

He Mihi | Ngā Matakirea

Mātua nei ki te pā kaiahi—

Tēnā koe mō te whakatuwhera mai i ngā tatau o te rangi, mō te whakanoa i te ara, mō te here i a tātou ki te wairua o te kaupapa—nāu te pae ka ū, nāu te pae ka tau—tēnā rawa atu koe

E whai tonu ana ngā roimata ki te hunga kua riro atu—

Koutou ngā manu tāwhiowhio i whakakī i ngā rori o Ngā Puhi mai i te rangi rā i kuhu mai ai a Reipa, Te Minita a Ānaru Iti ki ngā kōrero mō te whakataunga o ngā kerēme, tae noa mai ki tēnei ao wānanga nei

E tangi ana te ngākau i te tamō o te momo i a Te Rā Nehua—

Te pou aumangea o Whangārei Hapū, he rākau tū i te uru;

I te momo i a Hinewhare Harawira, *te wahine toa nāna i pupuru te aho o te au mārō;*

I te momo i a Tītewhai Harawira, *te korokī kaha, te ngākau niwha*

E tangi ana te ngākau i te tamō o te momo i a Moka i a Hinerangi Puru—

Ngā mata kāmehameha o te ao tuku iho, ngā poutokomanawa o te kōrero rangatira

I te momo i a Tākuta Patu Hōhepa—

Te tohunga reo, te tohunga tikanga, nāna ngā hihī o te rā i hōrapa ki Te Whare Tapu o Ngā Puhi

Ki a Rudy Taylor mā—

K ngā pou whakahau i ngā hapū me ngā iwi, te rangatira i te whenua—haere koutou, haere ki te ringa wairua o ngā tupuna, ki te tihi o te maunga, ki te pō nui, ki te pō roa

Haere, haere, haere atu rā

Ka hoki mai te aro ki te haukāinga—

Ki a koutou Ngā Maramara o Rāhiri, ngā ringa i hora te whāriki hei ūnga mō te tīni, tēnei te mihi whakaute, te mihi aroha

Ka toro atu te mihi ki ngā whānau, hapū, iwi

kua tau mai i waho o te rohe, *ngā uri nō ngā pae maunga, nō ngā tai e whā—tēnā koutou i ū mai ai ki te kaupapa rangatira nei hei kawē i ō koutou kōrero, ā, kia rangona ai te ngākau o ia hapū, o ia iwi*

Ka tahuri atu te kupu ki te Taraipiunara—

Ki a koe e Tumu Whakawā me tō Taumata Taraipiunara nei, koutou te māramatanga o te ture, koutou e tuitui ana i ngā whakaaro maha hei whakatakoto i te whāriki o Mātangireia e takoto nei—tēnei te tangi mātāwaka ki a koutou

Ka kōkiri tonu te mihi ki ngā kaikōrero i

mua i a mātou—*E ngā pou kawē kōrero i whakatakoto i te ara i whakatō i ngā whakaaro hōhonu hei puna kōrero mā tātou—tēnei te mihi o te ngākau, tēnei te mihi kauuanu*

Ā, ka huri te reo ki ngā kaikerēme, ngā tari rōia,

ngā uri e kawē nei i ngā moemoeā, ngā mamae, ngā wawata o ngā hapū me ngā whānau puta noa i te motu—koutou ngā rākau tītokona o te kaupapa—tēnei mātou e mihi kau atu nei

Nō reira, e te whānau kua noho mai nei—

kia tau ngā manaakitanga ki runga i tō tātou wānanga kia ū te ngākau ki te pono, ki te tika, ki te rangimārie, kia rere tonu a Matakirea ki te tomokanga o Mātangireia, hei waka kawē i te māramatanga mō ngā rā kei te haeata mai

Tēnā koutou, tēnā koutou

Huri tū, huri noa, tēnā tātou katoa

RECEIVED

Waitangi Tribunal

19 Dec 25

Ministry of Justice
WELLINGTON

POSITION STATEMENT/HISTORICAL BACKGROUND | HUHANA LYNDON

Acknowledgement to Merehora Taurua, Lani Apiata as mate o te wā.

Te Paparahi o te Raki Wai 1040 Stage One:

The Stage 1 Inquiry hearings took place between May 2010 and February 2011. On 14 November 2014, the Te Paparahi o Te Raki Stage 1 Report handover took place at Te Tii Marae, Waitangi.

The Rangatira who signed te Tiriti in February 1840 at Waitangi, Waimate and Mangungu did not cede their sovereignty to Britain.

What that means is:

1. **They did not cede** authority to make and enforce law over their people or their territories.
2. **They did agree to** share power and authority with Britain. In particular, they agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests.
3. **They consented to** the treaty on the basis that they and the Governor were to be equals, with each having different roles and different spheres of influence. In essence, the Governor was to be a rangatira for the Pākehā.

