IN THE WAITANGI TRIBUNAL **WAI 2700**
WAI 2872

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND
IN THE MATTER OF the Mana Wāhine Kaupapa Inquiry

AND
IN THE MATTER OF a claim by **Dr Leonie Pihama, Angeline Greensill, Mereana Pitman, Hilda Halkyard-Harawira** and **Te Ringahuia Hata** (Wai 2872)

BRIEF OF EVIDENCE OF DR MOANA JACKSON

Dated this 31st day of May 2022

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MAY IT PLEASE THE TRIBUNAL

Introductory Remarks

1. My name is Moana Jackson, I am Ngāti Kahungunu, Rongomaiwahine, and Ngāti Porou.

2. I graduated from Victoria University with an LLB and undertook post graduate research with the Justice Department of the Navajo nation in Arizona. Whilst there, I was exposed to the writings of many international indigenous peoples regarding their rights and authorities. I was struck by attitudes particularly of the Native Americans who could not and would not give away their sovereignty or the independence of their nations.

3. Upon my return my work has largely involved attempts to address past and present injustices inflicted upon Māori by the Crown and the process of colonisation. The effects of those injustices have often impacted particularly upon Māori women, both directly through legislative and policy intent, and indirectly, but with equal damage, through the perceptions and misunderstandings about the worth and place of Māori women which they have engendered.

4. My relationship with the Treaty of Waitangi however predates my study and overseas experience. One of our Marae, Te Poho o Heretaunga at Waipatu, was the site of the first Māori Parliament in 1892 and much of my understanding of Te Tiriti, and indeed of mana, derives from the stories associated with that marae and the others to which I whakapapa.

5. More recently I have had the privilege of working extensively with other Indigenous Peoples and organisations overseas. Like the earlier experience in Arizona, that mahi has always drawn upon my own understanding of Te Tiriti and the nature of Māori authority and rights.

6. In 1989 I first travelled to Geneva to attend the United Nations Working Group (WGIP) that had been established to draft the Declaration on the Rights of Indigenous Peoples in Geneva. (UNDRIP) A number of Māori women such as Aroha Mead,

Nganeko Minhinnick, Erihapeti Murchie, Pauline Tangiora, and Hikatea Carolynn Bull, played key roles in the development of the Declaration.

7. In 1990 I was elected chairperson of the Indigenous Peoples caucus at the Working Group, a position I held until 1996. In that capacity I was privileged, and often saddened to hear of the struggles of other indigenous peoples against the ongoing costs of colonisation, and indeed the particular impacts they have had on the lives of Indigenous women and children. Article 22 of the Declaration specifically addresses those concerns.

8. In 2012 I was invited to give an "expert presentation" on the Doctrine of Discovery to the United Nations Permanent Forum on Indigenous Issues. The formulation of the Doctrine in International law was part of the process which not only sought to rationalise the dispossession of Indigenous Peoples in general, but also helped set in train the legal redefinition and diminishment of the status and worth of Indigenous women in particular.

9. For a number of years, I have also studied the history and consequences of colonising law in England, Spain, and Portugal, among other places:

    a. In England I have spent time in the archives of the Colonial Office, the Privy Council and the Church Missionary Society. That research underpins the discussions of how the Crown usurped the mana of Iwi and Hapū after 1840 and redefined the very notions of mana and mana wāhine.

    b. In Spain I researched the debates held in Valladolid in 1550 which set the baseline for the colonial law relating to Indigenous Peoples. In particular they set the jural and legal parameters reaffirming the socio-patriarchal attitudes that shaped the Crown's political and legal approaches to Māori women after 1840.

    c. In Portugal I studied the records dealing with the submissions to and eventual promulgation of the 1493 Inter Caetera Papal Bull which outlined some of the other baselines enabling European states to abuse the status of Māori and other Indigenous women.

10. Other specific and relevant experiences that have shaped this Brief include the following:

    a. In 1993 I was appointed as a Judge to the International Peoples Tribunal which heard the claim of the Kanaka Maoli Peoples (of Hawaii) against the American Government. The Tribunal was established following the Russell Tribunal which heard claims of Indigenous Peoples in North and South America in 1972. Like that Tribunal the proceedings in Hawaii were conducted by a panel of international jurists and its jurisdiction and findings were sourced in international and indigenous law rather than the so-called domestic law of the colonisers.

    b. In 1995 I was appointed a Judge to a similar tribunal that was convened in Ottawa Canada.

    c. In 1988 I co-founded with now Judge Caren Wickliffe, Nga Kaiwhakamārama i ngā Ture, the first Māori Law Centre. I was involved with this organization until 1999.

11. In 1985 I began research on the relationship between Māori and the Criminal Justice System. The Report of that research was published in 1988 as "He Whaipaanga Hou." At that time, most Māori involved with the criminal justice were young men, although the rate of Māori women in prison was just beginning to trend upwards.

12. I have just completed a new Report on the same subject in conjunction with two young researchers, Ngawai McGregor and Anne Waapu. The Report will be published shortly as "Māori and the Criminal Justice System – He Tukino Mutunga Kore." Its most stark finding is that Māori women are now per capita among the most imprisoned women in the world.

13. In 2017, Victoria University of Wellington conferred upon me an Honorary Doctorate of Laws.

14. For several years I have been asked by a number of Iwi to give evidence in their claims to the Tribunal. Although I have often felt whakamā responding to the requests to give such evidence beyond Kahungunu and Ngāti Porou, I have also been humbled by the

honour the Iwi have accorded me. I have therefore given evidence in a range of claims, including the Rohe Pōtae claim, Te Urewera claim, and the Paparahi o te Raki claim.

15. It is that work and history which informs this Brief. In presenting it I am mindful and respectful of the evidence already given to this Tribunal by others before me. The claimants in particular are the proper experts on the law and history of the abuse and denial of mana wāhine. I acknowledge the power and sincerity of their evidence.

16. I am nevertheless honoured to appear before this Tribunal. I am mindful of the many years that Māori women have waited to have this claim heard, and the even longer period of time that the mana and dignity that is rightly their due has been subject to abuse in the course of colonisation.

17. However, I am also somewhat hesitant and whakamā as I am sadly aware that the colonising negativity about Māori women has often been internalised and acted upon by some Māori men. However, I hope that my evidence may be of some value. Certainly, the justice of the claim seems self-evident, and the Brief which follows seeks to augment the many issues already raised by wāhine Māori.

INTRODUCTION

18. In general terms, this Brief deals with the kaupapa of mana wāhine by drawing upon four different but interrelated contexts:

    a. The first is that the concept of mana wāhine, like mana, is a uniquely Māori construct that has no exact comparable meaning in other cultures or intellectual traditions. It has Iwi and Hapu nuances and has been uniquely framed within Māori culture, law, politics, and history. It is a text in the context of a uniquely Māori reality.

    b. The second is that the concept and expression of mana wāhine may have changed after the post-1840 assaults of colonisation, but it has remained unchanging in terms of the philosophical underpinnings of Iwi and Hapu life. It is a text in the context of the immutable cultural, social, political, and constitutional whakapapa of Iwi and Hapū.

c. The third is that the concepts and expression of mana and mana wāhine have always been discussed and misunderstood by the Crown within the ideologies and presumptions of colonial dispossession. The perspectives which the Crown brought and still brings to the very idea of mana wāhine constitute a particularly damaging text in the centuries-long context of colonisation.

d. The fourth is that mana wāhine has been discussed and misunderstood by the Crown in the quite specific context of the colonising claims to supreme sovereignty that it asserted in the Treaty of Waitangi and the Proclamations of Discovery in 1840. The consequent redefining of mana wāhine as a concept and the parallel socio-political demeaning of the status of Māori women constitutes what was often an initial text in the wider political and constitutional subordination of every Iwi and Hapū.

