair accused Tuhoe of desecration but was silenced by their enumeration of the many acts of sacrilege committed by the expeditionary force in 1869, for which this had been an act of *utu*. The result was reconciliation. Mair's 'newly made friends' assisted in gathering and burying the remains. They built a 'strong fence' around the burial site and 'never molested our dead again.'⁷¹¹ There must have been many such acts of confrontation and reconciliation in 1871 as the antagonists of 1869 encountered one another. Mair told Cowan of 'our numberless friendly gatherings since then, during which old battles were refought around the fires at night.'⁷¹²

At Maungaphatu, Mair and Preece met with Ngati Huri. Mair's conclusion about the people there was that 'the desire for peace is general, and sincere.'⁷¹³ In their first encounter at Te Kakari, the expeditionary force crept into the pa at dawn, sealed up the exits, and called on the inhabitants to 'lay down their arms and have no fear'. The surprised occupants tried to flee but found all the 'waharoa [gates] closed by our men'. 'Then they submitted,' Mair added, 'and we made them our unwilling hosts.'⁷¹⁴

This was not a promising start, although the two parties were 'soon on good terms.'⁷¹⁵ After seizing Te Kakari, the Crown's force met with the 'whole of Ngatihuri' at Tauaki, where the tribe 'promised to give no further assistance to Te Kooti'. Tamaikoha was at this hui, and Mair recorded in his official report that he

709. G Mair to officer commanding Tauranga district, 11 July 1871, AJHR, 1871, F-1, p 43

710. G Mair to J Cowan, 13 July 1913 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), p 658)

711. *Ibid*, pp 658–659

712. *Ibid*, p 657

713. G Mair to officer commanding Tauranga district, 11 July 1871, AJHR, 1871, F-1, p 44

714. G Mair to J Cowan, 13 July 1913 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), p 654)

715. G Mair to officer commanding Tauranga district, 11 July 1871, AJHR, 1871, F-1, p 44

had ‘behaved particularly well.’⁷¹⁶ In Mair’s account to Cowan some 40 years later, he described Tamaikoha’s continuing anger over the death of his uncle, Tipene. The chief soon ‘softened down’, however, on being reminded that ‘I held his captive tribe in the hollow of my hand’. The two parties returned together to Te Kakari, where, according to Mair, peacemaking was assisted by ‘fraternisation’ between his force and Tuhoe for the rest of their stay.⁷¹⁷

Mair and Preece left Te Urewera at Waimana at the end of June. They had discovered no trace of Te Kooti, but Mair wrote that a more fundamental object had been achieved:

The fact of a small force having passed through the whole of the Urewera country, in so short a time, and during the worst months of the year, ought to teach them that their wild country will not save them from punishment, should they continue in rebellion; while their being brought into contact with Europeans, cannot fail to have a beneficial effect, and do away with the dread and mistrust with which long seclusion has taught them to look upon us.⁷¹⁸

This reinforces McLean’s statement, cited above, that the capture of Te Kooti was only one objective. While not a war of subjugation or conquest in the sense argued by the claimants, there is no doubt the Government intended to demonstrate its power. Battersby argued that Mair and Preece’s expedition signalled a ‘thaw in government–Urewera relations.’ Good relations had been established and ‘they had taken a government force through an area without provoking hostility, where none had been before.’⁷¹⁹ We can accept this argument too. The peace was holding as a result of the careful conduct (and forbearance) of both sides, even though Tuhoe persisted in their refusal to actively help in the pursuit of their spiritual leader and the Government continued to pressure them to do so.⁷²⁰ There was no attempt to implement the plan of ‘concentrating’ the people at Ruatahuna.

In sum, there had been two expeditions to Te Urewera by mid-1871. The first one, led by Wahawaha, was supposed to concentrate the people at Ruatahuna and install a Ngati Porou garrison to defend them there. This expedition foundered on the opposition to the Ruatahuna plan of all the communities it encountered. But Tamaikoha also engineered an opportunity for the chiefs of Maungapohatu to commit themselves to peace with the Crown, evidently in the hope of protecting both them and everybody else in Te Urewera. The sudden intelligence that Te Kooti was at Te Haupapa caused the Crown force to depart hastily in search of him. The second expedition combed the district for Te Kooti, finding no trace of him. Both expeditions were careful to observe and give effect to the rongopai. No one was attacked or killed. On the other hand, Tuhoe had to feed large Crown forces,

716. Ibid

717. G Mair to J Cowan, 13 July 1913 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), pp 655–656)

718. G Mair to officer commanding Tauranga district, 11 July 1871, AJHR, 1871, F-1, p 44

719. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 160

720. See, for example, Binney, ‘Encircled Lands, Part 1’ (doc A12), p 244.

and on occasion officers admitted that they had plundered cultivations for food. Also, there was a very clear and deliberate element of intimidation. Nonetheless, even with the release and return of Te Whenuanui and Paerau, Tuhoe refused to help hunt for Te Kooti. Some Tuhoe had given him shelter covertly, though military support was no longer a prospect. This was the situation when Te Makarini reported Te Kooti's return to Waikaremoana in July 1871. We turn to that development next.

5-5-3 The return of Te Kooti and a third 1871 expedition

The rongopai was put at risk when Te Kooti suddenly materialised at Waikaremoana at the beginning of July 1871. On 6 July, Te Makarini wrote to the upper Wairoa chiefs that Te Kooti was at Te Marau Pa and, moreover, had captured a number of Te Makarini's young men:

Take care of yourselves, for Te Kooti is here at Waikare; Te Marau is the place at which he is staying. My sentry is at Wairau. I am afraid of that man (Te Kooti). On the 30th June he took up his quarters at Te Marau, and on the 3rd July I sent my men to watch Te Marau. He was there; he took away some of my young men unknown to me. This happened in the night. He has taken away Te Whatu, Hiko, Te Wao, Te Tata, Te Karaha. All the captives, Ngatimatawai, Apikara, and Riuha. Te Aho escaped to me on the 3rd July. I was afraid to send Rawiri on that day. Should these people and Te Kooti come out at your place I have nothing to do with it.⁷²¹

The same day, Te Makarini wrote a letter to Inspector Cumming, the Armed Constabulary commander at Wairoa, informing him of the situation. He asked Cumming for assistance.⁷²²

Te Makarini's letters provoked an immediate Crown response. On 11 July, Ormond instructed Cumming to occupy Tikitiki Pa with a contingent of the Armed Constabulary and a 'small body' of Maori. Ormond explained that 'the occupation is temporary and intended as a support to the Urewera' and stated that, given inevitable delays, it was unlikely that Te Kooti was still in the area. Again, however, he stated that, despite his capture of Te Makarini's young men, Te Kooti was not a threat: 'You are aware that he has scarcely any followers, and is not in a position in any way to oppose even a small party of armed men.'⁷²³ These instructions, according to Binney, 'reveal the first significant shift taking place in the government attitudes towards the Urewera chiefs and their authority in the region.'⁷²⁴ The Crown was now receiving active support from Tuhoe chiefs and

721. Te Makarini, Paraone, and Winitana to Tamihana et al (Wairoa chiefs), Paora et al (Mohaka chiefs), and Ihaka (Nuhaka chiefs), 6 July 1871, AJHR, 1871, F-1, p 40

722. Te Makarini and Paraone to Cumming, 6 July 1871, AJHR, 1871, F-1, p 41

723. . Ormond to Cumming, 11 July 1871, AJHR, 1871, F-1, p 41

724. Binney, 'Encircled Lands, Part 1' (doc A12), p 249

Unknown (ATL PACOLL 3385)



The Armed Constabulary redoubt at Onepoto, on the shores of Lake Waikaremoana, circa 1875. The constabulary erected the outpost in July 1871, following Te Kooti's brief reappearance at the lake at the end of June, when he had abducted several of Tamarau Te Makarini's young men. Like other Tuhoë chiefs, Te Makarini had by then withdrawn his support for Te Kooti, disapproving of his bringing conflict to Waikaremoana.

could therefore contemplate a military presence that was temporary, not 'as an act of invasion.'⁷²⁵

In light of the information emerging from Waikaremoana at this time, however, Cumming suggested that a permanent post should be established at the lake.⁷²⁶ He also doubted the word of Te Makarini. A suggestion had been made by the Wairoa chiefs that the young men had joined Te Kooti of their own accord. Ormond was not so quick to doubt Te Makarini. He told Cumming that 'Makarini has acted loyally in at once giving information when Te Kooti appeared in his district, which he would not have done had he desired to shield him.'⁷²⁷ Ormond counselled Cumming not to place further strain on the relationship that was being developed with the people at Waikaremoana: 'you will please moderate, as far as possible, the

725. Ibid

726. Cumming to Ormond, 16 July 1871, AJHR, 1871, F-1, p 42

727. Ormond to Cumming, 19 July 1871, AJHR, 1871, F-1, p 42

tone of the Wairoa Natives, as the wish of the Government is to cement friendly relations with the Urewera than to estrange them.⁷²⁸ He did, however, take 50 men to establish a redoubt at Onepoto at the end of July.⁷²⁹ By that time, Te Kooti had undoubtedly departed.⁷³⁰

On 26 July, Te Whenuanui and Paerau wrote to Cumming on the subject of Te Kooti's recent activities and offered their assistance: 'We have received your letters to us, and our word to you is, be strong in resisting Te Kooti, and turning him away from our district, and rescuing our young people from him. We are on our way to your assistance.'⁷³¹

According to Binney, this letter signalled a shift in perspective from the people at Ruatahuna. It was an important step towards the compact they would make with the Government in December 1871 (see chapter 7).⁷³² Their position in April, as expressed to Ormond, had been that 'It is for you to pursue Te Kooti – We are remaining here guarding this place [Ruatahuna].'⁷³³ At that time, as Binney put it, Te Whenuanui had hoped to cooperate with the Government without acting against Te Kooti and 'without forcing Tuhoe to act against their inner belief in the justice of Te Kooti's cause, as a man hunted without good reason or mercy.'⁷³⁴ Now, for the first time, Urewera leaders other than Tamaikoha were prepared to actively join the search.

In August, forces under Wahawaha, Preece, and Mair arrived, prepared once again to search Te Urewera for Te Kooti, who was known to have left Waikaremoana early that month. The search focused on the Whataroa district in upper Wairoa. They discovered Te Kooti's camp and a letter waiting for them: 'Cease to pursue me, because I am living in my own place in the bush. If I come out to the coast, then chase me; but this murderous work of yours, is like a rat scratching up filth; leave off doing so.'⁷³⁵ Te Kooti was once again indicating, as he had in February 1870, his desire to be left in peace. But the Government held firm. McLean stated that, if Te Kooti wished to surrender, he could do so 'on no other condition but that of being tried for his crimes.'⁷³⁶

Crown forces came their closest to catching Te Kooti in August 1871, when they came across his encampment on the Waipaoa River.⁷³⁷ A number of Te Kooti's immediate followers were captured, including a Tuhoe warrior, Wi Heretaunga, who was wounded in the leg. Te Kooti, however, escaped. The attack on Te Kooti's camp at Waipaoa was a significant event in itself, but it is Heretaunga's fate that

728. Ormond to Cumming, 19 July 1871, AJHR, 1871, F-1, p 42

729. Binney, 'Encircled Lands, Part 1' (doc A12), p 249

730. Ormond to McLean, 7 August 1871, AJHR, 1871, F-1, p 45

731. Te Whenuanui, Paerau, and Te Ahikaiata to Te Makarini and Cumming, 26 July 1871, AJHR, 1871, F-1, p 47

732. Binney, 'Encircled Lands, Part 1' (doc A12), p 250

733. *Ibid*, p 243

734. *Ibid*

735. Te Kooti to Government, no date, AJHR, 1871, F-1, p 51

736. McLean to Ormond, 12 August 1871, AJHR, 1871, F-1, p 51

737. Preece to Cumming, 22 August 1871, AGG-HB 13, Archives New Zealand, Wellington

concerns us here. According to Gilbert Mair's account of events, Heretaunga was in pain from a knee wound, and when Mair tended to the wound, Heretaunga attempted to kill him. A 'court-martial' was held and Heretaunga was sentenced to death. The execution was carried out by Kapa Te Ahuru, a sergeant in Preece's column and a grandson of Te Purewa, who was related to Heretaunga.⁷³⁸

Cowan's published account omitted reference to the court martial and referred to this (correctly) as a summary execution.⁷³⁹ This change came about as a result of comments from Gilbert Mair. In later life, Preece came to be concerned about the legality of the court martial. Mair agreed with Preece about the illegality of the killing but made the disturbing comment that such actions were normal at the time:

In deference to my great pal Captain Preece . . . It will overcome his scruples as to the holding of a court martial, in which contention, no doubt, he is right as to its illegality, tho' at the time, we fully intended it to be one and it was carried out in the fullest manner even to the taking of sworn testimony. I am not sure that Martial Law had been proclaimed in that particular district at the time. If it had not then the shooting of a prisoner and especially a wounded one, – was illegal. There were scores of cases during the war when prisoners, innocent as angels by comparison with Wi Heretaunga, were shot off hand without the faintest show of proving their guilt beforehand.⁷⁴⁰

The obvious point is aptly demonstrated: the officers in the campaign knew it was unlawful to kill except in combat.

5.5.5.4 The return of Wahawaha

After failing to find Te Kooti yet again, Wahawaha returned to Waikaremoana at the end of August 1871. His frustration by this time is very evident. The year before, he had spoken of going to Wellington and 'asking Government to allow the Ngatiporou to have the killing of Te Kooti to themselves, as their name was at stake.'⁷⁴¹ In May 1870, when everyone else was leaving after the making of the rongopai, Wahawaha told his own people that he 'intended to call upon the whole of the tribe in the summer [of 1870–71] to go in chase of Te Kooti till dead.'⁷⁴² Wahawaha's own mana and the mana of Ngati Porou was at stake; he had pursued Te Kooti relentlessly without success; and he now came back to Waikaremoana in August 1871 an angry and frustrated man.

This led to a sudden and significant deterioration in what had been a deepening peace and cooperation between the Government and Urewera leaders. In late

738. Mair to Cowan, MS-papers-0039, folder 6, Alexander Turnbull Library; Binney, 'Encircled Lands, Part 1' (doc A12), p303; Binney, *Redemption Songs*, pp 256, 605; Cowan, *New Zealand Wars*, vol 2, p 441

739. Cowan, *New Zealand Wars*, vol 2, p 441

740. Mair to Cowan, MS-papers-0039, folder 6, Alexander Turnbull Library

741. TW Porter, diary, enclosed in Porter to Ormond, 18 May 1870, AJHR, 1870, A-8B, p 69

742. Ibid

August, Wahawaha crossed over to the northern shores of Waikaremoana and stormed Te Marau Pa, whose people had sheltered Te Kooti in July. He captured what he called the 'Hauhaus' of the pa – men, women, and children. He planned to take the prisoners to his home, rather than leaving them at Wairoa. He then set about destroying kainga and cultivations: 'I have eaten all the Hauhau's food and destroyed their houses.'⁷⁴³

If sheltering Te Kooti and feeding him was considered worthy of such reprisals, why had the Maungapohatu people not been punished after their actions back in March? After all, Ormond and the Premier had instructed Wahawaha to investigate Ngati Huri and punish them. Fortunately for the people of Maungapohatu, they had confirmed the peace with Mair and Preece in July, as described above, so that when Wahawaha visited them in October 1871 he took no action against them.⁷⁴⁴ Te Kooti was known to have left Waikaremoana but Wahawaha clearly felt himself justified in punishing its people. He reported his actions to Ormond, and the Waikaremoana people believed that those actions were carried out on Ormond's instructions.⁷⁴⁵ Wahawaha had earlier been authorised to punish Ngati Huri and may well have felt that he had a general mandate to visit such destruction on communities accused of having sheltered Te Kooti.

Battersby suggested that Wahawaha's attacks affected more than this one Waikaremoana settlement (Te Marau). He noted the following protest from Te Makarini to the Government in late September:

Friend [Inspector Cumming] salutations to you. My word to you is to forward my letter to Mr Ormond & Mr McLean. The contents of my letter are that they should speak to Ropata and his people desiring them to cease their mischievous works within my boundaries. Major Ropata's plans were good when we had a talk together at Waikare.

But Mr Ormond's instructions were that the people were to be killed, the houses burnt and the food all eaten and this is what Ropata has done in my boundaries. I do not know the thoughts of people about this work – whether it is good – or bad – whether they object to this law of Ropata's and Mr Ormond's, for it is through this work that we are now suffering for want of food.

Friend do not object to this talk of mine – cease to ignore it. I am a man who has always told the truth to you and to have never told you any falsehood.⁷⁴⁶

Battersby was puzzled to account for this. He suggested that Wahawaha had made a mistake: 'It is possible that in destroying food supplies thought to

743. Ropata to Ormond, 31 August 1871, AGG-HB 2/1, Archives New Zealand, Wellington

744. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 166

745. Ropata to Ormond, 31 August 1871 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 165); Te Makarini, Tikitiki, to Cumming, 22 September 1871 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 165)

746. Te Makarini, Tikitiki, to Cumming, 22 September 1871 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 165)

belong to Te Kooti's supporters, Ropata had inadvertently destroyed some of Te Makarini's cultivations.⁷⁴⁷ Battersby added, 'It is not clear what response was given to Te Makarini at this time.' He did not dispute that the depredations must have been significant. They left the Waikaremoana people once again 'suffering for want of food'. In October, Te Makarini and six of his men were 'put on rations' for assisting in the hunt for Te Kooti.⁷⁴⁸

We have no information on the fate of those taken from their homes by the Crown's forces. We received no evidence as to whether they were ever allowed to return from the East Coast (or, indeed, whether they were actually taken there). Te Makarini said that people had been killed, but we do not know how many or in what circumstances. Nonetheless, these attacks were a serious blot on an expedition that had so far avoided killing people or destroying property. They had a significant impact on the people of Waikaremoana.

In its closing submission, the Crown conceded that the 'continuing use of draconian policies such as the burning of kainga when it was apparent that the district had returned to a state of peace' was a 'notable mistake'.⁷⁴⁹ In our view, this concession clearly applies to Wahawaha's attack on Waikaremoana settlements in 1871. We return to this matter in our findings.

Although Te Makarini's letter was a clear statement of anger at the destruction of settlements around Waikaremoana, Te Urewera leaders began increasingly to assist in the active pursuit of Te Kooti in September and October. In Binney's view, there was still some ambivalence. Paora Kingi, a sergeant under Preece, sought assistance from people at Ruatahuna and Maungapohatu, but they refused to consent. Pressure was still being placed on Tuhoe at the time – pressure that can be seen clearly in Preece's diary.⁷⁵⁰ The Crown's historian, on the other hand, noted that postive hui had been held with Ruatahuna chiefs at Omaruteane and with the people at Maungapohatu. Te Makarini, Rakuraku, and Tamaikoha all joined forces with the Crown at this point.⁷⁵¹ Many others did not. Finally, in late October, Te Whenuanui and Paerau were in a brief battle with Te Kooti at Te Whaiti, with about 30 men on each side. This encounter with Te Kooti had an unexpected result; Wahawaha came to Ruatahuna and Maungapohatu and established military outposts in the form of redoubts to be occupied by Ngati Porou garrisons. We turn to that development next.

5.5.5.5 Wahawaha's redoubts

The redoubts at Ruatahuna and Maungapohatu, constructed by Wahawaha in late 1871, continue to elicit distress among the claimants. Their pain and anger was evident during our hearings, particularly during our site visits at Ruatahuna and Maungapohatu, where the people shared their thoughts about the Crown's actions

747. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p165

748. *Ibid*, p167

749. Crown counsel, closing submissions (doc N20), topic 4, p10

750. Binney, 'Encircled Lands, Part 1' (doc A12), pp 252–253

751. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp165–168

in this particular instance. Counsel for Nga Rauru o Nga Potiki discussed this on behalf of the Maungapohatu claimants:

Ropata Wahawaha established a redoubt which took a year to complete [meaning from the first proposal in December 1870] and to which the Tribunal was taken during the site visit to view for themselves the ground from which the blood of Tuhoë had spilled. The lingering atrocity captured by the fact that the original name of the site Hināu Piwai has now been replaced in the memories of some by Kohi tau, the name that Wahawaha tried to impose on the lands lest Tuhoë forget the might of the Crown.⁷⁵²

These redoubts are deeply resented because they represented the occupation of Tuhoë's ancestral lands by the Crown. From the claimants' perspective, this occupation was not only endorsed by the Crown but also done in the name of the Crown. For the claimants, Wahawaha did not merely occupy the region; he also committed crimes there. At our Maungapohatu hearing, Professor Pou Temara spoke of the oral traditions handed down to him of acts of murder and destruction caused by the forces under Wahawaha's command. The details, however, were kept private and not shared with Temara or the Tribunal.⁷⁵³ Tamati Kruger explained to us that the two redoubts were named in reference to the 'relentless plunder of months and years of Te Manawa o Te Ika o Te Rohe Potae o Tuhoë. This was a grave insult to the mana of Tuhoë.'⁷⁵⁴ The redoubts continue to be seen as a symbol of the Crown's desire to occupy and therefore conquer the peoples of Te Urewera.