We recognise the Westminster System in Aotearoa is imported, it does not give effect to Te Tiriti, and for generations iwi Māori have suffered at the hands of dishonourable Kāwanatanga.

As Te Iwi Māori we participate in this system and we oppose this system all at the same time - as Te Iwi Māori we have operated under extreme duress in this counterfeit Kāwanatanga system for generations.

Hapū position statements:

Acknowledge Te Rā Nehua, Hinewhara Harawira, Titewhai Harawiraai Harawira, George Davies, Vilma Sutherland, Pauline Smith, Alan Haliday (Ngāti Hau Claimants who have passed over the years).

2016 - Ngāti Hau Hapū developed across 2016 a hapū position statement on sovereignty (acknowledge Hinewhare as spearhead, Brandon Nehua and Titewhai Harawira). Developed over numerous hapū and marae hui, and ratified.

1. We maintain our tupuna did not cede sovereignty under Te Tiriti o Waitangi and sovereignty has never been ceded or otherwise lost (for example, by conquest) since.
2. We will not agree to any arrangement which would compromise our sovereignty (including, without limitation, any full and final settlement).
3. Sovereignty is not negotiable.
4. We want redress for breaches of Te Tiriti o Waitangi. 1-3 above will be clearly communicated to the Crown at the appropriate time(s) so there is no doubt as to our position and therefore no risk of our position being misinterpreted or mischaracterised.
5. As we may not be able to achieve an acceptable outcome under the current process, we should concurrently explore other potential options to the fullest extent possible.

Whangārei Taiwhenua Position Statement:

A Whangārei Taiwhenua hui held at Ngāraratunua Marae on the 15th September, 2018, 3pm to late.

At this hui the following positions were agreed to by resolution:

1. **We strongly oppose** the evolved mandate proposal because it does not honour He Whakaputanga me Te Tiriti o Waitangi.
2. **We will not agree** to any arrangement which would compromise our Tino Rangatiratanga and our sovereignty (including, without limitation, any full and final settlement).
3. Our Tino Rangatiratanga and our sovereignty **is not negotiable**.
4. **Any proposal must recognise** the centrality of He Whakaputanga me Te Tiriti and prioritise constitutional transformation. An agreed pathway for constitutional redress must be in place, before cultural and commercial redress can be considered.

Resolution: That the above statements are agreed as shared key messages of the Whangarei Taiwhenua.

Moved Moana Kake, Seconded Kathleen Mahanga Popata (Carried)

Arthur Mahanga, Haki Mahanga, Louisa Collier abstained.

In closing, we oppose the actions of the Crown which continue to divide our people and our rohe by disrupting the whanaungatanga of “Te Whare Nui o Ngāpuhi mai Te Rerenga Wairua ki Tamaki”.

Ngā mihi,
We the undersigned

In attendance: Marina Fletcher, Mira Norris, **Tapa George**, Violet Nathan, Hinemoa Apetera, Jade Kake, Huhana Lyndon, Rowena Tana (left 6pm), Emere Te Para Robson, Mitai Paraone-Kawiti, Hori Tumene Remo, **Te Raa Nehua**, **Moana Ihaia Kake**, Mereana Warbrick, Thelma Connor, Brandon Edwards, Richard Shepherd (left 6pm), Kristi Henare, **Anne Davies**, **Fred Collier**, Ruiha Collier, Janet Mason, **Hinewhara Harawira**, **Titewhai Harawira**, Haki Mahanga, Arthur Mahanga, Kathleen Mahanga Popata, Te Kaurinui Parata, Mark Ngahoia Scott, **Violet Sade**, Margaret Kay, Nicki Wakefield

Letter sent to Andrew Little as Minister.

Position Statement was taken around the hapū and marae of Whangārei and adopted through consensus. This position statement has been used across the years as a tūāpapa affirming our hapū rangatiratanga.

This position statement has been used all the way up to most recently 2024.

Ngā Matakīrea | Ngā Hapū o Whangārei

Matakīrea is a working group formed and supported by Ngā Hapū o Whangārei (formerly Whangārei Taiwhenua) in September 2017 to support and coordinate our shared opposition to the proposed Tūhono Ngāpuhi Mandate proposal for settlement of the time; and have continued hold hui across the wider hapū of Whangārei to discuss matters of shared importance to the diverse hapū of Whangārei.

The name Matakīrea was given to the working group from Kaumātua of Te Waiariki, Hori Parata.

