OFFICIAL

IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

WAI 1040
WAI 2003

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	a claim by Cheryl Turner and others on behalf of Ngati Korokoro Ngati Wharara and Te Pouka Hapu

CLOSING SUBMISSIONS OF COUNSEL FOR NGATI KOROKORO, NGATI WHARARA AND TE POUKA HAPU

Dated this 16th day of February 2011

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Waitangi Tribunal
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WELLINGTON

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Introduction

1. These submissions are made on behalf of the people of Ngati Korokoro, Ngati Wharara and Te Pouka, Nga Hapu o Te Wahapu o Te Hokianga nui a Kupe ("Te Wahapu").

2. These submissions address the Issues in the First Stage Hearings of the Te Paparahi O Te Raki Inquiry.

3. Te Wahapu intends to present further evidence in support of their comprehensive claim in the second stage of the Inquiry.

Tauparapara

Tu te po, tu te ao tu ka maranga ki te whei ao ki te ao marama
Wherahia te kauhanga nui te kauhanga roa a marama
Kia hiwa ra i tenei tuku, kia hiwa ra i tena tuku
Kia whakahiwaia te papa whenua he tapuwae nuku tapuwae rangi tapuwae ngaro
Kia whakahiwaia te ngakau o te whare tatai ariki e tu nei
Kia tu tangatanga a runga kia tu tangatanga a raro
Ueauea te pou, rukutia te pou, akina te pou, whitikitia te pou ko Tu, ko Rongo, ko Tane
No wai te pou no Ngati Korokoro te pou
No wai te pou no Ngati Wharara te pou
No wai te pou no Te Pouka te pou
Tokotoko tu hikitia, tokotoko tu hapaingia rewa tu ki te rangi
Tu whakairihia a Ngapuhi Kaiariki, Ngapuhi Moanaariki, Ngapuhi Taniwharau ki te pou tahuhu
Ko te tekoteko o runga ko Rahiri e
Titia, poua te pou whenua a Kupe ka u ki uta ki te whenua ka u ki tai ki te moana ka u ki te takutai
Poua whakamaua kia tina, tina haumi e hui e taiki e

E whakatau ana ki tau aroaro e te Taraipiunara o Waitangi te kii taurangi whakamutunga no nga karangatanga hapu e noho ahika mai nei i Te Wahapu o Te Hokianga nui a Kupe.

The claim

4. Through their Wai 2003 Statement of Claim, further particularised evidence will be filed on behalf of Te Whapu in support of their comprehensive claim for losses of land and resources and the active ahikaa relationship and authority suffered in breach of Te Tiriti o Waitangi, in the second stage of the Inquiry.

Evidence

5. The following witnesses presented evidence on behalf of Te Wahapu:

a. Warren Moetara[1]

b. John Klaricich[2]

6. In addition Te Wahapu contributed information to the Hokianga Site Visit Booklet in respect of the Te Wahapu rohe.[3]

7. The evidence provides an insight into the world view and the life experiences of Moetara, who signed He Whakaputanga and, of his younger brother, Rangatira Moetara who signed Te Tiriti o Waitangi.

8. The evidence of the following speakers in the first hearing is endorsed by Te Wahapu:

   a. Hirini Henare

   b. Rima Edwards

   c. Dr Patu Hohepa

   d. Hone Sadler

   e. Erima Henare.

9. Te Wahapu supports the evidence of the following claimant witnesses and contained in their Briefs of Evidence and Reports filed for this Inquiry:

   a. Dr Manuka Henare

   b. Dr Patu Hohepa

   c. Dr Phillipson

   d. Dr O'Malley and Mr Hutton

   e. Mr Ralph Johnson

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[1] Brief of Evidence of Warren Jeremiah Moetara, Wai 1040 #, C10a.

[2] Brief of Evidence of John Klaricich, Wai 1040 #, C9, C9(a), C9(b), C9(c) 9(d), 9(e), 9(f).

[3] Site Visit Itinerary, Hokianga Claims Collective Wai 1040 #, C41.

f. Moana Jackson

g. Dr Merata Kawharu.

10. Te Wahapu also supports the evidence of Tribunal witness Distinguished Dame Professor Anne Salmond.[4]

11. Te Wahapu has reviewed the Collective Closing Submissions and adopts those submissions in respect of the Crown evidence at paragraphs 4.3 to 4.9 and where relevant to these submissions as indicated below.