The building of the redoubts arose from an incident in October 1871. Tuhoë-led forces had been searching the Ruatahuna region for Te Kooti from early in that month in the knowledge that he was somewhere in the area.⁷⁵⁵ On 19 October, Te Whenuanui and Paerau wrote to Cumming and Te Makarini to inform them that Te Kooti had been sighted near Te Whaiti, where, as we have seen, the two small groups had fought.⁷⁵⁶ Two of Te Kooti's people – Te Whiu Maraki and Te Ihipatua – surrendered. Battersby asserted that these efforts were made with the full knowledge of Government officials and were therefore part of the coordinated efforts at this time to catch him.⁷⁵⁷ This, Binney noted, must be seen in the context of the

752. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 310

753. Professor William Te Rangiuā (Pou) Temara, brief of evidence, 16 February 2005 (doc K17), pp 1–2

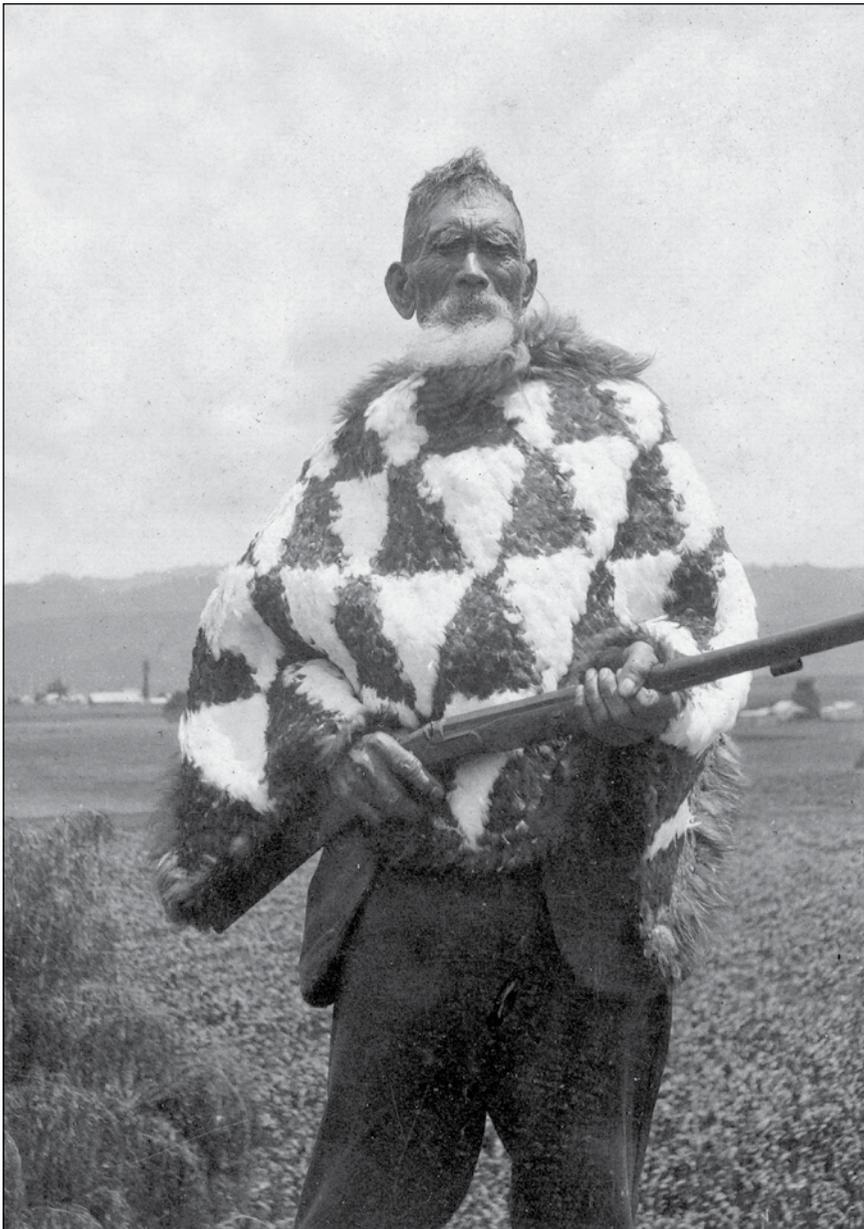
754. Tamati Kruger, summary of evidence regarding 'Ruatahuna: Te Manawa o te Ika', 11 May 2004 (doc D28), p 54. The Tuawhenua research team explained that the term 'Te Manawa o te Ika' refers to the heart of the fish (Te Ika a Maui – the North Island, which was fished up by Maui). The term is 'sometimes applied to the whole of the Urewera country, but is properly reserved for describing the districts and peoples of Ruatahuna and Maungapohatu': Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p1.

755. Binney, 'Encircled Lands, Part 1' (doc A12), p 253

756. Te Whenuanui and Paerau to Cumming, 19 October 1871 (Binney, 'Encircled Lands, Part 1' (doc A12), p 253); Te Whenuanui and Paerau to Te Makarini, 19 October 1871 (Binney, 'Encircled Lands, Part 1' (doc A12), p 253)

757. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 168

James Cowan (ATL, PA COLL - 6885-80)



Te Whiu Maraki, 1921. A staunch follower of Te Kooti, Te Whiu was instrumental in bringing him into Te Urewera after the fall of Ngatapa Pa to Crown forces in January 1869. He was one of a handful of men still with Te Kooti in mid-1871. He surrendered at Ruatahuna in October, when there was increased Crown pressure on Tuhoe to catch Te Kooti. But Te Whenuanui and Te Paerau refused to hand Te Whiu over to the Government. Te Whiu would later become a visionary leader at Waimana. This photograph was taken by James Cowan in 1921, the year before Te Whiu passed away.

increasing pressure that was being placed on Tuhoe at this time. In any case, Te Whenuanui and Paerau refused to hand over Te Whiu to the Government despite pressure to do so. A further 15 of Te Kooti's people came in to Ruatahuna and surrendered at the beginning of November; they were sent to Waimana and Ruatoki for the Government to deal with.⁷⁵⁸

Spurred by the news that Tuhoe had encountered Te Kooti, Wahawaha travelled to Maungapohatu and established a base there as part of his pursuit. The claimant and Crown historians disagreed over whether Ngati Huri offered free support or were pressured to accept a Ngati Porou 'defence' force in their community.⁷⁵⁹ In any case, a redoubt was built at this point. Battersby argued that 'The presence of a redoubt at Maungapohatu seems logical enough, especially given that a contingent of Ngati Porou were left to protect the people there – making some sort of fortification essential.'⁷⁶⁰ But it seems clear from Wahawaha's own account that he exerted pressure on the Maungapohatu people. He stated that he was taking most of them with him to hunt for Te Kooti and that he and Porter had decided that a party of Ngati Porou would guard those who remained. He made it quite clear that this was his decision, not made in consultation with Maungapohatu leaders, and that Ngati Porou would leave 'when Te Kooti is captured – not before.'⁷⁶¹

Wahawaha did, however, discuss building the redoubt with his adviser, Captain Porter. It is helpful, therefore, to consider what Porter wrote about the purpose of the redoubts. In his mid-November letter to Ormond, Porter wrote that the strategy was still to prevent Te Kooti being reinforced by Tuhoe 'should he again reappear in rebellion.' In his view, the Government had to either withdraw all expeditionary forces from Te Urewera or have two small posts 'of 50 men each at Maungapohatu and Ruatahuna.' The advantages were:

1st An effectual check upon rebellion throughout a part of the country mostly to be dreaded;

2nd It would tend to deprive the Urewera of that exclusiveness which so facilitates maturing of evil designs consequent upon the number of garbled reports reaching the tribe through prejudiced channels – and the Urewera are not yet clear from suspicions of ultimate intentions of Govt towards them . . .

In forming such posts I would recommend a part Ngatiporou as any other tribe, whatever their intentions, would be very careful not to inflict injury upon the representatives of so large a tribe.⁷⁶²

758. Binney, 'Encircled Lands, Part 1' (doc A12), p 254; Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 170

759. Binney, 'Encircled Lands, Part 1' (doc A12), pp 254–255; Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 168

760. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 169

761. Ropata to Ormond, 28 October 1871 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 169)

762. Porter to Ormond, 16 November 1871 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), pp 32–34)

The key point, it seems, was that the time had come to occupy Te Urewera permanently or to withdraw. Either Te Kooti was still a serious risk and the Urewera peoples were likely to provide him with military support, or such an approach was too expensive and simply ‘unnecessary’.⁷⁶³ We note that that approach did not fit with the peace that was being established, especially since the April 1871 hui at Ruatahuna. It was a return to the ideas of December 1870, when McLean had planned to concentrate all of Tuhoe at Ruatahuna under Wahawaha – something the Government was no longer prepared to endorse, as we shall see.

From Maungapohatu, Wahawaha moved on to Ruatahuna. His approach caused alarm, and the people fled until ‘reassuring letters’ from Wahawaha persuaded some at least to return.⁷⁶⁴ On arriving at Ruatahuna, Wahawaha entered into discussions with Te Whenuanui and Paerau. The result was an agreement that Wahawaha would remain in the region. On 3 November, the two Ruatahuna leaders wrote a letter to the Government, indicating their consent to Wahawaha’s presence:

My word to you is that Ropata, and I have met, and Ropata has told me that he means to remain here, I have consented to this, that is to his remaining at Ruatahuna – all the people of the Urewera who were with Te Kooti have come into my presence. I have sent them to Ruatoki and Te Waimana, and placed them under the charge of Ahikaiata and Tamaikoha.⁷⁶⁵

The following day, Wahawaha wrote to Ormond indicating his thoughts on recent events:

Friend I have arrived here, I have seen the Urewera and we have discussed the reasons for Te Kooti and his followers coming here to scatter about. This is the first great scattering of Te Kooti’s followers. His followers are all coming out here. This is the reason that I conclude that Te Kooti must be here somewhere. This is the reason that I want Ngatiporou to remain here and at Maungapohatu. If Kooti is either caught or escapes to Waikato, then myself and my people will return, but in the mean time I will search all this place. I have requested the Urewera to cooperate with me and they have consented. The talk of Te Whenuanui and Paerau was clear with respect to the people, but the fault is owing to the people being so foolish, and the weakness of the old man perhaps [this appears to be a reference to Te Puehu of Maungapohatu]. Upon my and Porter’s arrival here we spoke fairly to them and they approved of what we said, this was the means of our gaining over several bad men, we have spoken to these people, the leader of this party is Tutakanahau, this is a bad man, peace was made with the whole of this party, Kereru was the only one not present, he will no doubt turn up by

763. Ibid, p 34

764. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p169

765. Te Whenuanui and Paerau to Te Makarini and Ormond, 3 November 1871 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p170)

and by. Porter is going to you for instructions. I cannot send you all the news from here, Porter will tell you. We want food, there is none here[.] [T]he prisoners who surrendered have been ordered to Te Waimana, to Ruatoki and placed in the charge of Tamaikoha and Te Ahikaiata. The Urewera have not consented yet but if I persist they will.⁷⁶⁶

On 10 November, Wahawaha wrote to Ormond discussing his intent to build a redoubt:

My affectionate friend salutations to you, I have received your letter, and read what you say in it is that I should act according to my own knowledge. With respect to the Urewera I know that some of them who were friendly toward Te Kooti have come to me, and told me that they would not assist Te Kooti any more. I replied saying that if they were all present I would believe them but they had not all come forward, I say that these persons are concealing Te Kooti here. Kereru is the person who has not been seen. I then said to Te Urewera friends the Urewera, there are two ways by which I shall find out if you are acting falsely, I am going to remain here, if Te Kooti does not turn up here you will be the cause of it, but if he is seen at Kaingaroa then you will be free from blame, and it will be decided how you are to be treated, but if he is found here, the people will be annoyed, as Ngatiporou are still advancing into the Urewera country. Paerau is the only one who leads the Kokiri (expedition) and his actions are clear to me. I shall throw up a redoubt here for ourselves and my men will garrison it. I dare say these people want me to leave so that they can then bring him forth, I shall not leave until I hear that Te Kooti is elsewhere, as long as he is lost I shall remain here. But we may have to leave from starvation (ana te Kuri e ki). The Urewera have returned but they eat a good deal of our food, my people don't eat the food of the government expeditions but I suppose these people are hard up for food.⁷⁶⁷

While there is little written evidence about the construction of the redoubts, oral tradition tells us that two redoubts were built at this time. The first, at Maungapohatu, was named Kohitau ('gather in the years'). The second redoubt, at Ruatahuna, was called Kohimarama ('gather in the months'). According to Binney, these names were Wahawaha's 'statement of the long years it had taken to achieve this conquest.'⁷⁶⁸ The Tuawhenua report adds that, for Tuhoe, 'the word "kohi" could be interpreted, as it commonly is in the context of war, as "plunder". Thus the names of the redoubts should more appropriately be understood to refer to the relentless plunder over months and years.'⁷⁶⁹

Binney described the building of these redoubts as acts of 'conquest and

766. Wahawaha to Ormond, 4 November 1871 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), pp 313–314)

767. Wahawaha to Ormond, 10 November 1871 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), pp 315–316)

768. Binney, 'Encircled Lands, Part 1' (doc A12), p 255

769. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 257

occupation'; acts that Tuhoe chiefs had not agreed to.⁷⁷⁰ She drew attention particularly to the timing of the installation of the redoubts: 'Make no mistake: the two redoubts built at Maungapohatu and Ruatahuna at this precise time were statements of military conquest, even as the Urewera hapu were co-operating extensively in the search for Te Kooti.'⁷⁷¹

In her cross-examination, Binney expanded on these points: 'they thought that they had agreed to co-operation, not occupation and there are protests about the way that he [Wahawaha] was conducting his force which was different from their understanding as to what they had agreed to.'⁷⁷²

In our view, Wahawaha was – as he noted – exercising his own judgement in the building of the redoubts, not acting on instructions. He had discussed it with Porter, though, and the two were in agreement. Wahawaha stated that the Ruatahuna people did not want him there, no matter what had been agreed, but he was going to stay only for as long as it took to confirm that Te Kooti was not in the area. The Government, however, as Binney noted, had signalled earlier in 1871 that it had no desire to occupy posts in Te Urewera. The building of these redoubts was not Government policy, although Wahawaha had been given discretion as the man on the spot. It jeopardised the improving relationship between Tuhoe and the Crown to no real strategic purpose. As Porter noted, it was time for the Government to make up its mind: it had to either withdraw all expeditions or occupy the country.

As it happened, Wahawaha's force was removed only a matter of weeks after the redoubts had been constructed and following the Crown's decision to adopt a new policy regarding Te Urewera. This new policy included giving the various Tuhoe communities authority in their own sphere, which we discuss in chapter 7.⁷⁷³ In return, Crown forces would withdraw from Te Urewera. As we noted above, Porter presented the Government with a proposal on the future of military operations in Te Urewera in mid-November, given that Te Kooti had again vanished. The first option mirrored what Wahawaha was beginning to implement: the establishment of permanent military posts at Ruatahuna and Maungapohatu. Anticipating the expenses involved in such an exercise, and that it might simply be 'unnecessary', Porter suggested a second option: that the military forces be withdrawn entirely from Te Urewera and authority given to each community to preserve the peace in its own boundaries.⁷⁷⁴

As a result, the Crown rejected the option of establishing permanent military bases and approved Porter's second proposal of entrusting the policing of Te Urewera to its own leaders and peoples. Ormond wrote:

770. Binney, 'Encircled Lands, Part 1' (doc A12), p 255

771. Binney, responses to questions of clarification (doc B1(b)), p 21

772. Judith Binney, under cross-examination by Crown counsel, Tataiahape Marae, Waimana, 28 November 2003 (transcript 4.2, p 51)

773. Chapter 7 deals with claims about Te Whitu Tekau.

774. Porter to Ormond, 16 November 1871 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), p 34)

Captain Porter's other suggestion about the chiefs of the different hapus shd be entrusted with the security of their respective districts & say three men employed as mail carriers to keep communication between the govt & the tribes, is I think the best course open & if approved I wd take steps to meet or communicate with the Urewera Chiefs with a view to [arrange] it.⁷⁷⁵

We shall return to the question of the political arrangements made between the Crown and the leaders of Te Urewera in chapter 7. Here, we reiterate that a political solution was preferred over military occupation. On 19 and 20 November, Ormond communicated that decision to the Urewera chiefs. He also wrote to Wahawaha to inform him of the Government's decision, and asked him to find out the views of the Te Urewera leaders.⁷⁷⁶ There was no formal instruction for him to withdraw, but he did so at once, after ascertaining that the Te Urewera leaders agreed to the Crown's proposal. His force and the redoubts were no longer required in Te Urewera; they had never been welcome.

On 11 December, 250 people gathered at Ruatahuna to discuss matters with Wahawaha and Porter. Wahawaha gave the following speech:

The Government are greatly desirous that I should disclose to you the thoughts and intentions of the Govrnt towards you therefore listen intently. It is their thought, that Te Kooti is, or may come among you, trusting in your former sympathies shewn to him, therefore it is left to you, to capture, and hand him over, to be tried by the Law, the same as in the case of Kereopa. The Government have acceded to your thoughts, and no longer entertain the wish to drive you from your country, this change is owing to your present obedience to the Government. Therefore the Government desire that I and my people should vacate your Country leaving you the right to act over all your boundaries:—the Waimana, Maungapohatu, Ruatahuna and Waikare Moana. I therefore authorise the Chiefs of the Uriwera to be responsible for their several Districts, that the Government may know that you are responsible for the actions of your tribes in your own boundaries.⁷⁷⁷

Porter made it clear in his speech that Wahawaha spoke for the Crown.

Crown counsel, addressing the issue of the redoubts, argued that, as soon as the Crown received complaints about Wahawaha, it removed the redoubts.⁷⁷⁸ She drew this statement from Battersby's assessment of the events: 'Ropata appears to

775. Ormond memorandum to McLean, 16 November 1871, attached to Porter to Ormond, 16 November 1871 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 174)

776. Ormond to Ropata, 21 November 1871 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 175)

777. Binney, summary of 'Encircled Lands' (doc B1), p 24

778. Crown counsel, closing submissions (doc N20), topic 4, p7. In making this submission, Crown counsel confused the withdrawal of Wahawaha with the removal of the redoubts. Battersby did not suggest that the redoubts were removed. In Binney's evidence, the Maungapohatu redoubt was dismantled by the people. The Kohimarama redoubt at Ruatahuna was handed over to Tuhoe, who made it the birthplace of Te Whitu Tekau: Binney, 'Encircled Lands, Part 1' (doc A12), pp 255, 271.

have worn out his welcome; complaints surfaced from Urewera chiefs about him, and his force was removed from the area before the end of the year.⁷⁷⁹

The historical evidence does not support Battersby's reading of events. Te Makarini's complaints about Wahawaha (on which this is based) were written in September in relation to events at Waikaremoana. There is no evidence to suggest that officials in any way acted on Te Makarini's complaint. Rather, Wahawaha withdrew following the Crown's decision that military posts were too expensive and that Tuhoe could be trusted to police their own lands against Te Kooti. The Crown's argument that the redoubts were constructed as part of its attempts to 'rebuild the shattered relationship with Tuhoe' is also incorrect.⁷⁸⁰ The redoubts were not constructed as part of peace negotiations; on the contrary, they jeopardised relations between Urewera leaders and the Crown.

It is clear to us that, at the end of 1871, the Crown was more interested in negotiating with Te Urewera leaders than in 'conquering' its peoples. Why, then, was Wahawaha sent to Ruatahuna? The short answer is that he was not. Wahawaha was part of the expedition searching for Te Kooti, and he made his own decision to go to Maungapohatu and Ruatahuna and to take the actions he did there. He was very frustrated by Te Kooti's ongoing ability to hide and escape. His letters show a suspicion of the Urewera leaders that was inappropriate by November 1871. The occupation of Maungapohatu and Ruatahuna had been triggered by an incident in which the Ruatahuna leaders fought Te Kooti, after which a number of Te Kooti's party surrendered to those chiefs. Why, in that circumstance, was it a good idea to occupy Ruatahuna against the known wishes of its inhabitants? Wahawaha had already angered Tuhoe with his attacks at Waikaremoana a couple of months earlier. And now, by his own admission, the only rangatira he still really had doubts about was Kereru Te Pukenui – and yet he persisted in occupying Ruatahuna and arguing that its people could not be believed until Te Kooti was proven to be elsewhere.

Finally, we note that the claimants made reference to alleged crimes committed by Wahawaha's forces while at Maungapohatu and Ruatahuna.⁷⁸¹ The Crown's historian could find no documentary evidence to support this claim.⁷⁸² Tuhoe, however, chose not to give us details.⁷⁸³ We respect their reticence on this matter and consider it no further.

5.5.5.6 The release of the exiles in 1872

Before making our findings on the 1871 expeditions, we pause to consider the issue of how, and in what circumstances, the coastal detainees were finally permitted to return home. As we discussed above, various sections of Tuhoe, Ngati Whare, and Ngati Haka Patuheuheu were being held at coastal reserves, many of them at Te

779. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 145–146

780. Crown counsel, closing submissions (doc N20), topic 4, pp 6–7

781. Counsel for Wai 36 Tuhoe, closing submissions, pt A, overview, 31 May 2005 (doc N8), pp 20–21

782. Battersby, summary of 'The Government, Te Kooti and Te Urewera' (doc B3), p 7 n 16

783. Temara, brief of evidence (doc K17), pp 1–2

Te Kooti Finds Sanctuary

In April 1872, Te Kooti made his final journey through Te Urewera en route to the King Country. Te Kooti reached the aukati on 15 May and was permitted to enter under the mana of Ngati Maniapoto leader Rewi Maniapoto.