Our presentation approach:

As Ngā Matakīrea we stand to promote and advocate for a staged approach for the Constitutional Inquiry:

Whakatakoto Manuka

LEGITIMACY | BRANDON, KIRI NEHUA

- Legitimacy of Crown's acquisition and exercise of sovereignty including kāwanatanga
- Modes of acquiring sovereignty and debunk the 'how'
- Illegitimate sovereignty vs He Whakaputanga / Tiriti-based constitution

CONSTITUTIONAL HIERARCHY | MARK NGAHOIA SCOTT

- Meaning and interpretation of articles of He Whakaputanga and Te Tiriti
- Relationship between kāwanatanga and tino rangatiratanga (as defined by He Whakaputanga and Te Tiriti o Waitangi)
- What is appropriate kāwanatanga?

RESPONSE TO THEMES | NICKI WAKEFIELD

- Seeking finding before progressing to a stage 2 of the inquiry: that the Crown's acquisition and exercise of sovereignty is illegitimate
- Brief response to and reframing of themes, establishing a hierarchy of themes built on any findings on the legitimacy of the sovereignty the Crown exercises today

FUTURE CONSTITUTION, HAWAIKI HOU | JADE KAKE

- Brief review of moves towards new constitutional arrangements at a national or a tribal rohe level
- Transformative (vs reformative) view on current constitutional structure, including critique (and extension) of models set out in Matike Mai
- Begin to set out some high level principles for the design of future constitutional arrangements based on He Whakaputanga and Te Tiriti o Waitangi

HE WHAKARĀPOPOTO | HUHANA LYNDON

- Review key messages

PANEL DISCUSSION | Q+A with Tribunal and Whare

LEGITEMACY | BRANDON NEHUA

Tēnā tātou e te whare

E tautoko ana ahau i ngā mihi kua mihi me ngā kōrero kua kōrerohia i mua i ahau

Ko Huruiki te maunga
Ko Puhipuhi te whenua
Ko Whakapara te awa
Ko Whakapara te marae
Ko Ngāti Hau te hapū
Ko Ngāpuhi me Ngātiwai ngā iwi
Ko Hongi Hika me Patuone me Te Wharerahi ngā tūpuna
He mokopuna ahau o he Whakaputanga me te Tiriti
Ko Brandon Patuone Nehua tōku ingoa
Tihei wā mauri ora

Core issue of legitimacy

I stand here today to talk about one issue, and one issue only, and that is legitimacy.

The single most important issue in this inquiry is whether or not the Crown (including the government and its three branches of legislature, executive and judiciary) has ever legitimately acquired sovereignty in this country.

The exercise of sovereignty by the Crown denies Māori tino rangatiratanga. Every law made by the government and imposed on Māori is a denial of Māori tino rangatiratanga. Every interpretation of law made by the courts and imposed on Māori is a denial of Māori tino rangatiratanga. However, the laws themselves are merely symptoms and the core issue is whether or not the Crown has the constitutional authority to impose any laws on Māori in the first place. If the Crown has never legitimately acquired sovereignty in this country then it has no constitutional authority to impose any laws on Māori. Moreover, if the Crown has never legitimately acquired sovereignty in this country then the Crown (including the government and its three branches of legislature, executive and judiciary) is illegitimate and all its laws are unlawful.

This is why it is imperative the Tribunal in this inquiry makes a specific finding on whether or not the Crown has ever legitimately acquired sovereignty in this country and, if so, when and how.

Ko tēnei te take nui o te kaupapa nei.

WAI 1040

In Stage 1 of the Te Paparahi o Te Raki Inquiry (WAI 1040), the Tribunal concluded: “The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain.”

We absolutely agree with this conclusion and it does not need to be relitigated in this inquiry. However, cession is only one mode of acquiring sovereignty recognised under international law. Other modes of acquisition recognised under international law include discovery, occupation, conquest and prescription. In addition, there may be other means by which the Crown asserts it has legitimately acquired sovereignty.

Many thought the Tribunal would address the core issue of legitimacy in Stage 2 of WAI 1040. However, this did not happen and the Tribunal stated: “... we have not identified precisely when the sovereignty the Crown holds and exercises today was acquired, nor have we considered its legitimacy in a contemporary context – those questions may feature in the Waitangi Tribunal’s forthcoming kaupapa inquiry into constitutional issues.”

We, therefore, respectfully request the Tribunal in this inquiry to make a specific finding in relation to the core issue of legitimacy.

Kua tae te wā. Ko tēnei te wā.

Our position

Our position is the Crown has never legitimately acquired sovereignty in this country whether by discovery, occupation, cession, conquest, prescription or any other means. The exercise of sovereignty by the Crown is ultra vires and breaches te Tiriti, international law, UNDRIP and tikanga Māori.

Discovery and occupation

A key requirement of the discovery mode of acquiring sovereignty is occupation. Discovery, without occupation, is insufficient to establish sovereignty over territory. A key requirement of the occupation mode of acquiring sovereignty is that the territory must be terra nullius, that is, it must not be subject to the sovereignty of any State. The Crown has never legitimately acquired sovereignty in this country by discovery or occupation because this country was never terra nullius at any relevant time, as Māori had sovereignty at all relevant times.