19. The Brief therefore reiterates that every part of tikanga and mātauranga Māori was based on the equality and interdependence of Māori women and men. The experiential practice which gave life to the tikanga was drawn from whakapapa and the non-hierarchical sense of relational equality, complementarity, and balance that is inherent within it.

20. Ani Mikaere has rightly noted that the intergenerational need for balance was the "overriding principle" in tikanga and in Māori society in general.

"...balance between communities and their environment; balance between the people and their atua; balance between iwi, hapū and whānau; balance between the members of communities; and the internal balance of each and every person. An important part of this principle was the need to preserve a state of equilibrium between the genders. It was absolutely vital...in order to ensure the spiritual, political, social, and economic viability of their communities."

21. In Māori terms, any notion of a gendered hierarchy implying the lesser status of Māori women would have been, and still is, intellectually incomprehensible and culturally impossible. The relational nature of whakapapa, and its centrality in the Māori intellectual tradition, ensured that any differences in the roles men and women may

have performed were a recognition of distinctive mutuality rather than oppositional worthiness.

22. The fact that colonisation has sought to overlay that reality with its own patriarchal and misogynist attitudes has simply been part of its genocidal intent. It was learned and designed into what may be called the culture of colonisation which reproduced all of the inequities and inequalities needed to ensure the dominance of the colonising State.

23. The consequent mistreatment of Māori and other Indigenous women was rightly condemned at WGIP as a crime against humanity. Indeed, colonisation itself, and the ideas upon which it is based, are denounced in UNDRIP as:

"racist, scientifically false, legally invalid, morally condemnable, and socially unjust."

24. This Brief seeks to address some of the above ideas while re-affirming a Māori analysis of complementarity based on tikanga and mātauranga. It is divided into six parts.

Part One - The concept of mana, and the distinct interrelated meaning of "mana wāhine."

This Part briefly considers the philosophies of relationality within which Iwi and Hapu traditionally operated and understood the world. While it does so as a matter of historical record already outlined in much of the evidence presented to this Tribunal, it also establishes and re-positions the status and mana of Māori women within a distinctive socio-cultural and political framework that acknowledges both its primacy and legitimacy in theoretical and tikanga terms.

Part Two – The colonising redefinition of Indigenous women after 1492.

This Part briefly canvasses the European development of a culture of colonisation after Christopher Columbus chanced upon the Americas in 1492. In particular it considers the legal and jurisprudential underpinnings of that culture and the nexus between the so-called reason of its law and the reality of its racist and patriarchal imperatives.

Part Three – The redefining of mana wāhine since 1840.

This Part of the Brief explores some of the ways in which the Crown has deliberately undermined the mana of wāhine as an integral part of its broader imperative to overthrow the political, constitutional, and economic authority of Iwi and Hapū. It considers how patriarchy was not an unfortunate adjunct to colonisation but a fundamental part of its overarching design, and thus the Crown's persistent breach of Te Tiriti.

Part Four - The abuse of mana wāhine in the criminal justice system.

This Part of the Brief considers the particular abuse of Māori women and the very notion of mana wāhine that has been perpetuated by the criminal justice system since its imposition after 1840. It outlines the links between the origins of that abuse and the current incarceration rates of Māori women which together also constitute a breach of Te Tiriti.

Part Five – Mana wāhine in the lives of two kuia.

This Part of the Brief explores how Māori women have sought to retain and express the values and entitlements of mana wāhine in spite of all that colonisation has done, and still does, to deny those values. The profiles are neither exhaustive nor unusual but acknowledge the courage of the kuia and the resilience of the true meaning of mana and mana wāhine.

Part Six – Constitutional transformation and mana wāhine.

This part of the Brief outlines the need for constitutional transformation in order to finally honour Te Tiriti. In particular it maintains that the true exercise of tino rangatiratanga and mana as a political concept of power can only occur if the equal and equitable status of mana wāhine is reclaimed in constitutional as well as socio-cultural terms.

25. Together, the six Parts of the Brief are intended to not just reaffirm the true meaning of mana wāhine but to counter the essentialist racism of colonising history which presumed a necessarily lesser place for Indigenous women. That "lesser place" was always defined within the broader demeaning of all Indigenous Peoples in a racist discourse and practice which was developed and sanctioned throughout most of Europe from the late 15th century

26. The discourse was fomented in law, philosophy, religion, politics, and science. It was part of a process in which the historian James Belich suggests the various "Settler Colonies" acted as a kind of "yeast for each other" in order to:

"displace, marginalise, and occasionally even exterminate Indigenous Peoples rather than to simply exploit them."

27. New Zealand of course developed as one of those "Settler colonies." Since 1840 the Crown has developed its own distinctive "yeast" in which the mana of Māori women was one of the first "ingredients" to be displaced, marginalised, and exploited in a near extermination of their status and uniqueness.

PART ONE: MANA AND MANA WĀHINE

28. Like many Māori concepts, the term "mana" has layers of meaning – what etymologists sometimes call "use variability." The meanings may be interrelated or quite distinct and may derive from similar origins or diverge from its base meaning.

29. An English example is the word "nice," which derives from the Latin "nescius," the base meaning of which was "ignorant." It now has quite different meanings of course that range from attractive, sweet, or fine (as in a nice or narrow distinction between things).

30. The word "mana" does not diverge in meaning in such an obvious way but nevertheless has distinct layers of "use variability." It sometimes denotes political and constitutional authority or power, in which case it can be used by itself or in conjunction with other words, as in the terms mana motuhake, mana taketake and mana tō rangapu.

31. As a political construct, the term mana and its variants predated any use of the term tino rangatiratanga. The latter was a neologism first used as a synonym for mana in the translation of the Bible, and of course in Te Tiriti.

32. The use of mana as a descriptor of political and constitutional authority had its own layers of meaning that included different aspects of the power exercised within Iwi and Hapū. They may be defined as "mana enablers," and included:

    a. **The Power to Define** - that is the power to define the rights, interests and place of both the collective and of individuals as mokopuna and as citizens;

    b. **The Power to Make Tikanga as Law** - that is power to frame the normative codes by which people would live and the associated means and institutions to apply such law and expect compliance with and understanding of it;

    c. **The Power to Protect** - that is the power to be kaitiaki, to manaaki and maintain the peace, and to protect everything and everyone within the polity;

    d. **The Power to Decide** - that is the power to make decisions about everything affecting the wellbeing of the people, including how best to maintain good relationships and how to restore them when they were disturbed through the commission of a hara or hē;

    e. **The Power to Reconcile** - that is the power to restore, enhance and advance whakapapa relationships in peace and most especially after conflict through processes such as hohou rongo or other restorative processes; and

    f. **The Power to Develop** - that is the power to change in ways that are consistent with tikanga and conducive to the advancement of the people.

33. The idea of political authority as a conglomeration of powers necessarily included the responsibilty to maintain what was tika in the broadest sense of the safety of the people and the land. The aphorism used by the rangatira Manuhuia Bennett illustrates how that power was best expressed:

"Te kai a te Rangatira, he kōrero

Te tohu o te Rangatira, he manaaki

Te mahi a te Rangatira, he whakatira te iwi."

