

In the Waitangi Tribunal**Wai 2180****Wai 1261****Wai 1394**

Under the Treaty of Waitangi Act 1975

in the matter of the Taihape: Rangitikei ki Rangipō
District Inquiry (Wai 2180)

and in the matter of a claim by Aiden Gilbert (Wai
1261)

and in the matter of A claim by Kura Tahana (Wai
1394)

Claimant Closing SubmissionsDated 23 October 2020

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| RECEIVED Waitangi Tribunal |
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May it please the Tribunal

1. These are the closing submissions for the claimants' Te Patutokotoko claim issues.
2. The Tribunal will have seen references to Ngāti Patutokotoko and Te Patutokotoko. For clarity, these are related but separate entities. Ngāti Ruakōpiri is the hapū into which Tukaiaora II was born.¹ On his marriage to the twin daughters of Hekeawai he took on the identity of Ngāti Hekeawai and became its paramount chief.² The evolution to Ngāti Patutokotoko came about through the mana of Tukaiaora II's uri, Peehi Turoa, who was able to gather people from many hapū in times of need; this grouping was called Te Patutokotoko.³ Ngāti Patutokotoko then became the name used to distinguish the people of Ngāti Ruakōpiri/Ngāti Hekeawai who settled in the Inquiry District (and further down the Whanganui river), as distinct from those who remained at Manganui a te Ao. To some extent the names can be used interchangeably. Many of the hapū that formed Te Patutokotoko affiliate now to Uenuku.
3. The principal issues for the claimants are loss of lands, loss of seasonal uses of lands, and the diminishment of relationships with other mana whenua in the Inquiry District.

UENUKU / TE PATUTOKOTOKO

Evidence

4. The hapū of Uenuku / Te Patutokotoko in the Inquiry District are:⁴
 - a. Ngāti Patutokotoko
 - b. Ngāti Ruakopiri
 - c. Ngāti Pare
 - d. Ngāti Hinemihi

¹ Wai 2180, #K3 Evidence of Fred Clark at [9].

² Wai 2180, #K3 Evidence of Fred Clark at [9].

³ Wai 2180, #K3 Evidence of Fred Clark at [7].

⁴ Wai 2180, #3.3.275(a) Appendix A to memorandum regarding aggregation into the Inquiry District.

e. Ngāti Tara

f. Ngāti Hinewai

5. The claimants' tupuna first came to the Inquiry District through marriage between Taukai and Tutakamaiwaho, the parents of Hineiro, who later married Rangipawhaitiri, to stop fighting between Ngati Ruakōpiri and Ngāti Whiti that had taken place over some generations.⁵ The first settlement in the Inquiry District by Ngāti Ruakōpiri followed the alliance marriage at Manganui a te Ao of Hineiro's contemporary Mapihi of Ruakōpiri to Tuwharekino of Ngāti Tama.⁶ Mapihi and their daughters settled on Tuwharekino's Inland Patea lands.⁷ On the journey there Mapihi tasted the toi at Motuiti.⁸ She exclaimed that it was as sweet as her mother's milk, and Motuiti was renamed Te Waiū o Hinekupa.⁹ Consequently, the block became known as Rangipō Waiū.¹⁰
6. Walzl has it that Hineiro told Te Puaiti of Ruakōpiri¹¹ of her husband Rangipawhaitiri's additional cultivations (a sign of intended war), but the claimants' korero is that it was Mapihi that Hineiro told, as Hineiro would have had difficulty telling Te Puaiti without answering for her father's tupuna's actions, and because Mapihi held the mana at Rangipō Waiū.¹² Her mana was later demonstrated when she left her first husband and married Te Ngāhoa of Ōtaihape, son of Tautahi and Hinemanu, without enduring consequences.¹³ Her twin daughters from her first marriage both married Tuope; this marriage was arranged by Mapihi's cousin Te Puaiti.¹⁴
7. Lands of Rangipō Waiū, Motukawa, and Te Kapua were left bare following Te Whatanui's taua and the killing of Tawhiri.¹⁵ The first of

⁵ Wai 2180, #K3 Evidence of Fred Clark at [34]-[45].

