

The Honourable Dr Pita Sharples
Minister of Maori Affairs
Parliament Buildings
WELLINGTON



The Waitangi Tribunal
141 The Terrace
WELLINGTON

6 April 2009

E te Minita o ngā Takē Māori

Tēna koe e tu nei i te kei o te waka, e whakatinana nei i ngā tumanako, e whakatutuki nei i ngā wawata a te iwi Māori. Ki ngā tini mate haere rā e te aumangea, puawhiowhio atu ki te nohopukutanga o te tangata ki te whare ahuru o tuawhakarere.

Tihei Mauriora.

This part of the report opens with a description of Te Urewera communities today. It gives an account of the origins of the Maori people of our inquiry district, their settlement of Te Urewera, and their development over generations as hapu and iwi by the time of substantial contact with Europeans in the 1860s. We discuss the core beliefs and values of the people and the exercise of authority in traditional Te Urewera society to help to explain how its peoples responded to the challenges of contact and the operations of new institutions of government and law within their rohe. We would draw your attention in particular to the importance to Tuhoe, over many generations, of mana motuhake. It was clear to us from their sustained explanations that this is hardly a recent slogan, as some might assume. Rather, the urge for independence and the determination to secure their own destiny, so that their customs and beliefs – and thus their identity – can be protected, has long been intrinsic to the Tuhoe way of life.

The Maori people of Te Urewera were not offered the opportunity to sign the Treaty of Waitangi and did not sign it. One of the claims before us, the Tuhoe ‘constitutional claim’, concerns the Treaty implications of this absence of consent to the Treaty. In chapter 3, we discuss the relevant facts and their Treaty implications through to 1865. The Crown and claimants agree that in 1840 the Crown undertook Treaty obligations to all Maori, whether or not they had signed the Treaty. We uphold the claimants’ view, however, that since their tipuna knew nothing of the Treaty, it could not, in any real sense, take effect to bind them to its terms. Article 2 promised to protect their tino rangatiratanga and, in Tuhoe terms,

mana motuhake. We shall return to this issue at appropriate points in the later parts of our report.

Chapter 4 concerns confiscation in the eastern Bay of Plenty. The district involved in the whole of that confiscation can be generally described as the land north of a line running from approximately Opotiki through Putauaki (Mount Edgecumbe) and slightly further west, and then north to Otaramarakau. Tuhoe's customary rights and interests in the confiscation district were extensive, though not exclusive. For the sole purpose of facilitating negotiation, we have assessed Tuhoe's rights and interests as a percentage of total interests within the confiscation district. To this end, we have identified two adjacent zones – to the north and the south of a line drawn across the confiscation district and through Puketi and Whakarae – where Tuhoe's rights were markedly different. In the area to the south of that line, we consider Tuhoe have a 90 per cent interest. In the area to the north of Puketi and Whakarae, where Tuhoe shared rights and interests with other iwi, we consider Tuhoe have a 30 per cent interest. Based on these assessments, Tuhoe's interests within our inquiry district may be represented in acres by a figure of 59,655 acres (24,147 ha). This amounted to about half of Tuhoe's best fertile land, of the kind suitable for development in the colonial economy. Its loss had serious long-term impacts on the iwi.

We note that this confiscation was probably unlawful, as the law then stood. We found that it was certainly in breach of the principles of the Treaty, as the Crown conceded in our inquiry. The land was taken for resistance to the East Coast Expeditionary Force, which landed in Opotiki in 1865. The Crown sent the force following the killing of the missionary Carl Sylvius Völkner and a number of others in the eastern Bay of Plenty. Tuhoe were not involved with these killings or in the resistance to the force. The Crown did not intend to punish Tuhoe, but it took their land anyway. When it became clear that Tuhoe claimed a significant part of the confiscated land, the Crown had a number of mechanisms available to return land to them. It could simply have abandoned its claim or returned land through its special commissioner or compensated Tuhoe through the Compensation Court. Tuhoe, however, were not successful – as they should have been – in that court, which was designed as a mechanism to mitigate the worst aspects of confiscation and to protect the innocent. For all practical purposes, Tuhoe got nothing back from any of the Crown's mechanisms for returning land.

The confiscation line remains a highly visible symbol of grievance on the ground today. Raupatu is a core, long-standing grievance, for which Tuhoe failed to secure any meaningful recognition by the Sim commission in the 1920s or by the Crown, despite their sustained efforts to do so. The Crown has acknowledged that its failure to address 'the wrongful confiscation of Tuhoe land' itself constitutes a breach. We found that confiscation is a grievance which needs to be addressed urgently.

After confiscation, and given that it was the first substantial contact that Tuhoe in particular had with the Crown, it is unsurprising that the Crown came to be regarded, almost immediately, as an enemy. Confiscation was in large part the driving force that led Tuhoe and their close relatives Ngati Whare to ally themselves shortly after with Te Kooti, a messianic leader. Te Kooti was fleeing, having committed a number of killings at Turanga (Poverty Bay) and having suffered a heavy defeat by Crown forces at Ngatapa. Under Te Kooti's leadership, Tuhoe and Ngati Whare, with some other Te Urewera groups, launched a series of attacks in the Bay of Plenty and at Mohaka in Hawke's Bay. Approximately 80 people were killed. In the light of those attacks and given the Crown's fear that it would be unable to protect innocent Maori and Pakeha citizens from any further such attacks, we find that the Crown was justified in launching a military operation into Te Urewera in 1869 to apprehend Te Kooti and those responsible. We find however, that the Crown forces acted mercilessly. Non-combatants were killed intentionally and some prisoners were summarily executed. The Crown forces acted completely in breach of Treaty principles. We note particularly that the senior military officer involved in the operations of 1869 spoke to his troops of 'extermination'. It is likely that rape was involved, and there are certainly strongly held beliefs that this was the case. People were intentionally starved out of the region with the wholesale destruction of crops, shelter, and taonga. Both sides were involved in the desecration of the dead.


The Crown sent subsequent expeditions to Te Urewera in 1870 and 1871; the former was led by Kawanatanga Maori and ultimately resulted in a rongopai (peace) brokered by Te Keepa Te Rangihwinui and Tuhoe rangatira Tamaikoha. The Crown breached the rongopai on two occasions in 1870, notably by attacks at Waikaremoana during the autumn and winter which comprehensively destroyed all property and food supplies at the lake. This attack was unnecessary, unlawful, and in breach of the Treaty. The Crown's policy of removing all surrendered Urewera communities to the coast, despite the peace, and its failure to ensure that the people it held on reserves were properly provided for breached the Treaty rights of the peoples of Te Urewera. Much of the evidence for these facts is to be found in dispatches and writings or memoirs of Crown officers. On the heels of confiscation, this war was the worst of all starts for any relationship between the Crown and the peoples of Te Urewera. It has echoed down through generations and explains the anguish and anger evident to this very day. We discuss the loss of life of the peoples of Te Urewera, both as a direct consequence of the conflict and through deprivation and disease, during the years 1869 to 1871.

There is little for the Crown to be proud of in its actions during this period. The alliance of Te Urewera people with Te Kooti and the attacks on Crown subjects, Maori and Pakeha, that followed, meant that military action was inevitable and justified. The roots of the

conflict however, were in the Crown's wrongful confiscation. The confiscation of land from Tuhoe and the conduct of the war were such that they cannot be justified as having been in accordance with the values of the time, for they were not. These Crown actions have never been addressed or acknowledged and they must be, now.

We will report to you in due course, in further parts, to complete our report.

Heoi ano, naku na

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a long, horizontal, slightly wavy line extending to the right.

PJ Savage

Presiding Officer