34. The "kai" of the rangatira was not just the gift of oratory but the responsibility to heed and articulate the will of the people. The "tohu" was the obligation to care for the mokopuna and all manuhiri who arrived with good intent. The "mahi" was the effective exercise of authority to keep the people and the land in a state of balance.

35. The concept of mana as a political and constitutional power was also layered with a number of essential values to ensure that its exercise was normatively appropriate and exercised according to law. As in every culture, political power and law were symbiotic.

36. In the nationwide discussions that occurred between 2011 and 2016 as part of the Matike Mai Constitutional Review, Māori people identified some of those values –

"The value of place – the need to promote good relationships with and ensure the protection of Papatūānuku.
The value of tikanga – the core ideals that describe the 'ought to be' of living in Aotearoa and the particular place of Māori within that tikanga.
The value of community – the need to facilitate good relationships between all peoples.
The value of belonging – the need for everyone to have a sense of belonging.
The value of balance – the need to maintain harmony in all relationships, including in the exercise of constitutional authority.
The value of conciliation – the need to guarantee a concioiatory and consensual democracy."

37. The rangatira Mira Szazy often spoke of similar values when discussing mana and tino rangatiratanga. She thus defined the latter as the "self determination" that is implicit in:

"the very essence of being, of law, of the eternal right to be...to live...to occupy the land."

38. The "very essence of being" also captures another layer or "use variable" of the word "mana" – its description of certain attributes that inhere in humans through

whakapapa. It is a distinct individual and collective characteristic that exists in parallel with its political manifestations.

39. The Ngāti Kahungunu Rangatira Wi Te Tau Huata once spoke about the:

"complexities of meaning that weave through every kupu in the reo…the importance of mana…is its origins in whakapapa…it comes into being with the birth of every mokopuna which gives it a special meaning that is apart from but related to mana as the political authority of every Iwi and Hapū…the mana of a person might appear to wax and wane as they grow depending on the lives they may lead, but its essence remains unchanging just as the essence of whakapapa remains the same…mana can be as mysterious as the universe in the way we live or acknowledge it, but as simple as knowing that every new baby is special and worthy."

40. The attributes or characteristics of personal mana have been variously if inadequately described as prestige, influence, power, and authority. It contains the same incorporeal "essence of being" identified by Dame Mira but its uniqueness comes from being vested in a mokopuna born of whakapapa.

41. This personal notion of mana naturally inhered in both men and women. It is the birthright which intimately marks every mokopuna as being "special and worthy," and is conceptualised nowadays in the terms "mana wāhine" and "mana tāne."

42. It is apposite to note at this point that the terms do not feature as part of the historical record in Ngāti Kahungunu. Instead there was simply a whakapapa recognition of the mana of all mokopuna – what might in fact be termed "mana mokopuna."

43. In Ngāti Kahungunu the terms "mana wāhine" and "mana tāne" are therefore neologisms like the phrase "tino rangatiratanga." They are nevertheless now used as a response to the colonising denial of the extent and nature of political and personal mana, and as a reaction against the Crown's frequent assumption that if mana did exist it was restricted only to those men that it saw fit to recognise.

44. Indeed, although it is a comparatively new construct in Ngāti Kahungunu, the term "mana wāhine" is simply a statement of what has never been in doubt – that women have the same worth, the same value, the same "essence of being," as anyone else.

45. As the Kahungunu kuia rangatira Hana Cotter once noted:

"...we all come from Rangiatea and the whare tangata so there's never been any kōrero that our women weren't worth as much as our men...we've always been equal...not the same but equal...our women have never been seen as less important...the karanga was never less important than the whaikōrero...making tukutuku for the whare was never less important than the carving...and we've got stories of our men and women doing both anyway...our men and women, our babies all have whakapapa and all have mana...girls are also rangatira and can always be so...our tīpuna were always really clear about that and that's what I grew up with...it's what I've known all my life...and this recent idea that our women are somehow not as good or important as our men is a Pākehā idea that really upsets me."

46. The term "mana wāhine" therefore reinforces and reclaims what was once simply accepted. It acknowledges the notion of balance and reaffirms that the distinctive characteristics of women are nurtured in and consolidated by the worth and "very essence" of their being ***as*** women.

47. Māori history and the cosmogony of atua and tipua only makes sense if the mana of women is understood in this way. Te mana o te wahine Māori is fundamental for example to the different expressions of mauri and the whakapapa of ngā atua – which always unsurprisingly included atua wahine. It would have been as inconceivable for any whakapapa of creation to have only consisted of male atua as it would for the whakapapa of Iwi to be made up only of men.

48. The saying "He kākano ahau i ruia mai i a Rangiātea" has never referred only to male "seed." Rather it acknowledges that every mokopuna has the same origin and carry equivalent worthiness from that creation. Indeed it is not unduly fatuous to note that the tikanga of gender relationality and women's status could have been a precedent for the well-known clause in the Universal Declaration of Human Rights that "all human beings are born free and equal in dignity and rights."

PART TWO: THE COLONISING REDEFINITION OF INDIGENOUS WOMEN AFTER 1492.

49. The colonising redefinition of the mana of wāhine Māori flowed from the preceding centuries of oppression endured by other Indigenous women, particularly in the Americas and Australia. Indeed the intellectual, physical and cultural subordination of Indigenous women is one of the constant tropes of colonisation after 1492.

50. The ideas that were implemented in the dispossession of Indigenous Peoples were racist adaptations of the patriarchical thought that had long characterised the domestic history of Europe. They reflected and gave credence to Biblical teachings and their hierarchical structures of white men descended from white male angels and an omnipotent white male God.

51. The Biblical account of Eve's creation out of the rib of Adam was a holy writ written and interpreted by men as proof of women's secondary and inferior nature. In the later Epistles to the Corinthians Saint Paul affirmed that the lesser status of women was divinely ordained because:

"...man is the image and glory of God, but the woman is the glory of man...neither was the man created for the woman, but the woman for the man."

52. Like the teachings of other monotheistic religions, Christianity's gendered hierarchy leading to a male god and the comparable superiority of men was carefully promoted in doctrine and practice. Its arguments had the same confidence of dogmatism posing as truth that characterises all of the ideas that were used to justify colonisation

"All wickedness is but little to the wickedness of women...what else is woman but a foe to friendship, an inescapable punishment...Women are by nature the instruments of Satan...they are by nature carnal, a structural defect rooted in the original creation."

53. The socio-cultural and political consequence of such views has been described by the feminist scholar Carole Pateman as a "sexual contract" that excluded European women from the benefits of the "social contract" because they were subject to men's power and men's access to their bodies. She quotes John Locke's version of the "consent to be governed" as something vesting only in a male who is "the guardian of his own consent."

"(This) formulation should be read literally; the consent is his consent. Neither the classical contract theorists nor their successors incorporated women into their arguments on the same footing as men."

54. The costs of the exclusion and mistreatment of European women are now well-known. They were excluded from most professions and political positions, unable to sign wills or contracts, and were simple chattels owned by men.

55. After 1492 the same ideas were overlaid with racism to demean and oppress Indigenous women. Explorers, ethnographers, and any European man who invaded Indigenous lands felt entitled to describe Indigenous women not just as "instruments of Satan" but inferior objects whom they could dismiss, exploit, rape and kill in a deliberate process of sexualised and patriarchal brutality.