Jurisdiction

12. The Tribunal has a unique jurisdiction to determine the principles of the Treaty of Waitangi and Te Tiriti o Waitangi, however the issues in this Inquiry require a more fundamental question to addressed: when the rangatira put their marks on Te Tiriti o Waitangi, did they intend to cede their sovereignty, their power and authority, to Queen Victoria and the British crown?

13. Te Wahapu are emphatic in their rejection of that proposition, they say that their tupuna entered into He Whakaputanga and signed Te Tiriti, to **preserve** their power and their authority, not to cede or relinquish any aspect of their power or authority to Queen Victoria or the British Crown.[5]

The Issues

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**

[4] Brief of Evidence of Dame Professor Salmond, Wai 1040, #A22.
[5] The introductory paragraphs at pp4-11 of the Generic Closing Submissions are adopted.

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?

14. To understand the meaning and effect of He Whakaputanga me Te Tiriti to Te Wahapu it has been stated that it is important:[6]

> *"To establish the cultural context for Moetara's life and situation, we return to our beginnings, to our ancestor Kupe. His traditions are the foundation of our Te Wahapu culture. As we understand them, is how the land holds them. They are the fundamental principles of our understanding of Kupe's relationships with Te Wahapu and Hokianga and the basis of the intergenerational relationships, between particular ancestors and their landscapes. In the cognitive sense, this helps us visualize their world view and assists us re-create the cultural context for Moetara's times and our position today before the Tribunal."*

15. With respect to the English version of The Treaty, Te Wahapu make no comment, as was made clear in evidence:[7]

> "*At the signing of Te Tiriti at Mungugnu, signing alongside Rangaitira were others of Te Wahapu – Tukiata, Tio, Tete, Tako, Karekare. I note here that they did not sign The Treaty – and therefore it has no significance to us."*

Te Wahapu origins and traditions

16. The unique position of the people of Te Wahapu derives from the extant landscape and seascape. The origins and the traditions of the people of Te Wahapu derive from their position as aahi ka, who have continuously occupied their rohe in the Hokianga Harbour from the time of Kupe.

17. The evidence presented by Te Wahapu and others speaks of a common whakapapa among all of the people of Ngapuhi nui tonu and, of hapu and iwi beyond Te Tai Tokearau, it is not an overstatement to say that the Hokianga is the birthplace of the nation.

Kupe

[6] Brief of Evidence of John Klaricich Wai 1040, # C9 paragraph, 13.
[7] Brief of Evidence of Warren Jeremiah Moetara Wai 1040, # C10(a) paragraph, 22.

18. The people of Te Wahapu hold the landscape named by Kupe as a sacred taonga, with the traditions recalling his return to Hawaiki etched into the cultural fabric of Te Wahapu:[8]

> *" ... He placed two taniwha guardians, Araiteuru the male guardian with the rocky south headland and Niua the female with the opposite north headland. He gave her Tokataa, a flat rock, to be her basking place washed daily by the tides. Our local elders translated Araiteuru as "The hidden god", and Niua as meaning "To shy away from*"."
>
> *"Kupe summoned three waves Ngarunui, Ngaruroa, Ngarupaewhenua to assist the taniwha guard Hokianga, then they left. His departure marked the beginning of Hokianga, that later his descendants, would confirm by their arrival. The immutable presence of Araiteuru and Niua inspire Hokianga and Ngapuhi people. In the olden times, they were a source of power and inspiration. This short karakia was to encourage and to strengthen the warriors.*
>
> *Kotahi ki reira*
>
> *Kotahi ki Arai-te-uru*
>
> *Kotahi ki reira*
>
> *Kotahi ki Niua*
>
> *Their mana and power remain undiminished, an integral element of the Hokianga identity. Local orators, such as the late Mac Taylor, the late Rev. Piri Iraia and others invariably acknowledged the guardian taniwha in their mihi, by referring to them and concluding with the words;*
>
> *Tu te ao, Tu te po."*

19. Later onboard Ngatokimatawhaorua and the Mamari, Nukutawhiti and Ruanui followed in Kupe's his footsteps to the Hokianga. On their arrival they identified the places he had left and created a further layer of traditions to the cultural fabric of Te Wahapu:[9]

> *"Nukutawhiti and Ruanui began building their wharewananga at Whanui, and at Araiteuru. Ruanui finished first. Nukutawhiti reminded his cousin of their agreement of joint dedication. We know they exchanged karakia over the whale how it was taken which gave rise to the whakatauki,*
>
> *"Hokianga nui Hokianga roa, Hokianga whakapau karakia "*
>
> *This whakatauki has kept the spirit of Nukutawhiti and Ruanui alive to this generation."*

[8] Brief of Evidence of John Klaricich Wai 1040 #, C9 paragraphs 31-33.

