The Taranaki Report - Kaupapa Tuatahi

CHAPTER 12

CONCLUSIONS

Indigenous peoples have the right to maintain and develop their political, economic and social systems . . . and to engage freely in all their traditional and other economic activities . . . [They] have the right to own, develop, control and use [their traditional] lands and territories . . . This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources . . . [They] have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status . . .

as a specific form of exercising their rights to self-determination, [indigenous peoples] have the right to autonomy or self-government in matters relating to their internal and local affairs . . . as well as ways and means for financing these autonomous functions . . . [They] have the collective right to determine the responsibilities of individuals to their communities . . . Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights . . .

Extracts from articles 21 to 39, Draft Declaration on the Rights of Indigenous Peoples, August 1994

12.1 HOW PEOPLES RELATE

A century and a half after the Treaty of Waitangi was signed, the world's indigenous minorities sought a United Nations declaration to define their rights in relation to national states. Following 12 years of intensive study and discussions with indigenous peoples and governments, an independent and distinguished group of experts, the United Nations Working Group on Indigenous Populations under Mme Daes of Greece, produced the Draft Declaration on the Rights of Indigenous Peoples. It was introduced for consideration by various organs of the United Nations in 1994, when the General Assembly proclaimed the International Decade of Indigenous Peoples. The draft declaration expresses with particularity several principles that flow naturally from the Treaty of Waitangi.

In different ways, the draft declaration and the Treaty acknowledge that, on the colonisation of occupied lands, the indigenes must be adequately provided for in the life of the new nation. The respect that is due to all peoples is payable to each according to their circumstances. The special circumstances accruing to indigenes require that they should be respected as founding peoples and not merely as another cultural minority.

12.2 THE RELATIONSHIP IN TARANAKI

The whole history of Government dealings with Maori of Taranaki has been the antithesis to that envisaged by the Treaty of Waitangi. The Draft Declaration on the Rights of Indigenous Peoples affirms the relevance of the Treaty's principles for the global environment of today, defines the required relationship between governments and their indigenes, and emblazons in vivid relief the many respects in which the ability of Taranaki Maori to develop in their own country was removed from them. The relationship between peoples was in issue in Taranaki from the first contact with the New Zealand Company, before the Treaty was signed. Maori and Pakeha both assumed at that time that their own law and authority would govern whatever had been agreed, so that they were not contracts in the Western legal sense, for the understanding each had of the arrangements is unlikely to have been the same. The relationship between Maori and Pakeha law and authority has never been resolved, other than by force, to this day.

Taranaki Maori were confronted with Western methodologies for the occupation of land from 1839. Te Atiawa in particular were subjected to pressure to sell land for settlers who were on the land before arrangements were agreed. The tactics used to secure a show of acquiescence pitted one Maori against another, causing internecine warfare. Such were the circumstances surrounding the 'purchase' of most of the Te Atiawa land in the north, Waitotara in the south, and the land of the inland tribes in the east that, in our view, no distinction should now be made between the lands said to have been sold before, during, or after the 1860s wars and the lands confiscated as a result of them.

The protections promised Maori in the Treaty were gradually whittled away. The Native Protectorate was abolished and the offices of Native Secretary and native land purchase officer were combined in 1846. Matters worsened when representative institutions were introduced in New Zealand from 1853 without effective provision for Maori representation. At Waitara, the Governor was at once the purchaser, the judge of the title dispute, and the supreme commander of the troops. In the words of William Pember Reeves, adopted by the Sim commission and now us, the Waitara purchase would 'always remain for New Zealand the classic example of a blunder worse than a crime'. Maori custom, law, and institutions were judged by those who did not know them; and the judgments were wrong. The right of Maori to make their own decisions about who controlled the disposition of land and the nature of the interests held was negated, and the immediate result was war. The long-term consequence was that the Government enforced a plan to alter Maori land tenure and to destroy, by stealth and by arms, the capacity of Maori to manage their own properties and to determine rights within them. The relationship the Government imposed was that of dominance and subservience. The settler government was unable

to see that the essence of peace is not the aggregation of power but its appropriate distribution.

Wiremu Kingi was unjustly attacked. No serious historian has disputed that. Though famous for honour and integrity, Kingi was none the less attacked and hounded until, years later, he died landless. It was the Government that spread the war. In the words of D S Smith, claimant counsel before the Sim commission in 1927:

The memories of the past are bitter memories still. Out of Waitara there sprang, and from Waitara there spread what to the native mind was a war of aggression. We say, in fact, that it was a war of aggression, and that an impartial tribunal will find it so.