56. Indeed, as many Indigenous scholars have noted, colonisation was

"designed not only to destroy peoples, but to destroy their sense of being a people...the project of colonial sexual violence establishes the ideology that Native bodies are inherently violable – and by extension, that Native lands are also inherently violable."

57. In the learning of colonisation the taking of "virgin land" and the taking of indigenous women were expressions of the same right to confine and control. The establishment of the hierarchies of political and socio-economic power required the imposition of patriarchy and the parallel creation of images that trapped indigenous women in a cultural and social limbo where they were depicted either as chaste handmaidens to men or lascivious "squaws."

58. In the United States this process has been labelled as the "Pocahontas Paradox" in which Native American women were viewed either as strong, powerful, and dangerous, or as compliant, beautiful, erotic and lustful. Indigenous women became whatever the fevered imagination of colonising men wanted.

59. The corrupt imaginings were easily incorporated into "chains of being," the pseudo-scientific and pseudo-philosophical theories which divided the world into the superior and civilised Europeans and the inferior "other." They were then just as readily

incoporated into socio-legal discourse and accepted as some kind of incontrovertible truth.

60. The "truth" was then "learned" by every European coloniser, including the women who entered into Indigenous Nations. Indeed colonisation spawned a perverse patriarchal reversal in which European women attempted to elevate themselves from their domestic confinement by assuming that at least Indigenous women were even less worthy than them.

61. European women continued to be oppressed by White men in their own societies, and waged long battles to escape patriarchy. However in the process of colonising Indigenous Peoples they could be as racist and capable of "othering" Indigenous women as any European man. They too, benefitted from the taking of Indigenous lands, lives, and power.

62. That role is often denied or ignored but it is a historical reality that is important to this claim because it illustrates the pervasive and shared nature of the colonising process. It is also important because to ignore it is to further marginalise the costs that accrue from the dismissal of mana wāhine. As Leah Whiu has noted when referencing some White feminist arguments –

"What affinity can we share with white women if they refuse to acknowledge and take responsibility for their colonialism...It seems to me that my struggle necessarily takes account of your struggle. I can't ignore patriarchy in my struggle. Yet you can and do ignore the 'colour' of patriarchy, the culture specificity of patriarchy. And in doing so you ignore me."

63. The impulse to subordinate or destroy Indigenous women was weaponised in both colonising policy and practice. In Canada for example the recent Inquiry into Missing and Murdered Indigenous Women noted the co-operation between the colonising authorities and different missionary churches to impose patriarchal ideas of male and female roles.

"As part of their mission... many missionaries undertook projects to teach First Nations peoples how to treat their women as they 'should' according to European ways. There is evidence that Jesuit priests held public gatherings to teach indigenous

men how to beat indigenous women and children. Some accounts tell of women being 'publicly humiliated...and whipped' and (their) role as healers and midwives described as 'evil and superstitious."

64. The less overtly violent ways of transforming Indigenous women into politically powerless and socially subservient beings were similar in other colonising States. Girls were educated to be handmaidens to men and in some cases legislation was passed to remove First Nations women from positions of authority, and even from "membership" in the indigenous political structures sanctioned by the State.

65. In any society, such social attitudes and practices inevitably feed into, or are influenced by the law under which the people choose to live. In the colonisation of Indigenous Peoples the colonisers' law became both a source of, and a reinforcement for, the ideas of patriarchy and misogyny.

66. Indeed after 1492 the colonising States of Europe developed various legal doctrines of dispossession to rationalise for themselves why they were "entitled" to take over the lands, lives and power of distant Indigenous Peoples. Some of the doctrines drew upon the older ideas that had been long used to justify internal European conflicts, but others were invented purely to apply to the take-over and subjugation of "inferior" Indigenous polities.

67. Most of the doctrines were based on canon law precedents. All of them were violently racist and sexist.

68. The earliest canon law doctrines were contained in a series of Papal edicts or Bulls issued after Christopher Columbus' Spanish-sponsored journey to the Caribbean in 1492. At the time the Pope was regarded in Europe as the "First judge and upholder of the Law of God" and in the 1493 Bull known as the Inter Caetera Divinai he acknowledged Columbus' journey and rejected Portugal's claim to a share of the spoils.

69. In the Bull he "donated" to Spain all rights and authority over

"all the islands and mainlands, found or to be found, discovered or to be discovered, westwards or Southwards, by drawing and establishing a line running from the Arctic to the Antarctic Pole."

70. Apart from its presumptuous geographic sweep, the Bull is noteworthy because it established the colonising legal principle that the States of Europe had the right to take any Indigenous lands they wished to occupy and rule. It also reaffirmed Columbus' view that Indigenous Peoples were "barbarous" and

"all go naked, men and women...and have no shame...especially the women...licentious and unworthy in the sight of God."

71. Other Church-inspired legalisms followed. The Requerimiento for example required that Indigenous Peoples should be warned of their pending overthrow as "lesser infidels" and told of the consequences if they refused or delayed in accepting the new colonising authority.

"If you wickedly and intentionally delay we shall forcibly enter into your country and make war against you...we shall take you and your wives and children and make slaves of you...and shall punish you and do all the harm and damage that we can...and we protest that the deaths and losses which shall accrue from this are your fault."

72. Although it was read in a language that the Indigenous Peoples would not have understood, its intention was clear. Any opposition to the authority of the discoverers would be illegal in their law and would not be tolerated. It would also be an offence with particular consequences for Indigenous women.

"Be warned we shall sell and dispose of them as beings of no worth in the sight of God...submit them to our will...and punish them for any harlotry that besmirches the name of the Holy Mother of God."

73. Other doctrines were less overtly violent if still oppressive of Indigenous women. Often they were developed in debates among the colonising States about how Indigenous Peoples as a whole should be dispossessed. There was never any debate about whether European States had a right to dispossess – that was simply taken as a

given. However a great deal of thought and intellectual gymnastics was devoted to the best way of exercising the right.

74. One of the earliest and most important discussions occurred at a royal symposium called by the King of Spain in Valladolid between 1850 and 1851. The question posed by the King to his canon lawyers was how Christian polities could legitimately dispossess and wage war against Indigenous Peoples according to the appropriate "forms and laws." The Final Instruction prior to the debates therefore asked

"...how these people may be subjected to Us without damage to our conscience...and (in) accord with justice and reason"

75. The leading roles in the debates were taken by two canon lawyers, Juan de Sepulveda and Bartholome De Las Casas. Both agreed on the right to dispossess the inferior "others" and both characterised them as either "natural slaves" or beings who existed like "weeds in need of tilling." And both placed Indigenous women as the weediest of all.

"These inferior peoples...are as monkeys to men...and...The Spanish have a right to rule these barbarians in the New World...who in prudence, skills, and humanity are as inferior to the Spanish as children to adults, or women to men."

76. Sepuldeva advocated waging a "just war" as a necessary and legitimate first step in the subjugation of Indigenous Peoples. Las Casas argued however that dispossession should occur "beneficently" and with the "utmost good faith" because although they were heathen savages they were also the children of God who needed

"to be cultivated with gentleness and kindness...Like the uncultivated soil that...has within such natural virtue that by labour and cultivation may be made to yield sound and healthful fruits."

77. Although the King never declared a winner in the debate, the idea of a "beneficent" and even honourable take-over of Indigenous polities was gradually accepted throughout Europe. Of course colonisation by its very nature is non-beneficent, dishonourable and inhumane, but the idea of a humane dispossession became an

important part of what the Lumbee jurist Robert Williams has called "the legitimating function of law and legal discourse."

