IN THE WAITANGI TRIBUNAL
TE PAPARAHI O TE RAKI INQUIRY

WAI 249
WAI 1040
WAI 2124

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of the Te Paparahi O Te Raki Inquiry (Wai 1040)

AND

IN THE MATTER of a claim by James Christopher Eruera for and on behalf of Rima Edwards and for the benefit of Ngapuhi Nui Tonu.

AND

IN THE MATTER of a claim by Rima Edwards, James Christopher Eruera and Tangiwai Puhipi for and on behalf of themselves and the descendants of Mauitikitiki a Taranga ki Aotearoa.

RECEIVED
Waitangi Tribunal
28 MAY 2010
Ministry of Justice
WELLINGTON

AFFIDAVIT OF DAVID RANKIN

Dated this 21st day of April 2010

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MAY IT PLEASE THE TRIBUNAL

I, **DAVID RANKIN**, Property Developer of Auckland and Chairman of Hone Heke Foundation, of Kaikohe swear:

INTRODUCTION

1. My current position is Chairman of the Hone Heke Foundation, a position I have filled since 2002.

2. I have a Bachelor of Maori Development Degree from the Auckland University of Technology, and am a fully-qualified tertiary lecturer. One of my specialist areas is in the teaching of te reo and tikanga.

3. I have been involved in extensive research of my hapu's oral histories over the past fifteen years, and have been a historical consultant for a number of books on aspects of Ngapuhi history. I was the history consultant for the Hone Heke exhibition stages at Te Papa Museum in Wellington, and the National Museum of Australia. I have also been acknowledged for my input into the biographies of Hone Heke Ngapua and Hone Heke, written by the historian Professor Paul Moon.

4. I have also mounted several large exhibitions of Ngapuhi taonga in museums around the world. The taonga were all from my personal collection and were connected with Hone Heke, Hone Heke Ngapua and the Kotahitanga movement. I was driven to do this because such exhibitions represent an opportunity for our people to see a tangible part of their history. Also, because the items are in a private collection, people would not normally have an opportunity to see them.

5. My whakapapa connections to the signatories of the Treaty include Hone Heke, Tamati Waka Nene, and Patuone.

Scope of Evidence

6. In this evidence I will outline one particular historical aspect that relates to this claim. This is that although Hone Heke signed the Treaty of Waitangi on 6 February 1840, he later revoked his consent to be bound by the agreement.

7. On 6 February 1840, Hone Heke became the first chief in Aotearoa to sign the Treaty of Waitangi. When he signed the Treaty, he said: "I sign this with my hand, but with the mana of my ancestors, Kaharau and Kauteawha." In this context, mana is a form of political authority. In this action, Heke was confirming that the political authority of his lineage was being invested in the Treaty.

8. At the time of the signing, Heke believed that the intentions of the British were sound, and that he had entered into a covenant with them. Heke's intentions, according to the oral histories of our hapu, were to have the British remain in the Bay of Islands, and for Heke's power to rise hand in hand with the ascent of British power in the capital, Russell.

9. However, by 1841, when the country's capital had been shifted to Auckland, the first seeds of dissent were planted in the minds of many in Ngapuhi, and Heke was acutely aware of this. He believed that the Treaty would guarantee the capital would remain at Russell. When it was transferred to Auckland, this was like a breach of faith for Heke.

10. Heke wanted to lead a deputation to discuss this concern with Hobson in September 1842, but Hobson passed away at the beginning of the month and so the meeting never took place.

11. In the meanwhile, there was the feeling among Ngapuhi that the Crown was exceeding the authority that it had obtained through the Treaty.

12. One of the turning points that led to this realisation was the execution of Maketu in 1842 – in which British justice was applied for the first time to a Maori. Maketu was tried in a Pakeha court in Auckland and executed for murder. Many Maori felt that British justice was being applied to their people, which was not what had been promised in the Treaty.

13. By 1844, Heke had felt that the British had abandoned Northland, and was despondent about the region's immediate prospects. The economy in the North was in a slump and this was due mainly to the fact that the capital had moved to Auckland, and with it, a great deal of trade in the region. One of the consequences of this was that some Maori males were leaving the region to look for employment in Auckland. This had a direct impact on the power of rangatira in the region like Heke.

14. As a consequence, he announced to his hapu in November 1844 that he intended to withdraw his consent to be governed by the terms of the Treaty.

British Intentions for a Treaty with Maori in 1839

15. By 1839, James Stephen, the Permanent Head of the Colonial Office, concluded that the Residency in New Zealand had 'proved for the most part inoperative', and proposed that some form of treaty would allow for British relations with Maori to be 'placed on a more permanent footing'.