Putere. It may have been expected that their release would follow immediately on the political agreement of November to December 1871. It was not so. All along, the Government had insisted that they would not be freed until Te Kooti was captured. This remained its position until April 1872, a month before Te Kooti finally reached permanent refuge in the King Country.

McLean announced his decision to release the detainees at a hui with them in Whakatane in April 1872. The terms of the release were unconditional. Binney noted that 'all of those who had been living at Te Putere reserve on the coast were informed that they could, at last, go home.'⁷⁸⁴ Boast, in his report for Ngati Whare, suggested that not all of the people returned at this time. Some Ngati Whare and Ngati Haka Patuheuheu, he argued, remained at the coastal reserves after McLean's pronouncement. They were still there as late as 1874: 'It seems that Ngati Whare and the Patuheuheu mostly returned from 1872-74.'⁷⁸⁵

From the evidence available to us, the release of these people became bound up with the Government's goal of opening Te Urewera with roads. Our main discussion of this issue is in chapter 7. Here, we refer to it briefly in connection with the exiles. From December 1871 to April 1872, the Government was pressing Te Urewera chiefs to permit roads to be built to Te Whaiti and beyond. Captain Preece was in charge of trying to get agreement to these roads, but he ran into so much opposition from Tuhoe that he felt it could be resolved only if McLean met with the chiefs.⁷⁸⁶

The main exception to this opposition came from the people living at Te Putere. In January 1872, Preece proposed that the Government could solve two of its problems at once: it could get roads built if it paid the Te Putere exiles to build them. Their situation was urgent. Preece wrote: 'The Uriwera on coast will be [badly] off if they do not get road work soon.'⁷⁸⁷ In a telegram to McLean, as quoted in section 5.5.4, he stated, 'The Ureweras at Te Putere complain of want of food. Their crops

784. Binney, 'Encircled Lands, Part 1' (doc A12), p 265

785. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 76

786. Preece to McLean, 11 January 1872, MS-papers-0032-0514, Alexander Turnbull Library; Preece, diary, 23 February 1872, QMS-1658, Alexander Turnbull Library; Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 187-188, 191-192

787. Preece to McLean, 11 January 1872, MS-papers-0032-0514, Alexander Turnbull Library

failed and they want to be allowed to return to the Urewera country. Would suggest that they be given road work to enable them to buy food.⁷⁸⁸

Battersby described the result. At the end of January 1872, Preece arranged with Captain Turner – who Battersby said was ‘in charge of road works’ – to construct a road using the labour of those at Te Putere.⁷⁸⁹ Preece wrote in his diary that the road would be ‘from this end to Te Umuhika.’⁷⁹⁰ We presume this meant a road from Fort Galatea to Te Umuhika, which was near Te Teko. This road was under construction by April.⁷⁹¹ In the meantime, Preece continued to advocate to Tuhoe the Government’s proposal to construct a road through Te Urewera. According to Battersby, Preece met with Te Makarini and Paerau at Tikitiki Pa on Lake Waikaremoana and ‘they had a long talk about roads’. Preece recorded his hope that ‘the Urewera will fall in with the idea when they get a taste of the money.’⁷⁹² For the Crown, the purpose of the roads was mainly strategic. As Preece commented, roads into Te Urewera would be ‘a good stroke in weakening the Urewera and will strengthen ourselves in case of war at any time’ – a point not lost on Tuhoe.⁷⁹³

In March, the leaders at Te Putere offered to agree to roading in Te Urewera (and even a military post at Te Whaiti) if they were finally allowed to return home. Preece recorded that a ‘deputation of surrendered Ureweras under the chiefs Hapurona Kohi and Hamiora’ visited him at Te Teko and had

urged that they be allowed to return to their own country under the following restrictions:

- ▶ 1st that they live at one settlement at Ahikereru, and that a post be established to watch and protect them there.
- ▶ 2nd that they be employed on road work there and other places.

They complain that they cannot get sufficient to live on and buy clothing at Te Putere and that if they remain there they will be a source of constant expense to the government as their crops have entirely failed – I have myself observed that the land at Te Putere is very poor and can certify as to the crops having failed during the last two seasons.⁷⁹⁴

The fact that the exiles were desperate enough to agree to such terms seemed a wonderful opportunity to Preece. He recommended to the Government that

788. Armstrong, ‘Ika Whenua and the Crown’ (doc A46), p 52

789. Preece, diary, 28 January 1872 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 125)

790. Ibid

791. Preece, diary, 14 April 1872 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), p 761)

792. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 187

793. Preece, diary, 9 November 1871 (Binney, additional supporting papers to ‘Encircled Lands, Part 1’ (doc A12(b)), pp 764–765); Binney, ‘Encircled Lands, Part 1’ (doc A12), p 280

794. Armstrong, ‘Ika Whenua and the Crown’ (doc A46), p 52

their release should be conditional on putting a road through to Ahikereru and Ruatahuna.⁷⁹⁵ This information and recommendation was passed on to McLean, who agreed to meet with the Urewera leaders in April.⁷⁹⁶

This, then, was the background to the Whakatane hui of 15 April 1872. Preece was instructed to gather the Urewera chiefs: 'I got a letter from Mr Clarke telling me to meet Mr McLean at Whakatane and to get the Urewera chiefs down there.'⁷⁹⁷ As far as we can tell, the only Urewera people present at the meeting were the Te Putere exiles. Preece recorded that he 'saw Urewera chiefs who are working with their men on road work at Te Umuhika; informed them Mr McLean wished to see them at Whakatane'. Preece then went to Te Teko and on to Whakatane, without – it seems – inviting anyone else from Te Urewera.⁷⁹⁸

The hui took place the next day, on 15 April. Preece summarised the outcome:

Mr McLean arrived in the Luna at 1pm with Col St John, Mr Lewis and the chiefs Tareha and Hapuku of Hawkes Bay. Had meeting with Urewera chiefs. Mr McLean made a short speech telling them that they may go home without further restriction. I think it ought to have had one condition namely;—

That they should put the road through to the Lake and be paid for the work by the Government. Hapurona [leader of the exiles at Te Putere] is however very grateful and might do that bye and bye without it being put to him in that way. Mr McLean told me to dissilusion any Natives that thought the confiscated lands would be given back to them.⁷⁹⁹

Preece's journal entry demonstrates that McLean put no conditions on the release of the coastal detainees. It also shows that he rejected one of the options put before him: that their release be conditional upon the construction of a road through Te Urewera. However, the hui was clearly arranged in this context, and its effect – and the purposes that McLean wished to achieve in securing the detainees' release at this time – should be seen in light of the ongoing negotiations about the construction of roads. Although the majority of Tuhoe remained opposed to the idea, Hapurona Kohi of Ngati Whare appears to have repaid his release by staunchly advocating for roads.⁸⁰⁰ It seems to us that their agreement to work on roads, and their likely support for roading once they returned to Te Urewera, was the reason for their release. As far as we are aware, McLean did not explain why – after maintaining for so long that the detainees would not be allowed to go

795. Armstrong, 'Ika Whenua and the Crown' (doc A46), p 52

796. Ibid, pp 52–53

797. Preece, diary, 13 April 1872 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), p 761)

798. Preece, diary, 14 April 1872 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), p 761)

799. Preece, diary, 15 April 1872 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), pp 761–762)

800. Preece, diary, 22 April, 27 May 1872 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 188)

home until Te Kooti was captured – he finally released them in April 1872. Binney concluded that, ‘to McLean’s credit, he did not attach any strings to the return of the Urewera exiles.’⁸⁰¹ Nonetheless, we think he used the release of the exiles in an attempt to breach Urewera opposition to roading.

The official account of the April hui sheds little light on this question. David Armstrong summarised it in his report for Te Ika Whenua, based on Preece’s incomplete notes of the speeches.⁸⁰² Perhaps the most important point is that the Government made its decision in consultation with the Kawanatanga chiefs, including those who had been responsible for keeping an eye on the detainees. McLean had brought Te Hapuka and Tareha Te Moananui of Ngati Kahungunu with him, and Wahawaha was also present, as were leaders from Te Arawa, Ngati Awa, and Ngati Pukeko. All of these chiefs said that it was time for Hapurona Kohi and his people to return home. Hapurona was the only Urewera leader who spoke.⁸⁰³

Preece’s notes of McLean’s speech are incomplete, but he was recorded as saying:

The words which passed between us when I was last at Whakatane are now being fulfilled. I then told you [Hapurona] that if you and your people conducted yourselves properly during your stay on the coast, after a certain period you would be at liberty to go back to your own country and live there, or to go backwards and forwards along the coast, or anywhere else where you might think proper. I am glad to hear you say that there is no more intention of evil on your part, and I keep these words of yours in remembrance . . .⁸⁰⁴

Wahawaha saw the point of this at once, observing: ‘Now that the Government have allowed you to return to your land, and also given you land here, you will not need to dwell altogether in your fastnesses.’⁸⁰⁵

Hapurona replied to McLean: ‘I am pleased at what you say: you say, return now that Ropata has cleared the evil out of Ruatahuna; It is well; I will return, but I will come backwards and forwards to Te Putere and Hawera.’⁸⁰⁶

As of 15 April 1872, the people at all of the coastal reserves were free to go home. But Boast explained that some Ngati Whare and Ngati Haka Patuheuheu did not return:

Some people may, however, have remained permanently at Matata and did not return. In August 1911 Hohepa Maruhau, who described himself as Hamiora’s son, asked if he could have his Urewera lands exchanged for Crown land ‘lying here, between Matata and Whakatane’. A number of the Te Whaiti sellers after 1915 lived at

801. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 266

802. Armstrong, ‘Ika Whenua and the Crown’ (doc A46), pp 53–55

803. ‘Notes of a Meeting Held at Whakatane on 15th April 1872’, 15 April 1872 (Armstrong, supporting papers to ‘Ika Whenua and the Crown’ (doc A46(a)), pp 160–168)

804. *Ibid*, pp 167–168

805. *Ibid*, p 166

806. *Ibid*, p 164

Matata; others lived nearby at Te Teko, Opotiki and Whakatane. For some the exile may well have been permanent.⁸⁰⁷

From census information gathered by Hamlin, Boast concluded that most Ngati Whare had returned to Te Whaiti by 1874.⁸⁰⁸ Some later sought land there on a permanent basis. Armstrong commented that the reserve was mainly useful for fishing: 'they may not have occupied and cultivated the Te Putere land until the 1890s, when drainage and other changes to the physical landscape made farming there a more attractive proposition'.⁸⁰⁹ However, there is another side to this. Jack Ohlson and Ani Hare told us about the people who did not return because of their shame, as we discussed above.

For Ngati Whare and Ngati Haka Patuheuheu, the two years of exile undoubtedly had a lasting effect on their patterns of settlement. For Tuhoe, however, McLean's pronouncement in April 1872 meant that they could return home – and this they did.

5.5.5.7 Conclusion: Treaty findings on the Crown's conduct of the 1871 expeditions

In 1871, the Crown's focus was on hunting and capturing Te Kooti. From at least the end of 1870, the Government considered itself in a developing peace with the peoples of Te Urewera. A new policy was introduced: those who had not yet surrendered and come out would be allowed to remain and would be made responsible for catching Te Kooti if possible; the pressure to do so would come from continuing to detain the exiles until he was caught. Te Kooti was no longer believed to be a serious threat, but the Government still devoted considerable resources to bringing him to 'justice'. In part, the expeditions sent into Te Urewera were designed to intimidate and to prevent any renewal of opposition – military or other.

The first expedition did not achieve its goal of capturing Te Kooti. The December 1870 plan of concentrating Tuhoe at Ruatahuna under Wahawaha was soon abandoned, not only because the communities at Waimana, Tauwharemanuka, Tawhanga, and Maungapohatu refused to move but also because the expedition was diverted to hunt for Te Kooti when he was located outside the district. Importantly, peace was confirmed with Tamaikoha, who escorted the expeditionary force across his lands and onto Maungapohatu. There, Wahawaha met with Ngati Huri, and the latter made peace with the Crown. Thus, the ultimate effect of the expedition was to strengthen and extend the developing peace. This happened because of work and forbearance by the leaders on both sides. Tuhoe's reception of the Crown force, especially Tamaikoha's orchestration of an opportunity for peacemaking at Maungapohatu, demonstrated their commitment to maintaining their own authority while cementing peace with the Government.

The second expedition combed Te Urewera but did not find Te Kooti. Peace was confirmed with various communities, including Ngati Huri and the Maungapohatu

807. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), pp 76–77

808. *Ibid*, p 76

809. Armstrong, 'Ika Whenua and the Crown' (doc A46), p 55

peoples, and there were acts of reconciliation on both sides. Mistakes were made (such as the capture of Te Kakari) and there was an ever-present element of intimidation, but the ultimate result was to strengthen and further cement the peace. Hardship was being experienced on all sides. Neither the Kawanatanga forces nor the Urewera peoples had enough to eat, and hungry Government forces plundered some of the cultivations. These forces were greeted as ‘Te Manuhiri o Whenuanui’, because the exiled Ruatahuna chiefs Te Whenuanui and Paerau, who were being held at Napier under Tareha’s supervision, had agreed to them. We found this ‘consent’ to have been given under duress. Not only were the chiefs themselves being detained, but the Government also made it clear that none of the many exiles scattered around the coast would be allowed to return until Te Kooti was caught. It maintained this position throughout 1871, long past any policy justification. There was certainly no legal justification for it.

The Crown’s detention of its subjects is lawful only if done as part of the criminal law’s processes for bringing suspects to trial or as a necessary part of the response to a state of emergency. There is no suggestion that the exiles were detained pending trial for criminal offences, which leaves the possibility that a state of emergency could have necessitated their detention. The Turanga Tribunal’s consideration of this matter makes plain that the ‘necessity’ of any lawful detention lasts only as long as does the emergency.⁸¹⁰ Once the emergency has passed, the detention must cease or it will be unlawful. The Crown’s evidence is that Te Kooti was no longer a threat by April 1871. In our view, the date was earlier. In any case, as we found above, the situation in Te Urewera in 1870 did not justify the removal of people from their homes or their subsequent detention. Further, the detention of the exiles persisted until April 1872, a year past the time when, on the Crown’s own evidence, the emergency situation ceased. The exiles’ detention was unlawful.

We find the continued detention of the Urewera exiles in coastal reserves in 1871 to have been in breach of their article 3 Treaty rights. We also find that the coercion applied to the leaders and peoples still inside Te Urewera, in which the release of the exiles was made contingent on their cooperation in the capture of Te Kooti – and the capture of Te Kooti, regardless of where he was – in breach of the Crown’s promise in the Treaty to respect and uphold their tino rangatiratanga. The cooperation of Te Whenuanui, Paerau, and other leaders in 1871 was always based in part on this coercion.

After the release of Te Whenuanui and Paerau, and the evident decision not to take action against Ngati Huri despite their assistance to Te Kooti, there was a growing improvement in relations between the Crown and Te Urewera leaders. This was both helped and hindered by the events of July, when Te Kooti returned briefly to Waikaremoana and found some support from the people there. The Waikaremoana leader Te Makarini reported Te Kooti’s arrival and requested assistance. His swift action helped convince the Government of the trustworthiness of the Urewera chiefs. But Te Makarini could not have expected what he got in return. After fruitlessly searching for Te Kooti, who had left the area, Wahawahā’s

810. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, pp192–193

forces sacked the pa that had been accused of giving him refuge. They destroyed its buildings, consumed its food supplies, and carried its people off into exile. Further depredations ensued, so that the Waikaremoana people were again without food in September 1871. We do not accept the Crown historian's argument that the destruction of Te Makarini's cultivations must have been 'inadvertent'. The Government does not appear to have taken any notice of Te Makarini's protests. We find that the attacks on Waikaremoana in 1871 were without justification and breached the article 2 and article 3 Treaty rights of the Waikaremoana peoples. The Crown's failure to provide redress, despite complaint from Te Makarini, who had declared his loyalty to the Crown and was assisting it, was also in breach of the Treaty principle of redress.

The final act of this 'war' that was not a war was the continuing hunt for Te Kooti in October and November of 1871. Some Tuhoe leaders gave growing cooperation at this time; others, such as Kereru, remained aloof. A fight between Ruatahuna chiefs and Te Kooti in October, followed by the surrender of some of Te Kooti's people at Ruatahuna, led to a most unexpected development. Rather than supporting the Urewera chiefs, Wahawaha occupied Maungapohatu and Ruatahuna, built redoubts, and declared his determination not to leave until the people there could prove that Te Kooti was not in their district. His extreme frustration that his long endeavours to take Te Kooti had come to nothing was very evident. Although Wahawaha admitted to having real doubts only about Kereru Te Pukenui, he insisted on treating everyone with suspicion and remaining in occupation despite the known opposition of the local people. Wahawaha had certainly been given wide discretion – and would have considered himself entitled to act as he did. When faced, however, with the prospect of funding permanent military posts, the Government declared its intention to trust the Urewera chiefs to police their own district against Te Kooti. Wahawaha withdrew as soon as the Urewera people agreed to the new arrangements.

This brief occupation left lasting scars on the Ruatahuna and Maungapohatu communities, as the people told us at our hearings. In our view, the occupation of these settlements by Crown forces when their rangatira were cooperating with the Government and exercising their own authority in keeping Te Kooti out of their district was a violation of their mana motuhake and tino rangatiratanga. We find the Crown in breach of the Treaty.

Finally, we note that, although Wahawaha was withdrawn on the basis that the Urewera chiefs could in fact be trusted to police their own districts independently, the Crown still refused to allow the exiled hapu to return. We find their continuing detention past the end of 1871 to be a flagrant breach of Treaty principles.

5.5.6 What were the immediate and long-term impacts of the military expeditions?

SUMMARY ANSWER: The immediate impacts of the military expeditions were, as Professor Brian Murton argued, 'catastrophic'. Many people were left without food or shelter, and this contributed to a high death toll when an influenza epidemic struck in 1870. At least 12 per cent of the Urewera population died as a direct or

indirect result of the Crown's conduct of its expeditions – both as casualties and as a result of hunger and disease. As well as the immediate hardship involved, this had significant effects on the social structure of Te Urewera. The population appears to have stabilised by the 1880s as a result of a high post-war birth rate. Most of the economic impact, while destructive and severe, was relatively short lived. Parts of the traditional economy had recovered by the mid-1870s. The peoples of Te Urewera were more permanently affected by the loss of the confiscated land. Nonetheless, their *mana motuhake* was 'trampled'. Many *taonga*, moreover, were destroyed or desecrated by the expeditionary forces. These losses could not be replaced in the way that homes could be rebuilt and crops replanted. The peoples of Te Urewera have been left with a long-term sense of grievance, seeing themselves as '*kai-a-te-ahi*' (food for the fire). In all of these ways – socially, economically, and culturally – the claimants were prejudiced by the Crown's conduct of its expeditions, its failure to make peace in a fair and timely manner, and its failure to provide appropriate assistance and redress.

In this section, we examine both the immediate and longer-term impacts of the events of 1869 to 1871. We do so in terms of social, economic, cultural, and political effects. Some of the long-term impacts, however, are more fitting subjects for later chapters.

5.5.6.1 Social impacts

In terms of social impacts, the most immediate and obvious were the loss of life which took place as a result of the expeditions' attacks on Te Urewera settlements and the widespread destruction of homes and food supplies. In trying to gauge the extent of this loss, however, we encountered significant problems. We do not have reliable figures for the population of Te Urewera immediately before the conflict, or for the years before that, or immediately following the hostilities. All population estimates at the time had acknowledged deficiencies owing to the problems European visitors had in accurately counting the peoples of the region. In addition, the evidence we have of deaths from the hostilities (from reports by officers such as Whitmore) is one-sided. As Whitmore acknowledged at the time, the reports of deaths were based only on the bodies they recovered. Maori were known to take their dead away from the scene of battle to be buried elsewhere.

The first question to be addressed is the number of deaths – combatant and non-combatant – that occurred as a result of military action. The greatest number of direct casualties occurred in 1869. Having acknowledged the possibility that more deaths occurred than were reported, we nonetheless think it unlikely that there would have been many more than those reported by Whitmore. The most notable encounters during the first expedition, such as those at Te Harema, Te Whata a Pona, and Ruatahuna, involved surprise attacks on communities, an immediate exchange of fire, and the retreat of those who could escape. In such attacks, there would have been little time for the home people to carry away their dead. And, in each case, the military forces stayed in the *kainga* or *pa* for long enough to discover the bodies of those who were killed immediately. It is possible, of course, that some of the wounded who were able to escape died later. There

could also have been unreported deaths from the various exchanges of fire in the bush.

