OFFICIAL

IN THE WAITANGI TRIBUNAL

WAI 1040
WAI 1259

IN THE MATTER of The Treaty of Waitangi Act 1975

AND

IN THE MATTER of Pairama Tahere for Te Uri o Te Aho Hapu

BRIEF OF EVIDENCE OF PAIRAMA TAHERE ON BEHALF OF TE URI O TE AHO HAPU - WAI 1259 CLAIMANTS TO BE TAKEN AS READ (WEEK 4) OF THE WAI 1040 TE PAPARAHI O RAKI INQUIRY

Dated: 27th September 2010

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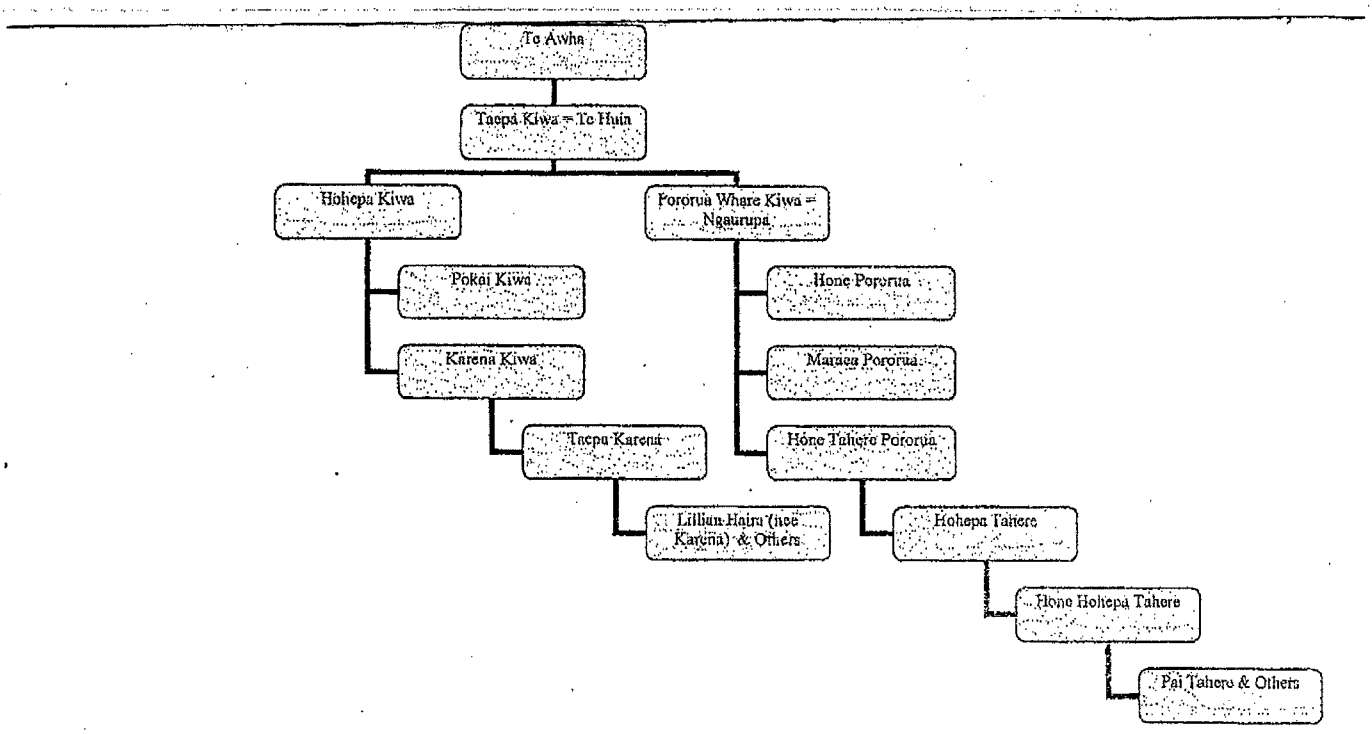
MAY IT PLEASE YOUR HONOUR: I Pairama Tahere of Mangamuka, farmer present this brief of evidence as Claimant on behalf of Te Uri o Te Aho hapu. The hapu though their Counsel advised the Tribunal in May 2010 of their desire to have their claim heard as part of the WAI 1040- Te Paparahi o Te Raki Inquiry and this was endorsed by Te Kotahitanga o Ngapuhi from the very earliest stages.

Authority and Whakapapa:

1. My authority to make this presentation has the tautoko of elder kaumatua and kiua of the hapu who acknowledge that I am a direct descendant, through my father, of the tupuna Taiapa Kiwa whose son was Pororua Whare Kiwa.

