OFFICIAL

IN THE WAITANGI TRIBUNAL

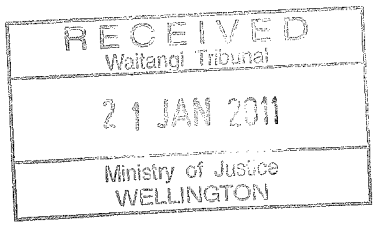
IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Paparahi o Te Raki (Northland) Inquiry

CLOSING SUBMISSIONS

Dated 21 January 2011



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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. These closing submissions are filed on behalf of those claimants annexed hereto on annexure "A" ("the claimants").

2. These closing submissions are filed in response to the Tribunal's List of Thematic Issues ("the issues") discussed during the series of Stage One Hearings held during 2010 ("the hearings").[1]

3. While the issues comprised seven key questions, the issues boiled down to their fundamentals – and the real purpose of the hearings – was to enquire into whether Māori had, by signing the Treaty of Waitangi, ceded sovereignty or not.

4. These submissions address, not only the familiar matter of sovereignty in Northland before the signing of the Treaty and whether the same was ceded or not, but also the less fully explored issues surrounding trade and economic independence for Northland Māori in the early nineteenth century.

5. These submissions analyse the position of Māori trade and economics at the time preceding and during the time of the signing of the Treaty.

6. They also analyse how Māori trade and economics influenced Māori in signing the Treaty.

7. These submissions conclude that among other reasons, an analysis of Māori trade and economics would not support the Crown held position that Māori, by signing the Treaty, were ceding their sovereignty.

8. In simple terms, at the time of signing the Treaty, New Zealand trade and economics was completely and wholly owned, organised and dictated by Māori.

9. These submissions say that this was true at the time preceding and during the time of the signing of the Treaty.

[1] Wai 1040 #2.5.023

10. For the reasons outlined herein, counsel will illustrate that it simply makes no sense for the Crown to conclude that Māori ceded their sovereignty to the Crown.

11. Most importantly, these submissions stress the claimants' contention that their burgeoning economic independence, which was being forged through national and international trade and diplomacy under the flag of the Whakaminenga, was undermined by the Crown and the Treaty of Waitangi.

HE WHAKAPUTANGA, TE TIRITI, AND SOVEREIGNTY

Submissions in response to the evidence of Crown witnesses

He Whakaputanga

12. The Crown indicated that the chiefs who discussed and signed He Whakaputanga felt their mana and tino rangatiratanga over their respective lands and peoples had been recognised by their British friends and advisers, and that any particular threat from de Thierry and the "tribe of Marion" had been averted.

13. He Whakaputanga, and the recognition of a Māori flag, reinforced the Māori perspective that they were a free and independent people, entitled to manage their lands and continue their engagement with the wider world as before.[2]

14. James Busby, the British Resident, intended that the He Whakaputanga should have an international status.[3] This evidence supports the claimants' evidence, and confirms the Māori position when signing He Whakaputanga.

15. However, Prof Ward expressed an opposing view when he argued that Māori might have regarded He Whakaputanga as confirming their aspirations of developing a functioning nation-state, but did not seem to be under any illusion that in making the agreement they had actually established one.[4] Counsel questions this argument: what does a "Declaration of Independence" mean if not the declaration of an independent and functioning nation-state?

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[2] Summary/Response of Professor Alan Ward, Wai 1040 #19(a), [hereinafter Ward, *Summary*] para 15.2

[3] Carpenter, *Te Wiremu, Te Puhipi, He Wakaputanga me Te Tiriti: Henry Williams, James Busby, A Declaration and the Treaty,* Wai 1040 #A17, pp180, 182

[4] Ward, *Summary*, para 15.3

16. It does not make sense to "declare independence" and not mean it.

17. The Crown has futilely attempted to disregard what He Whakaminenga really meant: Prof Ward described it as a source at least of *potential* Māori sovereignty[5], or even worse, a *failed experiment* according to the words of Dr Loveridge.[6]

18. The words of He Whakaputanga necessarily indicate that Māori considered themselves independent.

19. He Whakaputanga was acknowledged by the Crown through the Colonial Office.[7]

20. The Crown's witnesses have attempted to downplay the importance of this fact by arguing that the despatch was never circulated to Māori[8] and that the emphasis was rather on the relationship of support and protection between the parties.[9] However, counsel believes that these counter-arguments do not affect the legal status of He Whakaputanga. In any case, this acknowledgement was later on known to Māori, and the Crown's acknowledgement is reaffirmed by Prof Ward.[10] Clearly, it is now too late to deny He Whakaputanga's true meaning and effect: such action by the Crown was considered a formal recognition (and admission) on their part of Māori independence and nationhood.

21. The Crown does not deny the intent of the Confederation of Chiefs to extend He Whakaputanga to the whole of New Zealand.

22. There was an invitation for Southern Tribes to join the Confederation in Northland,[11] and two key rangatira from outside Northland did in fact sign He Whakaputanga – Te Wherowhero of Waikato and Te Hapuku of Hawke's Bay[12], thus confirming the national character of the document.