[9] Brief of Evidence of John Klaricich Wai1040 # C9 paragraphs 34 and 44 at paragraph 46: "*A burial cave of Nukutawhiti's is at Araiteuru. There are other tapu places there, although they are not burial places. These places with the site of Ruanui's wharewananga beside Poroki Bay, add to the mana of Araiteuru and Niua, heightening the spiritual and heritage importance of Te Wahapu.*"

20. The descendants of Nukutawhiti and Ruanui first occupied areas of Te Wahapu, both to the north and to the south, then Hokianga and beyond. Then 14 generations later came the rise of the leader Rahiri.

Rahiri

21. The legacy of Rahiri is revered by Ngapuhi nui tonu, his decisive action in preserving the Hokianga of Kupe has been recalled in the foundational korero given in the first hearing week. Rahiri's stronghold at Whiria is a central pou in the Wharetapu o Ngapuhi, it's prominence arose from its role as Rahiri's Pa, a place in which he was never defeated. Pakanae was his papakainga.

22. The cultural traditions created by Rahiri have been passed to his descendants, and his approach to settling the difference between his own sons, Kaharau and Uenuku, resulted in the whakatauki heard many times throughout these hearings:

> *"Ka mimiti te puna i Taumarere*
> *Ka toto te puna i Hokianga*
> *Ka mimiti te puna i Hokianga*
> *Ka toto te puna i Taumarere"*

23. As descendants of Rahiri, Te Wahapu hold fast to the his traditions and the laws that he lived by and applied to others. As has been stated:[10]

> *"The Rahiri experience has instilled into his descendents a resolution and independence where neither change or threat challenged or deterred them. The immutable presence of Whiria, the utterances and actions of Rahiri, a constant reminder of the ancestor. Alliances and pacts were an essential element of our ancestor's way of life. To enter into an alliance or pact to uphold their way of life was entirely consistent with customary living from ancient times."*

24. It is submitted that the origins and history of Te Wahapu provides the Tribunal with insight into the world in which the rangatira of Te Wahapu considered their relationship with the British and other non Maori. In particular, the power and authority of the British Crown was of great interest to the rangatira who saw themselves as equal with the King.

[10] Brief of Evidence of John Klaricich Wai 1040 # C9 paragraph 55.

25. As a signatory to the 1831 letter to King William IV, and one of the leaders who chose Te Kara and signed He Whakaputanga, Moetara's actions were consistent with the cultural imperatives by which he lived: the strategy of making alliances with powerful leaders who could be called upon for assistance in times of need.[11]

Nineteenth century Te Wahapu leadership

26. By the time of the arrival of Europeans in Hokianga, some 49 years after Captain Cook had arrived on the East Coast, for the purposes of trade, the principle Te Wahapu leaders were Kahi and Moetara. Moetara quickly rose to prominence as the leading rangatira in Te Wahapu, along with others leaders including Rangatira, Te Puna, Ngakai, Te Tio, Karekare and others.

27. Moetara, known as, Te Whetu i te Tonga and Moetara – Motu-tonga Porutu and Rangatira were closely connected to the hapu of the northern Hokianga, of Te Rarawa. Moetara and his brother fought alongside others Hokianga rangatira including Patuone, Waka Nene and Tuwhare in southern campaigns including against Waikato hapu and Ngati Whatua at Te Ika a Ranganui in 1825.