It should be noted that Whitmore's official report was written with an eye to emphasising the extent of punishment he had meted out to the peoples of Te Urewera. He made little attempt to disguise the death and destruction that had been caused – though the means by which he had achieved it may have been masked. The 20 dead bodies that Whitmore reported appear to be the five or six killed at Te Harema, the nine reported by St John, and four others. These final four may have been the men whose heads were presented by Te Arawa troops to Whitmore on 13 May. If Whitmore was willing to count these deaths in his official report, then it is likely he would have counted others of a similar nature if they had occurred. Therefore, we do not think it likely that there would have been many more than 20 deaths. As we discussed earlier, some of those killed were non-combatants.

The death toll for 1870 and 1871 is difficult to determine. There are only four actual instances on record of people being killed as a result of military operations in Te Urewera in these years. The first was at Maraetahi in March 1870, when 25 people were recorded to have been killed. As we have seen, Porter reported that 19 of these people, who were of Te Kooti's immediate party and unlikely to have been from Te Urewera, were executed. The second instance occurred when St John's force attacked Whakarāe in April 1870, killing Tamaikoha's uncle Tipene and one other. The third instance occurred in May 1870, when Hamlin's force killed two men and a woman. The final instance was in August 1871, when the Ngāti Porou column under Wahawaha and Porter attacked Waipaoa, killing three and later summarily executing Wi Heretaunga. The total recorded from these four occasions is 34.

In his report on socio-economic issues, Professor Brian Murton says that 'Tuhoe are estimated to have lost 160 men in the fighting.'⁸¹¹ This estimate came from the people themselves: 'Tuhoe would later say that they had lost 160 men in the various engagements of the wars.'⁸¹² Anita Miles notes that Tuhoe gave this figure of 160 to Resident Magistrate Locke in the 1870s.⁸¹³ Locke's report indicates that his Tuhoe informants counted all of the engagements since Orakau, back in 1864.⁸¹⁴ As well as the people who died during the Waikato war, this would have included the fighting against Crown forces at Lake Waikaremoana in 1866, the various engagements in which Tuhoe fought for Te Kooti across the North Island in 1869, and the attacks within Te Urewera itself.

Based on accounts of these engagements, we see no reason to doubt the Tuhoe estimate of 160 men killed, as given to Locke at the time. From the documentary

811. Brian Murton, 'The Crown and the Peoples of Te Urewera, 1860–2000: The Economic and Social Experience of a People' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc H12), p 174

812. *Ibid*, p 173

813. Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p 93

814. Locke to McLean, 30 May 1874, AJHR, 1874, G-2, p 20

evidence, we conclude that there were 54 reported deaths as a direct result of military action in Te Urewera. Of these, 26 were definitely from Te Urewera iwi. Allowing for some uncertainty in identifying 'Urewera' adherents of Te Kooti and for some unreported deaths, the actual total may have been anywhere from 30 to 40.

If we consider the collateral deaths that occurred, however, the figures are much higher. As we have shown in earlier sections, there was widespread destruction of homes and food supplies. In May 1870, Ormond reported: 'From Mr Porter, I gathered that the prisoners taken describe the Urewera as worn out and in constant dread of being captured and killed; they are said to have mostly dispersed in small parties, who are hiding in caves and other inaccessible places.'⁸¹⁵

Many communities lost all food and shelter in 1869, and the same happened in a more localised way at Waikaremoana in 1870 and again in 1871. We have only glimpses of the resultant devastation. In the winter of 1870, Hamlin reported that six of the people fleeing from Waikaremoana had frozen to death on the Huiarau Ranges and another four were known to be missing.⁸¹⁶ The refugees who did make it to Ruatahuna placed an unbearable strain on the resources of that community, which had had its own food supplies destroyed in 1869. Gilbert Mair reported a 'great dearth of food' there on 22 July.⁸¹⁷ It will be recalled that massive potato plantations had been looted or destroyed by Hamlin at Waikaremoana – the sheer scale of planting there (which had escaped the destruction in 1869) must have been an attempt to assist the communities whose food supplies had been obliterated the year before.

The situation deteriorated further when an outbreak of influenza hit Te Urewera in 1870. The death toll was horrendous. Murton put to us that there is a well-established link between malnutrition and the virulence of such diseases. He had no hesitation in concluding that starvation was a significant factor in the recorded death toll of 1870.⁸¹⁸ Eleven people died just in the three days that Government messengers were present at Ruatahuna in August 1870.⁸¹⁹ In October 1870, Hoani Paiaka wrote that the people could not 'come in' until December of that year, 'on account of the great mortality of the Urewera.' 'Two hundred of them have died,' he reported, and 'a great many of the rest are confined to their houses.'⁸²⁰ In September 1870, Mair reported:

The Urewera seem to be very short of food and clothing, and the winter seems to be unusually severe. Great numbers of them have died. Eleven died the 3 previous

815. Ormond to Colonial Secretary, 23 May 1870, AJHR, 1870, A-8B, p 67

816. Hamlin to Ormond, 2 July 1870, AJHR, 1870, A-8B, p 90; see also Armstrong, 'Ika Whenua and the Crown' (doc A46), p 45

817. Gilbert Mair to Moule, 22 July 1870, AJHR, 1870, A-8B, p 91

818. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 173-175, 297-302

819. Armstrong, 'Ika Whenua and the Crown' (doc A46), p 48

820. Hoani Paiaka to Mair, 13 October 1870, AJHR, 1871, F-1, p 6; Gascoigne to Moule, 17 October 1870, AJHR, 1871, F-1, p 6 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 143)

days to the messengers leaving Ruatahuna. They are seized with pains in the head and throat, and expire in a few hours.⁸²¹

Battersby argued that this ‘staggering death rate’ was ‘not again mentioned’ and was ‘probably well above the actual death rate.’⁸²² Instead, he suggested that the figure of 200 was actually the population of those who remained at Ruatahuna.⁸²³ Counsel for Tuawhenua questioned Battersby about the evidence he had used to conclude that a death rate of 200 as a result of influenza was incorrect. Battersby stated: ‘I find that figure too high based on the . . . later . . . estimates of their population.’⁸²⁴ He suggested that, because the Te Urewera population was at this time relatively small, averaging around 700, a death rate of 200 was more than could be expected:

That seems to be consistent whenever you can get information on it. And it would seem to me that 200 would significantly reduce that figure, and you wouldn’t come out with 700–800 people being estimated afterwards. That’s the reason I doubt the size of that figure.⁸²⁵

Hoani Paiaka, it should be noted, was working on behalf of the Government at the time he reported that 200 people had died. Further, his report was confirmed by the Ngati Whakaue messenger Tomo, who also stated that ‘many of the Urewera (perhaps 200) have died lately from sickness.’⁸²⁶ Te Arawa certainly believed that there was a crisis. They wanted to take the elderly and the sick to Rotorua, estimating that 100 carts would be required to transport them.⁸²⁷

Many witnesses in our inquiry argued that food shortages and starvation contributed to a high death toll for the peoples of Te Urewera in 1870 and 1871. In addition to the evidence of Murton and Binney, the same point was made by Milroy and Melbourne, by the Tuawhenua researchers, and by Miles.⁸²⁸ Vernon Winitana told us that the elders of Ngati Ruapani believe the Crown’s actions were

821. Mair to officer commanding Tauranga district, 3 September 1870 (Armstrong, supporting papers to ‘Ika Whenua and the Crown’ (doc A46(b)), p 316)

822. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 143

823. Ormond to Porter, 20 December 1870, AJHR, 1871, F-1, p 8 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 143)

824. John Battersby, under cross-examination by counsel for Tuawhenua, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p 165)

825. John Battersby, under questioning by presiding officer, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), p 165)

826. Gascoigne to Moule, 17 October 1870, AJHR, 1871, F-1, p 6

827. W G Mair to Clarke, 18 October 1870, AJHR, 1871, F-6A, p 4

828. Milroy and Melbourne, ‘Te Roi o te Whenua’ (doc A33), pp 164–169, 352; Evelyn Stokes, James Wharehuia Milroy, and Hirini Melbourne, *Te Urewera Nga Iwi Te Whenua Te Ngahere: People, Land and Forests of Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111), p 50; Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), pp 265–268; Miles, *Te Urewera* (doc A11), pp 187–191, 499

‘WHEN the Crown came through, they burned all the rua kumara. The whata-kai got burned as well, where they used to hang the corn. The scorched earth policy resulted in starvation for the people. Wanting the people to starve was a deliberate action. No one in their right mind would just go into someone’s garden and destroy it. They did things like dig up the potatoes and expose them to the frost.’

Desmond Renata¹

1. Desmond Renata, brief of evidence, 22 November 2004 (doc 124), p 9

nothing short of murder (kohuru).⁸²⁹ Memories of the catastrophe have survived in the oral history of the people.⁸³⁰ Neuton Lambert of Ngati Ruapani shared with us the history handed down by his grandmother:

She had this attitude about inheriting from her parents, and the old people. There was a real sense of interconnection between the generations, and this was passed down through their memories. They in turn passed them on to us, so that we still feel those things as acutely as they did. Her generation would have been living with people who had gone through the wars, through the fighting up here and around the Lake [Waikaremoana] and the great loss of life up here.

Her focus on survival was passed down to me, and I think it was passed on to them by the way they were brought up by their parents who went through that time. They suffered such a terrible loss. They have told us of the times in the 1860’s where about 200 people died from starvation after the scorched earth policy. I know this korero to be true because during my grandmother’s lifetime and mine people have kept finding the bones of our people on the land. When farmers were up in the farms cutting scrub they kept coming across bones. The old people just died through illness and starvation. They were decimated. It shows what a core element the land, the maara kai and the traditional food was.⁸³¹

Battersby accepted that the peoples of Te Urewera suffered from the looting and destruction of their property and food supplies. His principal doubt concerning the death toll was not that the conditions were rife for such an outcome. Rather, he queried whether a number of 200 deaths was realistic if the population was still 700 in 1871.

829. Vernon Winitana, introductory statement, no date (doc H27), p 2

830. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 268

831. Neuton Lambert, brief of evidence, 11 October 2004 (doc H57), p 10

In order to judge this evidence fully, an understanding of the relative estimates of the Te Urewera population before and after the wars is required. As we have already suggested, all population estimates made at this time need to be considered carefully. The observations (sometimes guesses) of European visitors, who counted the number of people they saw, must have meant that some people were counted more than once. At the same time, this approach took no account of the possibility that large numbers of people were absent. Much was dependent on the month in which estimates were made. People may have been away at hui or, in autumn, harvesting crops and other resources. Estimating the numbers of fighting men was particularly difficult, because these people were the most mobile. Similar caveats apply to estimates based on local knowledge. As observers pointed out at the time, Maori were prone to exaggerate when estimating their ranks of fighting men, particularly if the inquiry was from a visitor who was suspected of assessing that tribe's military strength.

Contemporary population estimates may also reflect the variety of the sources themselves. Some estimates were made by observers who travelled through the region; others were made by those who gleaned their information at the edges. An added problem was the definition of 'Te Urewera' itself. Some estimates included the Waikaremoana and upper Wairoa population; others did not. Further estimates included Ngati Awa communities on the fringes of Te Urewera: for example, Te Teko on the Rangitaiki River. Each figure we have must be carefully assessed. However, enough estimates of the Te Urewera population were made between the 1840s and the 1870s to gain a general picture of population change.

Estimates of the Te Urewera population before the wars suggest that the total population of the region was around 2,000. These estimates were made by Pakeha who had visited the district, in some cases travelling right through Te Urewera and discussing the population with Maori. The first estimate was made by the missionary J A Wilson in July 1841.⁸³² Based on his own observations, and his sending of Maori preachers to the various communities, Wilson suggested that the population of 'the Urewera' was 2,100, with the number of fighting men approximating 800. This figure included the Ngati Awa community at Te Teko. The second estimate comes from William Williams, who, in November 1840, travelled through Te Urewera, stopping at Waikaremoana and Ruatahuna. Williams estimated the total number of men to be 600.⁸³³

A third estimate was that of the missionary William Colenso, who travelled throughout Te Urewera in December 1843 and January 1844. Colenso made notes about each community he visited, observing the population as he went. The key difference between Colenso's figures and those of Wilson and Williams is that the notes he made in his diary were based purely on observation, rather than what his hosts told him. According to JH Starnes, Colenso told Henry Williams that the

832. Binney, 'Encircled Lands, Part 1' (doc A12), p38; Reverend J Irwin, 'John Alexander Wilson: First Resident Missionary in Opotiki-Whakatane, 1840-1851', *Journal of the Whakatane and District Historical Society*, vol 15, no 3 (1967), p 164 (Miles, *Te Urewera* (doc A11), p 85)

833. Binney, 'Encircled Lands, Part 1' (doc A12), p 39

Community	Population
Waikaremoana	165
Ruatahuna	275
Maungapohatu	175
Te Whaiti	140
Horomanga	80
Ruatoki	20
Waimana	195
Total	1,050

Table 5.1: William Colenso's population estimates from his December 1843 to January 1844 visit to Te Urewera

Source: Judith Binney, 'Encircled Lands, Part 1: A History of the Urewera from European Contact until 1878', 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A12), pp 48–51

Community	Men
Waikaremoana	80
Ruatahuna	400
Te Whaiti (At head of Rangitaiki)	100
Ruatoki (90 men and women)	50
Waimana	90
Total	720

Table 5.2: Hunter Brown's report of Te Urewera population

Source: 'Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes', June 1862, AJHR, 1862, E-9, p26 (Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), pp 67–68)

total population of Te Urewera was about 3,000, including 1,000 fighting men. However, as Binney notes, Starnes gives no citation for this figure.⁸³⁴ A more accurate picture of Colenso's visit can be drawn from his diary. Table 5.1 is compiled from Binney's notes on his diary.

The total of 1,050 is considerably less than the estimates of Wilson and Williams, who thought that the number of 'fighting men' alone ranged between 600 and 800. However, the figures drawn from Colenso's diary were based entirely on observations of the number present when he visited; they were not intended as a census of the total population. The months in which he visited Te Urewera, December and January, were the peak season for travel beyond the rohe. Therefore, 1,050 could be thought of as a minimum figure.

Charles Hunter Brown's visit to Te Urewera in 1862 (see chapter 3) took in the same communities that Colenso visited almost two decades before. In his report, Hunter Brown noted that he had talked to various people about the population of the region. Although he was cautious about his findings, Hunter Brown's estimates are indicative of the general pre-war population. See table 5.2.

Miles notes that while Hunter Brown believed the total of 720 men to be an exaggeration, he also commented 'on the fact that it was very difficult to get an accurate idea of the size of Tuhoe communities when people were often away trading, visiting, birding, and so on.'⁸³⁵ Therefore, Miles concludes, 720 appears to be an accurate assessment of the population of 'fighting men' in Te Urewera at this

834. Ibid, pp 48–55

835. Miles, *Te Urewera* (doc A11), p 87

time. Miles further concludes that an idea of the total Te Urewera population can be obtained by multiplying the number of 'fighting men' by three – based on the relative proportions of adult men to women, children, and elderly men. Thus, she reaches a figure of approximately 2,160 living in Te Urewera in the early 1860s.⁸³⁶ The Tuawhenua researchers pointed out that both Colenso and Hunter Brown missed various Ruatahuna communities on their way through the district. In their view, an estimate of 400 fighting men, and a total population of 1,000, was probably accurate for Ruatahuna.⁸³⁷

These figures can be contrasted against an estimate made by St John in 1868. St John stated that 728 people lived in Te Urewera (minus one-sixth, or 118, for possible inflation of the figures by his source and for losses in fighting). St John had a single source: a man who was a prisoner at Te Teko. His figure of 728 does not include Waikaremoana, and the total population for the Ruatahuna district was only around 100 – an unlikely proposition given the number of kainga and pa in the region.⁸³⁸ St John's estimate, therefore, appears to be far too low.

Given all of these pre-war estimates, then, it appears to us that the population of Te Urewera as a whole – including populations around Lake Waikaremoana – totalled approximately 2,000. We do not accept Battersby's suggestion that the average population of Te Urewera at this time was around 700. He appears to have based this figure on St John and on a misunderstanding of Hunter Brown's figures. (Under cross-examination, Battersby confused Hunter Brown's estimate of 720 fighting men with a figure for the total population.) He then combined figures for 1871 – 460 in Te Urewera, as observed by Gilbert Mair, and 250 at the coast, as estimated by Moule – and argued that this population still amounted to 700. Therefore, in his view, 200 people could not have died.⁸³⁹

It is not possible to be precise about the post-war population of Te Urewera. While more detailed census enumerations began in the 1870s, these had a number of flaws. However, the general consensus of those who observed population trends was that the relatively stable population of Te Urewera in the post-war period was attributable to the fact that the high number of deaths due to illness was later balanced by the number of births. In this regard, Te Urewera was a national exception.

Gilbert Mair, who travelled through Te Urewera in 1871, made the first estimate of the post-war population. Like Colenso, Mair noted the population at each community he visited.⁸⁴⁰ The total population, including Waikaremoana, was given as 460. As Battersby observed, this low figure is in part due to the fact that a number

836. Miles, *Te Urewera* (doc A11), p93

837. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p197

838. Binney, 'Encircled Lands, Part 1' (doc A12), pp170–171; Battersby, 'Conflict in the Bay of Plenty' (doc B2), p215

839. John Battersby, under cross-examination by counsel for Tuawhenua, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), pp165–167); Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p159; see also John Battersby, summary of 'Conflict in the Bay of Plenty and Urewera Districts, 1864–1868', 14 March 2005 (doc M2), pp27–28

840. Mair to officer commanding Tauranga district, 11 July 1871, AJHR, 1871, F-1, p45

of communities had by this time surrendered and were located at reserves such as Te Putere. Battersby notes a report by Moule, who estimated the population of surrendered Te Urewera peoples to be around 250 – giving a total population of 710.⁸⁴¹

Rather than providing us with a good indication of the actual Te Urewera population at this time, these estimates are in fact highly distorted. Mair's observations were made in a time of extreme uncertainty. Not only was a large proportion of the population located outside Te Urewera, but we also know that many people were hiding in very small family groups, away from the main settlements – particularly when Mair and Crown forces were passing through their communities. What Mair did note, however, was the preponderance of children seen on his journeys. Although, as the Tuawhenua report observes,⁸⁴² this observation seems to be contradicted by the proportion of children to women he actually recorded, Mair's observation was confirmed by a number of other officials in following years.

Mair's observations are supported by Locke, the resident magistrate at Wairoa, who in 1874, following a visit to Ruatahuna, noted 'the large number of elders killed during the late war'. Locke observed that the imbalance in the population may have been caused by these deaths.⁸⁴³ Robert Price, who toured through Te Urewera with Locke in 1874, noted that 300 to 400 'fighting men' could be mustered. This figure was considerably lower than the pre-war estimate of Hunter Brown, and those of Wilson and Williams before him, although it was restricted to those who gathered at Ruatahuna for this particular hui.⁸⁴⁴ Like Mair, Price was surprised by the 'immense number of children' at Ruatahuna.⁸⁴⁵ Price's observations were made in the same year as the first census of the region. The 1874 census was flawed, however, in that a number of Te Urewera hapu could not even be named. Consequently, the total population was estimated at only 599. But a table compiled by Miles of Sub-inspector Ferris's report in 1874 and the 1874 census suggests that the population of Te Urewera had in fact suffered a dip. Miles concludes from this evidence that the recorded Te Urewera population was 1,034.⁸⁴⁶

The 1878 census was no less flawed than its predecessor, but it provides us with a picture of a population stabilising after a period of war and disease. The total Te Urewera population recorded in 1878 was 745. However, Opotiki Resident Magistrate Bush observed at the time of the 1881 census that this figure excluded Te Urewera populations living around Waikaremoana.⁸⁴⁷ Adding these communities, Bush said, brought the total population to 1,471. Preece's comment on the 1878 census was that, although 'there have been a number of deaths [in Te

841. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 159

842. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 266

843. Locke, AJHR, 1874, G-2, p 21 (Milroy and Melbourne, 'Te Roi o te Whenua' (doc A33), p 169)

844. R Price, *Through the Urewera Country* (Napier: 1891), p 41 (Miles, *Te Urewera* (doc A11), p 88)

845. Miles, *Te Urewera* (doc A11), p 88

846. *Ibid*, pp 88–89

847. RS Bush to Under-Secretary, Native Department, 23 April 1881, AJHR, 1881, G-3, p 4 (Miles, *Te Urewera* (doc A11), p 90)

Urewera] during the last four years, I do not think there is any actual decrease in numbers; the births having outnumbered the deaths.⁸⁴⁸

The 1881 and 1886 censuses suggest that the population of Te Urewera was further rebounding at this time. The 1881 census recorded the population as 1,893. Five years later, this had increased to 1,901. While these figures need to be treated with caution, they are indicative of the fact that the population of the region stabilised at this time. In commenting on the 1881 census, Bush once again put this stabilisation down to the number of births offsetting the number of deaths:

It will be observed, on reference to the return, that the Urewera are the only tribe where the children are as numerous as the adults; in most of the other tribes the adults exceed the children. So far as my experience goes, the same is the lamentable fact amongst tribes in other parts of the island. The Urewera appear to be the exception . . .⁸⁴⁹

We can draw from this evidence some fairly strong conclusions about the general nature of the post-war Te Urewera population. First, the region experienced a severe strain of influenza, which, in combination with serious food shortages and lack of shelter, contributed to a high death rate in the early 1870s. Secondly, this was offset to some degree by the relatively large number of children who were born after the war.