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[5] Ibid., para 15.6

[6] Loveridge, *The "Declaration of Independence of New Zealand" of 1835 and the Confederation of New Zealand Tribes 1835-1840* (1998) [hereinafter Loveridge, *Declaration*], p 21

[7] Wai 1040 #3.1.142, p4 citing Loveridge, *Declaration*, par 5.2 further citing Despatch #36/159 of 25 May 1836 from Glenelg to Bourke; HRA XVIII p 427 & n120

[8] Ibid.

[9] Carpenter, p 54

[10] Ward, *Summary*, para 16

[11] Carpenter, p 90

[12] Ibid.; Loveridge, *Declaration,* p13; Orange, *The Treaty of Waitangi* (1987),[hereinafter Orange, *The Treaty*] p 22. This is also confirmed by the Crown in Wai 1040 #3.1.142, pp 6, 7 citing Parkinson, *Our Infant State: The Māori Language, the mission presses, the British Crown and the Māori, 1814-1838* (2003) Appendix 1

23. There was also evidence that the Declaration was printed twice, presumably to encourage its circulation.[13]

The Flag

24. Contrary to Dr Parkinson's allegation of manipulation by James Busby,[14] the selection of the 1834 Flag of Independence was accompanied by British ritual, pomp and civility.[15]

25. This flag was chosen by rangatira to represent the Confederation of United Tribes and to express their sovereignty.

26. In addition, the flag was gazetted at Sydney and formally acknowledged by the British Admiralty as that of an independent sovereign state.[16]

27. If Busby acted solely on his own, as argued by the Crown, it seems illogical that this unilateral action by a Crown agent be recognised by a subsequent gazetting.

28. If the British Resident did not have this authority, the Colonial Office should not have ratified his previous actions to the detriment of Māori rangatira, who believed what he said and represented.

29. Moreover, Dr Phillipson argued that there is no doubt that the chiefs understood the significance and symbolism of flags, both as markers of national identity for different ships, but also as used to convey a number of messages and ideas.[17]

30. As New Zealand ships developed a thriving coastal trade in the 1830s, the flag became familiar to overseas ports.[18]

Te Tiriti o Waitangi

31. In discussing Māori understanding of Te Tiriti o Waitangi, Prof Ward introduces one of many concepts of sovereignty.

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[13] Orange, *The Treaty*, p 60
[14] Parkinson, Brief of Evidence, Wai 1040 #D1, para 240
[15] Henare, *The Changing Images of 19th Century Māori Society – From Tribes to Nation,* Wai 1040 #A16, p179
[16] Johnson, *The Northern War 1844-1847*, p 30
[17] Phillipson, *Bay of Islands Māori and the Crown, 1793-1853,* Wai 1040 #A1, p 242
[18] Orange, *The Treaty*, p 21

32. This time, he points out a type of "sovereignty" which includes the traditional reciprocal authority of chiefs and people in their own community.

33. In this type of sovereignty, Māori certainly intended to retain their chiefly authority – and the mana that went with it.[19]

34. Again, this coincides and reinforces claimants' evidence without any reservations whatsoever.

35. By signing Te Tiriti, Māori were reaffirming the sovereignty that had been recognised in He Whakaputanga.

36. More specifically, as Prof Ward admitted, Māori believed that they were retaining or recovering a substantial measure of economic sovereignty and tribal authority, precisely because they were inviting the Governor in to develop national sovereignty in a legal and constitutional sense.[20]

37. According to Prof Ward, the Crown signed Te Tiriti o Waitangi for three reasons: to control the land trade and investigate previous transactions,[21]to frustrate the aspirations of any other power to assert sovereignty in NZ,[22] and to extend the rule of law in New Zealand, among settlers and Māori alike.[23]

38. In counsel's submission this amounts to acquiring economic sovereignty over New Zealand.

39. Rather than preserving or restoring Māori economic autonomy, as argued by Prof Ward[24], the Crown wanted to take control of all the land, trade and other resources in New Zealand - like any colonising power of the nineteenth century. Any benevolent purpose claimed by the Crown is absurd, to say the least.

40. As the Crown has asserted, Te Tiriti expressed a meeting of minds to a considerable extent, though there was some confusion as well.[25]

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[19] Ward, *Summary*, para 29.1
[20] Ward, Response to Written Questions, Wai 1040 #A19(c), [hereinafter Ward, *Response*] para10
[21] Ward, *Summary*, para 30.3
[22] Ibid., para 30.4
[23] Ibid, para 30.5
[24] Ward, *Response*, para 1
[25] Ward, *Summary*, para 31

41. Prof Ward mentioned what these common understandings are, but failed to point out glaring inconsistencies and disagreements.

42. There were numerous discussions on the two versions of the Treaty of Waitangi, including the conflicting translations and meanings of certain Māori words. Nevertheless, as all the claimants have argued, it was the Te Tiriti o Waitangi, or the Māori version, that Māori signed, together with the relevant intent and meaning attached to it.

43. The English version of the Treaty means little to Māori.

44. International practice when interpreting treaties with indigenous people is to use the interpretation of the native version of the treaty.

45. The Crown argues that in signing Te Tiriti o Waitangi, land and the sale of land, was central.

46. However, as the Crown admits, the evidence is not clear whether Māori would have understood the Crown right of pre-emption as an exclusive right to purchase Māori land or a right of first offer only.[26]

47. This is one aspect of the Crown's evidence which implies that there was no "meeting of the minds" between the Crown and Māori.