Cession

Under He Whakaputanga, our tūpuna declared they (and only they) held the highest possible constitutional authority in this country (“rangatiratanga”, “kingitanga” and “mana i te wenua”) and, under te Tiriti, our tūpuna retained the highest possible constitutional authority in this country (“tino rangatiratanga”) and delegated a subordinate authority to Britain (“kāwanatanga”) to govern its subjects only, not Māori. Kāwanatanga is the only authority the Crown has ever legitimately acquired and kāwanatanga is not sovereignty. Tino rangatiratanga and kāwanatanga are separate and not equal authorities and kāwanatanga is ultimately subject to tino rangatiratanga. This is the nature of delegated subordinate authority and this is the only legitimate constitutional hierarchy in this country. The Crown never legitimately acquired sovereignty by cession under Te Tiriti.

Conquest

Two key requirements of the conquest mode of acquiring sovereignty are that the territory must have been taken and occupied by force during war and control over the territory must have been uncontested. The Crown has never legitimately acquired sovereignty in this country by conquest because only a small part of this country has ever been obtained by the Crown as a result of war and Crown control has always been contested.

Prescription

A key requirement of the prescription mode of acquiring sovereignty is acquiescence, that is, acceptance of sovereignty must be peaceful and uninterrupted. The Crown has never legitimately acquired sovereignty by prescription because Māori have never acquiesced to the Crown’s usurpation of sovereignty, as evidenced by the many protests, resistance movements, wars, court cases and other actions by Māori, over the last 185 years.

In this inquiry, the Crown should clearly articulate when and how it asserts it legitimately acquired sovereignty in this country so its assertions can be thoroughly assessed by the Tribunal. Any assertion by the Crown that “sovereignty is our prerogative” or “we acquired sovereignty because we said so” is not a legitimate means of acquiring sovereignty.

Conclusion

In conclusion, addressing the core issue of legitimacy should not be difficult from a legal, moral, ethical or good faith perspective. It only becomes difficult from a political perspective, as it exposes and threatens the Crown and its accomplices. The Tribunal must therefore be courageous; not only for Māori, but for everyone in this country. We will never be able to realise our full potential as Māori or as a nation, until the core issue

of legitimacy is addressed. The disinformation of Crown sovereignty and denial of Māori tino rangatiratanga must stop.

Nā reira, kia kaha koutou otirā kia kaha tātou katoa i roto i te tika me te pono me te aroha. Tēnā koutou, tēnā koutou, tēnā tātou katoa.

CONSTITUTIONAL HIERARCHY | MARK NGAHOIA SCOTT

Kaupapa Inquiry into Constitutional Transformation Kupu Whakataki | Introduction

- The kaupapa of Tomokia ngā tatau o Matangireia is framed as an exploration of constitutional matters. I reiterate the words spoken before me that we assert that this inquiry must first and foremost address the single most critical issue underpinning all Māori-Crown relations: the legitimacy of the Crown’s assertion of sovereignty.
- Every exercise of power, every piece of legislation, and every denial of *tino rangatiratanga* flows from this foundational claim. We join the chorus who contend that the Crown—including the government and its three branches of legislature, executive and judiciary—has never legitimately acquired sovereignty in these islands of *Māui Tikitiki a Taranga* by any recognised mode under international law, tikanga, or the terms of its own agreement, Te Tiriti o Waitangi. Its exercise of power is, and has always been, *ultra viresi*.

Te Hiranga Ture | Constitutional Hierarchy

- On the matter of constitutional hierarchy that flows from the foundational texts of He Whakaputanga o te Rangatiratanga o Nū Tīreni (He Whakaputanga) and Te Tiriti o Waitangi (Te Tiriti). It builds upon the critical evidence presented to this Tribunal regarding the illegitimacy of the Crown’s acquisition of sovereignty. Given that the Crown has never legitimately acquired sovereignty through cession, conquest, occupation, or prescription, I will examine the profound implications for the constitutional structure over these Islands of *Māui Tikitiki a Taranga*.
- The core issue is not merely one of historical breach, but of an ongoing and imposed constitutional hierarchy that is fundamentally false.

Te Hiranga Ture i Whakaturehia e te Karauna | The Hierarchy Imposed by the Crown

- The Crown exercises a constitutional model of its own invention, which it has imposed without consent. This model asserts a hierarchy where the Crown's assumed sovereignty sits at the apex, with the *tino rangatiratanga* of hapū subordinated beneath it as a delegated or limited right, subject to ultimate Crown authority.
- This hierarchy is the source of all subsequent Treaty breaches. It is the legal fiction used to justify the alienation of lands, the suppression of tikanga, and the ongoing denial of our self-determination. It is, as we have heard, a hierarchy built on a foundation that is *ultra vires*—beyond any legitimate power the Crown ever acquired.