2. My whakapapa was lodged with the claim to the Waitangi Tribunal in March 2005 (WAI 1259,#1.1) and I repeat it here for the convenience of the Tribunal and the Crown:



3. Pororua's mother was Huia, a sister to Poroa. Poroa was a leading rangatira of Te Rarawa iwi. One of the effects of Pororua's marriage to Huia was to produce a strong alliance between Ngapuhi and Te Rarawa leadership in Pororua's and Poroa's time. Pororua was raised by his grand parents, hapu kaumatua and kuia, as well as his parents. He was put through mana kura schools of leadership training from an early age and in due course took on the leadership of Te Uri o Te Aho hapu

(over his elder brother, Hohepa Kiwa) and he took the reins from none other than Te Hotete (Hongi Hika's father). Te Hotete had in fact inherited his leadership of the hapu from Te Awha, following that tupuna's death on the battlefield at Matauri Bay. Pororua was Te Awha's grandson so in essence the hapu leadership was remaining in the same rangatira bloodline.

4. Pororua Whare Kiwa "Pororua" in his later years was known as Pororua Whare Kauri and it is this later name that is recorded in the earliest Monganui land sale deeds to Eurpoeans pre-dating Te Tiriti. It is my opinion and belief that the adoption of "Kauri" in place of Kiwa signified Pororua's subsequent rise in status and mana to hapu leader . This type of name change was not common but not unkonwn in the north where a hapu wished to acknowledge the high status of a particlar rangatira. A similar example is paramont chief Re TeTai of Waihou- Panguru who in later years was also known as "Te Maunga". These names that were bistowed on these rangatira by the hapu were in turn used by Europeans that came in contact with them in those later years.

5. From the 1830's to the late 1860's Pororua's mana and his authority extended from Oruru in the north to Kohumaru in the south and across to Maungataniwha in the west[1]. In the late 1830's to mid 1840's Nopera Panakareao " Panakareao" disputed Pororua's authority over Monganui. Panakareao obtained his mana from Poroa and claimed Oruru and Monganui on behalf of Te Rarawa. Pororua disputed Panakareao's claim in unequivical terms and maintained that stance until he died[2].

6. The northern boundary of authority between Panakareao and Pororua was never formally settled though they came very close to a full blown battle over the issue. However, I reiterate our hapu korero i tuku iho is that Pororua's claim over at least the southern part of Oruru (Peria area) and Monganui area was affirmed by Ngapuhi residence after the battles Te Rarawa and Ngapuhi had fought in driving out Ngati Pou from Whangaroa and some of Ngati Kahu resident in Northern Whangaroa and from Oruru and Monganui. This occurred in Te Hotete's time of leadership and Poroa's for Te Rarawa. It is important to note however that Hongi Hika with his warriors from Pewhairangi was also there in full force supporting his father. Some of Ngati Kahu were to remain in Oruru, though being defeated in battle by Ngapuhi and Te Rarawa. So great was the slaughter of warriors (Over 1000 were sleign, and Ngapuhi and Te Rarawa lost an additional 400) that many of those that remained from the enermy camp were the women folk, children and elderly. Te Uri o Aho acknowledge that Ngati Kahu remained in the Oruru to Monganui area but under under the grace and mana of Te Hotete and then later Pororua.

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1 Muriwhenua report 1991: Internal and external challenges and Pororua, p38.
2 Ibid at p38.

Pororua had fought alongside his father and then TeHotete in the battle to oust Ngati Pou and Ngati Kahu. Many wahine of Nagti Kahu married into Ngapuhi (Pororua himself married Ngaurupa of Ngati Kahu).Nowadays the blood lines of Ngati Kahu, Ngapuhi and Te Rarawa are inseparable. In Panakareao's time he also pushed Ngapuhi back from Oruru but was content to leave Ngati Kahu from whom his father descends there and return again to reside in Kaitaia. The Muriwhenua report records that Panakareao in his leadership years never regarded Ngati Kahu as being defeated north of Whangaroa[3].

7. Pororua's claim that Oruru and Monganui were part of their hapu land through conquest (ringakaha) and then occupation and maintenance of ahikaa has been told from generation to generation down to the present day. In later years Pororua reasserted his mana over Oruru valley by detroying all the pa sites of various hapu of Te Rarawa from Oruru through to Victoria valley. Further exercise of his mana in these areas was sign by charging archorage fees and watering fees to ships visiting Monganui. The also admitted sawyers onto hapu lands around Monganui to harvest kauri[4].

8. In Pororua's life-time his mana and authority as leader of Te Uri o Te Aho hapu was never succeeded by younger rangatira of his hapu. That respect accorded to him was in recognition of his staunch adherence to Maori ways, of his upholding the mana of his hapu against others who thought to encroach on the hapu's lands, or steal their resources.