48. This concept may have been far too complex to be fully understood by Māori society during that period, and if it were understood, it is counsel's submission that it was unlikely that Māori would have agreed to such condition.

49. In Dr Loveridge's opinion, Hobson sincerely believed he did everything possible to explain to Māori what the Treaty meant[27] yet not all options were explored in drafting and explaining Te Tiriti to Māori.

50. Much was done in haste, confusion, and even deceit.

51. Dr Loveridge added that the terms of the Treaty were the best Britain was prepared to offer, and for the time they were remarkably liberal.[28] Yet if there were no

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[26] Ibid., para 28.1
[27] Loveridge, *'The Knot of a Thousand Difficulties': Britain and New Zealand, 1769-1840*, Wai 1040 #A18, [heinafter Loveridge, *The Knot*]para 312
[28] Ibid., para 316

inconsistencies and deceptions, counsel submits that the ongoing issues surrounding Te Tiriti would not have emerged at all.

52. Dr Loveridge also stated that it was inevitable that New Zealand would come under European control of some kind during the 19th century, and the outcome could have been much worse if a treaty was not entered into.[29]

53. These assertions are highly speculative: No one can predict what might have happened if the British did not colonise New Zealand.

54. Dr Loveridge concluded that, "as far as the British Government and the Queen's subjects in general were concerned, Hobson's proclamations were the end of the matter: New Zealand was now British, Māori were British subjects and New Zealand for the first time in its history came under a single central government."[30]

55. Prof Ward agrees with this conclusion by citing Rutherford.[31]

56. This sweepingly Anglocentric statement totally disregards Māori and their understanding of He Whakaputanga and Te Tiriti o Waitangi.

57. Using this statement, the May 1840 Proclamations meant that the British had allegedly acquired sovereignty of New Zealand.

58. How can a "Proclamation" – literally declaring a territory to be acquired in honour of a monarch (then its subsequent gazetting) be a mode of acquisition under international law?

59. An assumption of *terra nullius* was present in the South Island: however, New Zealand could hardly be classified as uninhabited.

60. It must also be taken into account that 1840 was far past the age of discovery and territorial acquisition.

61. Several principles and concepts of international law had already developed by the nineteenth century, and a simple "proclamation" could not be sufficient.

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[29] Ibid., para 317
[30] Ibid., para 2
[31] Ward, *Response*, para 35

62. Although a proclamation may have been valid under British constitutional law, as the Crown asserted,[32] it may not have been sufficient under international law.

63. In the North Island, Te Tiriti o Waitangi was not a valid treaty of cession. Māori were very clear with their intentions when they signed Te Tiriti; these did not include cession of sovereignty and mana.

64. Contrary to these bold assertions by Dr Loveridge and Prof Ward, it is worth noting that Dr McHugh fails to provide an exact date when Māori sovereignty was allegedly ceded to the Crown, but rather fudges the issue by arguing that the acquisition of Māori sovereignty was a process, not a single moment.[33]

65. In the same manner, Dr McHugh argues that for constitutional purposes the May 1840 Proclamations amounted to an announcement via prerogative that the process of acquiring sovereignty over all inhabitants was formally over, and thereafter could not be traduced before the Crown's courts.[34]

66. However, as he himself admitted, the May 1840 Proclamations were jurisdictionally directed at the European community.[35]

67. It is also worth noting that the Crown denies the existence of Māori sovereignty in He Whakaputanga and later on acknowledges Māori sovereignty in Te Tiriti o Waitangi.

68. How can a "potential" nation-state in 1835 later on cede its sovereignty in 1840? This is illogical, and in itself highlights how the Crown easily changes its position to accommodate its own agenda.

69. In coming to such conclusions, the Crown has resorted to a complex collection of Eurocentric international laws, which have been applied creatively to a plain and simple set of events, in order to argue a position which is not borne out when said events are viewed simply.

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[32] McHugh, Brief of Evidence, Wai 1040 #A21 [hereinafter McHugh, *Brief*]para 42
[33] McHugh, *Brief*, para 4; Summary of Brief of Evidence of Paul McHugh, Wai 1040 #A21(a) [hereinafter McHugh, *Summary*] paras 49, 54
[34] McHugh, *Summary*, para 43
[35] McHugh, *Summary*, paras 7, 37

Submissions relating to the claimants' evidence

70. It should be noted that the question of sovereignty is of similarly great importance to the claimants. They do, of course, maintain that their sovereignty over their lands was never ceded to the Crown. As Joseph Tarrant argues: "[i]t is politically convenient for the New Zealand government today to simply say Māori signed it all away. But that does not make any logical sense."[36]

71. The position of Māori in the early nineteenth century was an advantageous one:

    a. Māori occupied the entire country;
    b. Māori outnumbered Pakeha;
    c. Pakeha were not formed into a recognisable armed force;
    d. Māori had lived on their ancestral lands for many generations;
    e. Māori were a "warrior people" who had fought and killed to keep what they considered to be theirs;
    f. Māori knew "every nook and cranny of their lands, waters, forests and oceans" and;
    g. Most importantly, the "practice of Rangatiratanga was evident amongst all hapu throughout the motu".[37]

72. Māori society admittedly had changed significantly between 1770 and 1840, particularly in Northland, where trade and contact was regular.