Te Hiranga Ture i Whakaahuatia e ō mātou Tūpuna | The Hierarchy Envisioned by our Tūpuna

- In stark contrast to the Crown's imposed model, the constitutional hierarchy articulated in He Whakaputanga and Te Tiriti is clear, logical, and legitimate:
- He Whakaputanga as the Declaration of the Supreme Authority: In 1835, our tūpuna declared to the world that the highest constitutional authority—the *rangatiratanga* and *kīngitanga*—resided solely and exclusively in the collective of hapū, *Te Whakaminenga o ngā Hapū o Nū Tīreni* (Te Whakaminenga). This was the established sovereign state.
- Te Tiriti as the Grant of a Subordinate Authority: It is well documented and you've heard again from the speaker before me, that in 1840, our tūpuna did not cede this sovereignty. Instead, in Article 1, they granted *kāwanatanga*—a delegated and limited authority to the British Crown to govern its own people within the country. This was a pragmatic creation of a subordinate government for a specific purpose.
- Article 2 as the Reaffirmation of the Supreme Authority: The guarantee of *tino rangatiratanga* in Article 2 was a deliberate and powerful reaffirmation of the pre-existing, inherent sovereignty declared in He Whakaputanga. It was the retention of all that we are and all that we have.
- Therefore, the only legitimate constitutional hierarchy is one where:
 - Tino Rangatiratanga is the supreme, enduring, and inherent sovereignty of hapū.
 - Kāwanatanga is a delegated, subordinate authority that is ultimately subject to the *tino rangatiratanga* from which it derives its limited legitimacy.

Te Āhua o te Kāwanatanga Tika | The Nature of an Appropriate Kāwanatanga

- An appropriate kāwanatanga therefore would have understood and operated within its delegated limits as an authority to govern the Crown's own subjects and to administer the common good between communities, *not* an authority to govern *Te Whakaminenga o ngā Hapū o Nū Tīreni* or to extinguish our *tino rangatiratanga*.
- The Crown's persistent failure to confine itself to this appropriate sphere is according to hapū is the primary cause of constitutional conflict.
- We explicitly oppose interpretations that visually and conceptually misrepresent this relationship and model that suggests a large area of "shared" or "overlapping" sovereignty, which inherently diminishes the sphere of *tino rangatiratanga* and creates a conceptual space where Crown sovereignty can dominate:
- The Crown, in its historical submissions, often leaned on interpretations that resembled this model. They argued that the overlap was large and that in this "shared space," the Crown's *kāwanatanga* (framed as sovereignty) could rightfully constrain Hapū *tino rangatiratanga* for the "public good." This was used to justify extensive Crown legislation over Māori lands and resources.
- For claimants, this model was flawed because it:
- *Implied Equality: It visually presented two circles of similar size, suggesting kāwanatanga and tino rangatiratanga were equal and parallel powers. Claimants argued that tino rangatiratanga was the pre-existing, inherent sovereignty, while kāwanatanga was a delegated and subordinate authority. A hierarchical model, not an equal Venn diagram, would be more accurate.*
- *Created a "Back Door" for Crown Supremacy: The "shared space" was viewed as a Trojan horse. However the overlap was defined, the Crown consistently used its power to unilaterally decide what fell into that space and to then impose its own will within it, effectively making its authority supreme.*
- *Contradicted He Whakaputanga: For the rangatira of Te Paparahi o te Raki, their sovereignty had already been declared in 1835 in He Whakaputanga. Te Tiriti in 1840 was not about creating a new "shared" sovereignty but about allowing a subordinate governor (kāwana) to control British subjects.*
- This model is a tool of colonial reconciliation that preserves the myth of Crown supremacy. It is incompatible with the clear, hierarchical relationship of paramountcy and delegation established in our founding constitutional documents. A delegated authority does not "share" power with the sovereign from which it is delegated; it exercises a specific mandate subject to that sovereign authority.

Te Whakatepe | The Implications

- The conclusion is inescapable. If the Crown has no legitimate sovereignty, then the entire constitutional edifice it has built is illegitimate. The hierarchy must be inverted to reflect the true legal and constitutional relationship: the paramountcy of hapū *tino rangatiratanga* and the subordinate, delegated nature of *kāwanatanga*.
- This is not a theoretical discussion for a future constitution; it is a statement of the constitutional reality that has been denied for generations. Recognising this true hierarchy is the essential prerequisite for any just and lasting relationship between Māori and the Crown.