The Sim commission agreed, and we do too, that Kingi and his people never rebelled but were attacked by troops. It was a direct violation of the Treaty of Waitangi. After a truce, a second war began through the Governor's invasion of Omata and Tataraimaka. It was no less an act of aggression than the first. From that point, Maori could no longer expect the Governor's protection. They had good cause to consider that their lands and their survival must depend on their recourse to arms.

As for the confiscation plan, it was in fact not a scheme to secure peace by occupation, as the legislation claimed, but a strategy to take the territory for the benefit of settlers. Constantly expanding in proportion to the ambitions of its designers, the confiscation plan was immoral in concept and unlawful in implementation throughout the length and breadth of the land.

Since the whole of the lands of most hapu had been taken during the war, then by any standards of fairness and justice, the post-war relief had properly to be swift and clement. In fact, for over a decade Maori did not know what lands, if any, would be theirs, while that beneath their feet was continually being allocated to settlers. Even Maori who had not fought, or had fought with the Government, and whose lands should never have been touched in the first instance lost everything, were left not knowing what would be returned, and never recovered more than a fraction of that which was theirs. Many hapu with extensive customary lands were affected in that way, for land was taken ostensibly on account of the war in places that the war had never visited. The protests of the landless were protests of desperation, but for their actions they were imprisoned in their hundreds, at will, without trial, and with all civil rights suspended. The ultimate consequence, the invasion and sacking of Parihaka, must rank with the most heinous action of any government, in any country, in the last century. For decades, even to this day, it has had devastating effects on race relations. There was not a tribe in the country that did not learn of it, for Parihaka had been open to them all.

Throughout the post-war period to the Parihaka invasion of 1881, when Taranaki Maori had uncertain land rights, if any at all, and were under threat of extermination, the Government embarked on a macabre buying spree of lands both inside and outside the confiscation boundaries. Such were the post-war circumstances of those purchases, the materially different expectations of the parties, the lack of protection for Maori interests, and the accompanying fraud and corruption that none of those purchases met the required standards of sincerity, justice, and good faith to be valid in Treaty terms. As contracts they were nullities for lack of common understandings.

Like the pre-war purchases, these too should be treated no differently from the land confiscations.

Between 1880 and 1884, long after the war, the West Coast Commission eventually returned various lands to some Maori. Even that necessary and long awaited result was, however, made secondary to the promotion of European settlement. The primary objective of the West Coast Commission was to relieve Maori of more land. The consequences were no less catastrophic than before. Much less was returned than could or should have been, and the lands returned were so individualised as to undermine the basis for Maori society and destroy the traditional bulwark against land alienation. The consequences were known and expected, and as anticipated, sales followed.

Where the commission did not personalise titles, the Native Land Court did. The court went further and in its arrogance deprived many of their ancestral lands. Ngati Tama lost all of their territory that had not already been confiscated through a decision of that court that was probably political and, in any event, wrong. It should not have been the business of the court to have decided the matter in any event, because the issues were fully capable of resolution within the Maori community. It ought not to be forgotten in this context that last century the Native Land Court was set up to perform the Government's purpose.

Further, and without Maori consent, the administration of such lands as were returned to Taranaki Maori was passed by the West Coast Commission to the Public and Native Trustees. By statutory direction, and again without agreement, the bulk of those lands were then tendered to Europeans on perpetually renewable leases. Loss of possession and control meant more sales, and over time, most of the lease lands were sold by the trustees. The remainder are still under perpetually renewable leases. Over 100 years have passed since the wars, but Maori have still to gain possession of the promised land, and in the interim, their society crumbled as development opportunities passed them by.

Among the machinations of the past, false promises of land may have lingered longest in memories, the most cruel being the promise of reserves and the delivery of leases in perpetuity. The perpetual leases ensured that the pain of dispossession, which prolonged the war and imprisoned the protestors, was formally passed down in succession orders through every generation to the present. It would have been kinder had the land been taken, for the rents were negligible and Maori were succeeding to little more than lands they could never walk on. Their inheritance was a certificate that they should never be allowed to forget the war, the imprisonments, and their suffering and dispossession. It lived with them as they hunted down jobs, knowing that others were working what should really have been theirs. As children, they learnt the Taranaki double talk: that Taranaki maunga was Mount Egmont, as though the past was no longer theirs, and that 'Maori reserved lands' means 'lands for Pakeha', for the future was not theirs either.