73. Māori rapidly adjusted their lives, reorganising the way they hunted, grew and produced food, and worked in order to trade more efficiently with Pakeha.

74. Māori learned to read and write in Māori.

75. Some Māori adopted Christianity or incorporated it into their own ritenga or customs.

76. These changes were "remarkable but in the long term it proved not so much a revolutionary overturning of old ways as selective development by a resilient, adaptable culture."[38]

77. In Northland particularly, rangatira were quick to take advantage of new opportunities to oversee economic, social and political development.

78. Māori were quick to adapt to and utilise then modern developments and technology.

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[36] Tarrant, Joseph, Brief of Evidence, Wai 1040 #C5, para 4
[37] Ibid.
[38] Orange, *The Treaty*, p 7

79. Māori quickly formed new trading relationships and forms of commerce.

80. Māori travelled overseas to acquire new ideas and goods.

81. Māori developed relationships with missionaries to improve their knowledge and skill of new technology and developments.

82. Māori improved their new skills in written language.

83. Māori improved and enhanced their direct communication with the Crown and its representatives.

84. Māori accepted the new Māori flag.

85. These are all examples of Māori enhancing "their independence, authority, development and wellbeing" – their rangatiratanga.

86. The Declaration of Independence provided new levels of recognition, and by supporting the Declaration, Northland chiefs expected that the new opportunities they had discovered would continue."[39]

87. The 1830s was a period in which Māori in Northland were dominant and sovereign in all of Aotearoa and their leaders decided to maximise opportunities for their people's well-being and survival."[40]

88. The Treaty of Waitangi was presented to rangatira "in a manner calculated to secure Māori agreement. The transfer of power to the Crown was thus played down. Māori suspicions were lulled by official recognition of Māori independence."[41]

89. Given these conditions, the idea that Māori would be likely to deliberately enter into any agreements with the Crown which disadvantaged them so greatly is highly unlikely, or as Joseph Tarrant described in his brief of evidence, "This hearing should undoubtedly prove, because surely there can be only one outcome from these hearings, namely that Māori and Nga Puhi did not cede sovereignty or power and control."[42]

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[39] Kawharu, *'Te Tiriti and its Northern Context'*, Wai 1040 #A20, p 56
[40] Ibid., p 26
[41] Orange, *The* Treaty, p 33
[42] Tarrant, para 20

ECONOMIC INDEPENDENCE AND ECONOMIC DISCRIMINATION

Submissions in response to the evidence of Crown witnesses

90. Prof Alan Ward distinguished between "sovereignty" in a legal-constitutional sense, meaning the supreme authority to make and administer laws in an independent nation-state; and the control of the *economic* resources of a people or nation.[43]

91. Nevertheless, despite this differentiation, it could be argued that legal-constitutional sovereignty cannot be separated from economic sovereignty.

92. In counsel's submission, one cannot not exist without the other.

93. An independent nation-state cannot control its political affairs if its economic dealings are being controlled by another nation-state.

94. In fact, Prof Ward even concluded that in the pivotal moments leading up to the signing of the Treaty, "the Colonial Office considered that Māori had largely lost *economic* sovereignty, and Hobson was to negotiate for the cession of legal or political sovereignty."[44]

95. This in counsel's submission suggests that even the Crown accepts that economic sovereignty cannot exist without legal or political sovereignty.

96. Dr Loveridge argued that post-contact trade in the period prior to 1840 was not a taonga protected by the Treaty.[45]

97. It should be emphasised however that the Kiwifruit Marketing Board Tribunal made this conclusion based, by his own admission, on insufficiently prepared evidence.

98. More importantly, the Tribunal is not bound by decisions made by previous Tribunals.

99. In counsel's submission, should the opportunity present itself, counsel is confident that there is sufficient evidence to prove that Māori trade and economic independence is a taonga protected and guaranteed by Te Tiriti.

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[43] Ward, *Summary*, para 15.1
[44] Ibid., para 23.
[45] Loveridge, Response of Dr Loveridge to Written Questions, Wai 1040 #A18(j) [hereinafter Loveridge, *Response*], para 4, citing Kiwifruit Marketing Board Report 1995, para 4.3, pp.12-13

100. In response to counsel's written questions[46], Dr Loveridge rightfully acknowledged that:

> At the end of the 1830s, Māori were providing most of the agricultural produce which was the foundation of the pre-colonial New Zealand economy. They grew and raised crops and livestock of European origin in quantity for European market – for whaling ships, and the consumers of New South Wales and Britain. They were the major suppliers of timber and flax products. Spars and lumber were cut to European specifications and flax leaves were processed to meet European industrial requirements. Māori were also involved to a greater or lesser degree in most other activities related to trade and commerce, including transportation and tourism (if the modern term can properly be used to describe the entertainments and souvenirs offered to visiting sailors).[47]

101. Dr Loveridge asserted that although Māori were sailing their own ships domestically and internationally, he was "unable *in 1995* to find any direct evidence that Māori were shipping goods offshore without the involvement of European middlemen, has no or were operating ships which carried export goods to foreign ports."[48]