Kupu Whakakapi | Conclusion

- The Crown's exercise of sovereignty is not merely a breach of Te Tiriti; it is an act of constitutional fraud that depends on a false hierarchy.
- Our tūpuna established a clear order: *tino rangatiratanga* is paramount, and *kāwanatanga* is subordinate. The Tribunal must have the courage to affirm this truth.
- Until the false hierarchy of Crown supremacy is dismantled, and the legitimate hierarchy of *tino rangatiratanga* is restored to its proper place, no other inquiry, no settlement, and no future constitutional arrangement can be considered just or founded in the rule of law.

RESPONSE TO THEMES + STAGED APPROACH | NICKI

He mihi poto

He reo mihi ki te tēnei whenua ko Waitangi Te Tii
Ki te hunga mate haere mai haere ki te moenga roa. Kua oti te mahi whakahaere nga
kereme o ngā hapū o Ngāpuhi. Haere haere haere atu ra
Huri ki nga whanau ora kua haere ai te mahi te whawhai tonu ake ake ake
Te Tripunara tena koutou - te whanau kua haere mai mauri ora ki a koutou
Tu ake au he uri o nga tini hapū o te rohe o Whangārei Terenga Parāoa
Tu kotahi ahau ki te taha o taku hoa haere ki te taha o “Ngā Matakirea”
Mauri Ora

Tautoko for our primary issue and position on legitimacy

I am a hapū member of the many tribes of Whangārei and stand with confidence to support our position

In addition to the points made by my fellow Matakirea on this point, I stand to expand on this issue of illegitimate kāwanatanga. Tangata Whenua, whanau, hapu, iwi continued participation and recognition for the Crown is built on the foundation of duress and denial of Tino Rangatiratanga.

This duress has been upon our tupuna since signing 1840, it quickly became violent forms of oppression here in the north, well before the Northern Wars of 1844-45. Violent duress upon tino rangatiratanga is not only a breach of Te Tiriti. It is genocidal. Breaches of internationally recognised human rights continue today and I mihi to the reports published just over a year ago outlining ongoing torture in state care, of our mokopuna. Our position is this duress continues today.

From 1840 until today, successive breaches and duress has put Kawanatanga and today's constitutional laws, norms, and our unwritten constitution of Aotearoa New Zealand in an illegitimate and repugnant place.

Electoral systems, citizenship, local government and any delegations from kawana to not only local government but other companies like Kainga Ora and legislations are established on this foundation of duress and no informed consent. We look forward to research, hearing evidence and kōrero across the range of issues and themes and eventually the Tribunal making findings on these issues.

However, we are reluctant to bring focus to the constitutional breaches of today's kāwanatanga in a piecemeal approach on matters. We wish to go to the core issue first

- to understand the legitimacy of Parliamentary sovereignty and today's constitutional system.

To understand if Kawanatanga has any authority to impose laws upon Māori - and if so - upon what themes and was that power acquired.

Each issue is important but sit secondary to the core issue

We are here in the hope to gain affirmation of this position no tribunal has formed findings upon legitimacy of crowns exercise of sovereignty. The issues groupings which relate to kawanatanga built systems will be engaged from this position of illegitimate kawanatanga from our roopu.

And to elaborate on this...

On the proposed inquiry issue of Tino Rangatiratanga, Mana Motuhake and self governance.

We understand the scope of the WT is to inquire into Crown Breaches of Te Tiriti o Waitangi. We are not sure why WT is seeking evidence and positions on Tino Rangatiratanga and so on.

Let us also point out, today's expressions and understandings of Tino Rangatiratanga are examples of the context of the day. Front of mind is that Today's diverse expressions of Tino Rangatiratanga are build on foundations of duress and denial. We live in a world still today that will incarcerate our people when expressing collective Tino Rangatiratanga. we don't want to enable this panel to make comment on validity of Tino Rangatiratanga in today's or yesterdays context.

Our stage one finding stands affirming sovereignty was not ceded at 1840 and has not been ceded since. there is a significant evidence based to rely upon in hapū, kainga, marae and whanau.

Further, we do not believe, that it is the role of this inquiry to determine what an appropriate future constitutional system for Tino Rangatiratanga spaces may look like - rather the WT scope is focussed on Kawanatanga - its breaches of Te Tiriti.

Our reluctance to engage on these issues should not be taken as a concession on the other issues of parliamentary practices and constitutional conventions.

A STAGED APPROACH IS REQUIRED

Here in the north We have a fair bit of experience in engaging with the WT on this critical issue. WAI1040 started with the Ngapuhi Inquiry Design Group. Some morehu of that process c.2008 are in the room today in person, and on the walls of the whare here at Te Tii.