How does this fit with the other Maori population trends of the time? In his book *Te Iwi Maori*, Professor Ian Pool tracks the Maori population across Aotearoa during the nineteenth century and beyond, based on estimates by earlier Pakeha observers and on census figures, where available. Pool concludes that the most rapid period of population decline was between 1840 and 1874. In the 17-year period from 1840, the Maori population declined on average 1.6 per cent annually. In the following 17 years, from 1857, the population declined at a slightly slower rate. From 1874 until 1891, the population remained relatively stable. Pool puts these trends down in large part to the sudden and drastic effects of introduced diseases. These communities were exposed to new diseases for which they had little natural immunity. The population stabilised over subsequent decades as Maori developed immunity to such diseases.⁸⁵⁰

It is no coincidence that influenza struck hardest in Te Urewera at the moment that its peoples experienced war and deprivation. Murton argued that the combination of hunger and influenza resulted in high mortality rates. As we noted above, he cited studies that have demonstrated the relationship between malnutrition and

848. Preece to Under-Secretary, Native Department, 10 April 1878, AJHR, 1878, C-2, p 5 (Miles, *Te Urewera* (doc A11), p 89)

849. Bush to Under-Secretary, Native Department, 23 April 1881, AJHR, 1881, C-3, p 4 (Miles, *Te Urewera* (doc A11), p 90)

850. Ian Pool, *Te Iwi Maori: A New Zealand Population Post, Present and Projected* (Auckland: Auckland University Press, 1991), pp 60–63

the outbreak of disease.⁸⁵¹ We look at the extent of destruction of crops and other property below.

We are now in a position to draw some conclusions about the decline in population in this period. In his evidence to us, Murton estimated that 160 men died as a direct result of the fighting and up to 200 died of disease and malnutrition. In his view, the peoples of Te Urewera lost up to 20 to 30 per cent of their population during the period 1863 to 1872. As we have noted, only a small minority of the 160 men were killed by the Urewera expeditionary forces. We believe the pre-war population, at least at the time of Hunter Brown's tour, to have been approximately 2,000. At least 26 Urewera people (combatants and non-combatants) were killed by the expeditionary forces. A further 10 people were believed to have perished in the Huiarau Ranges when trying to get to safety at Ruatahuna. Another 200 or so died from hunger and disease. In our view, therefore, a minimum of 12 per cent of the Te Urewera population perished as a direct or indirect result of the Crown's conduct of its expeditions.

As might be expected, this loss of life caused great anguish to the claimants who appeared before us. As Tamati Kruger put it:

For Tuhoe, the numbers killed had been relatively few for at no point had they offered any real resistance. Nevertheless people at Ruatahuna mourned. . . . [T]he twenty bodies [recorded by Whitmore] included a brother of Te Whenuanui and the sister of Tamaikoha.⁸⁵²

We return to this issue below, when we consider the impact of these events in the creation of long-term grievances against the Crown. Here, we discuss the social impacts of the population decline.

According to Murton, family and community structures must have been disrupted, and marriage and birth rates affected. Economic recovery would also have been hindered: 'This must have impacted nearly every family, affecting their capacity to plant, grow and harvest food, as well as hunt and gather.'⁸⁵³ We accept his point, although we note that a rise in the birth rate helped to stabilise the population by the 1880s.

Just as important as population loss, however, was relocation. We have described how people were removed from Te Urewera in 1870 and how Ngati Manawa evacuated the district the year before. Many pa and kainga had been destroyed. Within

851. Murton cited the following studies: GR Soliano and M Vine, 'Malnutrition, Infection and Infant Mortality' in SH Preston, ed, *Biological and Social Aspects of Mortality and the Length of Life* (Liege: Ordina, 1982), pp 83–112; Pool, *Te Iwi Maori*, pp 62–63; and W Watson, A Rosenfeld, M Viraveidya, and K Chanawongse, 'Health, Population and Nutrition: Interrelations, Problems and Possible Solutions', in PM Hauser, ed, *World Population and Development: Challenges and Prospects* (Syracuse: Syracuse University Press, 1979).

852. Kruger, summary of evidence concerning 'Ruatahuna' (doc D28), p 48

853. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 175

Te Urewera, those who remained had to move from time to time, seeking refuge in various places. The Waikaremoana people, for example, fled to Ruatahuna in 1870. In 1871, many people took refuge at Ruatoki, which had not been destroyed. When the expeditions were finally over in 1872, and the exiles returned in April of that year, people did not necessarily return to the places they had lived before. As Price noted during his 1874 journey through Te Urewera, many destroyed pa and kainga remained abandoned. Also, as we discussed earlier, some people never returned.

A number of witnesses suggested that the events of 1869 to 1871 had a long-term effect on the customary rights of the Urewera tribes. In part, this was because the war had forced migrations that then affected the people's ability to prove their rights before the Urewera commissions and the Native Land Court. Tama Nikora, for example, argued that the continuous occupation of Matahina by Ngati Hamua and Warahoe was interrupted by the war and by their relocation to Te Putere – and that not all of them resumed occupation afterwards.⁸⁵⁴ According to Mr Nikora, Ngati Awa took advantage of this to strengthen their own claim.⁸⁵⁵ Rere Puna told us that Ngati Hineuru were forced to leave Heruiwi by Te Kooti in 1869. According to the claimants, the Government would not allow them to return, and this had an effect on their customary rights there.⁸⁵⁶ Te Ringamau Tamanui pointed to the fate of Te Waru Tamatea and Ngati Hinemanuhiri after they surrendered in 1870. Exiled from their Tairawhiti turangawaewae to the Bay of Plenty, they never returned to their ancestral lands. The outcome, she said, was the exclusion of their names from lists of owners in Native Land Court hearings.⁸⁵⁷

Several witnesses, including Wharehuia Milroy, Vincent O'Malley, Cathy Marr, and Michael Belgrave, agreed that occupation patterns at Waikaremoana were significantly affected.⁸⁵⁸ According to O'Malley, the district had been rendered virtually 'uninhabitable'.⁸⁵⁹ Further, O'Malley and Nikora argued that Urewera support for Te Kooti counted against them in the Crown's negotiation with them and 'loyal' chiefs over Waikaremoana lands.⁸⁶⁰

In closing, the Crown submitted: 'People were dislocated for extended periods of time which may have had long-term consequences in being able to demonstrate

854. Tama Nikora, 'Tuhoe and the Rangitaiki' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc C30), p 90

855. Tama Nikora, affidavit for *Milroy, Nikora, and Others v Attorney-General* (High Court, Wellington, 77/02), 11 July 2002 (doc L25), p 22

856. Rere Puna, brief of evidence, 6 September 2004 (doc G10), p 8

857. Te Ringamau Tamanui, brief of evidence, 18 October 2004 (doc H36), pp 3–5, 13

858. Milroy, brief of evidence (English) (doc H51(a)), pp 9–10; Vincent O'Malley, summary of 'The Crown and Ngati Ruapani', September 2004 (doc H6), p 19; Cathy Marr, 'Crown Impacts on Customary Interests in Land in the Waikaremoana Region in the Nineteenth and Early Twentieth Century' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A52), p 130; Michael Belgrave and Grant Young, summary of evidence, November 2004 (doc 12), p 22

859. O'Malley, summary of 'The Crown and Ngati Ruapani' (doc H6), p 19

860. *Ibid*; Tama Nikora, 'Waikaremoana' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc H25), p 42

ahi ka roa over lands.’ So the Crown was at least open to this possibility, although it was unwilling to commit itself on the point.⁸⁶¹

We note these various claims here but are unable to make findings on them at this stage of our report. We will return to this issue in later chapters.

5.5.6.2 *Economic impacts*

In his report on socio-economic issues, Murton posed the question: ‘Were the Crown’s “scorched earth” policies after 1865, and especially during the “pacification” between 1868 and 1872, so destructive that the economic base was effectively lowered, both in the short and the long term?’⁸⁶²

There is no doubt that the economy was virtually destroyed for the duration of the expeditions. There was a great deal of suffering. The food shortages, lack of clothing, and lack of shelter in Te Urewera in 1870 and 1871 were commented on by many Government observers, including William and Gilbert Mair, George Preece, FE Hamlin, TW Porter, and Rapata Wahawaha.⁸⁶³ To give one example, Gilbert Mair reported in September 1870 that ‘The Urewera seem to be very short of food and clothing . . . Great distress prevails throughout the Urewera country for want of food.’⁸⁶⁴ There is no doubt the people endured severe hardship during these years.

As we have seen, Whitmore’s May 1869 expedition resulted in the destruction of several communities in the west of Te Urewera, most notably the Ngati Whare kainga and pa in Te Whaiti and all the kainga and pa on the Whakatane River. The heaviest destruction occurred in the Ruatahuna Valley. All the major food stores and cultivations in the area were destroyed, as well as all homes and buildings. This meant that all the men, women, and children of that area were without both shelter and many of their main sources of food, such as potatoes, during the winter months. Some would have been forced to stay with their kin in other areas of Te Urewera. In February 1871, for example, Wahawaha’s force found ‘refugees from almost every other tribe [Tuhoe hapu]’ at Maungapohatu.⁸⁶⁵ But many more had dispersed into the forests.

The full impact of the 1869 expedition was still being felt a year later. In April 1870, Henry Clarke reported on a family he had discovered near Maungapohatu

861. Crown counsel, closing submissions (doc N20), topic 4, p16

862. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p143

863. See, for example, Wahawaha to Ormond, 4 November 1871 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), pp 313–314); Wahawaha to Ormond, 10 November 1871 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), pp 315–316); TW Porter, diary, AJHR, 1871, F-1, p 32; Gilbert Mair to Moule, 22 July 1870, AJHR, 1870, A-8B, p91; Hamlin to Ormond, 16 June 1870 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 223); Gilbert Mair, 3 September 1870 (Armstrong, ‘Ika Whenua and the Crown’ (doc A46), p 48); and W G Mair to Clarke, 28 July 1870, AJHR, 1871, F-1, p 3.

864. Gilbert Mair to officer commanding Tauranga district, 3 September 1870 (Armstrong, supporting papers to ‘Ika Whenua and the Crown’ (doc A46(b)), pp 316–317)

865. TW Porter, diary, 16 February 1871, AJHR, 1871, F-1, p 32

who had been refugees from Ruatahuna since the Crown's attack the previous May:

I would here remark that this family lived entirely upon pigs, eels, and the tender shoots of certain ferns. The woman reported that they had not seen any one for several months, and imparted as a piece of news to her captors that the Europeans and Arawa had attacked Ruatahuna, a circumstance which occurred twelve months ago.⁸⁶⁶

In May and June of 1870, all the food stores and cultivations in the Waikaremoana region were thoroughly destroyed. Waikaremoana was deserted as a result; its people relied on the survivors at Ruatahuna and Maungapohatu for assistance. As we noted above, Ruatahuna could not cope with this demand. There was further destruction and resultant food shortages at Waikaremoana in 1871, as we discussed in section 5.5.5.

Battersby argued that, while the 'most adverse effects' of the fighting 'were in evidence for the duration of the fighting', the replanting of crops and the reconstruction of villages happened quite quickly.⁸⁶⁷ This appears to have been the case at Te Whaiti and Ruatahuna. People had returned to both places by the time military operations resumed in early 1870. But the limited extent to which this reconstruction had occurred is shown by a comment from Gilbert Mair in 1871. He noted that Tuhoe did not wish to participate in an active pursuit of Te Kooti, and he commented on their reasons for refusing:

They stated that this is the first time for many years that they have been at peace with the Europeans; hitherto they have lived in caves and holes in the ground, but now their only desire is to live in peace and give their undivided attention to building houses and planting food[.]⁸⁶⁸

Ruatahuna had not seen hostilities since Whitmore's expedition in May 1869, but it had had to host the Waikaremoana refugees in 1870. Mair's comment suggests that, even two years after the wholesale destruction caused by Whitmore's troops, the remaining people at Ruatahuna had not been able to give their full attention to rebuilding. When Wahawaha arrived at Ruatahuna in November 1871, he identified the ongoing shortages. On 4 November, he wrote to Ormond that there was no food there.⁸⁶⁹ On 10 November, he reported that 'The Urewera have returned but they eat a good deal of our food, my people dont eat the food of the government expeditions but I suppose these people are hard up for food.'⁸⁷⁰ Even

866. Clarke to Under-Secretary, Native Department, 18 April 1870, AJHR, 1870, A-8B, p 32

867. Battersby, summary of 'The Government, Te Kooti and Te Urewera' (doc M3), p 21

868. Mair to officer commanding Tauranga district, 11 July 1871, AJHR, 1871, F-1, p 43

869. Wahawaha to Ormond, 4 November 1871 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), pp 313-314)

870. Wahawaha to Ormond, 10 November 1871 (Binney, additional supporting papers to 'Encircled Lands' (doc A12(b)), pp 315-316)

so, the people preferred staying in Te Urewera in 1871 to the ‘uncertainty of getting sufficient rations’ at Te Putere.⁸⁷¹

The precarious situation of the Urewera communities was exacerbated by their inability to travel or to obtain other resources in the traditional way. Battersby noted the interruption to the regional economy: ‘Insofar as certain Urewera groups were involved in economic pursuits in the Waimana valley, or nearer the coast, these would have shared in the disruption that affected the entire district.’⁸⁷²

The Tuawhenua researchers explained the result for the Ruatahuna people:

The economic base of the Ruatahuna region had been destroyed in the wartime. The Ruatahuna people, relentlessly forced to move about, were unable to sustain their existence in the ways of yesteryears. No longer did they have access to the coast for procuring foods of the sea, nor could they safely cultivate the lands of the lower Whakatane for maize, kumara and other foods that would not flourish at Ruatahuna. Even at Ruatahuna their potato seed, crops and stores were destroyed, leaving them without this staple in their diet.⁸⁷³

Ani Hare’s evidence for Ngati Haka Patuheuheu described the combined effect of the destruction of homes and local crops and of people hiding in the mountains, cut off from traditional trade and resources:

they were prevented from moving around to other places, to the relations at Ohiwa on the coast and to take food from the forest to those relations living on the coast, because that was the accepted custom of our ancestors to take food. And also to return the sea foods and the shellfish to the inland areas of Te Urewera. Because of this people starved, people grew cold and they sickened and died. They could not see salvation for our hapu and for our ancestors.⁸⁷⁴

Peter McBurney, in his evidence for Ngati Manawa, argued that this part of the economy was slow to recover after 1871. In his view, the disruption to the traditional economy caused by the war, in which close neighbours and relatives were forced to choose sides against each other, carried over into the post-war years and prevented certain forms of economic activity from resuming.⁸⁷⁵

Murton and Battersby agreed, however, that the subsistence economy recovered quite quickly in the mid-1870s. This was, as Tamati Kruger said, a period of reconstruction for Tuhoe.⁸⁷⁶ The building of new homes and the planting of new potato crops began even before the establishment of final peace at the end of 1871. The absence of so many people at the coast, the continuous intrusion of expeditionary

871. Gundry to Moule, 26 January 1871, AJHR, 1871, F-6A, p 9

872. Battersby, summary of ‘The Government, Te Kooti and Te Urewera’ (doc M3), p 21

873. Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 267

874. Ani Hare, simultaneous translation of oral evidence, Waiohau Marae, Waiohau, 24 March 2004

875. McBurney, ‘Ngati Manawa and the Crown’ (doc C12), pp 58–59

876. Kruger, summary of evidence concerning ‘Ruatahuna, Part 1’ (doc D28), pp 60–62

forces (expecting to be fed), and the lack of basic resources had hindered recovery in 1871. Mair, Preece, and Wahawaha, leading large forces of armed men into the district, all noted the food shortages afflicting Tuhoe and their difficulties in feeding their 'guests'. In July 1871, for example, Preece's force passed through Ruatahuna, reporting that the people there had 'treated the force very well, giving the men the few potatoes they had'.⁸⁷⁷ In November, these people were without food.

Relying on the observations of Robert Price, Murton argued that Tuhoe had abundant food again as early as 1874.⁸⁷⁸ Under cross-examination from counsel for Wai 36 Tuhoe claimants, Murton conceded that very few Europeans visited and observed the situation in the 1870s, so the 'outside evidence is very limited'. Even so, he confirmed that there had been some recovery by the late 1870s.⁸⁷⁹ The Tuawhenua researchers also support this view in their account of rebuilding and food-growing at Ruatahuna.⁸⁸⁰

Nonetheless, as Murton pointed out, Price's 1874 visit showed that there were many pa and kainga that had not been rebuilt. The destructiveness of the expeditions was still evident.⁸⁸¹ On their way to Ruatahuna, Price and his party 'passed several spots at which we were pointed out the remains of pas and native settlements that had been burnt by Colonel Whitmore'.⁸⁸² On their way out from Ruatahuna to Whakatane, they found more ruined pa and settlements that had not been rebuilt.⁸⁸³

Samuel Locke was the Government representative in Price's party. He noted the almost total absence of European tools and implements. All the work had to be done with a few spades and the traditional ko (wooden digging implements), and there were hardly any cooking pots.⁸⁸⁴ Given that the Ruatahuna people had earlier traded for such goods, this must have been one result of the looting and destruction of Urewera settlements by the expeditionary forces.⁸⁸⁵ Locke concluded, however, that the people were growing enough potatoes, maize, and tobacco for their immediate needs, though they had no surplus for trade.⁸⁸⁶ Birdlife was still abundant and played a vital role in the economy.⁸⁸⁷

877. Preece to Roberts, 3 July 1871, AJHR, 1871, F-1, p 26

878. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 140-141, 253

879. Brian Murton, under cross-examination by counsel for Wai 36 Tuhoe, Tauarau Marae, Ruatoki, 20 January 2005 (transcript 4.13, p 93)

880. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), pp 280-287

881. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 253-254

882. Price, *Through the Urewera Country*, p 24

883. *Ibid*, p 49

884. Locke to McLean, 30 May 1874, AJHR, 1874, G-2, p 21

885. Best, *Tuhoe*, vol 1, pp 555-556, compared to Locke to McLean, 30 May 1874, AJHR, 1874, G-2, p 21

886. Locke to McLean, 30 May 1874, AJHR, 1874, G-2, p 21

887. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 102, 115-117, 139-140, 255, 263-266

Murton's analysis suggests that the long-term economic effect of the war was not from the conduct of the 1869–71 expeditions but from the permanent loss of the confiscated lands, a reduction in access to the resources of Ohiwa, and an inability to keep the Native Land Court out of the low-lying lands.⁸⁸⁸ We note here that one of the consequences of the expeditions was that the low-key military challenge to the confiscation, described in section 5.5.1, was brought to a decisive end. Any further challenge would have to be confined to the political arena.

From the evidence available to us, we agree with Murton that the Crown's conduct of the expeditions had 'immediate catastrophic consequences' but that parts of the economy had recovered by the mid-1870s.⁸⁸⁹ Homes were rebuilt and horticulture resumed – mainly in the form of potato crops. But, as we shall see in chapter 7, the people's heartfelt pleas for the restoration of the confiscated lands continued. They needed these lands to develop any sort of agricultural base in the colonial economy. Also, reduced access to Ohiwa had circumscribed the resources available for the customary economy. These were the impacts of events before 1869 still working themselves out in the circumstances of the 1870s and 1880s.

The final question to address, in terms of economic impacts, is whether the Crown assisted economic recovery in Te Urewera. In closing its case, the Crown argued that there is evidence of assistance from either the Government or 'loyalist Maori', in the form of food, clothing, and medical supplies, 'aimed at hastening' economic recovery.⁸⁹⁰ The Crown's submission was based on the evidence of its historian, Dr Battersby, who stated that in 1871 the peoples of Te Urewera received 'the benefits that accrued from peace. There is evidence that food, clothes and medical supplies were sent into the Urewera district in 1871 from both loyalist Maori and the government.'⁸⁹¹

His final conclusion was:

During the war period losses of life and property, and dislocation disrupted communities in the Urewera district . . . Property was damaged, destroyed, and looted and people dislocated for periods of time. Most adverse effects were in evidence for the duration of the fighting, but again once conflict ended recovery of crops and reconstruction of villages appears to have occurred quite quickly. There is evidence of loyalist or government assistance in terms of food, clothes and medical supplies aimed at hastening that recovery. The Urewera population, as recorded by various observers and censuses from the early 1870s, seems to have recovered quite quickly.⁸⁹²

We have examined the evidence for Battersby's statements. His conclusion appears to be based on five pieces of evidence:

888. Ibid, pp 173–308, esp pp 173–175, 188, 251–254, 260–280, 301–307

889. Ibid, pp 174, 253–254

890. Crown counsel, closing submissions (doc N20), topic 4, p 16

891. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 146

892. Battersby, summary of 'The Government, Te Kooti and Te Urewera' (doc M3), pp 22–23

- ▶ First, in July 1871, Lieutenant-Colonel Moule reported ‘One medical officer, and two men took two pack-horses with medicines and medical comforts, from Tauranga to Fort Galatea, for the purpose of rendering aid to the Uriweras, then suffering from an epidemic.’⁸⁹³
- ▶ Secondly, Gilbert Mair reported in July 1871 that the coastal ‘friendly Natives’ had sent ‘large supplies of clothing’ to Maungapohatu.⁸⁹⁴
- ▶ Thirdly, Te Makarini and six of his men were given Armed Constabulary rations in late 1871. (There is no information on the duration of these rations, but they appear to have been in lieu of payment for scouting services.⁸⁹⁵)
- ▶ Fourthly, Wahawaha gave some food to the Ruatahuna people when he was occupying their pa in late 1871. He noted in a November letter that his force might have to leave Ruatahuna because of starvation – they had had to share their supplies with the Ruatahuna community, which was ‘hard up for food.’⁸⁹⁶
- ▶ Fifthly, Preece supplied some clothes and food to the Te Putere exiles when they returned home in April 1872.⁸⁹⁷

This does not appear to us to be a strong foundation for arguing that the Government assisted economic recovery in Te Urewera. There is one instance of medical supplies being sent in 1870 to 1871. There is an instance of Wahawaha’s force giving some of their food to the Ruatahuna people. As we discussed above in section 5.5.5, visiting forces in 1871 also consumed much of the local food and hindered recovery. Some food and clothes were given to the exiles when they returned in April 1872, but we have no information on the reason or quantities. As we discussed earlier, Preece had arranged road work for these people: the supplies could well have been part of their payment. The rations supplied to Te Makarini and six of his men – a minority of the community affected by Wahawaha’s destruction of cultivations – were in lieu of payment for services. Finally, ‘friendly Natives’ sent clothing to the people at Maungapohatu, which is not an act for which the Government can claim credit. The only additional piece of evidence of which we are aware (and not cited by Battersby) is that Major Mair gave an unspecified quantity of seed potatoes to Te Whenuanui for Ruatahuna in October 1870.⁸⁹⁸ (The Ruatahuna community was without food again the following year.⁸⁹⁹) In any case, the assistance as recorded in Battersby’s report could barely have scratched the surface in terms of reconstruction.