102. Dr Loveridge came to this conclusion in 1995, in his brief of evidence for the claimants in the Kiwifruit Marketing Board Inquiry and admits that his evidence was "researched and written within an unreasonably short space of time"[49], and further acknowledges "the statistical record is neither complete nor reliable"[50] and "reliable figures for other New Zealand ports are not as yet available".[51]

103. More importantly, Dr Loveridge has been guilty of using his own evidence out of context. It is true the he stated he was unable to find evidence of Māori shipping trade without European involvement, however, he later pointed out that:

    a. It had not been possible in the time available to carry out research into this specific question using archival sources; given the existing regulations with respect to ship-registration, an overt acknowledgement of Māori ownership or

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[46] Wai 1040 #3.1.373, question number 4(a): *Combined with the fact that Māori were entrepreneurial and were sailing their own ships both domestically and internationally not only form the North but from various places throughout Aotearoa, is it correct to say, that: (i) At 1840 Māori were well on their way to becoming economically independent? (ii) If that is not accepted was it not simply a matter of time before Māori could have become independent recognizable traders both domestically and internationally? (iii) Hadn't Māori by 1840, independent of Crown help, set about establishing their own economic markets and providing those markets with the goods and services required by domestically and internationally?*

[47] Loveridge, *Response*, p 3 citing Brief of Evidence of Donald Mervin Loveridge for the claimants in the Kiwifruit Marketing Board Inquiry, Wai 449 #A9 [hereinafter, Loveridge, *Kiwifruit*]

[48] Ibid., p 4. Emphasis supplied.

[49] Loveridge, *Kiwifruit*, p 2

[50] Ibid., p4

[51] Ibid., p6

part-ownership of a vessel would have restricted the access of that ship to British and British colonial ports:

b. Māori were not actually doing such things prior to the British annexation of New Zealand, there were undoubtedly individuals around who could and would have become involved, had circumstances made it possible and profitable.[52]

104. The fact European middlemen were present in offshore Māori trade does not negate Māori control of that trade.

105. Māori produced and owned the goods.

106. Pakeha were there to facilitate the trade and to profit from it.

107. Such arrangements are common to business even today. Would the Crown argue that New Zealand exporters who use middlemen based in China have lost control of their trade?

108. In counsel's submission, evidence that Māori controlled trade is apparent in their collection of dues and taxes.

109. Māori travelled overseas, discovering that shipping was subject to a variety of port dues and charges, and began to introduce these in their own harbours.[53]

110. Dr Loveridge stated that Pomare was not the only chief to demand and receive harbour dues of some kind.[54]

How Was Economic Sovereignty Lost By Māori?

111. Prof Ward argued that "economic sovereignty lay largely with western capitalist and entrepreneurs who were finding local compradors among Māori – *i.e.* those Māori who would sell the land."[55]

112. This is an Anglocentric statement which does not consider Māori tino rangatiranga, acknowledged both by He Whakaputanga and Te Tiriti.

113. In counsel's submission Māori, held the mana whenua and were sovereign for all of New Zealand.

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[52] Ibid., p 41
[53] Ibid., citing Wigglesworth, *Timber and Flax Trade*, p 195
[54] Ibid, p 32
[55] Ward, *Response*, para 2

114. Māori exercised tino rangatiratanga, kaitiakitanga, mana, mana whenua, mana moana, mana ngahere, rahui, tapu, noa, tikanga and kawa over all the land, taonga and other resources in New Zealand and therefore in counsel's submission Māori had economic sovereignty, rather than the Crown or Pakeha entrepreneurs, as Ward suggests.

115. Māori outnumbered Pakeha considerably in the early nineteenth century and in counsel's submission it is hardly conceivable that a Pakeha minority would control and possess economic sovereignty – or any form of sovereignty – in New Zealand at 1840.

Submissions relating to the claimants' evidence

Trade

116. In counsel's submission the immediate decades preceding the signing of the Treaty were economically advantageous for Māori particularly in Northland.

117. The claimants have presented evidence of their burgeoning economy during the time before the signing of the Treaty.

118. Nga Puhi seized the opportunity to trade with Pakeha settlers and overseas traders, creating a robust network of goods and services.

119. Long before the arrival of Pakeha and the signing of the Treaty, Nga Puhi were adept at horticulture and fishing, producing goods and products from their lands and resources for the purpose of trading with Pakeha setters.[56]

120. Traders were interested in many goods and services procured by Maori including but not limited to potatoes, kumara, flax, fishing nets, fresh water and anchorage sites.

121. Māori received European goods in return for their goods and services.

122. The extent to which Northland Maori adapted to their new capitalist economy was astounding.

[56] Wai 1582, Statement of Claim of Eru Lyndon, 18 August 2008, pp. 2-3, paras 6-17

123. By the 1830s many hapu were traders themselves, "cultivating and preparing flax, and producing crops such as potatoes and fruit, and pigs."[57] Nga Puhi traded over 20,000 tonnes of white potato with Pakeha within three years of the white potato being introduced.[58]

124. The Bay of Islands became the hub of substantial trade, since whaling and other trading vessels from Australia, France, the United States, and Britain began to harbour at Kororareka (Russell) in growing numbers.