Te Uri o Te Aho Rohe and Kainga:

9. The traditional rohe of Te Uri o Te Aho was in Monganui but extended from Oruru (Peria Valley) in the north to Upper and Lower Kohumaru which was south of Tapia, and from Maungahautoa maunga on the southern end in Kohumaru and from there eastwards to Maungataniwha and east again to Oruru. The seaward boundary extended from north of Taipa to a line extending from the southern most point of Lower Kohumaru to the coast.

10. The main kainga of Te Uri o Te Aho were in Oruru, Monganui and Kohumaru.

The signing of He Whakaputanga and Te Tiriti

11. Pororua did not sign either He Whakaputanga or Te Tiriti. His refusal was deliberate and our hapu korero i tuku iho is that he

3 Muriwhenua Report 1991, p 79.
4 Ibid at p 53.

refused to do so because he was adamant, he would not allow the mana of another to be exercised over his own, whomever they were. As far as Te Uri o Te Aho hapu were concerned in 1835 and 1840 (and that stance has been maintanined down through the generations to the present) Te Uri o Te Aho was not bound without Pororua's signature, moko or mark irrespective of whether any junior or fledgling hapu rangatira may have signed. Though it doesnt seen as though any did. I therefore state categorically that Te Uri o Te Aho did not cede sovereignty to Queen Victoria or to her representatives of the British Crown. Despite saying this,Te Uri o Te Aho was nevertheless well aware of the activities of Te Whakameninga, and later what was proposed in He Whakaputanga and again in Te Tiriti as Hongi Hika and others who were deeply involved were regular callers on their whanaunga in the hapu. On one occasion before He Whakaputanga was signed Hongi Hika is known to have visited Pororua and his people and was accompanied by Kawiti and Te Wherowhero to debate the political maneuvering that were taking place during those times. One factor that is also significant is Pororua's absence from Te Tiriti signings, was Pororua refused to be baptised or accept the christian faith, preferring to retain his Maori beliefs and follow the teaching of Maori spirituality. Neither Panekareao nor the missionaries in 1840 would have been keen to push Te Tiriti on Pororua or even invite him. It was well known that he could be completely ruthless if he was protecting the integrity of or upholding the mana of his hapu and he was too dangerous a chief to cross or challenge. The evidence of Hami Piripi also suggests that many of the rangatira that signed in Kaitaia under Panakareao's watch were junior and Christian like Panakareao himself. Te Uri o Te Aho hapu say the inference to be made is their was some selectivity in who invitations were extended to.

Hapu Korero:

12. Although Te Uri o Te Aho was not a signatory to Te Tiriti it nevertheless suffered significant losses as a result of Te Tiriti/ The Treaty being signed through the subsequent usurping of its mana rangatiratanga. Losses that were particularly damaging were loss of land in Monganui and Oruru as a result of Old Land Claims Commissions treatment of pre-treaty land transactions. Those transactions were treated as sales which they were not and resulted in those hapu lands being alienated permanently. The fact that those transactions were not sales was affirmed by the Tribunal in the Muriwhenua Report in 1991:
" *As a consequence , the pre-Treaty land transactions were not sales, and at best conferred a personal right of occupation conditional upon acceptance of the norms and authority of the*

local Maori community as represented in the rangatira"[5]. These matters will be addressed in stage two.

13. Te Uri o Te Aho wish to remind the Tribunal that before Te Tiriti was signed the British Parliament were aware of the Maori concepts of land ownership. In 1838 a select committee of the British Parliament received a first hand account from Captain Fritzroy who had recently returned from New Zealand and who made it clear that settlers and missionaries who had bought land in New Zealand held their interests under sufferance subject to Maori land law. Their occupation was subject to ongoing protection of the chiefs and very much dependent on their continuing and useful relationship as part of the Maori community:

The Church Missionaries consider they hold their Lands purchased on Sufferance?
Yes
From which you believe them to contemplate the Possibility of them being taken away?
Decidedly: and I apprehend they consider that they hold their Property entirely at the mercy of the Natives; that their tenure in that Country depends solely on the goodwill of the Natives.
Of course it does, generally speaking, but do you suppose them to be of the opinion that the New Zealanders themselves consider them to hold the Lands they have purchased on Sufferance?
It is a sort of conditional Sale, such as 'We sell them to you to hold the Lands as long as we shall permit you'.
I apprehend it is considered that they hold those Lands under the Authority of the New Zealand Chiefs; that they settle upon them as their own Property; but under the protection and Authority of the Chiefs, and that they look upon the Chiefs as their Protectors, and ,in fact as their Masters.
Do you conceive at the Time that the Purchase is made is not an Understanding between the Missionaries and the New Zealanders, that the Land is entirely given up for positive Consideration?
The use of the Land is certainly; but as the Missionaries have never wholly taken away ground from the Natives, but always allowed them the Run of the Land, the Right of Common as it were, I do not think they at all apprehend at present, that the Day will come when they will not be allowed to go about the Land as they hitherto done; they consider it their Country while it is not transferred from them the Sovereignty of another Power.
Are you aware that the Missionary Society in all their Arrangements speak of Land as a Possession in Perpetuity, and that they recommend to the Missionaries to purchase such Quantities of Land as a Provision for their Children?
Yes, I am quite well aware of that; what I have meant is that they have a Right to hold that Land, or to make any Use of it for their