28. By their early 20's they experienced death and killing to protect what was theirs. Of Moetara and Rangatira it is said:[12]

> *"First and foremost Moetara was a warrior. Implicit in his understanding of leadership was the protection and welfare of the hapu, their resources, protecting their land and resources, their customs and cultural ways."*
>
> And
>
> *"The world in which Rangatira lived was one of changing times for our tupuna, but as a warrior who had fought beside his brother Moetara at Te Ika a Ranganui in 1825, and with him had defended the tribal boundaries of his people, Rangatira knew the necessity of maintaining the mana of his people. To capitulate in any way would mean death for him and the demise of the people.*

29. By 1828 Moetara had planted 200 acres of crops on land at the flat at Whiria and during the preceding year 1827, he and Kahi met Wesleyan missionary John Hobbs on

[11] The submissions in respect of Te Ao Maori and Maori Law at pp19 to 40 of the Collective Closing Submissions are adopted.

[12] Brief of Evidence of John Klaricich Wai 1040 #, C9 paragraph 76, Brief of Evidence of Warren Moetara Wai 1040 # C10(a) paragraph 17.

board the Governor McQuarrie. This meeting was the beginning of a strong Wesleyan presence in Te Wahapu.

30. To secure trade opportunities, Moetara and Rangatira sought to cement the advantages brought by the newcomers, by traditional means. For example in 1827, they arranged for the marriage of their sister, Te Hunga to Captain Kent. The couple were given land at Koutumongero to live on with the intention that a secure relationship with Kent, " ... *would enhance the mana of their people.*"[13]

31. During the meeting with Hobbs, Kahi expressed a wish to have a missionary presence in Pakanae, the advantages of a missionary presence were also sought – their knowledge of literacy and their Christian teachings. By 1836 the Weslyans had been provided with land at Whiria and established a mission station there.

32. Despite their desire for new material goods and their interest in Christianity, the Rangatira maintained their traditional powers and authority. There is no question that during this time the tikanga and customary law of Te Wahapu was both applied to the newcomers, and upheld by the rangatira.

33. For example in 1828, Moetara attacked those who he believed plundered his cargo of muskets and ammunition, when the vessel carrying them for him was stranded at Whangape. It was observed that:[14]

> *"Moetara's rage at his loss as much as his desire to protect trade and English confidence in the safety of Hokianga for commerce, that prompted his actions.*"

In another more serious incident in 1833, he induced an attack on the neighbouring north side hapu, Ngati Manawa and Te Hikutu over the vessel Fortitude, stranded at Motukauri.

34. The incident involving Ngati Manawa and Te Hikutu resulted in a battle in which Moetara was nearly killed. It was his close whakapapa connections to Te Rarawa that saved his life, despite that they were the people he was fighting. The battle caused widespread concern in Hokianga with Patuone and Tamati Waka Nene and Te Rarawa becoming involved.

[13] Brief of Evidence of Warren Jeremiah Moetara Wai 1040 #, C10(a) paragraph 20.

[14] Brief of evidence of John Klaricich Wai 1040 # C9, paragraph 82.

35. Eventually agreements and peace in Hokianga was settled in the traditional manner when Mohi Tawhai acted as intermediary between Moetara and his Te Rarawa whanaunga at Kawewhitiki Point. Most of the principal chiefs were there. [15]

36. It is submitted that even as Moetara was taking part in the pan-hapu decision making that preceded the writing of the 1831 letter to King William IV and journeying to the east coast to select Te Kara, he continued to exercise his power and authority within his rohe in the ancient way.

37. While Moetara was interested new alliances with the British and others, he held fast to his traditions. He signified his desire to enter a relationship with the British Crown by his use of moko as his mark. Mr Klaricich has stated that:[16]

> *"... twice did he use part of his nose moko as his sign. One of those times was when he signed the letter to King William. This is as close as being in person."*

Issue 3 **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?

38. Moetara did not live long, by 1838 he had died and the mantle of leadership passed to Rangatira who became known as Rangatira Moetara. Although Moetara had adhered to the old ways, his involvement with John Hobbs and John Whitely the Wesleyan missionaries at Pakanae led him to agree to be baptised as Wiremu Kingi on 2 December 1838, just before he died on 23rd December 1838.

39. Despite Moetara's conversion and his wish for Christian burial, his body was accorded the traditional rituals of burial by his brother Rangatira, then with his mother's head wrapped in a cloth was taken by her people of Te Rarawa, back to the north side of the Hokianga.

[15] See the Response of John Klaricich Wai 1040 # C9(b)and (c) in which Mr Klaricich describes the events at Kawewhitiki Point in response to questions of counsel as to the meaning of 'wenua rangatira'.
[16] Brief of Evidence of John Klaricich, Wai 1040 #, C9, paragraph 110.