125. In the 1830s, about 150 ships per year were arriving at the Bay of Islands.[59]

126. Hapu from large surrounding areas traded provisions and services in exchange for European goods at Kororareka and other surrounding places[60]

127. By 1838, 600 of the 2000 or so Pakeha inhabitants of New Zealand were settled near Kororareka.[61]

128. In Hokianga, trade – particularly in timber – also increased throughout the early nineteenth century.

129. In 1827, mills were established at Kohukohu and at Onoke, since local timber was an excellent supply of wood for British and American ships.

130. Dressed flax became desirable, and encouraged the further development of northern ports.

131. Harbours and shipping ports were "vital in connecting local groups with whalers, sealers and traders."[62]

132. Nga Puhi also realised the value of their harbours as places for anchorage by trade vessels and jealously guarded and protected them.[63]

133. Nga Puhi rangatira were also dominant traders at various internal trading posts, including:

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[57] Orange, *The Story of a Treaty* (1989) [hereinafter Orange, *The Story*], p 5
[58] Lyndon, pp. 2-3, paras 6-17
[59] Sinclair, *A History of New Zealand*, (1988), p 40
[60] Orange, *The Story*, p 9
[61] Sinclair, p 46
[62] Kawharu, p 19
[63] Lyndon, pp. 2-3, paras 6-17

a. Muriwhenua/ Whangaroa (Poroa-rua/ Ururangi);
b. Bay of Islands (Pomare/ Ururangi);
c. Waimate/ Kaikohe (Hone Heke);
d. Kerikeri/ Whangarei (Kira);
e. Whangarei (Poroa-rua/ Ururangi);
f. Tamaki Makaurau (Hongi Hika/ Patuone).[64]

Trade and International Relations

134. Northland Māori were not just proficient traders in New Zealand, they also extended their economic reach overseas.

135. Nga Puhi rangatira, in particular Hongi Hika and Pomare, were prominent figures in national and international trade and enterprise.[65]

136. They, among others, travelled to Australia and England on a number of expeditions to extend and build trade relationships with the Crown and other allied governments.[66]

137. As early as 1805, New South Wales Governor Phillip King sent gifts – iron tools, fruit tree seedlings, and livestock – to Te Pahi, who controlled a good anchorage for shipping in the Bay of Islands.

138. Te Pahi and several of his sons visited New South Wales and presented the King with cloaks and a stone mere.[67]

139. After 1835, under the flag of the Confederated Tribes, Nga Puhi in counsel's submission, were seen as a sovereign trading nation who had international recognition and mana.[68]

Economic Independence

140. Contact between Māori and Pakeha in the early nineteenth century held advantages for both Māori and Pakeha.

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[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] Orange, *The Story*, p. 7
[68] Lyndon, pp. 2-3, paras 6-17

141. The growth in trade was characterised by a "gradually growing symbiotic relationship between Māori and Pakeha".[69]

142. On one side, investors and workers were able to access raw materials for profitable industries, on the other, Māori were paid for their labour and were able to use the parts of European technology and culture they found desirable.

143. In general, Māori used European goods and ideas "without compromising their Māori cultural identity."[70]

144. By the early 1830s, chiefs entered into competition to ally with resident Pakeha, who brought trade, skills and knowledge to tribes.

145. On the other hand, for Pakeha traders or missionaries, "a chief's protection was essential."[71]

146. Relationships between missionaries, whalers, traders and Māori were characterised by a give-and-take situation which increased mana and rangatiratanga for Northland hapu and their leaders.[72]

147. Given this historical background, in counsel's submission, Nga Puhi, as the owners of vast fertile lands, could easily have become a national and international "economic powerhouse"[73], were it not for the Crown's historic and ongoing prevention of the economic expansion of Nga Puhi and accordingly their economic well-being and welfare.[74]

148. In counsel's submission the signing of the Treaty signalled the end of economic well-being and economic independence for Northland Maori.

149. In counsel's submission the signing of the Treaty signalled the end of economic well-being and economic independence for all Maori.

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[69] King, *The Penguin History of New Zealand* (2003), p 123
[70] Ibid.
[71] Orange, *The Treaty*, p 7
[72] Kawharu, pp. 16-17
[73] Lyndon, pp. 2-3, paras 6-17
[74] Ibid.

ISSUES FOUR: WHAT IF ANY, WAS THE RELATIONSHIP BETWEEN HE WHAKAPUTANGA/THE DECLARATION AND TE TIRITI/THE TREATY?

150. In counsel's submission the purpose of He Whakaputanga was to assert beyond any doubt Maori tino rangatiranga over their lands, waters and other taonga.

151. In counsel's submission it would have made sense for Maori Rangatira to sign Te Tiriti (the Maori version) given the Maori wording of Te Tuarua/the Second Article.

152. Te Tiriti (the Maori version) gave effect to and ratified He Whakaputanga.

153. In counsel's submission, for Maori that was the relationship between He Whakaputanga and Te Tiriti (Maori version).

154. In counsel's submission it is this understanding, namely that Te Tiriti (Maori version) gave effect to and ratified He Whakaputanga also answers Issue Five, namely how did Maori understand Te Tiriti, and therefore what was the nature of the relationship and the mutual commitments they were assenting to in signing Te Tiriti?