893. Moule to Commissioner, Armed Constabulary Force, 1 July 1871, AJHR, 1871, G-5, pp 6–7 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 158)

894. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 157

895. Cumming to Ormond, 18 October 1871 (Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 167)

896. Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), p 171

897. *Ibid*, p 183

898. WG Mair to Clarke, 21 October 1870, AJHR, 1871, F-6A, p 4

899. Wahawaha to Ormond, 10 November 1871 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), pp 315–316)

According to Murton, the Government also provided assistance in the form of small amounts of money. First, payments were made to ‘orderlies or mail carriers’ as part of Ormond’s arrangements at the end of 1871. Initially, these payments amounted to £318 a year, later reduced to £120. The number of orderlies, who were attached to particular Urewera rangatira, fluctuated in the 1870s. Secondly, the Government later provided some leaders with paid work as assessors. Tamaikoha was made the Ohiwa Harbour ferryman in 1876. The Government also paid pensions to several chiefs from 1872. These included Rakuraku, Tutakangahau, Te Wakaunua, Te Whenuanui (and his son Te Whenuanui II), and Tamarau Te Makarini. According to Murton, these pensions were not large – around £20 each per annum. Finally, Government money was available if people were willing to agree to – and work on – roads inside Te Urewera. Mostly, they were not.⁹⁰⁰ The amount of money supplied by these means was not large and had little discernible effect. Locke noted in 1874, for example, a near-total absence of the kinds of tools and goods that required cash to buy.⁹⁰¹

We conclude from all of this evidence that the Government’s efforts were piecemeal and insufficient given the widespread devastation of settlements and plantations caused by its military expeditions. It is true that Te Urewera leaders, in negotiating peace with Ormond and McLean, made no demands on the Government to help rebuild their communities. The reason for this is clear. Resident Magistrate Brabant, who visited Te Urewera in 1874, reported great suspicion that food or rations given to the surrendered exiles might later be charged against land.⁹⁰² But we must ask why, in the circumstances, this kind of fear was not allayed and no substantial assistance was offered.

Despite what appeared to be drastic evidence of hardship, little was done to restore Te Urewera to its pre-war condition. On the one hand, the Crown ought to have compensated the peoples of Te Urewera for the comprehensive looting and destruction of their property. On the other hand, having destroyed the region’s infrastructure so thoroughly, the Crown had a responsibility to plan for its recovery. It is astounding to us that such death, pain, and anguish could be inflicted on people declared by the Treaty of Waitangi to be British subjects and such little relief given. It is hard to see it as anything other than a disgrace.

5.5.6.3 Cultural impacts

In our view, the cultural impacts of the Crown’s expeditions are evident particularly in the destruction of taonga of great value to the people; the spiritual harm

900. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), pp 277–285

901. Locke to McLean, 30 May 1874, AJHR, 1874, G-2, p 21 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 339)

902. H W Brabant, ‘Native meeting of Urewera tribes, held at Ruatahuna’, 1 April 1874, AJHR, 1874, G-1A, p 2. Tuhoe wanted to repay the food, clothing, and rations that had been given to the exiles with a gift to the Government of 1,800 preserved birds: see Tuawhenua Research Team, ‘Ruatahuna, Part 1’ (doc B4(a)), p 280, and Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 287, 292–293.

Te Kooti's Legacy: The Ringatu Church in Te Urewera

The lasting legacy of Te Kooti's spiritual leadership of the peoples of Te Urewera was evident at many of our hearings, which began with Ringatu karakia. Kaumatua Mahue Te Waara spoke to us about the importance of Te Kooti's teachings to Tuhoe over generations:

When Te Kooti came into Te Urewera that was the time of the arrival of the Ringatu religion and its spiritual teachings . . . Those practices were an integral part of our communities during Te Kooti's time and remain an integral part of the spiritual life of many of our peoples, even today. The scriptures that Te Kooti taught and the underlying values he communicated are still held fast today . . .¹

During his time in the King Country, where he accepted King Tawhiao's injunction of peace, Te Kooti evolved the practices of the Haahi Ringatu (the Ringatu church), composing its services – which he drew from the Bible – and laying out the roles and functions of the tohunga (priests). The name 'Ringatu' derived from the practice of raising the hand in praise of God at the end of each prayer. Its origin lay in the first hymn Te Kooti composed, while still on Wharekauri: *Te Tangi a Heremaia* ('The Lamentations of Jeremiah'): 'But let my heart and my hands be raised up in the search for my God'. ('Aue kia ara atu toku ngakau me oku ringaringa, ki te wahi i toku Atua.')

1. Mahue Te Waara, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 11 December 2003

2. Monita Delamere (Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press, 1995), p 66)

inflicted by the desecration of wahi tapu, urupa, the bodies of the dead, and human remains; and the sense of grievance transmitted from generation to generation.

In one sense, the events of 1869 to 1871 contributed immeasurably to Tuhoe identity and culture because they provided the circumstances in which many Urewera communities committed themselves to Te Kooti. That commitment was forged in the crucible of war. Military defeat did not destroy Tuhoe's faith in Te Kooti as their religious leader. In 1874, for example, Locke and Brabant observed that the Ruatahuna people were still using 'the religious ceremonies known as "Te Kooti's Karakia"'.⁹⁰³ When Te Kooti returned in 1884, after he was pardoned the

903. HW Brabant, 'Native Meeting of Urewera Tribes, Held at Ruatahuna', 1 April 1874, AJHR, 1874, G-1A, p 3; see also Locke to McLean, 30 May 1874, AJHR, 1874, G-2, p 21

After the amnesty of 1883, Te Kooti began to travel quite widely to establish the practices of his church in receptive communities, so that its future would be assured. He also wished to make his peace with those who had fought against him.³ In many communities, new whareni were built for him; among them Te Whai a Te Motu at Ruatahuna, and Eripitana at Te Whaiti. Te Kooti became known for his kupu whakaari – words reflecting his spiritual understanding – which he spoke at each place he stayed to guide the people and act as a warning to them for the future. Those kupu whakaari were often recorded. They have been remembered, and their meaning discussed, in every generation to the present.

The Ringatu faith has remained of lasting importance in Te Urewera, the Bay of Plenty, Turanga, and other areas. Te Kooti is said, however, to have had a unique relationship with Tuhoe, which stemmed from the shelter they had given him.⁴

The latter years of Te Kooti's life were considered by the Tribunal in its report *Turanga Tangata Turanga Whenua*, which concluded:

his story has its own end. His pain at the retribution visited on his followers after his own resistance had failed did not leave him a bitter man. He grieved, and his grief is plain in the waiata he composed. He devoted the rest of his life to building a church in which those who had been dispossessed could find solace. And he hoped that, through faith and the law, a mutually beneficial relationship might yet be developed between Maori and Pakeha.⁵

3. Binney, *Redemption Songs*, pp 319–320

4. *Ibid*, p 468

5. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 248–250

year before, he established the practices of the Ringatu church, to which he had turned his attention while in exile in the King Country.

Moreover, there is a sense in which the peoples of Te Urewera emerged from the events of 1869 to 1871 tested and strengthened. Milroy, Melbourne, and Stokes argued:

Even the poverty, death and disruption caused by the military campaigns of the late 1860s, the scorched earth policy of Colonel Whitmore and others, did not destroy Tuhoe traditional culture. If anything, all this guerrilla warfare made Tuhoe even more determined to protect their forest home land, and life style, which was governed so much by their forest environment.⁹⁰⁴

904. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 28

Even so, much cultural harm was inflicted on the peoples of Te Urewera by the expeditions of 1869 and 1870 and by the Crown's policy of unconditional surrender and relocation to the coast. Many Tuhoe witnesses explained that mana motuhake was central to their culture, their way of life. They had no choice but to defend mana motuhake. As Matthew Te Pou put it, rangatira such as Rakuraku, Te Pou, and Tamaikoha used any means necessary – political and diplomatic as well as military – to 'retain mana motuhake o Ngai Tuhoe and to ensure the life force of Te Urewera sustained its taonga.'⁹⁰⁵ But, as we have found, they did not always succeed. In the view of the Tuawhenua claimants, their mana motuhake was 'trampled' by the Crown's expeditions.⁹⁰⁶ The impact is clearly seen in their burning anger – still evident today – over Wahawaha's redoubts: 'Rapata Wahawaha will forever be a scar in the Tuhoe landscape.'⁹⁰⁷ Tamati Kruger, however, noted that 'although we were overwhelmed and whatever was done, our mana motuhake remains.'⁹⁰⁸

One of the consequences of the Crown's conduct of its expeditions was that Tuhoe could not protect their taonga. In sections 5.5.3 and 5.5.4, we described how taonga such as carved meeting houses were destroyed when pa and kainga were put to the torch. In 1869, Major Mair noted the deliberate destruction of Te Whenuanui's great carved house.⁹⁰⁹ Oral tradition tells of similar acts of destruction at Waikaremoana when pa and kainga were burned there. Desmond Renata told us: 'I know that the Crown soldiers burned fourteen big meeting houses (tipuna whare) around the lake, as well as smaller ones.'⁹¹⁰ According to Ngahua Te Awekotuku and Linda Nikora, some plundered carvings and taonga may have since made their way into various collections.⁹¹¹

Not all the taonga destroyed were buildings. Te Harema was guarded by a 'tree gong,' a hollow totara tree with a 'long tongue of wood' inside it. This 'tongue' was elaborately carved, and, when struck with a wooden mallet, 'the sound could be heard for a long distance.' Visitors announced their arrival by striking the gong. This tree, which Te Awekotuku tells us was greatly revered by the people, was destroyed by Whitmore's force in May 1869.⁹¹²

The destruction of taonga was accompanied, as we have said, by the desecration of Te Murakareke's burial site, as well as many urupa and the bodies of people slain in the fighting. We need add no more here, except to comment that this caused great anguish to the communities involved.

The Crown's conduct of its expeditions resulted in the creation of one of the

905. Matthew John Te Pou, brief of evidence, 10 December 2003 (doc B24), p 60

906. Tuawhenua Research Team, 'Ruatahuna, Part 1' (doc B4(a)), p 234

907. Te Pou, brief of evidence (doc B24), p 49

908. Kruger, claimant translation (doc D44(a)), p 24

909. Mair to Clarke, 27 May 1869, AJHR, 1869, A-10, p 68

910. Renata, brief of evidence (doc 124), p 9. This account may have included the results of destruction in 1866.

911. Ngahua Te Awekotuku and Linda Waimarie Nikora, 'Nga Taonga o Te Urewera' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc B6), pp 54–56

912. *Ibid.*, pp 70–71

Thomas Ryan (ATL B-159-007)



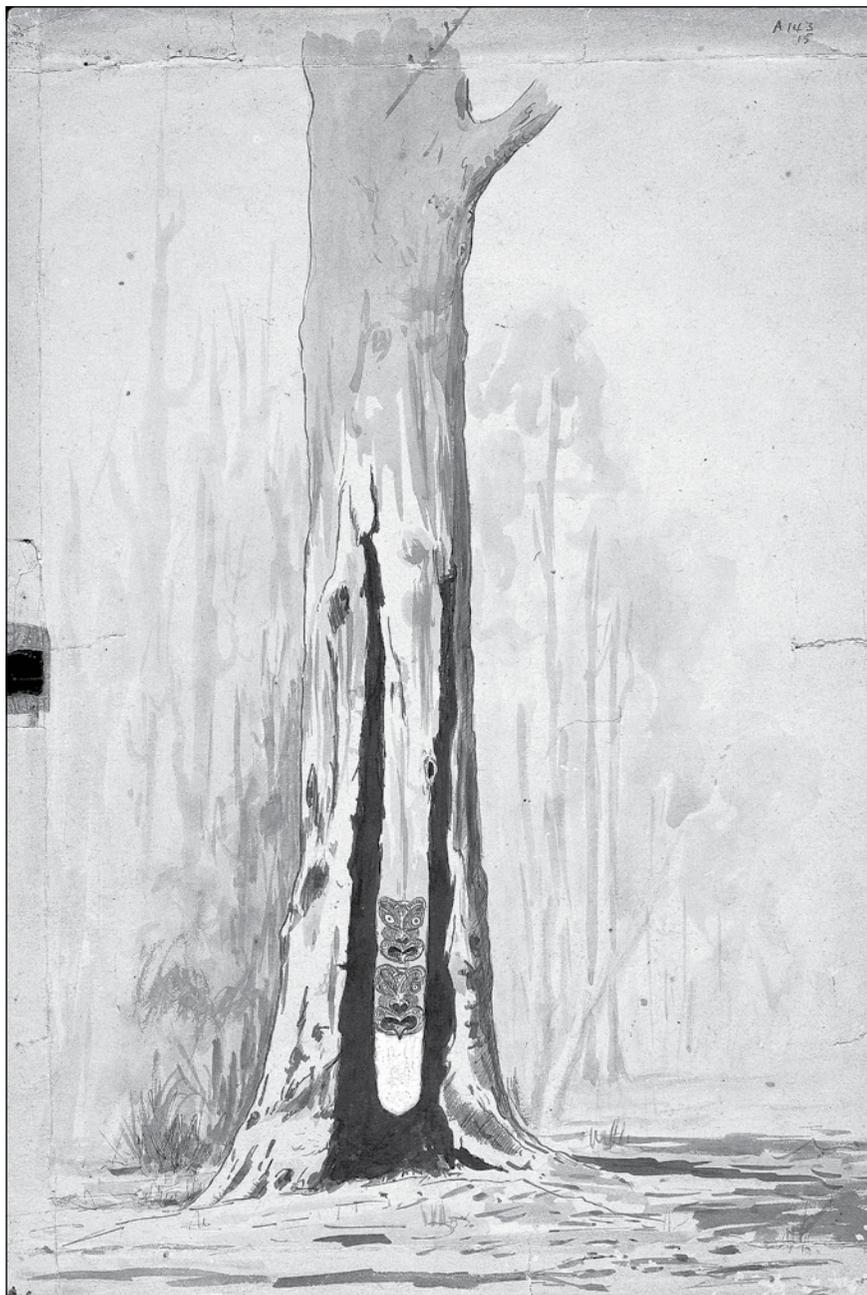
Eripitana whareniui, Te Whaiti. The whareniui was built for Te Kooti and was opened by him when he visited Te Urewera in 1884, after having been pardoned by the Governor in 1883. Because of Te Kooti's kupu whakaari (prophecy) on that occasion – that the people of Te Whaiti would lose their land 'save for the sacred threshold of this house' – Eripitana became extremely tapu. At the opening, Te Kooti sang his famous waiata tohutohu (song giving advice and guidance) *Kaore te Po Nei Morikarika Noa!*

most lasting and bitter grievances of the Te Urewera peoples. Peter Webster, who researched Tuhoe oral evidence in the 1970s, found the memory of these events was still fresh. It had been passed down from a generation at the turn of the century, who had been children at the time of the attacks:

there were people still alive in 1905 when Rua gained his first success who remembered the Urewera before the devastation of the Wars of the sixties. There were many, too, who had fought and suffered during the scorched earth and starvation tactics of the military expeditions of the Colonial Army in 1869–72. Impressionable children then were adults in their prime at the turn of the century. They could recall vividly the hunger and the pain, the smell of smoke from the burning kaingas, the thud of muskets and the cries of the wounded. Most of all, they knew what it was like to be helpless as an invading army incinerated their homes and destroyed their crops; they had experienced what it was to be persecuted.⁹¹³

Closely guarded, the stories of rapes and atrocities were also handed down, as Ani Hare and Jack Ohlson told us.

⁹¹³ Peter Webster, *Rua and the Maori Millennium* (Wellington: Victoria University Press, 1979) (doc K1), p 2



The pahu (tree gong) at Te Whaiti. The pahu was a hollow totara tree with a carved 'tongue of wood' inside. Visitors to Te Harema Pa would signal their presence by striking the gong with a wooden mallet. Whitmore's forces destroyed this taonga – and many tipuna whare – during their campaign to capture Te Kooti and to destroy Te Urewera kainga so that the people could not provide support to Te Kooti.

Many witnesses described how these events shaped their past and present. Desmond Renata explained:

I used to hear my Father talking about the ‘scorched earth policy’, although at the time I didn’t know it was called that. They used to use the word ‘kai-a-te-ahi’, meaning that they became food for fire at this time. . . .

The word ‘kai-a-te-ahi’ became a saying of this area. A person who is no good or of no value is called a kai-a-te-ahi. . . .

The long-term effect of these kinds of actions by the Crown (scorched earth and other policies) has meant that our people are now dominated by a spirit of hopelessness and low self-esteem. I can understand why the people here aren’t motivated. A person is of worth, but our history tells them otherwise.⁹¹⁴

We heard similar sentiments from Ngati Haka Patuheuheu claimant Ani Hare, who put it in these terms:

The enormity of those Military invasions caused devastation and remorse for our ancestors. They lost the will to live. They were drained spiritually, emotionally and mentally.

All these events greatly impacted on our people, on our ancestors, on our tipuna. Their minds and thoughts became very weary and disorientated. Their spiritual and cultural beliefs were violated and corrupted. Sadly, they felt degraded, dejected and oppressed.⁹¹⁵

Also, as Professor Wharehuia Milroy explained to us, these events are not seen in isolation by Tuhoe but are considered with others for their collective impact on the people: ‘Tuhoe was assailed and suppressed, oppressed, by confiscation of land, by the afflictions and scorched earth policy, third by poverty, fourth by starvation, fifth is the mental anguish.’⁹¹⁶

This anguish was very evident to us at our hearings.

5.5.6.4 Political impacts

Finally, we note that the events of 1869 to 1871 had a profound political impact on Te Urewera and, in particular, on the relationship of the peoples of Te Urewera with the Crown. We shall examine this issue in chapter 7, which deals with the political relationship between the Crown and Maori during the Te Whitu Tekau (council of 70) era.

914. Renata, brief of evidence (doc 124), pp 8–9

915. Counsel for Ngati Haka Patuheuheu, closing submissions (doc N7), p18

916. James Te Wharehuia Milroy, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 2 November 2003

5.5.6.5 Conclusion: findings of prejudice

We accept Professor Murton's view that the Crown's conduct of its expeditions had 'immediate catastrophic consequences'.⁹¹⁷ For two and a half to three years, the Urewera economy was destroyed and its people left with insufficient food, clothing, and shelter. This contributed to a very high death rate from influenza and to what Mair called the 'great distress' of the Urewera peoples.⁹¹⁸ Conditions were better at the coastal reserves, where food and clothing shortages were also reported but no deaths resulted that we know of (see section 5.5.4).⁹¹⁹ While only a small number (including some non-combatants) were killed directly by the expeditionary forces, at least 12 per cent of the population died during these years, causing ongoing social problems until numbers stabilised again in the 1880s. The people's distress was increased by the wanton destruction and looting of their taonga and the desecration of their wahi tapu. While homes could be rebuilt and crops replanted, these losses were irreplaceable.