This was in the time before Sir Patu Hohepa initiated the name for our 'district' inquiry, as Te Paparahi o Te Raki, this design group brought together our wider claimant whanaunga inside and outside the four walls of Te Wharetapu o Ngapuhi. Our WAI1040 inquiry followed a path set by this design group which began with Stage One. Four hearing weeks 2010 and 2011.

Stage One, entirely focussed on the meaning and effect of He Whakaputanga me Te Tiriti o Waitangi at 1840. Stage Two, follows with the long journey of Crown Breaches of Te Tiriti o Waitangi following 1840.

Our aspirations for this Waitangi Tribunal process, are to progress beyond our Te Paparahi o Te Raki stage one finding and pursue a Tribunal finding on the legitimacy of Crown sovereignty.

This task was given to you by our WAI1040 panel.

In stage 2 volume 1 report, the panel was explicit "we have not identified precisely when the sovereignty the Crown holds and exercises today was acquired, nor have we considered its legitimacy in a contemporary context – those questions **may** feature in the Waitangi Tribunal's forthcoming kaupapa inquiry into constitutional issues."

Our position is that this panel MUST first consider when, and how the Crown legitimately acquired sovereignty - if at all - before considering issues such as human rights, electoral systems,

Today, we place on the floor for wananga, for tautoko - that this inquiry brings focus to this legitimacy issue. And that is heard in depth and alone at the first stage of this inquiry. And that findings on this are available to us before we engage with the secondary issues.

Closing off on the comments on the variety of issues and how to progress this inquiry, we acknowledge that a key purpose for engaging in this inquiry is to bring appropriate honourable kawanatanga for future mokopuna and removal of the duress upon Tino Rangatiratanga

HAWAII HOU | Future Constitution | Jade Kake

1. Omission of New Zealand from the global move towards decolonisation

- 1945 | United Nations charter, the founding document of the United Nations, was signed. The principle of “equal rights and self-determination of peoples” was stipulated in Article 1 (2) of the Charter of the United Nations, as well as from three specific chapters in the Charter which are devoted to the interests of dependent peoples. The Charter established, in its Chapter XI (“Declaration regarding Non-Self-Governing Territories”, Articles 73 and 74), the principles that continue to guide the decolonization efforts of the United Nations.
- 1952| Bluewater/saltwater thesis¹
 - The “blue water rule”—also known as the “Belgian Thesis” or the “Salt Water Thesis”— was adopted by the UN on Dec 16, 1952, in Resolution 637 VII.
 - The blue water rule asserts that: ... to be eligible for decolonization, the presence of “blue water” between the colony and the colonizing country or a discreet set of boundaries would be needed.
 - The so-called “blue water rule” emerged in the UN resolution after Belgium decided to give up its colonial possessions and attempted furthermore to move the United States to “decolonize” American Indian nations by permitting self-determination to be applied to these native peoples.
 - Under UN Resolution 637 VII the world’s states have agreed that nations located inside UN member states may not seek or obtain independence through self-determination.
- Since 1945, more than 80 former colonies have gained independence. Among them, all 11 Trust Territories have achieved self-determination through independence or free association with an independent State. Former Non-Self-Governing Territories ceased to be on the list of Non-Self-Governing Territories due to their change in status or as a result of their choice of independence, free association or integration with an independent State. Today, there are 17 Non-Self-Governing Territories remaining and fewer than 2 million people live in such Territories.
- New Zealand as a colonial nation was considered an administering power (alongside the settler-colonies of the United States, South Africa, and Australia, and the European colonial powers of Belgium, Denmark, France, Italy, the Netherlands, Spain, Portugal, and the United Kingdom).

¹ <https://cwis.org/2017/10/the-blue-water-rule-and-the-self-determination-of-nations/>

- New Zealand former colonies include Cook Islands, Niue (which are now territories in free association), and Samoa (which gained independence in 1962).

2. International examples

- Greenland²
 - o 1721 | Colonised by Denmark
 - o 1945 | Denmark ratified the Charter of the United Nations
 - o 1946 | Denmark reported Greenland as a colony to the United Nations
 - o 1948-50 | Greenland modernisation scheme
 - o 1979 | “Home Rule”, or autonomy limited to some internal matters granted by Denmark. Greenland Home Rule Act 1978.
 - o 2009 | Self-governing status. Greenland Self Government Act 2009.
 - o June 2009 | the government of Greenland made Greenlandic the sole official language of the autonomous territory. Language spoken by 85–90% of the total population.
 - o Population – 89.7% Inuit.
 - o 2023 | Greenland’s Constitutional Commission introduced its proposed constitution for Greenland (Commission’s draft) in preparation for the island territory to pursue independence from Denmark.³
 - o Draft constitution highlights – affirms Inuit as Indigenous peoples, collective rights, and the inalienable principle of common ownership of land, sea and resources.⁴ No monarchy, but some critiques not that proposed governance arrangements otherwise largely reflect Danish system.
- Bolivia⁵
 - o 16th century – Colonial Era (Spanish colonisation)
 - o 500 years of struggle
 - o October 1999 | Bolivian government passed Act No. 2029, which ensured a legal means to privatise the water resources within the city of Cochabamba