16. Throughout 1839, the various branches of the British Government with an interest in New Zealand expressed the view that any treaty of cession with Maori would enable Britain to apply its sovereignty only to British subjects resident in New Zealand, and that Maori sovereignty (initially at least) would be unaffected. The evidence supporting this limited application of British sovereignty in New Zealand through a treaty includes:

(a) A minute written in March 1839 by James Stephen, stated his preference for a ruling body in New Zealand that would govern 'the Anglo Saxon Race', in the country.

(b) A letter from Lord Normanby, the British Colonial Secretary, to the British Attorney General in May 1839 argued that the need had arisen for 'some system for governing the numerous body of British subjects who have taken up their abode in the New Zealand Islands'.

(c) A memorandum written in June 1839 by James Stephen, recommended the establishment of British authority in New Zealand to provide 'for the government of the Queen's subjects resident in or resorting to New Zealand'.

(d) A British Treasury minute written in June 1839 supported the need for 'some competent control over British Subjects in the New Zealand Islands'. This sentiment was repeated in a Treasury memorandum written the following month.

(e) A legal opinion obtained by the Colonial Office in June 1839 suggested that the British annexation of any territory in New Zealand would be permissible, and that 'the legislative authority of New South Wales could then be exercised over British subjects inhabiting that territory'.

(f) A letter from Lord Palmerston in August 1839 supported more formal British intervention in New Zealand because the fact of British settlement there 'indisputably requires the check of some contending authority'.

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(g) The Instructions issued by Lord Normanby in August 1839 expressed the need for a treaty with Maori to protect and restrain British emigrants living in New Zealand.

17. The quotes above are all from Paul Moon, *Te Ara Ki Te Tiriti: The Path to the Treaty of Waitangi.*[1],

18. The Maori expectations for the Treaty – at least as far as Ngapuhi were concerned – were connected with the notion of a relationship between two peoples. This was an extension of traditional types of relationships between rangatira and was seen very much in that light.

The Recognition of Maori Sovereignty by the British Crown in 1839 and 1840

19. Any treaty involving a cession of some element of sovereignty can only be concluded between sovereign states. That is, those states that possess the sovereignty to cede in the first place, and those that intend to augment the existing extent of their sovereignty through the cession. This is my observation based on considerable reading of books dealing with the status of treaties in international law.

20. Maori sovereignty was recognised formally by the British Government in August 1839. Lord Normanby's instructions noted that 'I have already stated that we acknowledge New Zealand as a sovereign and independent state'.[2]

21. Since Hobson's 1837 report on New Zealand, though, it was clear to British Government officials that the recognition of Maori sovereignty would be a more intricate matter, particularly because of the fractured nature in which this sovereignty had developed in Maori society. Instead of there being a single Maori sovereign authority in New Zealand at the beginning of 1840 (and despite Busby's efforts to create one), such authority was divided along hapu lines.[3]

22. Although lacking the appropriate language to articulate this, Lord Normanby conceded on 15 August 1839 that his recognition of Maori sovereignty, as a precursor to a possible treaty with Maori, was made 'in favour of a people composed of numerous dispersed and

1 David Ling Publishing, 2002.

2 Moon, P. *Te Ara Ki Te Tiriti: The Path to the Treaty of Waitangi*, Auckland, David Ling Publishing, 2002.

3 Moon, P. *Te Ara Ki Te Tiriti: The Path to the Treaty of Waitangi*, Auckland, David Ling Publishing, 2002.

HC

petty tribes, who possess few political relations to each other, and are incompetent to act, or even to deliberate in concert'.[4]

23. Lord Normanby thus acknowledged Maori sovereignty, and further, acknowledged that it was apportioned to 'dispersed and petty tribes', rather than some single entity. This implied that Maori did not have the capacity to act in concert, at least as far as the British were concerned, but at the same time, it still acknowledged the fundamental essence of Maori sovereignty in a European context.

24. This entitled Heke and all the other signatories to the Treaty to act independently of each other when considering their subsequent adherence to the provisions of the agreement. Each signatory was regarded both by the British authorities and in their own communities as representing an autonomous sovereign entity.

SWORN at Wellington)
by the above named **DAVID**)
RANKIN)
this 21st day of April 2010)
before me: Henry James Clayton)

Henry James Clayton
Solicitor
Wellington

A Solicitor of the High Court of New Zealand

4 Moon, P. *Te Ara Ki Te Tiriti: The Path to the Treaty of Waitangi*, Auckland, David Ling Publishing, 2002.