"(The discourse) extended far beyond providing passive defenses and apologies for the exercise of colonizing power. The immunizing function of law and legal discourse also served as an effective tool for dismissing or deflating demands for further justifications or examination of the colonising enterprise. In Western colonizing discourse the thin veneer of law and legal argumentation does not obscure so much as add value to what might otherwise be regarded as an underlying baseless substance."

78. The Doctrine of Discovery is perhaps the most well-known part of the colonising law's "immunising function." It was also originally devised within Catholic canon law through a number of Papal edicts or Bulls asserting that the "discovery" of a heathen country by a Christian State constituted a valid claim transferring sovereignty and the land itself to the discoverer.

79. The discovery had to be accompanied by various rituals such as the raising of flags and the drafting of proclamations which were intended as signals to other potential colonisers that the land had already been claimed. For the intended legal "audience" for the doctrines of dispossession were always other Europeans rather than the Indigenous Peoples being "discovered."

80. A number of colonising States acted on the Doctrine after Columbus first used it in the Carribean. In each case the peoples whose lands were being "discovered" were essentially irrelevant. In effect they were legally "disappeared" in what another Lumbee jurist David Wilkins has called "law as magic."

81. As a result any Indigenous Peoples' rights were either ignored or "necessarily diminished" because it was assumed that discovery gave exclusive title to those who made it. And any "discovered" Indigenous women were disappeared and "diminished" even more completely than Indigenous men.

82. The Mohawk jurist Patricia Monture Angus described the Doctrine of Discovery as an "act of erasure" that had particular consequences for Indigenous women.

"It completely invisible-ised Native women...just as it assumed that Indigenous country could be terra nullius so it rendered Indigenous women as humano nullius...non-humans even more so than Indigenous men who were often described as at least homo efferus – the savage or wild man...Discovery is a doctrine that is both racist and sexist...yet it remains the basis of claims to legitimacy in States from Australia to New Zealand and the US."

83. The Roman Catholic base of the right asserted in such doctrines was adopted with enthusiasm by the Protestant colonising States. Although there was also much subsequent debate among them about how the right might be exercised, its existence was never questioned, and neither was the presumption of Indigenous female unworthiness which they invoked.

84. The invention of the doctrine of aboriginal title or rights is perhaps the most common Protestant-inspired part of colonising law. In the mythology of that law the doctrine is regarded as especially "beneficent" because it allows Indigenous Peoples to claim certain residual rights that may have survived their usurpation by a colonising State.

85. However the nature and extent of the rights are defined and limited by the colonising law which also granted to colonising States a power to "extinguish" such rights. Aboriginal title and rights thus became a chimera, restricting Indigenous Peoples within the colonising law while trumpeting the restriction as a gift that has to be legally "honoured" until it is extinguished by those who made it up.

86. Although the rights were often presumed to be a non-gendered gift, they were quite specifically sexist and limited to Indigenous men. Only men were deemed to be the owners of property in colonising law so only Indigenous men could in effect be the bearers of aboriginal rights. Apart from its racist subordination of every Indigenous legal and jural tradition, the doctrine therefore further "extinguished" Indigenous women.

87. The cumulative effect of colonising law was to entrench patriarchy and the demeaning of Indigenous women as an accepted part of the new social order being imposed upon Indigenous societies. It cloaked oppression in the "veneer" of legal reason and respectability.

PART THREE: THE REDEFINING OF MANA WĀHINE SINCE 1840

88. The legal and social redefining of Indigenous women was inevitably transported to this country. The effects on Māori women and the very essence of mana wāhine has been destructive, long-lasting, and almost incalculable.

89. The demeaning of Māori women, like the dispossession of Māori people in general, has occurred within a historical context shaped by the ideas developed at Valladolid that colonisation could somehow be honourable and beneficent. Indeed the idea of "humanitarian colonisation" adopted by the Colonial Office in the 1830's was a co-option of Valladolid, and it has become one of the greatest and most damaging myths of New Zealand history.

90. The Colonial Office Instructions to Governor Hobson in 1839 quite specifically adopted a Valladolid/humanitarian framing in their statement that in order to transmit "the blessings we enjoy" Māori should be treated with

> *"mildness, justice, and perfect sincerity."*

91. It is clear that the Colonial Office expected that colonisation should still not disturb the colonisers' conscience. However it is equally clear that dispossessing the "other" was also still seen as an unquestioned English right, and that if "mildness" failed then the usual resort to overt violence was also a colonising prerogative.

> *"One of the two systems we must have to preserve our own security, and the peace of our colonial borders; either overwhelming military with all its attendant expense, or a line of temperate conduct and of justice... The main point I would have in view would be trade, commerce, peace and civilization. The other alternative is extermination."*

92. As the Waitangi Tribunal succinctly summarised in its First Report on the Taranaki claim, destruction in fact became the norm.

> *"Through war, protest and petition, the single thread that most illuminates the historical fabric of Māori and Pākehā contact has been the Māori determination to maintain Māori autonomy and the government desire to destroy it."*

93. The "desire to destroy" included the redefining of the worth of both Māori men and women. While some Māori men were assumed by the Crown to be "chiefs," the general image of the Māori male was quickly framed in the stereotypical language of the "warrior race." If their violent proclivities could be curbed, they might at least be fit for menial tasks.

94. The instructions from the Colonial Office in fact suggested that Māori men

"may be won over by gentleness and skill to execute laborious works (such for example as opening roads)...savage men can best be converted into useful labourers by humouring all the innocent habits and tastes which have grown up with them."

95. There was no equivalent Colonial Office prescription for Māori women. Instead as Irihapeti Ramsden once stated

"Māori men had to be tamed because they were seen as a direct political and military threat who needed to be made-over in the malleable and racially controllable image of lower class Pākehā men...the threat Māori women posed was different and their taming was never articulated in quite the same way...they were also racially inferior but had to be domesticated to be more like Pākehā wives and women who were all and always subordinate."

96. Kuni Jenkins has explored how those same attitudes were imposed upon Māori women.

"Western civilsation when it arrived on Aotearoa's shore, did not allow its womenfolk any power at all – they were merely chattels in some cases less worthy than the men's horses... The missionaries were hell-bent (heaven-bent) on destroying (Māori women's) pagan ways...Hence in the retelling of our myths, by Māori male informants to Pākehā male writers who lacked the understanding...of Māori cultural beliefs, Māori women found their mana wahine destroyed."

97. The result was a totalising attack on the essence of mana wāhine which Linda Smith has noted took many forms.

"Māori women were perceived either in family terms as wives and children, or in sexual terms as easy partners. Women who had "chiefly" roles were considered the

exception to the rule, not the norm...Their autonomy was interpreted as immorality and lack of discipline. Christianity reinforced these notions by spelling out rules of decorum and defining spaces (the home) for the carrying out of appropriate female activities."

98. I am aware that others appearing before this Tribunal may be traversing the socio-historic trajectory of that perception. It is certainly a long and violently developed perception that ranges from the early disappointment of French sailors that Māori women did not in fact seem as promiscuous as they had hoped, to the discussions about the domestic skills to be imparted to Māori girls in the Native Schools. ()

99. However, this part of this Brief focusses more on some of the earliest Pākehā politico-legal constructs which reinforced the ideas of Māori women's inferiority. They have in many ways been much more damaging and long-lasting.