Stories of the scorched-earth policy, of rapes and pillaging, and of the destruction of taonga were passed down from generation to generation. In the evidence of Desmond Renata, for Ngati Ruapani, the people came to see themselves as 'kai-a-te-ahi' ('food for the fire'). 'A person is of worth,' he said, 'but our history tells them otherwise.'⁹²⁰ In one sense, Tuhoe emerged stronger than ever, supported by their Ringatu faith and their determination to survive. But at what cost? We note the summation of Wharehuia Milroy, cited above: confiscation and the 'scorched earth policy' had become indelibly associated with poverty, starvation, and anguish in the minds of the people.⁹²¹

We find that the peoples of Te Urewera suffered social, economic, and cultural harm as a result of the Crown's conduct of its expeditions. We also find that the Crown failed to provide appropriate redress, in breach of Treaty principles. While parts of the traditional economy recovered quite quickly, the Crown provided barely any assistance. It ought to have compensated for property it had used or incinerated, and assisted with the social and economic recovery of the places it had destroyed. We find that the claimants have been prejudiced by the Crown's breaches of Treaty principles.

Some of the impacts of these events, including their political consequences and their effects on the exercise of customary rights, will be examined in later chapters.

917. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p174

918. Gilbert Mair to officer commanding Tauranga district, 3 September 1870 (Armstrong, supporting papers to 'Ika Whenua and the Crown' (doc A46(b)), pp 316–317)

919. We note that uncertainty on this issue – whether the food situation would be worse inside Te Urewera or at the coast – was one of the factors identified by officials as preventing Tuhoe from 'coming out'. See, for example, Preece to McLean, 18 May 1870, AJHR, 1870, A-8B, p 62; and Gundry to Moule, 26 January 1871, AJHR, 1871, F-6A, p 9.

920. Renata, brief of evidence (doc I24), pp 8–9

921. James Te Wharehuia Milroy, oral evidence (simultaneous translation), Tataiahape Marae, Waimana, 2 November 2003

5.5.7 How did the Crown's military expeditions affect Ngati Manawa?

SUMMARY ANSWER: The majority of Ngati Manawa were not present when Te Kooti's force attacked Motumako in March 1869. As a result of that attack and their ongoing support of Te Arawa and the Crown, Ngati Manawa had to evacuate their rohe in 1869. They were not able to return until 1872. The claimants and the Crown agree that Ngati Manawa's kainga and resources were destroyed or plundered by forces from both sides. As a result, Ngati Manawa returned to a ruined rohe in 1872. The Crown did not compensate Ngati Manawa for its use of (or destruction of) their resources or for the destruction caused by Te Kooti's forces. In the meantime, Ngati Manawa had lived in exile for three years, mainly with whanaunga in the Rotorua district or on their military award near Matata. A significant number of their fighting force – as many as 50 – were part of the Arawa Flying Column, but we do not have exact numbers for those who participated in the Urewera expeditions. During their time fighting for the Crown, Ngati Manawa experienced privation alongside the rest of the Crown's forces. They may also have been underpaid, but the evidence for this is inconclusive.

For Ngati Manawa, the critical issues come after their return to their lands in 1872. The questions of whether the Crown provided them with adequate assistance, or whether instead it took advantage of their situation to target their lands, and whether they were left vulnerable and exposed by post-war political isolation remain to be addressed later in the report.

As we noted in the introductory section of this chapter, Ngati Manawa have a distinct claim about the war and the military expeditions of 1869 to 1871. That claim relates to their position as supporters of the Crown. Some Ngati Manawa men fought for the Government in Whitmore's force and then as part of Mair's Arawa Flying Column. The remaining Ngati Manawa population had to evacuate their Urewera lands from 1869 to 1871, before returning to the district in 1872. These events took place in the context of Ngati Manawa's choice to support the Crown in 1865: support which has, in the claimants' view, been constant ever since.

Claimant counsel argued: 'The political stance of Ngati Manawa did not mean that Ngati Manawa were in any way spared from the general destructiveness and dislocation characteristic of the war period experienced by so many iwi of the region.'⁹²²

Ngati Manawa's principal grievance is that they returned to lands devastated by war in 1872 and were left vulnerable to a cycle of debt and land loss as a result. Instead of receiving assistance from their ally, the Crown, 'they were targeted by [it] as part of its programme of land purchasing in the region.'⁹²³

In addition, the claimants made the following specific allegations:

- ▶ Despite their military support for the Crown from 1865 onwards, the Crown 'failed to adequately protect Ngati Manawa from capture by Te Kooti's forces.

922. Counsel for Ngati Manawa, closing submissions (doc N12), p17

923. Ibid, p12

In 1869, a number of Ngati Manawa were taken prisoner by Te Kooti at Motumako.⁹²⁴

- ▶ The Crown failed to provide proper or timely payment, conditions, or clothing to Ngati Manawa while they were on active service for the Crown against Te Kooti. Ngati Manawa and other Flying Column Maori constables were paid less than European constables.⁹²⁵
- ▶ The Crown established Fort Galatea in the centre of the Ngati Manawa rohe in 1869. Ngati Manawa neither asked for nor wanted it, but its establishment there ‘resulted in Ngati Manawa lands being a war zone for four years.’⁹²⁶ During that period, Ngati Manawa women and children had to live in exile in Rotorua.
- ▶ Ngati Manawa kainga and crops were destroyed or used by ‘rebels’ in the east of their rohe and by Crown forces on the western side. Ngati Manawa were unable to occupy their lands or plant any crops for a number of years.⁹²⁷

Claimant counsel argued that Ngati Manawa were prejudiced in the following ways:

- ▶ Their rohe became a front line in the war with Te Kooti, forcing non-combatants to abandon their homes and kainga, which were then plundered and destroyed by both sides.
- ▶ Relationships with close kin groups, especially Ngati Whare and Ngati Haka Patuheuheu, were badly affected – after the war, Ngati Manawa were on their own, accepted by neither Te Whitu Tekau nor the Arawa komiti.
- ▶ Trading networks were affected, and their time in exile made Ngati Manawa more dependent on European goods (both of which helped draw them into a trap of debt and land alienation).⁹²⁸

The Crown did not respond to these allegations in its closing submissions. At the beginning of our hearings, however, the Crown denied almost all of these claims – a position, we presume, from which it had not departed by the time it closed its case.⁹²⁹ The only substantive allegation the Crown accepted was that ‘Ngati Manawa kainga and crops were destroyed or used by “rebels” in the eastern parts of the rohe and by Crown forces on the western side.’⁹³⁰ The Crown argued that it was not responsible for the destruction caused by Te Kooti’s forces and that its own use of resources took place after Ngati Manawa’s departure. Ngati Manawa were ‘provided with alternative places to live and alternative sources of food.’⁹³¹

924. Counsel for Ngati Manawa, closing submissions (doc N12), p 18

925. *Ibid*, p 19

926. *Ibid*

927. *Ibid*

928. *Ibid*, p 20

929. Crown counsel, statement of response to claimants’ particularised statement of claim, no date (claim 1.3.5), sec E, pp 3–9

930. Counsel for Ngati Manawa, third amended statement of claim, 16 April 2004 (claim 1.2.23(a)), p 12; Crown counsel, statement of response (claim 1.3.5), sec E, p 7

931. Crown counsel, statement of response (claim 1.3.5), sec E, p 7

According to claimant counsel, the key context for our evaluation of these issues was Ngati Manawa's decision to support the Crown from 1865 onwards.⁹³² In common with the other peoples of Te Urewera, Ngati Manawa were not offered the opportunity to sign the Treaty of Waitangi in 1840 and had had little contact with the Crown before 1862. They were visited by the Wairoa resident magistrate, Charles Hunter Brown, in that year (see chapter 3). The claimants' historian, Peter McBurney, described their meeting at Tauaroa, a kainga shared by Ngati Manawa and Ngati Haka Patuheuheu. At that meeting, the Manawa leaders expressed suspicion of the Government and some support for the Kingitanga, but they indicated some willingness to try out the 'new institutions'.⁹³³ As we discussed in chapter 3, these initial expressions of cautious interest were not followed up by any Government action. Ngati Manawa, however, tried to lease some of their lands to settlers in the early 1860s, but this was disrupted by the outbreak of war. In 1864, they chose not to join other Urewera forces in fighting the Crown in Waikato.⁹³⁴

Influenced by their Te Arawa kin and by fear of land confiscation, Ngati Manawa ended their neutrality in 1865. Although their initial response to Pai Marire had been mixed, they (in common with Ngati Rangitahi) took a stand after Volkner's murder and the Government's proscription of Pai Marire (see chapter 4). McBurney argued that this decision – and the course of Ngati Manawa's history – was dictated by the fact that they were a small border iwi caught between competing tribal alliances: Tuhoe (with Ngati Whare and Ngati Haka Patuheuheu) and the Te Arawa confederation. Either way, Ngati Manawa would have to fight close kin if these two groups took opposing sides. Ultimately, Ngati Manawa chose to stick with Ngati Rangitahi and Te Arawa from 1865. McBurney also argued that the Ngati Manawa rohe was very exposed, lacking the natural defences of other parts of Te Urewera, and that the fear of confiscation was a key factor in their supporting the Government and Te Arawa.⁹³⁵

The claimants emphasised their loyalty and service to the Crown. They looked back on this with mingled pride and regret. Sarah Hohua told us:

Throughout history Ngati Manawa have answered the call when the Crown has asked us to fight. We have proudly done so. We have contributed because we saw that as our duty, and we have paid a heavy price. Our contribution was recognised when we were presented with the flag Te Aroha o Wikitoria [around 1873].⁹³⁶

932. Counsel for Ngati Manawa, closing submissions (doc N12), pp14–17

933. McBurney, 'Ngati Manawa and the Crown' (doc C12), pp 59–61

934. *Ibid*, pp 54, 66–70

935. *Ibid*, pp 84–86, 90–92, 96–100, 114–117; Armstrong, 'Ika Whenua and the Crown' (doc A46),

p9

936. Sarah Hohua, brief of evidence, 11 August 2004 (doc F32), p5. Relying on Henare Bird of Ngati Manawa, McBurney noted that the presentation of the flag, Te Aroha o Kuini Wikitoria, took place at Fort Galatea, probably in 1873. This flag is kept at St Faith's Church, Ohinemutu: McBurney, 'Ngati Manawa and the Crown' (doc C12), p93.

Wiremu Bird echoed this sentiment, and described the essence of their claim:

For Ngati Manawa the relationship with the Crown has been a disappointing one. Ngati Manawa has throughout its history since the arrival of the Pakeha been prepared to act in partnership with the Crown. Regardless of the reasons for this back then, Ngati Manawa has taken its responsibilities as citizens very seriously. The Tribunal has heard this week how in all the wars of the 20th century Ngati Manawa men went off to war for the Crown and suffered and died in numbers which greatly harmed Ngati Manawa as an iwi. Yet despite this, Ngati Manawa has had no consideration or support when we needed it . . .⁹³⁷

This long history of service may be seen as beginning in 1865, when Ngati Manawa and Ngati Rangitihia fortified a pa at Te Tapiri. They tried to prevent Tuhoe from escorting Kereopa Te Rau across their lands. The resultant battle in 1865 ended with Ngati Manawa's retreat from Te Urewera. They lived in exile in the Rotorua district until 1866, after which they returned to part of their Kaingaroa lands. In the meantime, they were rewarded with a small piece of confiscated land near Matata, and some of their men continued to fight for the Crown in Tauranga and elsewhere.⁹³⁸ Unlike the other peoples of Te Urewera, therefore, Ngati Manawa entered into a Treaty-based relationship with the Crown from 1865 onwards. In large part, the Crown was represented in that relationship by Gilbert Mair, who visited them regularly from 1866, commanded their men in the Arawa Flying Column, and built a particularly close relationship with their rangatira, Peraniko Tahawai.⁹³⁹

Peace was finally negotiated with Ngati Whare and Ngati Haka Patuheuheu in 1867, after which Ngati Manawa tried to satisfy the various calls on their loyalties by maintaining peace between all parties. In late 1868, they negotiated with Ngati Whare and Ngati Haka Patuheuheu in an attempt to prevent an outbreak of hostilities over Te Kooti.⁹⁴⁰ In this, they were unsuccessful. We have no information on whether they participated in the hui of January 1869 at which Tuhoe and Ngati Whare decided to support Te Kooti.

In March 1869, after his attack on Whakatane, Te Kooti's kokiri returned to Te Urewera. It stopped at Tauaroa, where Ngati Haka Patuheuheu agreed to support Te Kooti. A force was then sent to the nearby Ngati Manawa settlement of Motumako.⁹⁴¹ According to the claimants' historian, David Armstrong, the majority of Ngati Manawa were absent at a Native Land Court hearing; there may have been only a dozen or so people at Motumako.⁹⁴² There were varying accounts at the time, but one person was certainly killed (and a second person may have

937. Wiremu Bird, brief of evidence, 9 August 2004 (doc F14), pp 4–5

938. McBurney, 'Ngati Manawa and the Crown' (doc C12), pp 84–94

939. Ibid, pp 92–94, Armstrong, 'Ika Whenua and the Crown' (doc A46), pp 11–12, 13–14

940. McBurney, 'Ngati Manawa and the Crown' (doc C12), pp 92, 96

941. Ibid, p 98

942. Armstrong, 'Ika Whenua and the Crown' (doc A46), pp 14–18

been). The rest were taken prisoner and retreated with the kokiri to Te Whaiti, but they escaped soon after.⁹⁴³ Such a low casualty rate, and the successful escape of all those taken away from the pa, was not unusual for encounters between close kin. As we discussed above, the Ngati Manawa leader Harehare had similar hopes of ensuring minimal casualties at Te Harema in May 1869. Those who were away at the court sitting did not return, and the rest of Ngati Manawa evacuated the district immediately.⁹⁴⁴ They were not to return until 1872.

Ngati Manawa's first claim against the Crown – that it failed to protect them against Te Kooti at Motumako – cannot be upheld. From our discussion in section 5.5.1, it will be clear that the Government was largely powerless to predict or prevent Te Kooti's sudden raids in 1869. It was for that very reason that military expeditions were necessary inside Te Urewera. In March of that year, when the attack on Motumako took place, a Government force was chasing Te Kooti but did not arrive in time to prevent it.⁹⁴⁵ Ngati Manawa, on the other hand, must have been aware of the decision by Tuhoe and Ngati Whare in January to support Te Kooti. In any case, only a handful of people were at Motumako; the majority had already left the district. The rest followed soon after.

As part of its military expedition in 1869, the Government built Fort Galatea on Ngati Manawa lands at Karamuramu. McBurney explained that the redoubt became the Government's advance post on the western borders of Te Urewera.⁹⁴⁶ It was manned until 1876. From the evidence available to us, there is no record that the claimants' permission was sought or given. While there were some Ngati Manawa men with Whitmore's force, the majority of those with rights in the land were not in the district at the time. The Government began negotiating for the purchase of this land in 1871. The negotiations took 18 months. Ngati Manawa were reluctant to sell.⁹⁴⁷ While willing to lease land to settlers or the Crown, they had not yet sold any land and wanted to hold that line.⁹⁴⁸ McBurney argued that Ngati Manawa were presented with a *fait accompli*, since the land was already 'gone' – the redoubt was already there and Ngati Manawa wanted it kept there for trading purposes. As a result, they eventually agreed to a post-facto sale.⁹⁴⁹

In his closing submissions, counsel for Ngati Manawa argued that the building of the fort in their rohe turned it into a war zone for four years.⁹⁵⁰ McBurney's evidence for the claimants was that they had to withdraw to Rotorua, while 'their rohe became a debatable land, criss-crossed by the warriors and troops of both sides.'⁹⁵¹ We cannot accept the claim that the building or siting of Fort Galatea in

943. *bid*, pp 14–18; McBurney, 'Ngati Manawa and the Crown' (doc C12), pp 98–101

944. Armstrong, 'Ika Whenua and the Crown' (doc A46), p 18; Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 44

945. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), pp 42–45

946. McBurney, 'Ngati Manawa and the Crown' (doc C12), p 104

947. *Ibid*, pp 135–136

948. Armstrong, 'Ika Whenua and the Crown' (doc A46), p 62

949. McBurney, 'Ngati Manawa and the Crown' (doc C12), pp 135–136

950. Counsel for Ngati Manawa, closing submissions (doc N12), p 19

951. McBurney, 'Ngati Manawa and the Crown' (doc C12), p 104

itself produced this outcome. Ngati Manawa withdrew before the redoubt was built. The fort itself was never attacked. Ngati Manawa's lands were a buffer zone and a contested gateway to Te Urewera. They remained unsafe for Ngati Manawa so long as the war continued, and that would have been the case regardless of the establishment of the redoubt.

We accept, however, that Ngati Manawa's lands were affected by warfare and by the long absence it entailed. In 1878, Gilbert Mair wrote: 'In 1869 Te Kooti with 4 or 500 men overran the Country, and Ngatimanawa were attacked, and again obliged to flee, to Rotorua for safety. Their houses were burned down, their property – pigs, cattle horses &c, destroyed or taken away.'⁹⁵²

McBurney argued: 'Ngati Manawa's outer kainga and cropping areas were destroyed by the 'rebels', so that at the end of hostilities they too returned home to a ravaged landscape, in much the same way as Ngati Whare and Patuheuheu.'⁹⁵³

Not only had some kainga and settlements been destroyed, but cultivated areas had also been reclaimed by the bush.⁹⁵⁴ Three years of neglect from absence had taken their toll. McBurney blamed the 'scorched earth tactics employed by both sets of combatants.'⁹⁵⁵ As noted above, Crown counsel agreed that Ngati Manawa kainga and crops were destroyed or looted – by Te Kooti's forces in the eastern parts of the rohe and by Government forces in the west.⁹⁵⁶ We accept, therefore, that a combination of destruction and neglect meant that Ngati Manawa returned to a 'ravaged landscape' in 1872.

Further, intertribal trading was slow to be restored. Ngati Manawa were dependent on Fort Galatea for trade in 1872 and on their Pakeha associates – especially Gilbert Mair – for cash, goods, and food. Hence, Ngati Manawa re-established themselves next to the redoubt, at Te Karamurumu, where they built a new settlement. As many of their men as possible remained in the employ of the Armed Constabulary, bringing in wages from road-making to help re-establish the community.⁹⁵⁷

This brings us to the question of how far the Government assisted Ngati Manawa to re-establish themselves in 1872. This was the claimants' principal grievance. They argued that the Crown took advantage of their situation and that – despite their support for the Government – the Crown targeted their lands for purchase instead of helping them. Indeed, that very support had forced their exile and brought destruction on their homes and local economy. We are not in a position to address this question yet, as it is inextricably bound up with issues about

952. Gilbert Mair, district officer, memorandum to Judge Halse, Matata, 7 September 1878 (Armstrong, supporting papers to 'Ika Whenua and the Crown' (doc A46(a)), p157); see also McBurney, 'Ngati Manawa and the Crown' (doc C12), p 201

953. McBurney, 'Ngati Manawa and the Crown' (doc C12), p 113

954. *Ibid*, p127

955. *Ibid*, pp 126–127

956. Crown counsel, statement of response (claim 1.3.5), sec E, p 7

957. McBurney, 'Ngati Manawa and the Crown' (doc C12), pp 124–134

land purchase and the Native Land Court. We shall return to this Ngati Manawa claim in chapter 8.⁹⁵⁸

We do note, however, that the Crown defended its use of Ngati Manawa's land and resources with the arguments that:

- ▶ some Ngati Manawa men benefited (as members of its force);
- ▶ its actions occurred after the tribe had already evacuated its rohe; and
- ▶ the Ngati Manawa evacuees were 'provided with alternative places to live and alternative sources of food.'⁹⁵⁹

We accept that there were some Ngati Manawa men in Mair's Arawa Flying Column and that they would have benefited from food and resources obtained from Ngati Manawa's lands. We also accept that Government forces did not damage or use resources until after Ngati Manawa had departed. When the iwi returned in 1872, they then faced something of a struggle to get the Fort Galatea garrison to pay for further use of fish and timber.⁹⁶⁰ No payment, as far as we are aware, was made for resources used or destroyed before 1872. The fact that Ngati Manawa were not present at the time cannot justify use of their land and resources without compensating them later. In 1877, Ngati Manawa were awarded two pieces of land (amounting to 97 acres) as a reward for their loyalty to the Crown during the war against Te Kooti.⁹⁶¹ It was 'recompense for military services rendered.'⁹⁶² In other words, this small award was payment for active service. It cannot be counted as compensation for the destruction or use of property.

On the other hand, some of the destruction (and taking of food) was carried out by Te Kooti's forces. This is likely to have happened before the arrival of Whitmore's army in May 1869, and the Crown cannot be held accountable for it. We are not in a position to quantify the destruction or losses involved in either case.

We do not accept the submission that the Crown provided Ngati Manawa with alternative homes and food. There is no evidence to support it. The iwi dispersed, some staying with relatives in the Rotorua district, others living on the military award near Matata.⁹⁶³ That land had been awarded in 1866, when Ngati Manawa were living in exile after Te Tapiri. It consisted of 1,725 acres, described as 'one fifth arable, remainder good pastoral country'.⁹⁶⁴ In 1870, Mair proposed sending some surrendered Ngati Haka Patuheuheu to live there with Ngati Manawa in the belief that the land could support them as well.⁹⁶⁵ We have no evidence that Ngati

958. Chapter 8 deals with claims about the Native Land Court and land alienation in the rim blocks.

959. Crown counsel, statement of response (claim 1.3.5), sec E, p 7

960. McBurney, 'Ngati Manawa and the Crown' (doc C12), pp 124, 131-134

961. Ibid, pp 434-435; Armstrong, 'Ika Whenua and the Crown' (doc A46), p 114

962. Registrar, Maori Land Court, to Under-Secretary, Native Department, 7 September 1925 (Armstrong, supporting papers to 'Ika Whenua and the Crown' (doc A46(c)), p 452)

963. McBurney, 'Ngati Manawa and the Crown' (doc C12), pp 104, 113, 128

964. Davis and Mitchell to St John, 24 February 1874 (Armstrong, supporting papers to 'Ika Whenua and the Crown' (doc A46(c)), p 481); Armstrong, 'Ika Whenua and the Crown' (doc A46), p 113

965. Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 123

Manawa were ever provided with any food or assistance, although we accept that they had a piece of good land on which to live. The claimants' historians argued that this time in exile marked the beginning of a cycle of debt for Ngati Manawa – that their need for food and goods while away from their rohe started the process of indebtedness that later facilitated land loss.⁹⁶⁶ We shall address this issue in chapter 8.

