

## INTRODUCTION

### 1.1 THE REQUEST FOR AN INTERIM REPORT

This report concerns the Wai 655 claim by Te Ngahina Mathews, for and on behalf of Ngā Wairiki. For the purposes of this report, this claim is considered part of the Whanganui district inquiry (Wai 903), not a stand-alone claim.

We produced the report in response to a request in a memorandum from counsel for Wai 655. Counsel sought leave to close the Wai 655 case and asked the Tribunal to produce forthwith an interim report on the Wai 655 claim, making such recommendations as the Tribunal considered just.<sup>1</sup>

### 1.2 BACKGROUND: THE URGENT INQUIRY APPLICATION

It is important for the sake of context to note here that the Wai 655 claimants earlier sought from the Tribunal an urgent hearing, which they hoped would lead to recommendations that the proposed settlement between Ngāti Apa (including Ngā Wairiki) and the Crown should not proceed.<sup>2</sup> The Wai 655 claimants are of Ngā Wairiki and submitted (inter alia) that the Ngā Wairiki iwi is not exclusively a part of Ngāti Apa and that Ngā Wairiki, or some of them, affiliate to their Whanganui kin. By including them in the Ngāti Apa settlement, the Crown will permanently prevent Whanganui-affiliated hapū of Ngā Wairiki from joining their Whanganui kin in a Whanganui settlement.<sup>3</sup>

The presiding officer in the urgency application, Judge Stephanie Milroy, defined the issue between the Wai 655 claimants and the Crown as whether the Crown should or should not have accepted the mandate of Te Rūnanga o Ngāti Apa to negotiate for Ngā Wairiki. She noted that the Ngāti Apa settlement is intended to make redress for claims involving Ngā Wairiki. Judge Milroy considered that the Wai 655 claimants would be able to obtain redress through the rūnanga in respect of their claims. As beneficiaries of the rūnanga, the Wai 655 claimants will be entitled to participate in the post-settlement governance entity by standing for election, taking part in voting, attending hui, and participating in community activities.

The presiding officer noted that the prejudice to the Wai 655 claimants is that they will be unable to pursue their claim against the Crown in the manner that they choose; that is, through a Waitangi Tribunal inquiry. But she also noted that others claiming Ngā Wairiki

whakapapa have chosen to mandate Te Rūnanga o Ngāti Apa to settle Ngā Wairiki grievances. She was influenced by evidence of the Crown's efforts to include the Wai 655 claimants and take account of their issues in the negotiation and settlement process. It was unfortunate that differences could not be resolved, but she concluded that there would be significant prejudice to Ngāti Apa, and those of Ngā Wairiki whakapapa who have given a mandate to the rūnanga to settle, if that settlement were further delayed.<sup>4</sup>

The application was dismissed on 15 May 2009.

### 1.3 THIS REPORT

The Whanganui district inquiry Tribunal may not and will not traverse matters already decided on in the urgency decision.<sup>5</sup>

On 16 July 2009, Judge Carrie Wainwright, the presiding officer of the Whanganui Tribunal, directed as follows:

The Tribunal does not wish to destabilise the proposed settlement between Ngāti Apa and the Crown. A decision has already been made not to inquire into the settlement process, and that decision will not be revisited.<sup>6</sup>

Concerning the present report, the judge stated:

We will be focusing substantially on 19th century material, and will not be canvassing matters of politics and identity in the present. (For the avoidance of doubt, the Tribunal will not be making findings about present-day hapū or iwi status, as sought by Mr Hirschfeld for Ngā Wairiki in paragraph 16 of his memorandum of 3 July 2009.)<sup>7</sup>

The scope of this report is limited by a number of factors, but none more than time. The Crown recently informed the Tribunal that the Bill enacting the proposed settlement between Ngāti Apa and the Crown may go before the House at any time from 27 July 2009.<sup>8</sup> We set about

the task of reporting in that very limited window of about three weeks in July 2009. Recently, the Crown revised its prediction about when the Bill may be introduced, but it was too late for us to revise our timetable in response.<sup>9</sup>

Other limitations on content have been discussed already. We keep away from the issues between the Wai 655 claimants and Te Rūnanga o Ngāti Apa, and their relations with the Crown. Neither do we venture upon the generic issues covered in the Whanganui inquiry district's 'Main Document'.<sup>10</sup>

There is one final point to make. The Waitangi Tribunal's jurisdiction concerns Treaty claims by Māori against the Crown. It is not our role to decide issues of customary tenure, tikanga and disputed rohe. This was the function of the Native Land Court and is now the function of the Māori Land Court. This being so, we make no findings on these matters.

### 1.4 SOURCES

This report draws on the evidence submitted by the Wai 655 claimants in the Whanganui inquiry, including the evidence they presented orally during the second week of hearings in August 2007. We refer to submissions of counsel, and other material filed by counsel, and also draw on a number of historical reports presented in evidence.

We have not – given the extreme time constraints – gone further, but we have felt free to cite evidence in local histories and official documents, plus primary and secondary material cited in the texts and bibliographies of the reports and briefs mentioned above. We give a select bibliography of the sources we have used at the end of our report.

Ngāti Apa chose to be observers rather than parties in the Whanganui inquiry district, with the result that we have no direct evidence from them. We have not had access to the full mana whenua report produced on behalf of Ngāti Apa and compiled for the Office of Treaty Settlements. However, copies of extracts from the report

relevant to Ngā Wairiki are available in Wai 903 document banks, together with much other material emanating from Te Rūnanga o Ngāti Apa, Te Roopu Rangahau o Ngāti Apa, and the Ngāti Apa website.

#### Notes

1. Counsel for Ngā Wairiki, memorandum requesting interim report on Wai 655, 11 June 2009 (paper 3.2.612)
2. Counsel for Ngā Wairiki, memorandum applying for urgent hearing, 31 August 2008 (Wai 655 ROI, paper 2.8)
3. Counsel for Ngā Wairiki, memorandum setting out grounds for urgency, 24 April 2009 (Wai 655 ROI, paper 2.60)
4. Judge Carrie Wainwright, memorandum declining application for urgency, 15 May 2009 (Wai 655 ROI, paper 2.66), paras 27–29
5. Judge Carrie Wainwright, memorandum concerning Crown hearings and inquiry planning, 2 July 2009 (paper 2.3.94), para 5
6. Judge Carrie Wainwright, memorandum concerning interim report on Wai 655, 16 July 2009 (paper 2.3.96), para 6.1
7. *Ibid*, para 6.9
8. Crown counsel, memorandum concerning interim report on Wai 655, 10 July 2009 (paper 3.2.649)
9. Crown counsel, memorandum concerning introduction of Ngāti Apa Settlement Bill, 21 July 2009 (paper 3.2.670). The memorandum states (para 2): ‘The likely timeframe for the introduction of the Ngāti Apa Settlement legislation is now at any time on or after 4 August 2009.’
10. Rainey Collins, ‘Main Document’, memorandum concerning claims and issues, 10 March 2006 (claim 1.5.5)

