

COMMISSION ON HUMAN RIGHTS  
SUB - COMMISSION ON PREVENTION OF  
DISCRIMINATION AND PROTECTION OF MINORITIES  
WORKING GROUP ON INDIGENOUS POPULATIONS

NINTH SESSON

22nd JULY - 2nd AUGUST 1991

STATEMENT OF MATIU TARAWA

NGAI TAMARAWAHO

AOTEAROA

WGIP 91/OCE - NZL/4

Tihei Mauri Ora E Nga Mana E Nga Reo Tena Koutou Tena Koutou Katoa

To all nations gathered, greetings. I breathe into you the breathe of life.

Madame Chair Tearohanui Daez, known to the indigenous peoples of the world as our chairperson, we honor you and respect you for your forthrightness and tenacity and true grit in considering the submissions and statements of the indigenous peoples of the world. We love you.

In making a general statement of claim to the assembly regarding the wrongful possession and confiscation of our lands in Aotearoa, New Zealand raped and destroyed, stolen and devastated by the Crown of England and its agent representatives, the Government of New Zealand.

It is with clarity of speech that I speak the truth concerning our Maori Tribes of Aotearoa Land of the Long White Cloud.

As a Kaumatua elder of my people I am aware of the tremendous responsibility that is mine and my colleagues of the Māori delegation to ensure that we are accountable to those individuals and leaders who have put their faith and trust in us. And as a member of our Maori delegation to this World Indigenous People's Conference in Geneva I make these statements of truth.

Whereas the power and authority of the hereditary chiefs and tribes of Aotearoa was usurped by the Crown of England

Whereas the Treaty of Waitangi signed by some hereditary Maori chiefs of Aotearoa and representatives of the Crown of England in 1840 yet to this day the Crown has not honored the treaty signed in uttermost good faith. After the treaty of Waitangi was signed the colonial government agents started to rape the land, committed acts of war and aggression, cultural genocide and ethnocide.

Whereas we the hereditary Maori chiefs and tribes of Aotearoa did not cede our Tino Rangatiratanga meaning Maori sovereign rights to the Crown of England or its agents the government of New Zealand, in the signing of the treaty of Waitanga.

We the Tangatawhenua the indigenous people of the land of Aotearoa wish to make it irrevocably clear to the New Zealand government representatives here in Geneva and in New Zealand that we are not a conquered people even though our Mana-whenua and all its resources -- forests, lands, fisheries Kaimoana -- were taken forcibly by force of arms, lying, fraud and deception.

Furthermore, the past and present government of New Zealand are illegal and have no legal jurisdiction over us as a people or our lands and resources under Māori sovereign law.

I further submit on behalf of the Maori tribes of Tauranga, Bay of Plenty, New Zealand, that the Waikereu Estuary Empowering Act which is well documented is illegal according to the Treaty of Waitangi.

Furthermore this ancestral land belongs to Ngaitamarawahi of Ngatiranginui of the Takitimu Canoe and is part of the wider general land claim which is before the Waitangi Tribunal in New Zealand.

Tuhua Island, and all adjacent islands in Tauranga, have all been illegally seized by the Crown invaders and their agents the government of New Zealand. Tuapiro lands in Kati Kati Nga Kuri A Whareī in Otawhiwhi burial grounds desecrated and raped by the Pakeha local governments.

Many land claims are still waiting to be heard in Aotearoa, Bastion Point Tainui land claims and Ngatita and numerous others. All these claims are still current and the Crowns agents are stalling, hoping these claims and its claimants will die.

I would respectfully submit these statements and associated claims with supporting evidence which has been set out and well documented in previous claims applications before the Waitangi Tribunal of New Zealand.

Tihe Mauri Oraī Ki Te Whei Ao Ki Te Aomarama, - Tena Kou  
Tou Tena Kou Tou-Katok

# PROCLAMATION OF MAORI SOVEREIGNTY

WHEREAS on the 6th day of February 1840 a Treaty was entered into at Waitangi between Her late Majesty Queen Victoria and the Maori people of New Zealand:

AND WHEREAS there have been numerous and persistent breaches of the terms and principles of the Treaty:

AND WHEREAS it is desirable to restore the partnership between Maori and Pakeha in order to secure and protect the just Rights, Lands and Heritage of the Tangata whenua and to ensure the enjoyment of peace and good order by all people in Aotearoa:

IT IS NECESSARY TO PROCLAIM THE FULL AND EXCLUSIVE SOVEREIGNTY, RIGHTS, POWERS AND AUTHORITY OF THE CHIEFS AND TRIBES OF NEW ZEALAND AND THE PARAMOUNTCY OF TE ARIKINUI TE ATAIRANGIKAHU.

