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IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

WAI 1040
WAI 1384

IN THE MATTER OF	the Treaty of Waitangi Act 1975 (as amended)
AND	
IN THE MATTER OF	Te Paparahi o Te Raki
AND	
IN THE MATTER OF	Elvis Reti, Henry Murphy and Merepeka Henley for and on behalf of the tangata whenua of Whangaruru

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CLOSING SUBMISSIONS OF COUNSEL FOR THE CLAIMANTS ON BEHALF OF THE TANGATA WHENUA OF WHANGARURU

Dated this 21st day of January 2011

RECEIVED
Waitangi Tribunal
21 JAN 2011
Ministry of Justice
WELLINGTON

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Introduction

1. These submissions are made on behalf of Elvis Reti, Henry Murphy and Merepeka Henley claimants for and on behalf of the tangata whenua of Whangaruru ("the claimants") of the Iwi of Ngati Wai.

2. These submissions address the Issues set identified by the Tribunal in the First Stage Hearings of Te Paparahi o Te Raki Inquriy.

The claim

3. The Wai 1384 Statement of Claim (to be further particularised) records losses of land and resources, but is fundamentally based on the claimants clear understanding that the Whangaruru and Ngati Wai rangaitra who signed Te Tiriti o Waitangi did not cede their sovereignty, their power and authority to Queen Victoria or the British Crown.

Evidence

4. The following two witnesses provide evidence on behalf of the claimants:

    a. Hori Parata[1]

    b. Te Warihi Hetaraka.[2]

5. The claimants endorse the evidence of the pou korero given in the first hearing week, and support the evidence in the brief and reports filed on behalf of the Te Paparahi o Te Raki claimant community by the following witnesses:

    a. Dr Manuka Henare

    b. Dr Patu Hohepa

    c. Dr Phillipson

    d. Dr O'Malley

    e. Mr Ralph Johnson

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[1] Brief of Evidence of Hori Parata, Wai 1040 #, C 10a

[2] Brief of Evidence of Te Warihi Hetaraka, Wai 1040 #, C9, C9(a), C9(b), C9(c) and #3.1.48.

f. Moana Jackson

g. Dr Merata Kawharu.

6. The claimants also support the evidence of Tribunal witness Dame Professor Anne Salmond.

7. In respect of the Crown evidence, the claimants support the views expressed at paragraph xx of the Generic Claimant Submissions. Relevant paragraphs of the Generic Claimant Submission are adopted where indicated in these submissions.

Ngati Wai and Whangaruru origins and traditions

8. The founding ancestor of the people of Ngati Wai is Manaia. Today his descendants are located in and around the lands and waters in which he lived. Within the rohe of the hapu of Whangaruru are the sacred places left by Manaia, and his legendary exploits are landmarks in the Whangarei Harbour and at other places on the east coast from south of Whangarei to the Bay of Islands and throughout Aotearoa.[3]

9. A visionary, Manaia presaged negative forces that would impact on his descendants:

> *"...Te puke i Manaia ka tarehua. E mihi ana ki te whenua. E tangi ana ki nga tangata. Korohihi po. Korohihi Ao. Ko Rongo i turia ki te mata hau o Tu. Tu winiwini. Tu wanawana. Tu whakaputaina ki te whei Ao...puta ki te Ao Marama."*

10. By virtue of their close relationship with the sea and known for their fighting prowess on the water and in defence of their offshore lands, Manaia's descendants became known as the people of the water, Ngati Wai. Their traditions record that the power of Ngati Wai comes from the water, which is expressed this way:[4]

> *"Ko nga mana katoa o Ngatiwai kei te wai, i nga taniwha me o ratou manawa. All of the power of Ngatiwai comes from the water, from the taniwha and their spirits."*

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[3] Brief of Evidence of Te Warihi Hetaraka Wai 1040 # C19(a)para.

[4] See the Brief of Evidence of TeWarihi Hetaraka Wai 1040 # C22 para 13.

11. Ngati Wai share a common whakapapa with all of hapu of Ngapuhi Nui Tonu, the wives of Rahiri's were from the east.[5] The evidence of the whakapapa relationships given in the first hearing week confirms these close connections.[6]

Issue 1 **He Whakaputanga / The Declaration**

How did Maori understand He Whakaputanga / The Declaration? And, therefore, what was the nature of the relationship and the mutual commitments they were assenting to in signing He Whakaputanga / The Declaration?

Issue 4 **Te Tiriti / The Treaty**

How did Maori understand Te Tiriti / The Treaty? And, therefore, what was the nature of the relationship and the mutual commitments they were assenting to in signing Te Tiriti / The Treaty?