5 Muriwhenua Report 1991, p392.

own benefit; and that they may act as they please upon the land as long as they acknowledge the New Zealand Chiefs as the Authorities under whom they hold it"[6].
It is with that in mind that Te Uri o Te Aho say that despite what Lord Normanby's instructions and honourable intentions those instructions might have contained[7], or the subsequent guarantees that were expressed in Te Tiriti by the British Crown, or the personal assurances those missionaries engaged by the Crown(Agents):
Henry Williams
"... *Not to be in a hurry but telling them that we, the missionaries, fully approve of the treaty; that it was an act of love towards them on the part of the Queen, who desired to secure to them their property, rights and privileges; that this treaty was a fortress for them against a foreign power which might desire to take possession of their country, as the French had taken possession of Otaiti[Tahiti]"*[8] or the British Resident James Busby gave on behalf of Hobson:
"James Busby... *that the Governor was not come to take away their land, but to secure them in their possession of what they had not sold; that He (Busby) had often told them that land not duely acquired from them would not be confirmed to the purchsser, but would be returned to the natives, to who it of right belonged; that this the Governor would be prepared to do"*[9], the whole process has to be considered against colonisation. The history of Imperial colonisation was of grabbing land. The Imperial mindset was: that every British citizen had an inherent right to Briish law, no matter which country or foreign jurisdiction they resided in.
Te Uri o Te Aho say that the inferrence to be drawn is there was never any intention to honour Te Tiriti and Pororua was suspicious of the British Crown's undelying motives or hidden agenda's from the beginning.

14. Those hidden agenda's included imposing British land law standards to all land acquired by Europeans from Maori and totally disregarded Maori systems of land ownershipor tenure. Te Tiriti was a smoke screen in achieving at least one hidden agenda. The bigger agenda however was to alienate the rest from Maori through the imposition of a colonial government was a means to that end. The threat as far as Pororua and his hapu were concerned was not a French foreign power taking New Zealand as Busby was suggesting but the foreign power that posed the greatest threat was Britain as their citizens were the ones who were present in the north in greatest numbers and thus causing Maori the most strife.

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6 Evidence of captain R Fitzroy, 11 May 1838,'report and Evidence of Select Committee on New Zealand ' BPP, vol 1, pp 173-174.
7 Normanby to Hobson,15 August 1939,CO 209/4:157
8 Williams in Carlton, ed, 1948, p 313.
9 Colenso, 1890, p17.

15. Te Uri o Te Aho tautoko those hapu of Ngapuhi in their assertion their tupuna never ceded sovereignty in signing Te Tiriti. We say Ngapuhi agreed to no more than allowing Hobson limited judical power to contol pakeha residing in their country. In other words they were wanting no more than the services of a British Majestrate not unlike Kendell, or Mc Donnell or even Busby but with a military / naval contingent capable of enforcing and maintaining law and order amongst Pakeha. Those men might also assist Maori themselves in their inter hapu disputes which many rangatira in 1840 acknowledged, in a role as independent mediator in the resolution of those disputes as an when they occurred. As many rangatira in the pe-Treaty discussions alluded to they would never accept a Governor up high while they as rangatira might be down low. No. No. No. The eliquent use of metaphors in their speaches made abundantly clear their position.

16. Te Uri o Te Aho hapu wholehearted tautoko Dr. Patu Hohepa's analysis and interpretation of He Whakaputanga and Te Tiriti and acknowledge him as New Zealands leading linguistic expert.

17. Te Uri o Te Aho tautoko Dr Manukau Henare's evidence that He Whakaputanga and Te Tiriti are part of a "continuing conversation" in a chiefly alliance between Britain and Ngapuhi that began many years earlier.

16. Te Uri o Te Aho hapu say that Lord Normanby's instructions were to obtain the free and intelligent consent from the chiefs to cession of sovereignty. The basis behind those instructions is presumed to be the British Parliaments need to satisfy its own self imposed standards in respect of the lawfulness of its actions in terms of jus gentium (international law). The hapu assert Hobson never achieved free and intelligent consent in 1840 and hence state his proclamation of sovereignty in May 1840 lacked the necessary lawful basis that was required in terms of jus gentium.

Signed: Pairama Tahere Date: 27th September 2010

Pairama Tahere for Te Uri o Te Aho hapu