⁶ Wai 2180, #K3 Evidence of Fred Clark at [46].

⁷ Wai 2180, #K3 Evidence of Fred Clark at [46].

⁸ Wai 2180, #K3 Evidence of Fred Clark at [47].

⁹ Wai 2180, #K3 Evidence of Fred Clark at [47]; Wai 2180, #A12, Walzl *Tribal Landscape Overview* at 220, 834.

¹⁰ Wai 2180, #K3 Evidence of Fred Clark at [47].

¹¹ Called Te Ruaiti by the Native Land Court and Walzl. See Wai 2180, K3 Evidence of Fred Clark at [51].

¹² Wai 2180, #K3 Evidence of Fred Clark at [49]-[51] and #A12 Walzl *Tribal Landscape Overview* at 251.

¹³ Wai 2180, #K3 Evidence of Fred Clark at [53]-[54].

¹⁴ Wai 2180, #K3 Evidence of Fred Clark at [52].

¹⁵ Wai 2180, #C14 Speaking notes of Aiden Gilbert for Ngā Korero Tuku Iho at [16]; Wai 2180, #A12, Walzl *Tribal Landscape Overview* at 220.

Ngāti Ruakōpiri to return to the land was Te Kōtuku Rairoa, who reestablished mahinga kai at Moawhango and Rangipō Waiū.¹⁶

NGĀ HARA

Land interests

8. Peehi Hitaua, ariki of Patutokotoko, did not accept the Native Land Court, saying that if it wanted to talk about his lands it must come to him. After his death, his teina, Topia Turoa, and their uncle, Wiari Topia, were forced into the Land Court by others making applications for lands in which Ngāti Patutokotoko had interests. The Court rejected Topia's Patutokotoko whakapapa and he had to go in to blocks under other whakapapa, however Patutokotoko and Ruakopiri are occasionally found in the Minute Books relating to the Inquiry District, sometimes referred to by others as hapu of Ngāti Rangi, though the claimants say this is incorrect as concerns Patutokotoko lands within the Inquiry District.¹⁷ Peehi Hitaua's and Topia's mother was Utaora of Ngati Tamakopiri, Ngati Hauiti, Ngati Te Ikamoewhare and Ngati Rangipoutaka, and some of their mana in the Inquiry District comes through this line, however the involvement of their paternal uncle, Wiari Turoa, confirms the Patutokotoko mana independent of Utaora's line.
9. The claimants have land interests through the north and west of the Inquiry District, and down along the line of the Moawhango River. As well as kainga, much of the land was used seasonally. Summer mahinga kai and hunting grounds were in Rangipō Waiū and followed the lands around the Moawhango river.¹⁸ Hapū members remained in the area, and Te Kotuku Rairoa's grandchildren Tukaia III and his siblings were born in Rangipō Waiū and Moawhango.¹⁹ In the 1960s additional whānau deliberately settled in Taihape so as to maintain and strengthen their ahi kā within the Inquiry District.²⁰

Settlements and seasonal use of the lands

¹⁶ Wai 2180, #C14 Speaking notes of Aiden Gilbert for Ngā Korero Tuku Iho at [14].

¹⁷ Wai 2180, #K3 Evidence of Fred Clark at [73] citing Whanganui MB 1E at 610. See also Wai 2180, #A12 Walzl *Tribal Landscape Overview* at 251-252, 431, #A22 Berghan *Whanganui Blocks* at 735, 741-2.

¹⁸ Wai 2180, #C14 Speaking notes of Aiden Gilbert for Ngā Korero Tuku Iho at [17].

¹⁹ Wai 2180, #C14 Speaking notes of Aiden Gilbert for Ngā Korero Tuku Iho at [16], [14].

²⁰ Wai 2180, #C14 Speaking notes of Aiden Gilbert for Ngā Korero Tuku Iho at [18].