2

<https://unric.org/en/greenland-and-the-un-colony-or-not-a-colony-that-was-the-question/#:~:text=Since%202009%2C%20Greenland%20has%20been,place%20in%20the%20capital%20Nuuk.>

<https://nordics.info/show/artikel/the-danish-decolonisation-of-greenland-1945-54-1>

3

<https://www.maastrichtstudentlawreview.com/post/greener-grass-an-analysis-of-greenland-s-draft-constitutions-and-history-of-greenlandic-home-rule-g#:~:text=In%202023%2C%20Greenland's%20Constitutional%20Commission,independence%20process%20has%20progressed%20lethargically.>

⁴ <https://tikatangata.org.nz/news/speech>

⁵ <https://erich-arbor.medium.com/what-does-decolonization-look-like-ask-bolivia-b97f8bddd565>

- o December 1999 | a burgeoning party the *Movement for Socialism–Political Instrument for the Sovereignty of the Peoples*, whilst receiving 3.27% of the national vote, received more than 70% of the municipal vote within Cochabamba that year.
- o April 2000 | The government repealed Resolution 2029 after coordinated organising and sustained protest.
- o From Cochabamba onwards, MAS and its party leader Evo Morales gained traction on a national scale, representing a powerful popular force for Indigenous rights, national sovereignty against imperialism, and socialism.
- o 2005 | Evo Morales elected President by a record-setting margin.
- o 2009| New Constitution⁶ – Pachamama (equivalent to Papatūānuku) acknowledged in preamble⁷; the rights of Indigenous peoples to autonomy, self-government, their culture, recognition of their institutions guaranteed within the framework of the state; all 36 native languages recognised; Indigenous cultural values adopted and promoted; Indigenous knowledge, worldviews, history, dances, cultural practices, traditional technologies, and traditional medicine are protected, safeguarded and uphold; a multitude of human rights, such as the right to healthcare, potable water, education, and a clean environment. Democracy considered under a variety of forms, including communal, pursuant to the norms and procedures of the native Indigenous nations and peoples.
- o Following the passage of the new constitution, Evo Morales appointed a Vice Ministry of Decolonization, with Félix Cárdenas Aguilar as Bolivia’s Minister of Decolonization.
- o Population – Indigenous peoples estimated to be 59% of Bolivia’s total population, with Whites/Mestizos group estimated to be about 41%.⁸

3. Matike Mai and beyond

- Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation published in 2016
- This report is the result of 252 hui between 2012 and 2015.
- Reaffirmed constitutional foundation of He Whakaputanga, Te Tiriti o Waitangi, and the UN-DRIP.
- Draws on international precedents, including Bolivia.

⁶ https://www.constituteproject.org/constitution/Bolivia_2009.pdf

⁷ Note: In the case of Ecuador, the seventh chapter of its new constitution is entitled “Rights of Nature.” This document establishes Pachamama as a legal entity for the first time in history, stipulating the right to an integral respect for nature’s existence and for the maintenance and regeneration of its life cycles, structures, functions, evolutionary processes, and restoration. The new constitution was approved in 2008 after a referendum, with nearly 64 percent of votes in its favor. At present, the Ecuadorian constitution is the only one in the world where this kind of recognition exists.

<https://www.environmentandsociety.org/arcadia/constitution-republic-ecuador-pachamama-has-rights>

⁸ <https://growup.ethz.ch/atlas/pdf/Bolivia.pdf>

- Consider Māori values underpinning any new constitutional arrangement.
- Six different models of a new constitutional arrangement identified.
- Models explore various power sharing arrangements, but do not consider a model where tino rangatiratanga is considered as the upper house or overarching constitutional power.
- Matike Mai also stops short of the practical steps towards the implementation of these new constitutional arrangements – which could be a positive outcome of this inquiry.

4. Potential principles for a future constitutional arrangement

- Reaffirm and elevate constitutional status of He Whakaputanga and Te Tiriti o Waitangi.
- Constitutionally enshrine rights and responsibilities established through He Whakaputanga and Te Tiriti o Waitangi through the enactment of laws.
- Codify decolonisation into law and establish the frameworks through which the state can be transformed to undo the systematic oppression experienced by Māori.
- Consider international precedents and critiques which highlight the limited capacity of constitutional reform to address colonial legacies in the development of new constitutional arrangement.
- Beyond Matike Mai – work through practical next steps towards implementation of these new constitutional arrangements.

CLOSING COMMENTS | HUHANA LYNDON