100. When Māori men were "incorporated" into the land law framework being imposed by the Crown they were seen as landowners whose titles to the land land could be individualised and then taken to facilitate settlement. Their incorporation was an act of dispossession and control.

101. Of course, it was usually described in the language of "civilisation" but even that framing with its assumption of White privilege and superiority was an act of racist, gendered theft. The language used in the Native Land Act of 1862 is just one example.

"...it would greatly promote the peaceful settlement...and the advancement and civilisation of the Natives if their rights to land...were assimilated as nearly as possible to the ownership of land according to British law."

102. The same impulse to dispossess and control Māori men was seen in the eventual creation of the four Māori seats within the colonisers' constitutional order. Representation at the time was based on individual property ownership which excluded most Māori men as land was still largely communally vested.

103. However by 1867 as the colonising of Māori land gathered pace there was a fear that Māori male "owners" might swamp Pākehā voters in many North Island electorates.

Four separate Māori seats were therefore created to control and limit Māori representation.

104. The intent was clearly an act of racist colonising exclusion. The fact that the creation of the four seats is now promoted and historically misrepresented as proof of the Crown's honour, and even its "Treaty obligation," is as offensive as it is incorrect.

105. Māori women were of course not included in any such Parliamentary representation. Pākehā women of the time were also unsurprisingly excluded in an act of patriarchal oppression, but Māori women were excluded also as the racialised "other." The oppression of Māori women has always been a compounded act of racist patriarchal intent.

106. The supposed recognition of Māori men as worthy of some form of representation became part of what may be called their ideological seduction. It proved so persistently persuasive that many Māori men learned its lessons and abandoned the Iwi and hapū teachings of gender equality.

107. Sadly, some Māori men became oppressors of Māori women. On occasion this has historically manifested itself in the effective exclusion of many Māori women from decision-making roles in Māori organisations or on entities established by the Crown.

108. It has even more tragically manifested itself in acts of physical and emotional violence against Māori women. The current language of Māori women "deserving the bash," and the experience of young women being "blocked" in some gang rituals last century, are the most overt examples of that internalised oppression.

109. The redefining learned by some Māori men is now also apparent in their understandings or misunderstandings of the rituals of the marae. In too many instances the karanga performed by women is merely seen as a thirty second prelude to the whaikōrero, which is often regarded as "men's work" and therefore more important.

110. That shift in perception from the traditional complementarity of the karanga and whaikōrero truly is "a Pākehā idea" that continues to damage the place and status of mana wahine. It also ignores the fact that in some Iwi such as Ngāti Pōrou and Ngāti Kahungunu, there is a history of women kaikōrero.

111. The socio-cultural defining was always abetted and influenced by ongoing political and legislative actions of the Crown which directly or indirectly excluded or attacked the integrity of mana wahine. Indeed law and law-making in this country, and especially law-making in relation to land, has been based almost exclusively on patriarchal and racist grounds.

112. Indeed, colonising law has always been part of a broader socio-legal paradigm to dismiss the rights of Māori in general and to erase the traditional land-holding and other rights and interests of Māori women in particular. It is similar to the process described by the African-American jurist Patricia J. Williams in which Black women's bodies are invisible-ised into obscure "no-bodies" where worth and

"goodness becomes a limited property...as if it were a physical thing, a commodity or object whose possession can only know one location...Gender as property. Gender as privilege. Hierarchy as sexualised oppression."

113. Colonisation by its very nature necessarily includes hierarchies of sexualised oppression. They are part of colonisation's design as a culture of dispossession and their implementation and effects are a clear breach of Te Tiriti. They are contrary to its hope that Māori and the Crown should establish an interdependent relationship built upon the recognition of each Parties' continuing independence.

PART FOUR: THE ABUSE OF MANA WAHINE IN THE JUSTICE SYSTEM.

114. The confinement and mistreatment of Māori women in the criminal justice system is both a contributor to, and reflection of, the more general subordination of mana wahine by the Crown. It mirrors the disproportionate criminalisation and incarceration of Indigenous women and women of colour in other colonising States, and it constitutes one of the many symmetries between the dispossession of Indigenous Peoples in New Zealand, Australia, Canada, and the United States.

115. It derives from the rituals of annexation which the Crown assumed would give it authority and allow the writ of its law to run in a jurisdiction that already had its own. Indeed, the dispossession of Indigenous Peoples was always predicated on the presumption that justice lay only in the colonisers' law. The same presumption was

applied in this country, and was made clear in the Colonial Office Instructions to Governor Hobson in 1839 which sought

"…the speedier expansion over the Maori of the regular administration and judicial machinery of the Colony and the constraints and obligations of British law."

116. In my considered view that presumption had (and has) no validity in tikanga, and also represents a stark breach of the Treaty. Because Iwi and Hapū did not cede sovereignty in Te Tiriti, as the Tribunal found in its Te Paparahi o te Raki Report, neither did they cede the authority to legally care for or reprimand mokopuna who may have done wrong or needed protection. The responsibility for mokopuna as taonga is clearly one obligation that in tikanga terms could never have been surrendered.

117. Certainly, the notion that the State could confine and control Māori women in a prison or some other institution was as culturally incomprehensible as the idea of cession itself. The fact that some rangatira may have allowed the Crown to exercise some sort of criminal jurisdiction over some Māori men in the 19th century was an act of adaptation not acquiescence.

118. It was brought about by the State destruction of Māori justice processes that increased during and after the Land Wars in the 1860's. For example, the 1863 New Zealand Settlements Act which in the Crown view sanctioned the raupatu also led to the first mass imprisonment of Māori. Indeed, those who were classified by the Crown as "rebels" were necessarily criminalised, which in turn led to the assumption that any Māori could be confined, including Māori women.

119. The criminal justice system was built upon that seminal injustice. Although the system is most commonly assumed to comprise the Police, Courts, and prisons, it also includes the many other Crown agencies which assume an authority over Māori. The most important in terms of this claim is Oranga Tamariki. Indeed its assertion of control over Māori children is often more extensive than the other parts of the system.

120. As of 30 June 2020 for example, 6041 children and young people were in the custody or care of Oranga Tamariki. 59% were Māori, and another 10% identified as Māori/Pasifika. That proportion is higher than the current imprisonment rate for Māori.

121. Those figures, plus the fact that the number of Māori women in prison has increased over 150% since 2002 and now make up nearly 60% of the female prison population indicates the persistence of a deep-seated injustice. The numbers may have fluctuated over the years since the 1860's, but the combination of racism, classism and sexism which underpins them has varied very little.

122. Between 2015 and 2019, 6626 Māori participated in the research that is now recorded in the Report "He Tukino Mutunga Kore." 293 male Māori and 262 female Māori who have been imprisoned or had some other involvement with the criminal justice system were also interviewed and/or attended hui.

123. The narratives of the Māori women participants are a sad amalgam of the socio-cultural and socio-economic consequences of colonisation and the punitive impulse that characterises the history of every colonising State. Their lives are examples of how the Crown has consistently demeaned the ideals and assertion of mana wahine.

124. Indeed, the poverty, racism, and abuse endured by most of the wāhine participants are inseparable parts of the same historical circumstances that link together the current rates of their incarceration and the operations of the criminal justice system. If they have often led to feelings of loss or an incipient anger they have also instilled a sense of frustrated injustice.