10. In Walzl's *Tribal Landscape Overview*, the claimants' tupuna Mapihi, Hineiro, and Te Puaiti (called Te Ruaiti in the Native Land Court and by Walzl) are named as Ngāti Rangituhia or simply Ngāti Rangi, however as noted above, the claimants say this is not the correct whakapapa line for the mana of their tupuna in the Inquiry District.²¹ In the Murimotu hearing, Topia Turoa distinguished the two, saying:²²

Te Ranga and Motukawa [are] places occupied by Ngati Rangi and Patutokotoko. [...] Te Ranga and Motukawa are the places of Ngati Rangi and Patutokotoko which I have seen myself.

11. Claimant witness Fred Clark also records a battle between Patutokotoko, defending their Patea lands against Ngāti Rangi attack, which led to the naming of Turangarere when:²³

Peehi and his warriors climbed up onto Hihitahi and sounded the putatara. Ngati Rangi looked up and saw that it was Peehi Turoa and Patutokotoko. It was as if the rays of the sun had come to a standstill on Turoa's silhouette. "Turanga rere nga hihi tahi o te raa." This is how Turangarere and Hihitahi get their name. From Peehi Turoa.

12. In Rangipō Waiū, Motuiti, renamed by Mapihi to Te Waiū o Hinekupa, was used by Patutokotoko as a seasonal base for hunting, and cultivations were established here.²⁴ Te Pou a Tamuringa is named in the Native Land Court minutes as "te pa tuturu o Patutokotoko".²⁵

13. In Motukawa, Turangarere was a site of occupation, as was Okautupapaku.²⁶ Turangarere was initially identified in the Native Land Court as being in Murimotu but when the boundary was adjusted it was in Motukawa; Topia told the Court that was one place that he lived, which is consistent with the wāhi being named in relation to Peehi Turoa as noted above.²⁷ Turangarere today is in either Motukawa 2B11

²¹ See, for example, in #A12, Walzl *Tribal Landscape Overview* the Ngāti Rangituhia section at 220-223 and Te "Ruaiti" at 251.

²² Wai 2180, #K3 Evidence of Fred Clark at [85] quoting Whanganui MB 1E at 599.

²³ Wai 2180, #K3 Evidence of Fred Clark at [66].

²⁴ Wai 2180, #A12, Walzl *Tribal Landscape Overview* at 220.

²⁵ Whanganui MB 1E at 600.

²⁶ Wai 2180, #K3 Evidence of Fred Clark at [86]; #A12 Walzl *Tribal Landscape Overview* at 431.

²⁷ Wai 2180, #K3 Evidence of Fred Clark at [86] quoting Whanganui MB 1E, p 600.

or 2B12; it was 2B11, 2B13, and 2B14 that were awarded to Topia, and he came there through his Ngāti Tama whakapapa.²⁸ Walzl does not record to whom 2B12 was awarded. These blocks are shown in brown in Map 18 of Walzl's *Twentieth Century Overview* report.²⁹

14. In Awarua, Otaihape and Te Awahaehae were the places Mapihi moved to to be with her second husband, Te Ngāhoa.³⁰ Otaihape was (and is) a settlement with a stream, and Te Awahaehae was a stand of bush on the Rangitīkei River with a kainga named Otamanehurangi on the edge of it.³¹ Topia was not awarded blocks in or near Taihape.
15. Owhaoko is recorded by Stirling as having interests of “upper Whanganui hapū” in it, as they were included in the land to be set aside for a school, proposed at the Turangarere hui.³² This block is Owhaoko 1.
16. Walzl records Ngāti Rangi versions of Patutokotoko korero, naming Patutokotoko tupuna as Rangituhia.³³ It is unfortunate that Walzl did not also capture the Patutokotoko korero, however he did acknowledge in cross-examination that he was aware that the version he was given was the Ngāti Rangi version of events and whakapapa, that he was aware of the complexities around discussion of Uenuku tupuna, and he stated that he had not talked with Uenuku about the korero collected from Ngāti Rangi.³⁴ David Armstrong agreed that the Native Land Court had no investigative function, and that groups could get lost in that process.³⁵
17. As set out above, Topia Turoa stated for the Native Land Court that Rangituhia and Patutokotoko lived together at places within the Inquiry District, and places Walzl lists as being places of seasonal use by

²⁸ Wai 2180, #A55 Hearings Overview Map Book at plate 61; #A46 Walzl *Twentieth Century Overview* at 111.