We cannot begin to describe the resentment that welled up at every hearing, founded not on factual research but on the reality of inherited opinions. There is a conviction that from first settlement to the present there has been a concerted and unending programme to exclude Maori from land ownership throughout Taranaki. Law and

order are not readily maintainable in that situation. Similar views are held by Australian Aboriginals and Canadian Indians, and it seems to be relevant that the three are the world's most imprisoned races. The prejudice must be overcome. The opinion that the world is no longer theirs to behold must stop with this generation.

We would expect any government seized of the consequences of the Taranaki legacy to have moved years ago to promote reconciliation through speedy and generous recompense. It took 60 years of agitation, however, before any inquiry was made, and then, as if to prevent proper public disclosure, that inquiry was so constrained by the Government that no full and proper investigation was possible. Nor was there ever a free and willing settlement. An annuity was offered on a take it or leave it basis. Any appearance of good intentions was destroyed when the annuities were allowed to erode through inflation. The only salve to conscience we can see is in now regarding those annuities as only token payments, in recognition of a wrong, as the Sim commission intended.

By the processes described, Taranaki Maori were plundered of their resources. The little left to them cannot sustain the cultural basis of their society for the future. This situation arose from the attitude of the Europeans in departing so entirely from the promises on which the government of the country was established. Generous reparation policies are needed to remove the prejudice to Maori, to restore the honour of the Government, to ensure cultural survival, and to re-establish effective interaction between the Treaty partners.

12.3 THE RELATIONSHIP IN FUTURE

12.3.1 Kaupapa tuarua

This report has introduced the historical claims of the Taranaki hapu. It has shown the need for a settlement and will shortly conclude with some opinion on how settlements might be effected. A second report, unless matters are earlier resolved, will prcis the history relevant to particular groups and associated ancillary claims that may need to be distinguished in any comprehensive settlement.

A separate accounting for particular groups was seen to be necessary because they are not the same, were affected differently, and have different aspirations for the future. In the meantime, further hearings will be considered if the claimants or the Crown can demonstrate that these are necessary to achieve a settlement.

12.3.2 Settlement options

This report concludes by marshalling some comments on how the claims might be settled, based upon the picture that has emerged and the representations and arguments made at various sittings over the last five years. We observed in prefacing this report that further sittings would be needed, especially to hear the Crown, before findings and recommendations could be made, but that the parties had sought an early report in the hope that our preliminary opinion on the facts and our views on a settlement might expedite a resolution. Our thoughts for settlement relate to quantum, process, and structure.

12.3.3 Size of claims

As to quantum, the gravamen of our report has been to say that the Taranaki claims are likely to be the largest in the country. The graphic muru of most of Taranaki and the raupatu without ending describe the holocaust of Taranaki history and the denigration of the founding peoples in a continuum from 1840 to the present.

12.3.4 Injurious affection

The above assessment of the size of the Taranaki claims is based upon the extent of prejudice or injurious affection. In historical claims, as distinct from the actionable and recent losses of individuals, the long-term prejudice to people may be more important than the quantification of past loss. Section 6(3) of the Treaty of Waitangi Act 1975, which requires consideration of the steps necessary to remove prejudice, not simply the quantification of property losses in accordance with lawful damages criteria, suggests this approach is necessary for historical matters. The extent of property loss is of course relevant but is not solely determinative. It appears that compensation should reflect a combination of factors: land loss, social and economic destabilisation, affronts to the integrity of the culture and the people over time, and the consequential prejudice to social and economic outcomes, for example.

12.3.5 Compensation for the impact of land loss

We consider that 1,199,622 acres (485,487 ha) were confiscated, that no distinction should be made in all the circumstances between that land and a further 296,578 acres (120,025 ha) said to have been purchased, and that a further 426,000 acres (172,402 ha) were expropriated by land reform and the Government's Native Land Court process, making some 1,922,200 acres (777,914 ha) in all. Even more important than the number of acres, however, is the fact that the whole of the lands of most hapu were confiscated, the whole of the lands of every other hapu were also deleteriously affected, and lands were not adequately returned to any hapu to provide the minimum relief that was vitally necessary. In other words, when determining injurious affection, the impact of loss by reference to the proportion of land taken and the amount retained, having regard to the size of group, is more important than the amount taken in absolute terms.

Considering the ways in which the alienation of Maori land was effected, including land reform as a device to remove tribal controls for land retention, and having regard to the Crown's Treaty duty to ensure a sufficiency of land for each hapu, it is useful to consider the land in Maori possession today and to relate that, if possible, to the circumstances of the people. Research on the amount of land in Maori possession in Taranaki is still being undertaken through the Crown Forestry Rental Trust and is not yet available to us. We would assess the land left in Maori possession, however, to be less than 3 percent of the total area, and it may be that none of it will have a commercial benefit to hapu, as distinct from individuals. In commercial terms, the hapu loss would appear to be total. Relating that to the people is more difficult. The Taranaki Maori population cannot readily be assessed both because of Government policies from the 1840s to exclude Maori from the district and because of migration following land loss.