The claimants also argued that their men were treated unfairly during their military service to the Crown:

During the Te Kooti campaign, the Crown did not provide proper or timely payment, conditions or even clothing. Despite doing less pleasant work, Ngati Manawa and other Flying Column constables were remunerated at discriminatory rates of pay compared with European constables.⁹⁶⁷

Gilbert Mair recorded that around 50 Ngati Manawa were among his troops: 'They did such fine service scouting and fighting, and were always in the advance, so they were named "Mair's forty thieves". I was authorised to pay them a bonus of 2/- per diem on the quiet.'⁹⁶⁸

We have no evidence of exactly how many Ngati Manawa troops were employed specifically in the Urewera expeditions. McBurney cautioned against too literal an interpretation of Ngati Manawa's service. He noted Harehare Atarea's attempt to protect his whanaunga during the attack on Te Harema in 1869. (Atarea was later a scout for Te Kooti.⁹⁶⁹) Maori troops, McBurney stated, 'regularly discharged their weapons at crucial times to warn the whakarau that they were [in] imminent danger.'⁹⁷⁰

As we saw in section 5.5.2, the Crown's forces in 1869 to 1871 had to live off the land as much as possible. They were often short of food, clothing, and supplies. The accounts of Mair and others suggest that everyone was affected – Maori and Pakeha, officers and men.⁹⁷¹ Various groups reacted differently. In April 1870, Preece described the condition of his Maori troops, pointing out that they had not been paid for months, that they had had no opportunity to plant crops for food, and that they were dressed in rags. 'Europeans under similar circumstances', he wrote, 'would not have behaved as well as these men have.'⁹⁷² But we do not have systematic evidence to compare the circumstances of Maori and Pakeha troops. We have no trouble in concluding that the Crown's forces as a whole were not treated

966. McBurney, 'Ngati Manawa and the Crown' (doc c12), pp 124–134; Armstrong, 'Ika Whenua and the Crown' (doc A46), pp 94–97

967. Counsel for Ngati Manawa, closing submissions (doc N12), p 19

968. Captain Gilbert Mair, *Reminiscences and Maori Stories* (Auckland: Brett, 1923), pp 8, 63 (Armstrong, 'Ika Whenua and the Crown' (doc A46), p 14)

969. McBurney, 'Ngati Manawa and the Crown' (doc c12), pp 101–102, 105, 115

970. *Ibid*, p 102

971. See, for example, W Mair to his sister (Laura Jackson), 6 June 1869 (Armstrong, supporting papers to 'Ika Whenua and the Crown' (doc A46(a)), p 152).

972. Armstrong, 'Ika Whenua and the Crown' (doc A46), p 23

well. From 1870, owing to the policy of using Kawanatanga Maori to do almost all of the fighting, this situation obviously affected Maori disproportionately.

There is some suggestion of discrimination in the rates of pay for Maori and Pakeha troops. Armstrong argued that there was a long history of underpayment, in terms of both pay that was too low for the services rendered and pay that was at a rate lower than that for European soldiers. Much of this evidence relates to the period before 1869.⁹⁷³ For the Flying Column, Armstrong relied in part on an 1872 newspaper article reporting complaints about unequal rates of pay. He argued: ‘it was a constant cause of complaint that Maori serving in the “Flying Column” were paid only 4s per day, out of which they had to purchase their own rations, while Pakeha soldiers similarly engaged received 6s per day and rations.’⁹⁷⁴

Although we note that there were complaints about dissatisfaction with pay and some suggestions of discrimination, we are unable to reach a conclusion on the point. We do not have detailed evidence of the rates of pay for Maori and Pakeha troops in the Armed Constabulary during these years; nor do we have a basis for comparing payments to the troops in 1869 or payments to non-constabulary Maori forces in 1870 to 1871. We lack the evidence to determine whether there was systematic underpayment of Ngati Manawa (or other troops) or unfair rates of pay. Also, as we noted above, Ngati Manawa received two small awards of confiscated land for this military service (of 88 acres and nine acres) in 1877.

In sum, the Crown’s forces (including Ngati Manawa) were not well provided for in Te Urewera. They were frequently short of food, clothing, and supplies. Their pay was often late. At times, Maori troops may have been paid less than their Pakeha counterparts, but there is insufficient evidence to determine whether this happened systematically. Since Maori troops formed the great majority of the expeditionary forces in 1870 and 1871, the harsh conditions and lack of adequate supplies affected them more than anyone else. We are not in a position to conclude, however, that Ngati Manawa were underpaid for their services. They were awarded confiscated land in addition to their pay, and we simply lack any detailed evidence or a reliable base for comparison. It would be fair to ask whether the Crown dealt adequately with the complaints that were made. Again, lack of evidence prevents us from reaching a conclusion.

Finally, we address the Ngati Manawa claim that their relationships with their close kin, especially Ngati Whare and Ngati Haka Patuheuheu, were damaged by the war. In our view, it is difficult to separate this particular conflict from the many other matters that affected these relationships. McBurney argued that the key division between Ngati Manawa and their Urewera whanaunga had already occurred in 1865, when Ngati Manawa committed themselves to support Te Arawa and the Crown. The two ‘sides’ fought one another soon after at Te Tapiri, and Ngati Manawa then had to live in exile for at least a year, well before the events of 1869. Ngati Manawa persisted in their commitment to the Government from then on.⁹⁷⁵

973. *Ibid*, pp 21–23

974. *Ibid*, p 22

975. McBurney, ‘Ngati Manawa and the Crown’ (doc c12), pp 84–123

Wiremu Bird explained the genealogical ties between Ngati Manawa and Ngati Whare. These iwi are closely bound to one another by whakapapa.⁹⁷⁶ Some of them resumed living together in the 1870s, sharing land and resources.⁹⁷⁷ When Ngati Manawa faced famine in 1877, Ngati Whare provided food and help. McBurney's conclusion was that these kin groups quickly 'overcame their history of recent conflict'.⁹⁷⁸

Other factors intervened to drive them apart again, but they always came back together. Margaret Herbert explained how her grandfather saw matters at the beginning of the twentieth century, when Te Arawa set aside land for their visits to Rotorua hospital:

This was not an outright gift of land necessarily, but a goodwill gesture by Te Arawa to allow Ngati Manawa and Ngati Whare to feel comfortable about visiting their family members, by granting them permission to use the land when they wished to do so. There has always been a close link between Ngati Manawa, Ngati Whare and Te Arawa.⁹⁷⁹

Whakapapa bound these people together; politics and land drove them apart. From the evidence of the tangata whenua and the claimants' historian, we cannot accept an argument that the events of 1869 to 1871 caused permanent damage to their relationships.

In sum, we are unable to make a finding of Treaty breach without first considering the Crown's leasing and purchasing activities in the years immediately after the tribe's return to its rohe. Only then will we be able to determine whether the Crown met its Treaty obligations to Ngati Manawa in respect of the events of 1869 to 1871. We shall return to this claim in chapter 8.

5.6 SUMMARY

We summarise this chapter as follows:

- ▶ After his defeat by Crown forces at Ngatapa, Te Kooti sought refuge in Te Urewera early in 1869. His religious teachings brought him widespread adherence from Te Urewera leaders, who were bitter at the unjust confiscation of their best lands. Large numbers joined Te Kooti, and participated with him in attacks on Ohiwa, Rauporoa, Whakatane, Motumako, and Mohaka. These attacks were an indirect way of expressing outrage at the Crown's confiscations. Some 80 people were killed, the great majority at Mohaka, and there was widespread destruction of property.
- ▶ The Crown was justified in deciding in 1869 to respond with military force to the attacks made by Te Kooti in the early months of the year. The Crown

976. Wiremu Bird, brief of evidence, 11 August 2004 (doc F33)

977. McBurney, 'Ngati Manawa and the Crown' (doc C12), p 136

978. *Ibid*, p 129

979. Margaret Marino Herbert, brief of evidence, 11 August 2004 (doc F30), p 5

had a duty to its citizens to protect them, and to try to ensure there were no further such attacks. It has the right to put down breaches of the peace using force that is reasonable in light of the threat posed. The Crown rightly perceived the leaders of Te Urewera, in conjunction with Te Kooti, to be a threat to law and order, and to its citizens, armed and unarmed, Maori and Pakeha.

- ▶ It is unfair for the Crown to seek to rely on any 'rebellion' of the Te Urewera leaders in order to justify its decision to use military force against them. The law's view of rebellion is not readily applied to the leaders of Te Urewera. They had not signed the Treaty of Waitangi, which was the source of the Crown's authority to govern, and the Crown had not otherwise established a relationship with them from which a meaningful duty of allegiance could derive. Indeed, their prior contact with the Crown was so minimal that their understanding of its Government must also have been minimal.
- ▶ We do not accept the Crown's submission that the circumstances justified the suspension of its Treaty obligations. The Crown is entitled to use appropriate force during a state of emergency, but – even in those circumstances – fundamental Treaty rights endure, such as the rights not to be arbitrarily deprived of life or to be punished outside the law. Thus the fundamental principles of active protection and good government, and the obligation to act in good faith, apply to the conduct of the Crown's military expeditions in Te Urewera.
- ▶ Further, the Crown at the time considered itself bound to act according to some, at least, of the accepted laws and usages of war. It accepted that prisoners should not be summarily executed, that non-combatants should not be killed, and that women and children could not be treated as prisoners.
- ▶ The military expedition of 1869 had the dual purpose of depriving Te Kooti of a secure base (and capturing or killing him if possible), and of punishing the peoples of Te Urewera. It was war waged against a whole population. Everything in the path of the expedition was destroyed, whether it had a military application or not. This destruction was visited on many communities as far inland as Ruatahuna. Non-combatants were sometimes killed, and there was an instance in which prisoners were summarily executed and their bodies desecrated. No provision was made for non-combatants after the thorough destruction of their homes and food supplies. At Te Harema, the women and children were captured, taken prisoner, and sent off against their will with their Te Arawa captors. Taonga and wahi tapu, including urupa, were deliberately destroyed and desecrated.
- ▶ These actions went far beyond what was necessary or appropriate in depriving Te Kooti of a base, and were in breach of Treaty principles. Killing of non-combatants – elderly men, women, and children – was never permissible. Execution of prisoners without due process was unlawful. Destruction of homes and food was permissible only insofar as it was essential for depriving Te Kooti of a base. There had to be both a reasonable expectation that the resources would be used by Te Kooti, and a prevailing state of war. In circumstances where such destruction was essential, non-combatants had to be provided with safe alternative accommodation and necessities.

- ▶ Further, the degree of threat posed by Te Kooti, and the degree of force necessary to apprehend him or prevent further attacks, had to be re-evaluated by the Crown as circumstances changed. Utmost endeavours were required for the restoration of peace as early as possible.
- ▶ The Crown was justified in sending its second expedition to Te Urewera in 1870. Events in Taupo in 1869 showed that Te Kooti was still a serious threat, acting there with the support of Tuhoe. The Government could not have known that Tuhoe would turn away from Te Kooti and send him out of Te Urewera in February 1870.
- ▶ The Government's entrusting of the campaign to Kawanatanga Maori leaders ultimately proved beneficial when, at its outset, Te Rangihiwini established a rongopai (peace) with Te Urewera leader Tamaikoha in March 1870. Major Rapata Wahawaha, who was leading the other Crown force in Te Urewera, accepted the rongopai. These two parts of the expedition inflicted very little damage on Tuhoe before they withdrew accordingly.
- ▶ The Crown accepted in this inquiry that it had a Treaty obligation to restore peace as quickly as possible. However, it breached the rongopai on two occasions in 1870. First, Colonel St John attacked Tamaikoha at Whakarae in April, killing Tamaikoha's uncle (Tipene). Crown counsel conceded that this was a 'notable mistake'. Defence Minister McLean was culpable in that he failed to instruct his officials and officers properly. The attack was a clear breach of the Treaty. Tamaikoha and other Te Urewera leaders, however, protected the rongopai by foregoing any retaliation. Secondly, a force under the command of colonial officers attacked Waikaremoana from late April through to June, comprehensively destroying all property and food supplies at the lake. In military terms, this attack was unnecessary. Peace had been made (and was being discussed and confirmed in the rest of Te Urewera). Te Kooti was not at Waikaremoana, and the local people offered almost no resistance. The attack could not be justified on any reasonable grounds of emergency, and was therefore unlawful. It was also an impediment to peace negotiations. In both respects, it was a breach of Treaty principles. Crown counsel conceded that the attack was an impediment to peace (though not, in her view, for long).
- ▶ From May to December 1870, McLean harnessed the movement for peace but also subverted its fundamental terms. He insisted on unconditional surrender and the evacuation of the district, removing all surrendered communities to small coastal reserves where they were detained under the supervision of Kawanatanga chiefs. There was no justification for the insistence on unconditional surrender given the circumstances of the rongopai, the Tuhoe decision not to provide Te Kooti with further military support, and the fact that the Government felt no need to insist on Tamaikoha 'coming in'. In its insistence on surrender, despite these facts, the Crown clearly breached Treaty principles by failing to uphold its guarantee of the claimants' mana motuhake and tino rangatiratanga. Nor was there sufficient justification for overriding the Treaty rights of the peoples of Te Urewera by removing them

from their rohe and detaining them on the coast. Having done so, however, the Crown had an obligation to ensure that their needs were properly provided for. The Crown failed to do so at Te Putere, in breach of the principle of active protection.

- ▶ In 1871, the Crown's focus was on hunting and capturing Te Kooti. From at least the end of 1870, the Government considered itself in a developing peace with the peoples of Te Urewera. A new policy was introduced with the consent, given under duress, of Te Whenuanui and Paerau who were being detained in Napier. The remaining Te Urewera population would not be required to 'come out'. Instead, they would be concentrated at Ruatahuna under Wahawaha and be made responsible for catching Te Kooti if possible. The Crown pressured Urewera chiefs for this purpose by continuing to detain the exiles. Te Kooti was no longer believed to be a serious threat, but the Government still devoted considerable resources to bringing him to 'justice'. In part, the expeditions sent into Te Urewera were designed to intimidate and to prevent any renewal of opposition – military or otherwise.
- ▶ The first expedition of 1871 did not achieve its goal of capturing Te Kooti. Its ultimate effect was to strengthen and extend the developing peace. The plan of concentrating Tuhoe at Ruatahuna under Wahawaha was soon abandoned. Peace was confirmed with Tamaikoha, who intervened and escorted the expeditionary force across his lands and on to Maungapohatu, where Ngati Huri made peace with the Crown. This happened because of effort and forbearance by the leaders on both sides. Tuhoe's reception of the Crown's force, especially Tamaikoha's orchestration of an opportunity for peace-making at Maungapohatu, demonstrated their commitment to maintaining their own authority while cementing peace with the Government.
- ▶ The second 1871 expedition combed Te Urewera but did not find Te Kooti. Peace was confirmed with various communities, including Ngati Huri and other Maungapohatu peoples, and there were acts of reconciliation on both sides. Mistakes were made, and there was an ever-present element of intimidation, but the ultimate result was to strengthen and further cement the peace. Hardship was being experienced on all sides. Neither the Kawanatanga forces nor the Urewera peoples had enough to eat, and hungry Government forces plundered some of the cultivations. In April 1871, Te Whenuanui and Paerau were permitted to return to Ruatahuna, where Tuhoe leaders from throughout the district met and affirmed the rongopai with the Crown.
- ▶ After the release of Te Whenuanui and Paerau, and the Crown's evident decision not to take action against Ngati Huri despite their assistance to Te Kooti, there was a growing improvement in relations between the Crown and Te Urewera leaders. This was put at risk, however, during the second half of 1871, when three factors led to a deterioration in the developing peace.
- ▶ First, the Urewera leaders were placed under increasing pressure actively to join the hunt for Te Kooti – pressure to which they eventually succumbed. The coercion applied to the leaders and peoples still inside Te Urewera, in which the release of the exiles was made contingent on their cooperation in

the capture of Te Kooti, was in breach of the Crown's promise in the Treaty to respect and uphold their mana motuhake and tino rangatiratanga.

- ▶ Secondly, the peace was threatened in July 1871, when Te Kooti returned briefly to Waikaremoana and found some support from the people there. The Waikaremoana leader, Te Makarini, reported Te Kooti's arrival and requested assistance, which helped convince the Government of the trustworthiness of the Urewera chiefs. But, after fruitlessly searching for Te Kooti, who had left the area, Wahawaha's forces sacked the pa that had been accused of giving him refuge, destroying its buildings, consuming its food supplies, and carrying its people off into exile. Further depredations ensued, so that the Waikaremoana people were again without food in September 1871. The 1871 attacks on Waikaremoana were without justification, and breached the article 2 and article 3 Treaty rights of the Waikaremoana peoples. The Crown's failure to provide redress, despite complaint from Te Makarini, who had declared his loyalty to the Crown and was assisting it, was also in breach of the Treaty principle of redress.
- ▶ Thirdly, late in 1871, Wahawaha occupied Maungapohatu and Ruatahuna, built redoubts, and announced his intention of not leaving until Te Kooti was captured. Although Wahawaha admitted to having real doubts about the trustworthiness of only one chief, Kereru Te Pukenui, he treated everyone with suspicion and remained in occupation despite the known opposition of the local people. Wahawaha would have considered himself entitled to act as he did. Faced with the prospect of funding permanent military posts, however, the Government declared its intention to trust the Urewera chiefs to police their own district against Te Kooti. Wahawaha withdrew as soon as the Urewera people agreed to the new arrangements.
- ▶ Nonetheless, the Government still refused to release the surrendered Urewera peoples who had been detained at coastal reserves since 1870. Their release was finally agreed to in April 1872, mainly in an effort to break Tuhoe opposition to the building of strategic roads inside Te Urewera. Their unlawful detention was in breach of their article 3 Treaty rights.
- ▶ Wahawaha's brief occupation left lasting scars on the Ruatahuna and Maungapohatu communities. The occupation of these settlements by Crown forces when their rangatira were cooperating with the Government and exercising their own authority in keeping Te Kooti out of their district was a violation of their mana motuhake and tino rangatiratanga. The Crown was in breach of the Treaty.
- ▶ The Crown's breaches of Treaty principle caused 'catastrophic' immediate prejudice to the peoples of Te Urewera. Many were left without food or shelter, and this contributed to a high death toll when an influenza epidemic struck in 1870. At least 12 per cent of the Urewera population died as a direct or indirect result of the Crown's conduct of its expeditions – both as casualties and as a result of hunger and disease. As well as the immediate hardship involved, this had significant effects on the social structure of Te Urewera. The population appears to have stabilised by the 1880s as a result of a high

post-war birth rate. Most of the economic impact, while destructive and severe, was relatively short lived. Parts of the traditional economy had recovered by the mid-1870s. The peoples of Te Urewera were more permanently affected by the loss of the confiscated land. Nonetheless, their mana motuhake was 'trampled'. Furthermore, many taonga were destroyed or desecrated by the expeditionary forces. These losses could not be replaced.

- ▶ The Crown's breaches of Treaty principle in the conduct of its expeditions, its failure to make peace in a fair and timely manner, and its failure to provide appropriate assistance and redress have prejudiced the peoples of Te Urewera socially, economically, and culturally. They have been left with a long-term sense of grievance, seeing themselves as 'kai-a-te-ahi', or food for the fire. Some of the further impacts of these events, including their political consequences and their effects on the exercise of customary rights, will be examined in later chapters.
- ▶ In respect to the particular claim of Ngati Manawa, we note that the majority of Ngati Manawa were not present when Te Kooti's force attacked Motumako in March 1869. As a result of that attack, and their ongoing support of Te Arawa and the Crown, Ngati Manawa had to evacuate their rohe in 1869 and were not able to return until 1872. While in exile, their kainga and resources were destroyed or plundered by forces from both sides. As a result, Ngati Manawa returned to a ruined rohe in 1872. The Crown did not compensate Ngati Manawa for its use of (or destruction of) their resources or for the destruction caused by Te Kooti's forces.
- ▶ As many as 50 of the Ngati Manawa fighting force were part of the Arawa Flying Column, but we do not have exact numbers for those who participated in the Urewera expeditions. During their time fighting for the Crown, Ngati Manawa experienced privation alongside the rest of the Crown's forces. They may also have been underpaid, but the evidence for this is inconclusive.
- ▶ The critical issues for Ngati Manawa arise after their return to their lands in 1872. Those issues will be addressed later in this report.