²⁹ #A46 Walzl *Twentieth Century Overview* at 112.

³⁰ Wai 2180, #K3 Evidence of Fred Clark at [53].

³¹ Wai 2180, #A12, Walzl *Tribal Landscape Overview* at 179.

³² Wai 2180, #A6 Fisher & Stirling *Northern Blocks* at 33.

³³ See, for example, Wai 2180, #A12, Walzl *Tribal Landscape Overview* at 109, in which Walzl names Hineiro's relatives as Rangituhia, and at 145 in which he says it is only Rangituhia's line which occupied lands within the Inquiry District.

³⁴ Wai 2180, #4.1.8 at 216-217.

³⁵ Wai 2180, #4.1.8 at 415.

Ngāti Rangituhia are places shared with Patutotokotoko (and others).³⁶ The claimants therefore rely on the Ngāti Rangituhia section of Walzl's report to illustrate some of their rights in the Inquiry District.

18. Walzl emphasises the seasonality of land-based food sources, particularly in the Rangipō Waiū block.³⁷ Similarly, Hohonu emphasises the seasonality of river-based food sources.³⁸ Their report is on the Rangitīkei River, and the claimants are more associated with the Moawhāngo River, however the basic principles are the same. Interests in the Moawhango River and smaller streams were not considered, as the Native Land Court framed its thinking in terms of English custom and law. Hohonu also notes the rivers were used as highways to get to kainga and cultivations, and many sites on Walzl's maps cluster around the Moawhango River.³⁹ Hohonu said:⁴⁰

It was easier to get from place to place by canoeing up or down rivers than by walking over the mountains or through dense bush. The rivers offered landing sites, harbours and a source of fresh water and kai. Food sources found inland or at sea could be reached easily by river. The availability of the fisheries and other foods determined settlement patterns and seasonal movement around the iwi and hapū rohe. Such activities played an important role in establishing rangatiratanga authority and stewardship responsibilities over the waterways.

19. Even had Topia Turoa's Patutokotoko whakapapa been accepted in the Native Land Court, it is unlikely Patutokotoko's seasonal use rights or their river interests would have been fully recognised, as these are a layers of rights not well understood or accepted by the Native Land Court.

20. In this Inquiry District, the Native Land Court heard applications for blocks in which the claimants had interests in the 1880s, and much land loss had occurred by the early 1900s. Additionally, the Crown had

³⁶ Wai 2180, #A12, Walzl *Tribal Landscape Overview*, chapter 2, B.7 at 220-223.

³⁷ Wai 2180, #A12, Walzl *Tribal Landscape Overview* at 220-223.

³⁸ See, for example, Wai 2180, #A44, Hohonu Ltd, *Ko Rangitīkei Te Awa* at 169.

³⁹ Wai 2180, #A44 #A44, Hohonu Ltd, *Ko Rangitīkei Te Awa* at 4.19 at 179; See, for example, #A12, Walzl *Tribal Landscape Overview* at 526, 679.

⁴⁰ Wai 2180, #A44, Hohonu Ltd, *Ko Rangitīkei Te Awa* at 197.

assumed control of rivers. This is a relatively fast transition from ownership of kainga and adequacy of seasonal food gathering sources to lockout of accessible lands. As the Ngāi Tahu Tribunal summarised, the question is whether the Crown exercised sufficient restraint in its policies and actions to prevent the disaster which has occurred to traditional food resources in the Inquiry District.⁴¹

21. The other issue that arises from this loss of land and seasonal resources is the loss of relationships between the claimants and other mana whenua in the Inquiry District. Many of the locations listed in Walzl's site lists are shared across mana whenua groups.⁴² Without access to the resources, those relationships have fallen away over the generations. Diminished relationships translate directly to diminished recognition of the claimants' interests in the Inquiry District.