## *Declaration*

IN ACCORDANCE WITH THIS PROCLAMATION IT IS ALSO NECESSARY TO DECLARE:

THAT the Order in Council made by George Grey, Governor, at the Government House at Auckland on the eighteenth day of May 1865 was unlawful and in breach of the terms and principles of the Treaty of Waitangi:

AND THAT the errors, mistakes and injustices that have occurred as a consequence of the wrongful confiscation of lands within the Tauranga Land District have been the cause of severe deprivation and enormous losses to the Tangata whenua, resulting in real and deep-felt grievance:

AND THAT these wrongs urgently need to be redressed and put right in practical ways by the Crown and its agents, including Government and the various local authorities with statutory responsibilities for these matters:

AND THAT it should be recognised by all people that before there can be healing there must be justice and that before there can be partnership there must be full consultation and sharing with utmost good faith, honour and integrity.

Na



Matiu Kauri Tuhourangi Tarawa

Mo Nga Hapu Katoa o Tauranga-Moana.

Dated at Tauranga this 12th day of August, 1987.

HAND AGAIN THIS 29<sup>TH</sup> DAY OF AUGUST 1997 IN NEW ZEALAND AT GENUVA SWITZERLAND.

Te Iwi o Aotearoa



# MATIU HAS HIS SAY

## TAURANGA LAND CLAIMS IN LIGHT OF THE TREATY

Firstly, I would like to say that none of our tupuna ever sold or voluntarily parted with ownership of this land. In the hearts and minds of the people it remains ancestral land, whether or not confiscatory laws declare that it is now European or General land.

Maori people have always held to this 'belief' but we now think that there are compelling reasons for asserting it in law. To start with, we believe that it is in the public interest that the legal obligations of the Crown be observed, whether their source is the Treaty of Waitangi or elsewhere.

The preamble to the Maori Affairs Bill, 1983, emphasised in Maori and in English texts that the Treaty symbolised the special relationship between the Maori people and the Crown:-

"Ko te Tiriti o Waitangi te Taonga whakatapu i te nohoanga i waenganui i te Iwi Maori me te karauna."

If that special or sacred relationship is to be truly meaningful, the Courts ought to play their part by giving much more recognition to Maori rights and values. There are many instances where the rules of the game have been changed to ensure the outcome. If there is a consistency about the laws in this country, particularly where traditional Maori take are concerned, it is to the effect that they exclude resolution of the matters we are raising before you.

A review of the history of cultural conflict makes it clear that the legal framework should be changed to provide for Maori cultural input. Even the very venue of this hearing makes it difficult for Maori cultural values to be expressed.

Despite the odds and precedents against us, even if we were successful in our submissions, the law provides inadequate and inappropriate redress. We understand that in the case of wrongful deprivation of customary right or land, the legal remedy is compensation.

Amongst Maori people there are very strong feelings concerning compensation monies — we call it Raupatu. For us to even consider any form of compensation would be a denial of the values that make us Maori, because we are part of the land and the land is part of us.

The hurt feelings which we and other Maori's have concerning spiritual and cultural values are not properly understood either by the law or even the general public attitude. Maori's place a value on these things which is far more than mere dollars and cents.

It was not until the report and recommendations of the Waitangi Tribunal in 1983 in respect of the claim of Te Atiawa against the Motunui outfall, that the faith of Maori people in the moral force of the Treaty of Waitangi was vindicated. The findings of the Tribunal are the first clear and unequivocal statement since the 1850's of the binding force of the Treaty on the Crown. The Motunui case had its importance in a legal sense for in that case the Tribunal pointed out why the Treaty of Waitangi can no longer be regarded as "a simply nullity." Yet its consequences as a decision were still mainly local in character. The Manukau Harbour case was important because it showed how the course of history shapes current attitudes. In April 1986, the Tribunal released its findings on the Te Reo Maori claim in which it stated: "This claim will affect everybody in the country and not only those now living but future generation as well (3.1.3) This was a case in which the claim was simple, but its ramifications were not. The Tribunal recognised that the cost of doing all that the claimants sought will run into many millions of dollars annually.

Perhaps similarly to ourselves in this present case, the claimants in the Te Reo Maori case said:

"that they belong here, that they and their culture have no other home, that they are the tangata whenua and that by the Treaty they and their culture were given promises in writing that they expect and demand to be kept."

(3.5.4. — Finding of the Waitangi Tribunal)

We think that this finding should also be applied to our case. Although not binding in law, it is authoritative and very persuasive. We refer you again to the very well researched articles by Paul McHugh and Professor Brookfield.

The purpose of the Treaty of Waitangi (and its variations and also the number of other treaties of the same time) was to ensure a place for two peoples in this country. Likewise our agreement with Brian Taylor was directed to ensuring a place for us both at Ahika. The founding principles of this country are embodied in the Treaty of Waitangi. It is a very simple document and it should not be too difficult for every New Zealander to know and understand these principles. They are also the basis by which the present constitutional order exists.