40. Rangatira Moetara was a signatory to Te Tiriti o Waitangi at Mungungu, along with other Te Wahapu rangatira signatories including Tukiata Tete and Tako of Ngati Korokoro and Tio Te Toka of Te Pouka.

41. It is submitted that the relationship between He Whakaputanga me Te Tiriti was as described by Erima Henare in Week 1, that of a parent and child, He Whakaputanga the parent and Te Tirti the child.[17]

The signing of Te Tiriti o Waitangi at Mungungu

42. The descendants of Rangatira Moetara have within their whanau tradition a belief that Rangatira signed Te Tiriti o Waitangi on behalf of his hapu with his own experience and understanding of the world at the forefront of his mind. Warren Moetara records:[18]

> *"I believe that any influence the small Pakeha presence in his rohe had on Rangatira was minimal. At the time of the signing of Te Tiriti at Mangungu, all that Rangatira knew, or learnt, all that he had done and how he thought, the language he spoke, the people he interacted with –all these aspects of his life were almost completely derived from the Maori world view. Our oral traditions tell us that it is from that stance that he approached the signing of Te Tiriti."*

And

> *"As descendants of Rangatira, my whanau have always felt a sense of pride at the fact that he was a signatory to Te Tiriti. Our elders have always taught us that Te Tiriti was not merely an agreement, but a sacred covenant entered into between our tupuna and the Queen of England. The commitment made by Rangatira was not a rash act made on a mere whim. When he put his mark on that document, he committed himself to that sacred pact."*[19]

43. The descendants of Rangatira Moetara challenge the account of events recorded by historians.

[17] Erima Henare, Week One Transcript Wai 1040 #, 4.1.1, p318 in response to a question from the Presiding Officer regarding the relationship between He Whakaputanga me Te Tiriti.

[18] Brief of Evidence of Warren Jeremiah Moetara, Wai 1040 #, C10(a), paragraph 21.

[19] Brief of Evidence of Warren Jeremiah Moetara, Wai 1040 #, C10(a), paragraph 23.

44. This challenge is consistent with the analysis of Dame Salmond in respect of the signings at Mungungu and of observers there.[20]

45. Following his signing of Te Tiriti, Rangatira Moetara sought to have it upheld, he was a founding member of the Bay of Islands District Runanga which first met in 1862.[21]

46. As Mr Moetara has said, from the Te Wahapu position,[22]

> "*... it is inconceivable that the tupuna could have anticipated the Crown failure to uphold the sacred covenant made with the Queen.*"

Conclusion

47. The cultural imperatives derived from the traditions of Kupe, Nukutawhiti, Ruanui and Rahiri, require that their descendants preserve and retain their cultural integrity. This is what was sought by the rangatira of Te Wahapu when they encountered non-Maori.

48. By seeking a relationship and entering into agreements with the British Crown Moetara and Rangatira and others considered themselves as equals. They sought alliances, they did not conceive that they were seeking to surrender their power or authority.

49. As a result of the Crown usurpation of the power and authority of the people of Te Wahapu, they say again in these closing submissions, that their tupuna never ceded their power and authority to Queen Victoria or the British Crown.

Tribunal Report

50. Te Wahapu seek that the Tribunal undertake to produce a Report on their findings in respect of the Issues as soon as possible so that they are available for consideration in the stage 2 hearings.

[20] Te Wahapu adopts paragraphs 9 to 10.17 at pp65 - 94 of the Collective Closings Submissions.
[21] Brief of Evidence of Warren Jeremiah Moetara #C10(a), paragraph 41.
[22] Brief of Evidence of Warren Jeremiah Moetara #C10(a), paragraph 47.

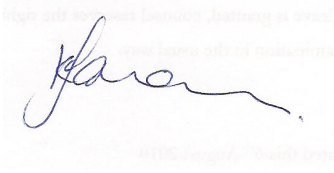
Findings

51. The people of Ngati Korokoro, Ngati Wharara and Te Pouka seek that the Tribunal make the following findings of fact:

    a. That He Whakaputanga is expression of the pre existing Maori sovereignty declared by the Confederated Chiefs to other nations; 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 16th day of February 2011



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