IN THE WAITANGI TRIBUNAL

Wai 2180, Wai 1705, Wai 647, Wai 588, Wai 385, Wai 581, Wai 1888

IN THE MATTER OF the Treaty of Waitangi Act 1975 and the Taihape: Rangitikei ki Rangipo Inquiry (Wai 2180)

IN THE MATTER OF a claim by Isaac Hunter, Utiku Potaka, Maria Taiuru, Hari Benevides, Moira Raukawa-Haskell, Te Rangianganoa Hawira, Kelly Thompson, Barbara Ball and Richard Steedman on behalf of themselves, the Iwi organisations who have authorised them to make this claim and the Mōkai Pātea Waitangi Claims Trust (**Wai 1705**)

AND a claim by Maria Taiuru and others for and on behalf of Wai 647 Claimants (**Wai 647**)

AND a claim by Isaac Hunter and Maria Taiuru and others for and on behalf of the Wai 588 Claimants (**Wai 588**)

AND a claim by Neville Franze Te Ngahoa Lomax and others for and behalf of the Potaka Whanau Trust and Nga Hapu o Ngati Hauiti (**Wai 385**)

AND a claim by Neville Franze Te Ngahoa Lomax and others for and behalf of Te Runanga o Ngati Hauiti (**Wai 581**)

AND a claim by Iria Te Rangi Halbert and others for and behalf of the Wai 1888 Claimants (**Wai 1888**)

Generic Closing Submissions (Native Land Court)
"Chapter 3 – Aspirations vs Outcomes"
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E te Rōpū Whakamana i te Tiriti o Waitangi

1. Introduction

1.1 These are Claimant Generic Closing Submissions on the topic of the Native Land Court, Chapter 3 – Aspirations versus Outcomes.

1.2 The submissions have been prepared as part of a collaborative counsel approach dealing with questions from the Tribunal Statement of Issues (TSOI). These submissions address questions 14-24 of the TSOI which are under the headings:

1.2.1 Impact of the Native Land Court process; and

1.2.2 Opposition, disputes and remedies.

1.3 As such, these generic submissions focus on the broad theme of "Aspirations versus Outcomes", namely assessing the aspirations of the Rangatira of Taihape Māori as against what they actually received by way of outcomes from the Court process.

1.4 The submissions try to avoid the duplication of submissions already made on the Native Land Court judgments to the various blocks and instead seek to deal with the judgments as examples of the various breaches of the principles of Te Tiriti o Waitangi that the claimants assert.

2. Aspirations of Rangatira

2.1 The Native Land Court had the effect of dismantling the effective exercise by Taihape Māori of their tino rangatiratanga, customary tribal authority and decision-making. It is submitted that the Crown acts and omissions in this regard are fundamentally inconsistent with the principles of Te Tiriti o Waitangi in the establishment of the Court system, the imposition of the native land tenure system, and the legislation and policy that underpinned the operations of the Court.

2.2 Counsel supports the generic submissions filed in relation to the constitutional basis of the Native Land Court. Those matters are not traversed here. But two themes were raised in counsel's specific submissions concerning the Court:

2.2.1 The fact that because the Taihape land blocks were relatively late in the Court title investigation processes, increases the Crown's culpability when examples from other regions meant that the deleterious impacts of the Court on tāngata whenua were reasonably foreseeable;

2.2.2 The fact that Taihape Māori took steps to both object to the land alienations, and to put forward reasonable alternatives, which were rejected or ignored by the Crown.

2.3 Submissions already filed have focused extensively on the aspirations of Taihape Māori which were clearly expressed to the Crown on:

2.3.1 land retention;

2.3.2 collective tribal control of titles;

2.3.3 collective tribal administration of land and distribution of benefits including decisions on the apportionment of land among hapū by way of tribal rūnanga;

2.3.4 requests to access development assistance to promote growth in the new economy.