12. To access the events that led to He Whakaputanga me Te Tiriti, and the reasons for their tupuna's agreement to these, the claimants adopt the description of Te Ao Maori set out at paragraphs xxx of the Generic Closing Submission.[7] A description of the source of laws by which their tupuna lived is set out in the expert evidence of Te Wahiri Hetaraka, a Tohunga Whakairo, who states.[8]

> *"Our matauranga and tapu provide the principles upon which our Rangatira entered into agreements with the Pakeha. They could not know that their ways would be ignored and betrayed by the Pakeha."*

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[5] Brief of Evidence of Hori Parata Wai 1040 # C22.

[6] Paragraphs xxxx of the Generic Closing Submissions in respect of the first week evidence area adopted.

[7] Paragraphs xxx of the Generic Closing Submissions are adopted.

[8] See the Brief of Evidence of Te Warihi Hetaraka Wai 1040 # C19(a) and see paragraphs xxx of the Generic Closing Submission.

He Whakaputanga

13. As coastal people Ngati Wai experienced the early visits of whalers, sealers, explorers and early traders that came to Aotearoa. The incident involving Du Fresene is infamously held within the oral traditions.[9]

14. From these early visits and the reports of visiting ship's captains, the claimants tupuna were aware that there was interest in the resources within Aotearoa. As part of a response to these events Ngati Wai rangatira took part in Te Whakaminenga, the hui that took place throughout Ngapuhi nui tonu to address issues arising from the arrival of the newcomers from around 1808.[10]

15. Even when hapu were at war, they would continue to meet to discuss a response to the newcomers, not only in terms of politics but also religion. Hori Parata has stated:[11]

> *"By 1830 the missionaries were exercising a significant influence on hapu affairs and the way in which hapu interacted with each other. However our tupuna were also considering the way in which Christianity could be incorporated or evolved into their own spirituality. Paratene Te Manu was involved in Whakaminenga and the evolution of alternatives to Christian religion such as Ko Huriarau. Whakameninga was the precursor to He Whakaputanga."*

16. Hori Parata is clear about the reasons for his tupuna, Paratene, signing He Whakaputanga, stating:

> *"On receipt of King William's agreement to be their friend and protector the chiefs signed He Whakaputanga asserting their mana and authority to all nations. Paratene was one of the signatories, providing the basis for the people of Ngatiwai to take to the battle field to assert their mana against any encroachment on their authority."*

And

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[9] Brief of Evidence of Hori Parata Wai 1040 # C22.

[10] Brief of Evidence of Hori Parata Wai 1040 # C22.

[11] Brief of Evidence of Hori Parata Wai 1040 # C22.

"He Whakaputanga is a declaration that recognises the sovereign authority of the chiefs of Aotearoa. Five years later on 6 February 1840 those same chiefs debated, then signed, Te Tiriti o Waitangi allowing the Pakeha to govern their own people, many of whom were escaped convicts and run away sailors."

17. Paratene Te Manu had been a staunch supporter of Hongi Hika and a famed warrior, however Hori Parata states:[12]

"Paratene, like all Maori chiefs, was a staunch protector of mana Maori motuhake and was prepared to defend it with his life. By the time of Hongi's death Paratene had observed changes in the attitudes of the Pakeha and the missionaries. The rumour that the tupuna had heard about a possible annexation by the Pakeha was showing real signs of being true, but which Pakeha? The chiefs knew the British Resident James Busby and the missionaries, but they had also heard that the French were considering taking the chiefs land as utu for Marion du Fresne. This rumour was intensified by the knowledge of a previous agreement between Hongi and a so-called Frenchman, Baron de Thierry who had bought guns for Hongi in exchange for land at Hokianga when he was in England. The rumour was that de Thierry was coming to claim his lands. The tupuna were also aware of the Americans who already had Clendon in residence."

Te Tiriti o Waitangi

18. The evidence describes reasons the tupuna entered into Te Tiriti o Waitangi:[13]

"The fact that the Pakeha didn't adhere to our laws is one of the reasons that our rangatira signed Te Tiriti. The impact of Christianity and the observation that Pakeha were not affected even when they breached tapu, meant that the effect of our laws"

And,

"The proof of the tapu that surrounds the marks on Te Tiriti is seen in the reaction of the rangatira who witnessed the Crown break its covenant almost immediately after signing it. By 1844, Kawiti and Heke were prepared to die to uphold the tapu of Te Tiriti. ..."

19. The tapu nature of Te Tiriti is described thus:[14]

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[12] Brief of Evidence of Hori Parata Wai 1040 # C22.

[13] Brief of Evidence of Te Warihi Hetaraka Wai 1040 # C19(a).