155. Quite simply the latter (Te Tiriti) supported the former (He Whakaputanga).

156. The Treaty (the English version) was deliberately designed to take away the power and effect of He Whakaputanga.

157. In counsel's submission that was, for the Crown, the relationship between He Whakaputanga and The Treaty (English version).

158. In counsel's submission Maori Rangatira understood their own language and therefore fully understood the meaning of Te Tiriti (Maori version) and therefore signed that version of the Treaty, because they knew what it meant.

159. In counsel's submission neither would Maori Rangatira have understood the Treaty (the English version) nor would they have signed had they fully understood the meaning which the Crown has subsequently given to it and has relied upon to justify and substantiate their position of so-called sovereignty ever since Maori signed Te Tiriti (Maori version).

160. The International Law position is that if there are issues concerning the interpretation of a treaty it is the native version that is to be relied upon.

161. The New Zealand government does not utilise this internationally recognised practice when interpreting the Treaty (English version).

CONCLUSION

162. In counsel's submission, the Crown has consistently employed confusing words and legalese to cloud the true intentions and Māori understandings of He Whakaputanga and Te Tiriti o Waitangi.

163. It has good and obvious reasons for doing so.

164. This has been despite the very clear meaning and interpretation of He Whakaputanga and Te Tiriti o Waitangi.

165. In counsel's submission, concepts like "stadialism"; the erection of the *imperium*; the "baking" of sovereignty and various and partial definitions of sovereignty itself have been used to stymie Māori independence and growth and to mislead the rest of New Zealand and the international community.

166. In counsel's submission, the Crown has tried to distort facts by discounting key historical events rather than exploring the true, logical intent of both parties when they signed He Whakaputanga and Te Tiriti o Waitangi.

167. In counsel's submission the Crown has done nothing but argue their way out of the obvious conclusion: that Māori did not and could not have ceded their sovereignty to the Crown.

168. In his brief of evidence, Joe Tarrant simply says that while not being an historian or He Whakaputanga and Te Tiriti o Waitangi expert, it is common sense that Maori simply did not 'give it all away'. His brief says,

> 'At the time of signing He Whakaputanga and Te Tiriti Maori were in control of all the resources and assets in Aotearoa. Not the Crown. It is politically convenient for the New Zealand government today to simply say Maori singed it all away. But that simply does not make any logical sense. Neither the Crown nor any so-called expert can give any explanation as to why Maori would simply sign everything all away. It makes less sense when one looks at the facts at the time when Maori signed He Whakaputanga and Te Tiriti:

a. Maori occupied all of Aotearoa;
b. Maori outnumbered the Crown at lest one hundred to one;
c. The practice of Rangatiratanga was evident amongst all hapu throughout the motu;
d. There was no discernible Crown army in Aotearoa at the time;
e. Maori had fought, killed and were willing to die for what they considered to be theirs;
f. Maori had lived on their ancestral lands for generations;
g. Maori knew every nook and cranny of their lands, waters, forests and oceans; and
h. Maori were a warrior people.

The whole point of my brief is to say, when one looks at everything in totality in particular those points outlined above, it makes no logical sense whatsoever that Maori would simply, sign it all away. It makes no sense what so ever. I understand that historians, professors etc will be debating this issue at the hearings and theorizing as to what our people were thinking at the time they signed He Whakaputanga and Te Tiriti but there is no escaping the fundamental reality that it makes no sense what so ever that our people, the masters of all they surveyed, would simply sign it all away to a minority people with no whakapapa connection to the lands and with no ability (at the time of signing) to defend those resources either'.[75]

169. In counsel's submission, despite the simplicity of Mr Tarrant's argument, there is considerable merit to it.

170. In counsel's submission, Mr Tarrant's point is correct: it makes no logical sense at all for Maori to simply 'sign it all away'.

171. In counsel's submission, the true intention of the Crown entering into the Treaty (English version) is plain and obvious.

172. In counsel's submission, the Crown needed New Zealand's natural resources and settlement lands to sustain its imperial objectives.

173. The British also wanted to control ongoing trade.

174. For obvious reasons, the Crown wanted to finish this acquisition as quickly and cheaply as possible.

175. In counsel's submission, the British were ultimately aiming for economic power and control of New Zealand's resources.

[75] Tarrant, para 4

176. In counsel's submission, at the time of signing the Treaty, New Zealand was a burgeoning nation-state, well on its way to becoming a fully independent and sovereign nation.

177. In counsel's submission, when the Crown realised that they had made a mistake in supporting He Whakaputanga, they resorted to a "treaty of cession" intentionally drafted and disguised as an agreement of protection.

178. Maori signed Te Tiriti (Maori version), not the Treaty (English version): thus, in counsel's submission the *contra proferentem* rule applies and it is the Māori understanding of the Treaty that should be followed.

179. International practice is that when the interpretation of a Treaty is in question, it is the aboriginal interpretation that is given preference as that is the language which the aboriginals in question, in this instance, Māori, would understand and not the interpretation of the foreigner, in this instance, the Crown.

180. How Māori understood He Whakaputanga and Te Tiriti o Waitangi should be recognised and upheld for the aforesaid reasons.