12.3.6 Compensation for social and economic destabilisation

The social and economic destabilisation of Taranaki Maori is a major compensation heading arising from the Government's circumvention of the traditional leadership, its disregard for Maori rights of autonomy, its levying of war, its land acquisition, and land reform through the Compensation Court, the Native Land Court, and the West Coast Commission. Some criticism of current arguments over tribal representation is properly directed not to the tribes but to the destruction of their society and institutions by the means described above. Based on the inquiry to date, we assess the question of autonomy to be most at issue in the Taranaki claims. We consider the principal losses to be the destruction of the culture and society of the people and of the resources that traditionally underpinned them. The result was the loss of both society and economic development opportunities, including the opportunity to participate in Government-assisted projects over the years; among them, the Department of Maori Affairs' farm development schemes. Reparation sufficient for the several hapu to establish a durable economic base appears to be essential for the reconciliation now needed.

12.3.7 Compensation for personal injuries

Personal injuries constitute a serious prejudice for which reparation is due. By personal injuries, we mean the present-day damage to the psyche and spirit of the people caused by deleterious and prejudicial action over generations. In our view, it is a significant item when considering historical claims and the steps necessary to remove prejudice. While time can soften hurt, the hurt in Taranaki has not been allowed to mend. The attack on Wiremu Kingi might well be seen as a thing of the past were it not for the fact that the rights of autonomy Kingi and others represented are still being denied. The military march through Taranaki and the bush scouring to destroy every village in the way, whether at peace or in arms, was one of the gravest scourges of the war; but it too might have been forgotten were it not for the fact that the process was repeated, long after the war, in the sacking and pillage of Parihaka and the forced dispersal of its citizens. It was indelibly emblazoned on our minds by witness after witness that Parihaka lives in the memory, and not as an isolated incident but as the exemplification of a pattern.

The history of Taranaki is not a set of unconnected incidents but a record of continual denial and repression, and that is the major problem to be addressed. Original prejudices have been resurrected and reinforced throughout each generation. The manner in which land was taken; the way in which the so-called purchases were effected; the human rights abuses, including imprisonments without trial; the injury sustained; the continued denial of rights over generations; the resultant state of race relations and the bitterness to be ameliorated; cultural marginalisation; and demographic dispersal are all relevant considerations under this heading.

Included in this category is compensation for the perpetually renewable leases. While they may well constitute a separate, specific, and quantifiable item of damage for loss of use and rents, the main prejudice was the memorialisation of the confiscations and dispossessions. The perpetual leases ensured that the history of war and deprivation would be revisited by every generation of Taranaki Maori.

12.3.8 Social and economic performance

Current social and economic performance may be a measure of past deprivation and poverty. We understand the Crown Forestry Rental Trust is funding a study in this area, but details of the work are not currently available to us.

12.3.9 Prior payments

We would place little weight on moneys previously paid for these claims. At best, they served to save face for the Government's wrongs, but only fleetingly, for the sincerity of the Government's desire for atonement has depreciated in proportion to the growth of inflation.

We refer now to matters of structure and process.

12.3.10 Full and final settlement

Just as generous reparation is needed to restore the Crown's honour and re-establish sound relations, so too is a broad and unquibbling approach required for the terms and conditions on which the settlement is made. Based on legal principles, the Taranaki claims may be assessed in billions of dollars, yet claimants appear to be required to settle for a fraction of that due. Some billions of dollars would probably result were loss based only upon the value of the land, when taken with compound interest to today, leaving aside exemplary damages or compensation for loss of rents and the devaluation of annuities. It may be necessary to have some constraints on account of economic exigencies. It could also be that the historical claims of peoples should not be treated as lawsuits for the recent losses of individuals, because historical variables have interposed. Whatever the case, it seems to us that a full reparation based on usual legal principles is unavailable to Maori as a matter of political policy, and if that is so, Maori should not be required to sign a full and final release for compensation as though legal principles applied. How tribes can legally sign for a fraction of their just entitlement when they have no other option is beyond us. To require Maori leaders to sign for a full and final settlement in these circumstances serves only to destabilise their authority. If a full pay-off for the past on legal lines is impractical, and a massive sum would be needed in this instance, it is more honest to say so and to reconsider the jurisprudential basis for historical claims settlements.