125. Many of the women were taken from their whānau as children and subjected to abuse in care and in criminal justice facilities. In fact of the 134 women taken into care as babies or young girls, over half (81) reported emotional, physical, and sexual abuse in the institutions either by Staff or older residents. The abuse occurred more than once.

126. The abuse which they (and a number of the mokopuna who were victims of offending) suffered at the hands of the State are part of a long colonising persecution of the young and vulnerable. The taking of Indigenous children from their families was a crucial and early expression of what we have termed in the research the carceral imperative – the will to confine and punish the "other" that was acted upon in Canada, the United States and Australia, and then replicated in this country.

127. Indeed, the abuse and taking of Indigenous children has always in itself been an abuse of power that every colonising State has perpetrated. It has denied Māori and other

Indigenous Nations the authority they had always exercised to care for and protect mokopuna and replaced it with an authority that was responsible for the initial colonising harm done to the integrity of whānau.

128. The fact that Māori babies continue to be taken at a rate that is five times more than other children is a continuation of that abuse of power. The number of mokopuna profiled in the research for "He Tukino Mutunga Kore" who were were taken and abused since the 1950's indicate that it is not a recent phenomenon. The colonising State has long used its so-called "welfare agencies" and criminal justice system to mistreat Indigenous children, and Indigenous girls in particular.

129. The taking may have sometimes been due to misguided policy imperatives or merely the zealously abusive power of individual case workers, but it is also an acting out of what colonising States have always done.

130. The journalist Aaron Smale has noted how New Zealand has been "brutally efficient" at that confinement and mistreatment.

"The public...can expect to be shocked by the brutality that has been meted out to children in the name of the State: unnecessary uplifting of children; solitary confinement for months; torture through electrocution; beatings; rape, including gang rape of children..."

131. In her study of "State Violence Against Children" Elizabeth Stanley has described its effects.

"...State institutions created conditions in which children hardened and even became violent themselves in a bid to survive. Children developed negative feelings about adults, authorities and the society that had treated them so poorly."

132. Dr. Oliver Sutherland studied abuse in care extensively during the 1970's and 1980's and catalogued the "scale of the injustices and abuses perpetrated by the State."

"A horrendous picture of physical and mental assaults; of extreme deprivation of liberty; of inhumane and degrading treatment and punishment; of forced sexual examinations; and of unhygienic and culturally offensive practices."

133. Many of the cohort of Māori women profiled in the research for "He Tukino mutunga Kore" endured that horror. For the girls involved, the conditions created in State institutions were a violently focussed denial of mana wahine as well as an expression of brutal control.

134. The holding of mokopuna in segregation or solitary confinement in care or in prison has been a constant feature of that control. The fact that many of the women were subjected to excessive exposure to pepper spray and invasive bodily searches in segregation exceeded even the "normal" limits of control and reached a degree of mistreatment that fits the international law definition of torture.

135. Their mistreatment has also too often gone beyond the bounds of prison as a State sanction against wrongdoing and reached a level where punishment has become an extra-legal use of force against those who were already deprived of their liberty. Their ordeals have been race-based, immoral, and contrary to any ideals of correctional rehabilitation.

136. Whatever wrongs the women may have done, their institutional experience, like many of their lives, was brutalising and in some cases insurmountable. Those who have managed to find some later degree of balance in their lives have done so only with courage and the support of their partners and whānau. The State has played little or no part in restoring the balance in their lives or the mana which it has damaged.

137. The extent of the damage was recounted with hurt and anger during the research for "He Tukino Mutunga Kore." Many of the women agreed to have their experiences recorded in the Report only if their anonymity was guaranteed. Although the rules for the hearing of stories in this Tribunal are obviously different, the following two extracts are offered to illustrate the most egregious and overt State attacks on mana wahine.

"I was seven when I first got taken by CYFS...and the abuse started almost straight away...it just happened all the time...girls like fruit for the picking...and I was Māori so I was disposable I guess...just over and over again...and I wasn't the only one it happened to...it wasn't 'care,' and it wasn't anything to do with my safety or mana as a young Māori girl...in fact my age and my mana was irrelevant."

*"Most of my life's been abusive really…it was like…abuse just growing up Māori…being poor, abused at school…the Police…like it's all been abusive…and I never got to know a kui who could show me how to protect myself…to show me what mana meant…instead what happened in care and prison was just a different abuse…rape…genital examinations that were really assaults by medical perverts…the stand over tactics at Wiri…pepper spray…the cell buster where they'd hose the pepper spray through the door…prison guards laughing…being put in the pound…made to eat my kai off the floor…they were the worst things ever done to me."**

138. The violence acted out against so many young Māori girls and women has above all been a crime against their dignity, their safety, and everything encapsulated in the term "mana wahine." That the Crown either deliberately or unwittingly allowed it to occur has been a clear breach of Te Tiriti.

PART FIVE: MANA WAHINE IN THE LIVES OF TWO KUIA

139. In spite of all that has been done to so many Māori women, the ideals of "mana mokopuna" with which they are all born have survived. They are still often mischaracterised, redefined, and abused, but they survive because whakapapa survives.

140. Many of those abused by the State have been denied that whakapapa legacy and still struggle to realise their own intrinsic worth – their mana. Circumstance has often also denied them the opportunity to live with and see what mana wahine might be – to "know a kui" who could help protect them and show them what they might become.

141. That is an especial tragedy because so many Māori women still manage to live lives that give expression to all of the tangible and intangible attributes that make up mana wahine. Together those attributes represent a certain pride and hope that Hana Cotter once said marked out the strength and dignity of "wāhine pou kaha." ( )

142. Indeed, every day Māori women display the intrinsic resilience of mana wahine. Whether it is in the sole care of tamariki, in kohanga reo, in the kitchen on the marae, in social service mahi from women's refuges to foodbanks, or in new leadership

positions, they display the sort of pride and hope that has been essential to the survival of Māori people since 1840.

143. For colonisation has always been about taking the lands, lives, and power of Indigenous Peoples. In the "official "histories usually written by Pākehā historians, the resistance to that oppression has often been individualised, and with rare exceptions, largely reduced to the efforts of some male rangatira. But resistance and leadership was always an obligation assumed by men and women, and even the most destructive acts of the Crown have failed to completely destroy the knowledge of women's contributions.

144. It may have erased them in a process of misremembering that the English philosopher Paul Connerton has called a deliberate or "constitutive forgetting." ( ) Yet they still reside in the stories in the land of every Iwi and Hapū, and part of the hope of this claim is that they might again be honoured and retold.

145. In the meantime, the following brief profiles of two kuia illustrate the vibrancy and strength of mana wahine. There are of course countless other women whose stories could be told, and many of them have appeared before this Tribunal. However, the complex and interrelated contributions which these two kuia made in their lifetimes to the protection and well-being of Māori serve as exemplars of what mana wahine can be.

146. The profiles of course do not cover the total contributions they made, nor all of the difficulties they often had to overcome – difficulties usually created by the Crown which not only demeaned the nature of mana wahine but also the very nature of tino rangatiratanga. The profiles also do not canvass all of the attributes of mana wahine which the kuia embodied, but instead seeks to identify some which illustrate its different facets.

147. Nganeko Minhinnick of Ngāti Te Ata was a staunch advocate for the protection of her people's lands from the age of eleven when she was first chosen by her elders to speak on their behalf. Throughout her life she argued on behalf of Papatūānuku, both domestically and internationally.