181. Aside from vindication of their legal rights, the claimants want the truth of their evidence – particularly the significance of their economic independence before the signing of the Treaty of Waitangi and the subsequent decline of it after signing the Treaty as a consequence of Crown action and inaction – to be recognised once and for all.

REMEDY

182. Throughout the Hearings counsel was often asked by the claimants what would the outcome of the Hearings be?

183. In response counsel advised that there could only ever be one possible Tribunal finding which was that Maori did not cede their sovereignty when they signed Te Tiriti (Maori version).

184. The natural question that will arise when the Tribunal produces its report and its findings that Maori did not cede sovereignty is 'what now?'.

185. To that question counsel then advised that the subsequent outcome or Crown response to the Tribunal's findings would depend on the integrity of the government.

186. The Helen Clark led 2004 Government, in response to the Tribunal's findings that the proposed Foreshore Seabed Legislation breached the principles of the Treaty, did not stop it from implementing the legislation anyway.

187. A Tribunal finding in response to the Issues in favour of Maori does not mean that the Government will instigate the appropriate changes to accord with said findings.

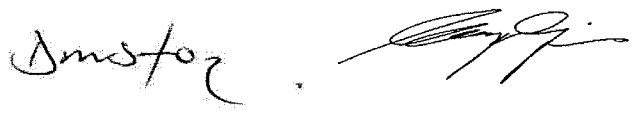
188. How the New Zealand government will respond to the Tribunal's findings in response to the Issues is unknown and uncertain.

189. What is clear and unfortunately certain is that New Zealand will not return to the position that Maori enjoyed as at 1840.

190. Unfortunately too much water has passed under New Zealand's constitutional bridge for that to happen.

191. Perhaps then the Hearings came too late.

DATED at Auckland this 21st January 2011.



David Martin Stone | Augencio Bagsic

TO: The Registrar, Waitangi Tribunal; Crown Law Office; and those on the notification list for Wai 1040 Te Paparahi o Te Raki Inquiry.

ANNEXURE "A"

1.	Wai 1509	Puawai Leuluai
2.	Wai 1512	Michael Leuluai
3.	Wai 1518	Nonnie Puru
4.	Wai 1529	Tolu Hetaraka
5.	Wai 1523	Mataroria Lyndon
6.	Wai 1524	Hineamaru Lyndon
7.	Wai 1529	Tolu Hetaraka
8.	Wai 1530	Te Rina Hetaraka
9.	Wai 1539	Te Aroha Going
10.	Wai 1541	Fred Collier
11.	Wai 1544	George Davies
12.	Wai 1582	Eru Lyndon
13.	Wai 1677	Huhana Seve
14.	Wai 1712	Marino Mahanga
15.	Wai 1825	Deborah Kapa
16.	Wai 1864	Mike Pehi
17.	Wai 1954	Eta Haika
18.	Wai 1955	Juanita de Senna
19.	Wai 1959	Lissa Lyndon
20.	Wai 1960	Kapotai Tamihana
21.	Wai 1961	David Carpenter
22.	Wai 1971	Hana Tarrant
23.	Wai 1973	Robert Carpenter
24.	Wai 1979	Adrian Pehi
25.	Wai 2057	Joe Tarrant
26.	Wai 2152	Tim Edwards
27.	Wai 2153	Kolaske Lawrence
28.	Wai 2168	Matiu Hetaraka
29.	Wai1400	Terewi, John & Hone Paki
30.	Wai 1477	Gibbs Smith, Emma
31.	Wai 1478	Wihongi, Ted
32.	Wai 1484	McIntyre, Paul
33.	Wai 1485	Joyce, Joseph
34.	Wai 1487	Bishop, Florence

35.	Wai 1488	Mardon, Kathleen
36.	Wai 1522	Horton, Esther
37.	Wai 1540	Epiha, Naomi
38.	Wai 1613	Hikuwai, Eric
39.	Wai 1680	Strongman, Caley
40.	Wai 1716	Mitchell, Ian
41.	Wai 1751	Pivac, May
42.	Wai 1816	Hutton, Taytem
43.	Wai 1817	Paki, Kaylem
44.	Wai 1838	Hikuwai, William
45.	Wai 1839	Ututaonga, Denny
46.	Wai 1844	Carey, Dean
47.	Wai 1845	Allen, Thelma
48.	Wai 1846	Morgan, Sailor
49.	Wai 1847	Brunton, Francis
50.	Wai 1848	Paki, Anthony
51.	Wai 1849	Samuels, Wiremu
52.	Wai 1850	Epiha, Hera
53.	Wai 1852	Epiha, Nau (Hohepa)
54.	Wai 1853	Paki, Wiremu
55.	Wai 1854	Tamaiparea, Donnelle
56.	Wai 1855	Davies, Dawn
57.	Wai 1856	Paki, Richard
58.	Wai 2004	Boyle, Leigh
59.	Wai 2027	Mahanga, Harry
60.	Wai 2064	Cains, Kym
61.	Wai 2115	Paki, Jessica
62.	Wai 2116	Rakena, Susan
63.	Wai 2148	Rhodes, Haylee

64. Wai 2151 Stewart, Miriama

65. Wai 2170 Pine, Patience