CONCLUSIONS

22. Patutokotoko did not agree to the Native Land Court dealing with their lands, however after the paramount chief Peehi Hitaua's passing, his teina, Topia, was forced into the Court to defend their lands. The Court did not accept Patutokotoko whakapapa, forcing Topia to rely on his Ngāti Tama whakapapa to retain land interests within the Inquiry District. Nor did the Court consider, let alone protect, their interests in the Mowhango River or streams near their lands.
23. Because of this failure to recognise their correct whakapapa, the claimants have experienced:
- a. Loss of customary interests in land and rivers in the Rangipō Waiu, Motukawa, Awarua, and Owhaoko blocks, and the cultural and spiritual impacts associated with that loss;
 - b. Loss of mana;
 - c. Diminishment of traditional relationships within the Inquiry District.

⁴¹ Waitangi Tribunal *The Ngai Tahu Report 1991* (Wai 27, 1991) vol. 3 at 909-910.

⁴² For example, Ngāmatea.

FINDINGS AND RECOMMENDATIONS

Recognition

24. The claimants seek a recommendation from the Tribunal that the Crown acknowledges and recognises their interests in the Inquiry District.

Return of Land and Taonga

25. The Claimants seek recommendations from the Tribunal that:
- a. Pursuant to Sections 8A-8HG of the Treaty of Waitangi Act 1975 the Crown should return to the Claimants, in a manner which appropriately recognises those hapu/whanau that have a direct interest, all relevant Crown land together with waterbodies, together with any improvements thereon.
 - b. For those lands and waterbodies retained in Crown ownership or returned to other iwi and hapu/whanau, the Crown recognises and acknowledges Te Patutokotoko and Ngāi Te Upokoiri interests and obligations.
 - c. The Crown makes such other remedies as the Tribunal considers appropriate.

Compensation

26. The Claimants seek recommendations from the Tribunal that pursuant to Section 6(3) of the Treaty of Waitangi Act 1975 the Tribunal recommends the Crown:
- a. Compensate the claimants for the prejudicial effects caused by the Crown's legislation, actions, omissions, policies and practices as identified in this Statement of Claim and other documentation relating to the Taihape: Rangitīkei ki Rangipō District Inquiry;
 - b. Compensate the claimants in respect of the disruption of the hapu and whanau; the social dislocation which has occurred as a consequence of legislation and government policy; and

for the taking of measures dealing in social issues of unemployment and loss of mana; and for compensation by way of policies, practices and funding appropriate to restore the mana of the tribes; education and training of tribal members;

- c. Provide compensation to the claimants for the loss of their economic base and lands, including accrued loss of earnings;
- d. Provide compensation for all costs involved in relation to endeavours by the claimants tupuna to recover possession of the lands claimed;
- e. Compensate the claimants for the full costs of the preparation and presentation of this claim and the costs of recovering any land recommended to be returned or other costs incurred in securing the implementation of recommendations;
- f. Provide any other such compensation as the Tribunal considers appropriate.

Cultural redress

27. The Claimants seek recommendations from the Tribunal that:

- a. The Crown assist and facilitate restoration of access to mahinga kai and to other forms of traditional food resources of importance to the claimant whanau and hapu;
- b. The Crown make provision for the participation of the claimants on all statutory boards, authorities, agencies, companies and other Crown organisations that function within the claim area, including members of the hapu be employed as kaitiaki alongside the Department of Conservation, and any other Crown Agencies relevant to the resources of the hapu that includes lands, waterways, forests, and flora and fauna in the ownership or management of such Agencies;

- c. The Crown assist and facilitate restoration of relationships between the claimants and other mana whenua of the Inquiry District.

Other Forms of Redress

- 28. The Claimants seek any other recommendations and/or redress the Tribunal thinks fit.

Dated at Nelson this 23rd day of October 2020



Tom Bennion / Lisa Black

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