148. Between the 1970's and 1990's she initiated a number of legal actions against the Crown to prevent damage to the land, most notably the wāhi tapu and burial grounds of Maioro that were given by the Crown to New Zealand Steel to mine ironsands. She, and her people, were obstructed in each case by the Crown and/or the company, and even a covenant signed in 1990 to restrict some of the company's activities was subsequently ignored by the Crown.

149. In 1984 she filed the Manukau claim to this Tribunal. The claim was the eighth registered by the Tribunal and resulted in one of its earliest and most comprehensive Reports. The Tribunal acknowledged the environmental damage done to waters of the Manaukau Harbour and its effects on the people of Ngāti Te Ata and Waikato-Tainui.

150. At the same time she began travelling to Geneva to attend WGIP and contributed for a number of years to the drafting of the United Nations Declaration on the Rights of Indigenous Peoples. Her leadership was acknowledged by other Indigenous Peoples who regularly sought her counsel.

151. Nganeko devoted her life to the well-being of the environment, and to the rights of her Iwi, and to Māori people in general. She personified mana wahine, and perhaps especially its attribute of noble courage.

152. Erihapeti Rehu-Murchie of Ngai Tahu had whakapapa to many marae, most notably at Arowhenua where the whare is called "Te Hapa o Niu Tireni" – "The Unfulfilled Promise of New Zealand." In all her work she sought to make good on the many unfilled promises, especially those in Te Tiriti.

153. Her many areas of interest included the fostering and development of Māori-centred research. After serving as President of the Māori Women's Welfare League between 1977 and 1980 she led the first comprehensive study by Māori of Māori women's health. The Report,"Rapuora: Health and Māori Women," was published in 1984. Its findings were influential in terms of the health of Māori women, and its methodology was in many ways the first tentative attempt to institute what is now accepted as kaupapa Māori research.

154. In a completely different venture, she promoted the need for a distinctive Māori voice on stage and in radio and film. Her acceptance of the leading role of the matriarch in

the stage play "The Pohutukawa Tree" was a catalyst for many efforts that not only encouraged Māori to write and produce their own dramatic works but also to establish Māori publishing ventures.

155. Erihapeti also attended the meetings at WGIP. She too was a conscientious and respected leader acknowledged by the many others who participated in the drafting of the Declaration. In 1992 she was given the title "clan Mother" by the Indigenous Peoples caucus. In that role she led the ceremonies marking the 500th anniversary of Columbus' landing in the Americas which of course led to the centuries of Indigenous dispossession and the subsequent need for the Declaration.

156. Erihapeti devoted her life to the advancement of Māori rights, and especially the rights of Māori women, both domestically and internationally. She personified mana wahine, and perhaps especially its attribute of dignified grace.

157. It is a sad fact that the work of the two kuia was so often obstructed by the Crown. Although they were belatedly acknowledged and honoured, the issues to which they devoted their lives were injustices that the Crown had created and in many ways continue to perpetuate. That is not only a breach of Te Tiriti, but a slight on the mana of the kuia and on mana wahine in general.

158. However their legacy has endured. The example they set of what mana wahine is and can achieve is just one reminder perhaps of why this claim is so important.

PART SIX: CONSTITUTONAL TRANSFORMATION AND MANA WAHINE.

159. The restoration and recognition of mana wahine in its fullest sense is crucial to the future well-being of all mokopuna Māori. For Māori boys it is the base for once again acknowledging the balance and mutual respect implicit in whakapapa. For Māori girls it is the necessary papa or foundation that will enable them to know that that they are "also rangatira and can always be so."

160. To reach that point involves the ongoing process of decolonisation which many Māori and Pākehā are currently engaged in. It is a necessary social, political and educative process that the work of the Tribunal has directly and indirectly contributed to over the years.

161. Decolonisation is of course a commonly used, and often misused, term. However it may be understood in general terms as an ethic or means of achieving repair and restoration by changing the values and broader socio-political structures of the colonising State.

162. In relation to this claim, repair means mending the damage that colonisation has caused, while restoration involves a re-claiming of the independent Iwi and Hapū structures that colonisation was designed to subvert. Both include re-acknowledging the values of mana wahine that are crucial to their balanced functioning.

163. Of equal importance, decolonisation requires the proper honouring of Te Tiriti. In particular it means recognising the Treaty imperative that there would be two founding political and constitutional systems in this country, not one. It means reclaiming the balanced relationship envisaged in Te Tiriti between independent yet interdependent Crown and Māori polities.

164. The discussion of constitutional transformation is not a new one of course. The Waitangi Tribunal has often considered constitutional issues, and in its Paparahi o te Raki Report it addressed the matter most directly with its conclusion that the Treaty "explicitly guaranteed rangatira their...independence and full chiefly authority." It also observed that the rangatira

"did not cede their authority to make and enforce law over their people or their territories. Rather they agreed to share power and authority with the governor. They agreed to a relationship: one in which they and Hobson were to be equal while having different roles and different spheres of influence."

165. It is my respectful view that the idea of distinct but interrelated spheres of influence was an imaginative and accurate description of the independent but interdependent relationship which Iwi and Hapū have always maintained lies at the heart of the Treaty. It helps re-articulate the political and constitutional relationship it envisaged while also providing a conceptual tool that will help reclaim and protect mana wahine.

166. The rangatira Rima Edwards was always acutely aware of the power imbalances in the Māori-Crown relationship and saw their resolution as a constitutional issue shaped

by his deep knowledge of He Whakaputanga, Te Tiriti, and what he called the "kawenata tapu" between Iwi and Hapū and the Crown.

"I te tuatahi horekau i tukua e ngā rangatira o ngā hapū tō rātou mana ki a Kuini Wikitoria.
Te tuarua, horekau i tukua e ngā rangatira o ngā hapū tō rātou mana whakahaere o tō rātou whenua ki a kuini Wikitoria.
Te tuatoru, i whakae ngā rangatira o ngā hapū kia whakatungia he hononga tapu waenganui i ngā mana o Aotearoa me Ingarangi.
(In the first instance the rangatira of the hapū did not cede their sovereignty to Queen Victoria.
Secondly, the rangatira of the hapū did not cede their mana in relation to their land to Queen Victoria.
Thirdly, the rangatira of the hapū did agree to create a sacred relationship between two sovereign nations, that is Aotearoa and England."

167. Similar views were expressed in the hundreds of discussions and hui held during the Matike Mai Constitutional Review organised by the Iwi Chairs' Forum and other roopu between 2011 and 2016. Among the constitutional models suggested in the Matike Mai Report was a tricameral structure which reflected the interrelationship between Māori and the Crown.

168. It consisted of what were called autonomous rangatiratanga and kawanatanga spheres of deliberation and decision-making, plus a joint relational sphere where the two spheres would make shared decisions on matters of common interest based on the values of Te Tiriti governance. The mechanics of how the spheres of influence might actually be established were not discussed in detail in the Matike Mai Report. However in keeping with the Terms of Reference it was presented as an indicative model of how a different constitutional system might be based upon and give effect to tikanga, He Whakaputanga and Te Tiriti.

169. Such a relational model is also indicative of how a different constitution and a different set of constitutional values might contribute both directly and indirectly to the reassertion and protection of mana wahine. It provides a framework that not only finally honours the Treaty but supports the work already being done to advance mana

wahine by guaranteeing and ensuring its rightful place in a decolonised and Treaty-based polity.

Dated this 31st Day of May 2022

Moe mai e te taniwha hikuroa.

Dr Moana Jackson