"The tapu surrounding Te Tiriti was partly because of the fact that they placed their mark by way of moko on it -that represented their identity and thus had to be protected, to the point that they went to war for the Crown's failure to act in accordance with the tapu of the contract that was signed.

It is significant that when signing Te Tiriti the Rangatira used only a small part of their ta moko. When we look at ta moko, we can read the entire universe represented there, but in signing He Whakaputanga and Te Tiriti, the Rangatira only chose to use a small part of their moko, which signified a humble acknowledgement that the meaning of their actions in signing, was insignificant to the meaning of the universe that was held and represented in the total ta moko.

Ta moko represents the mana of the bearer. The exercise of that mana is a privilege. The parts of the moko chosen by the Rangatira were those parts that referred to them as individuals. Different Rangatira took from different parts of their moko, usually the part that described their person or their particular skill. For example an orator would choose that portion of the moko referred to as ...Te Pu... that starts at the lower ...Makaurangi... on the ngu and runs down the side of the mouth to the kauae raro.

20. Ngati Wai joined Kawiti and Heke in battles against imperial forces, it is stated that:[15]

"After the signing of Te Tiriti Ngati Wai felt cheated that the British Crown had assumed authority over Maori. It is important to say that the battles that happened were to prove a point, they were undertaken to highlight that the Crown could not control us, and that the Crown's control over us was not what we had agreed to. The Rangatira were willing to go to battle with the Crown, they were willing to assert their power and authority. This willingness to not only fight, for what we understood was tika, but also to inflict retribution on those whom we believed had broken the tapu of the agreement, was completely consistent with our own laws and way of life."

21. As is made clear in the evidence in response to the first and fourth issues in this Inquiry, the people of Whangaruru and Ngati Wai say that their tupuna entered into He Whakaputanga me Te Tiriti in order to **preserve and protect** their way of life, their cultural and customary law. The rangatira were intimately aware of, and

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[14] Brief of Evidence of Te Warihi Hetaraka Wai 1040 #C 19(a).

[15] Brief of Evidnece of Te Warihi Hetaraka Wai 1040 #C 19(a) and see paragraphs xxx of the Generic Claimant Submission which are adopted.

involved in, pan-hapu discussions about a response to the newcomers from time of the arrival of non-Maori in the North.

22. While Ngati Wai willingly entered into a relationship with the newcomers they also sought to protect their own way of life, by bring the new knowledge into their own culture and traditions.

23. They entered into the documents on the basis that their power and authority would be preserved, those documents are considered tapu and when breached, tapu can be a destructive force. Hence, following the breach, the rangatira went to war.

24. It is submitted that there is no more compelling proof of the commitment to the meanings in He Whakaputanga me Te Tiriti than in the rangatira's decision battle against the Crown.

25. It is further submitted that it is without doubt that the people of Ngati Wai did not cede their sovereignty to Queen Victoria of the British Crown.

Issue 4 **Relationship between He Whakaputanga / The Declaration and Te Tiriti / The Treaty**

What, if any, was the relationship between He Whakaputanga / The Declaration and Te Tiriti / The Treaty

26. It is submitted that the explanation above describes the nature of the relationship between these documents, they were part of a continuum, a progression in Te Ao Hurihuri, consistent with Maori cultural imperatives.

Conclusions

27. The claimants say their tupuna entered into He Whakaputanga me Te Tiriti on the basis of their own rules and cultural belief in which it was not possible for them to have given away their power and authority to Queen Victoria or anyone else.

28. He Whakaputanga me Te Tiriti o Waitangi are considered tapu.

29. As a result of the breach of tapu by the Crown failing to uphold the agreements in Te Tiriti, Ngati Wai sought retribution and were willing to fight to the death to uphold their tikanga.

30. The claimants place these submissions before this Tribunal to say once again, "Our tupuna did not cede their sovereignty, or their power and authority to Queen Victoria or the British Crown".

Tribunal Report

31. The claimants seek that the Tribunal undertake to produce a Report on their findings in respect of the Issues as soon as possible. If necessary an outline of findings of fact that for consideration in the Stage 2 Hearings, should be made available by way of an interim report.

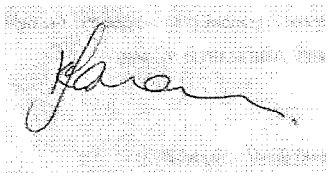
Findings

32. The following findings are sought:

    a. that He Whakaputanga is expression of the pre-existing sovereignty of the Iwi and Hapu of Ngati Wai; and

    b. that the Rangatira who signed or put their marks to Te Tiriti o Waitangi did not give away or cede their power or authority.

Dated at Kerikeri this 21st day of January 2011



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