A more arguable case would appear to be that the settlement of historical claims is not to pay off for the past, even were that possible, but to take those steps necessary to remove outstanding prejudice and prevent similar prejudice from arising; for the only practical settlement between peoples is one that achieves a reconciliation in fact. Accordingly, it appears to us that generous reparation is payable, and if the hapu are to waive further claims to the Waitangi Tribunal in future, it must be subject to the Government maintaining a commitment to the people's restoration and adhering thereafter to the principles of the Treaty of Waitangi.

12.3.11 Hapu representation

On the evidence to this point in time, the vast majority of those who appeared before us favour not a single Taranaki settlement but a settlement with the main hapu aggregations. Bearing in mind that over the history described more than 100 hapu can be counted and that the same number of hapu could well surface again, it is necessary to emphasise that we are here referring to the principal aggregations that have devolved to today. Most speakers before us presumed there were only eight such groupings, being the first eight named below, all of whom are currently represented on the Taranaki Maori Trust Board. It was considered these would cover the interests of all. Based upon their regular appearances and submissions at hearings spread over the last five years, however, 10 groups in fact demonstrated that they exist today as distinctive and viable entities deserving separate consideration. The groups are arranged by region and waka as follows:

North (Tokomaru)

- 1. Ngati Tama
- 2. Ngati Mutunga
- 3. Ngati Maru
- 4. Te Atiawa

Centre (Kurahaupo)

- 5. Taranaki

South (Aotea)

- 6. Nga Ruahine
- 7. Ngati Ruanui
- 8. Nga Rauru
- 9. Pakakohi
- 10. Tangahoe

Other hapu appeared or filed claims, some only after four or five years of well-publicised hearings. Where these have particular ancillary claims relating to recent losses, as will be considered in any further report, those claims may need to be severed from the general settlement. Otherwise, these hapu appear to fall within the umbrella groups named.

12.3.12 Hapu apportionment

Because the hapu were affected in different ways, direct comparisons between them are not practicable. It is not enough to quantify the differences by comparing the amount of land that each lost by confiscation, purchase, or land reform or that each had returned as reserves, because there was not one hectare of the land of any hapu that was not deleteriously affected in some way. A population basis is also of no help in this case, because population is conditioned by land loss.

The allocation is properly to be agreed between the hapu. In addition, the matter has not been fully argued before us. In the absence of some agreement, however, and

based only upon our broad perception of matters over the last five years of research and hearings, we would consider the loss of the Taranaki people in the centre, including the destruction of Parihaka, to equate to one-seventh of the total, with the north and south losses to be equal between them at three-sevenths each. This also roughly approximates comparable tribal areas.

Hopefully, any apportionments within the three districts can be settled locally without further input from us. It may be useful if we state our view, however, that, although we recognise Pakakohi and Tangahoe as functioning entities of distinctive tradition, they have not had an exclusive occupation of territory nor have they established to our satisfaction that they have asserted such pre-eminence either formerly or today as might entitle them to share equally with Nga Ruahine, Ngati Ruanui, and Nga Rauru.

Further, subject to some contrary arrangement that might be locally agreed, it appears to us that separate settlements with the north, centre, and south would be appropriate, provided a body can be established for each that is fully accountable to the hapu in the area. To resolve overall quantum, however, a negotiating body of representatives from each of the northern, central, and southern parts may be required.

Those are our views at this stage, but as we have said, they are subject to any alternative arrangements settled locally.

12.3.13 The Taranaki Maori Trust Board and the PKW Incorporation

Conversely, while the Taranaki Maori Trust Board has had and should continue to have an important role in the life of Taranaki, compensation should be directed to the hapu, not the board, unless the hapu agree otherwise. Similarly, although the shareholders of the PKW Incorporation can point to historical losses of possession and rents, the main loss has again been with the hapu and it is with the hapu that a settlement must be made. If historical grievances are not to be compounded, or history repeated, limited funds should not be dissipated to individuals. It may need to be recalled that the Taranaki claims arose initially from the colonists' reordering of individual and group functions in Polynesian tradition.

None the less, the costs incurred by the trust board and the incorporation, which provided the main funding for the research and hearings over several years, should be acknowledged and reimbursed by the Crown.

DATED at Wellington this day of April 1996

Chief Judge E Taihakurei Durie presiding, Kuia Rangatira o Kahungunu ki Wairoa Emarina Manuel, Professor G S Orr, Te Pihopa Kaumatua the Right Reverend Manuhuia A Bennett, Professor M P K Sorrenson for

THE WAITANGI TRIBUNAL