Maybe we should look closer at what the principles of the Treaty are. (Refer to Waitangi Act 1975 and Amendments). "Article II of the Treaty guarantees "the fullness of control over our lands, our villages and all the things we value highly" (Translation of Maori text from schedule in the Amendment Act 1985). The Waitangi Tribunal has found that: "By the ordinary legal principles applicable to the interpretation of treaties where neither version is superior to the other, any variation between the two versions must be resolved having regard to both languages." (4.3.5 Te Reo Maori Finding).

The Tribunal findings goes on to refer to a Canadian case, The Queen v Taylor & Williams (1981) 62 ecc (2nd) 227, in which the Ontario Court of Appeal declared: "Further, if there is any ambiguity in the words or phrases used, not only should the words be interpreted or construed as against the framers and drafters of such treaties, but such language should not be interpreted or construed to the prejudice of the Indians if another construction is reasonably possible." In a carefully prepared submission to the Reo Maori Hearing, Professor Sid Mead of Victoria University, argued that "O ratou taonga" in article II covers both tangible and intangible things and can best be translated by the expression "all their valued customs and possessions". This is in accordance with the Kaituna Finding where the Tribunal accepted the phrase to mean "all things highly prized". In the Manukau Finding the Tribunal reached the conclusion that "taonga" in the context of the Treaty means more than objects of tangible value.

Now, it may be said that this is fine, but it is not provided for in law, especially in relation to title and so forth under the Land Transfer Act. This may be so. But we would ask: **WHICH IS WRONG, THE LAW OR THE TREATY?** We think it reasonable to argue that the original confiscation of this land was in conflict with the principles of the Treaty and the omission to rectify the position by the Crown. This is consistent with what has been stated by Maori leaders and petitioned to Parliament since the time of the confiscation, and this view has been supported by other authorities.

It could be further argued, with respect to land, that many of the basic principles of the torrens system of title provided for under the Land Transfer Act and other statutes are also fundamentally in conflict with the Treaty and that steps should be taken by the Crown to remove these conflicts.

It would also be logically and legally consistent to argue that the maladministration and 'legalised' theft of Maori land by the Courts and procedures established under the Native Lands Act 1865 and its Amendments (and have they are), is in conflict with the Treaty and has consequently denied rights guaranteed by the Treaty, and that the Crown has again omitted to take proper steps to redress this. (The very recent report of the Waitangi Tribunal on the Orakei Claim (November, 1987) now makes this clear in the Findings and Recommendations of the Tribunal.)

Having fought with the sword and the gun, land-grabbing settlers turned to the law and the pen. It is said that "the pen is mightier than the sword", and it may prove that the cost of redressing the injustices and wrongs of the Native Land Court will far exceed the cost that inevitably must be paid to remedy the wrongs perpetrated in the name of the Crown under the Suppression of Rebellion Act 1863 and the New Zealand Settlements Act 1863, which purportedly authorised the land wars. It would appear that the Tribunal is the most appropriate forum available to resolve these long outstanding issues between Maori people and the Crown.

A claim on grounds similar to the matters raised here in this case has been filed by the local tribes with respect to the wrongful deprivation of land by the Tauranga confiscation.

That Maori's are today severely disadvantaged in almost every respect is well established. What has not been properly understood is, why? what has happened that we, who had so much, now have so little?

As in the case of our own life experience, I do not believe for one moment that the fault is due to our mismanagement of our affairs, as much as to circumstances outside our control or influence — the 'educational system', the 'legal system', the 'financial system', the 'health system', the 'political system'. **THE PROBLEM, I THINK, LIES FAIRLY AND SQUARELY WITH THE SYSTEM.**

A placard I saw once on television puts it perfectly:

**"BLAME THE SYSTEM; NOT THE VICTIM".**

Stop oppressing us, stop discriminating against us, stop cheating us, stop exploiting us, and allow us to live in accordance with the Treaty. In other words; be honest and fulfil your obligations and we will all start to get on a little better.

And when it comes to considering the just grievances of Maori people in this regard, please do not think you can buy us out with compensation monies. We do not want money. What good is money if you don't know what to do with it. What we need is a supportive and encouraging environment that meets our basic needs and allows us to live and grow and educate ourselves and regain our mana and competence. **YOU HAVE DENIED US SO MUCH, and yet you say this land is a land of equal opportunity. This is a myth disproved by your own records and accounts.**

We also want to be healthy and strong. As we quoted from the Department of Health publication earlier, **THIS REQUIRES THAT OUR ASSOCIATION WITH LAND BE RESTORED.**