2.4 For example:

2.4.1 The Kokako Hui of 1860 and Turangaarere Hui of 1872;

2.4.2 The 1867 report to Donald McLean that Ngāti Whitikaupeka and Ngāti Tamakōpiri Rūnanga ("Council") would be conducting land dealings;

2.4.3 The communications from Mōkai Pātea representatives in the Repudiation Movement objecting to the Native Land Court processes during 1872-1878;

2.4.4 The telegrams in 1890 from Erueti Arani and Winiata Te Whaaro for Ngāti Whitikaupeka to the Native Land Court imploring that any hearing of the Awarua block occur at Moawhango because of the deleterious effects on the people, and other representations on the same issue from the rangatira;

2.4.5 The letter in 1890 on behalf of the "Chiefs of Inland Patea" Winiata Te Whaaro and Retimana Te Rango to the Native Minister that:

> "…that they desire all negotiations relating to the purchase of the lands of Ngatiohuake, Ngatihauiti, Ngatiwhiti and Ngatitama be conducted through them as the chiefs representing these hapus – Winiata Te Whaaro the two former and Retimana Te Rango the two latter."

2.4.6 The evidence of Utiku Pōtaka, Winiata Te Whaaro and other rangatira on behalf of the committee of chiefs at the Awarua hearing in 1891 as to the division of land interests based on their rangatiratanga;

2.4.7 The evidence of Hiraka Te Rango in 1891 to the Rees-Carroll Commission and subsequent recommendations from the Commission to the Crown concerning the right of tribal councils and committees to adjudicate on land ownership, administer land collectively and distribute benefits.

2.4.8 The letters in 1892 and 1895 from rangatira such as Hiraka Te Rango to the Crown proposing land apportionment to hapū be allocated by the tribal rūnanga, with consolidation of interests to combat the fragmentation of title, and access to development assistance for economic growth.

2.4.9 The Kōtahitanga hui held at Kaiewe in 1893;

2.4.10 Representations made to Premier Seddon at a hui at Moawhango in 1894 as to issues of local governance and control.

2.4.11 The repeated attempts by Winiata Te Whaaro to obtain justice through legal avenues for the errors in the surveying of the Mangaohane block, and his protestations at his forced eviction from Pokopoko.

2.5 David Armstrong summarised these aspirations in his Oral and Traditional History Report:[1]

> "By this time the iwi had become convinced that whanau ownership, based on the Pakeha land ownership model, was the key to their future economic success. …. But while land titles would be determined by the Native Land Court, it was anticipated that this process would be overseen by the chiefs, exercising their customary authority and acting together in a form of runanga or committee. In this way the block could speedily and cheaply pass through the Court, which would 'rubber stamp' runanga or committee decisions. It was envisaged that land interests would be apportioned to the various iwi and hapu, and in due course each individual whanau would obtain a share of land. These lands would then be leased to Pakeha run-holders or farmed by the owners themselves."

3. Outcomes from the Native Land Court process

3.1 There was little Crown support given to attempts by Rangatira to assert a collective control or strategy over the partitioning process. If an individual did not agree, the attempts to reach out-of-court settlements failed.

3.2 Partition orders resulted in blocks becoming practically or legally landlocked, which itself resulted in loss of economic value for the land, and a severance from the cultural expression of kaitiakitanga.

3.3 Under-secretary Lewis had testified in 1891 to the Rees Commission that "the whole object of appointing a Court for the ascertainment of native title was to enable alienation for settlement."[2]

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[1] Wai 2180, #A49, Armstrong, D., *Mokai Patea Land, People and Politics* (January 2016) at pg 4.
[2] Waitangi Tribunal, *Kahui Maunga* report, p315.

3.3.1 Land was held by way of fragmented interests spread across blocks in the rohe, insufficient to support rational economic units.

3.3.2 Title investigations, partitions and re-hearings took place during winter, away from the kainga of Mōkai Pātea and caused hardship, sickness, cost and prejudice.

3.3.3 Title investigation court costs and survey liens created financial debt and personal hardship.

3.3.4 Land ownership was further reduced through land-takings for roads, railways, townships, reserves, schools and other public purposes.

3.3.5 There was a lack of financial and support systems for owners to develop lands, with government initiatives (such as the Advances to Settler Act 1894) being practically unavailable to Māori owners.

3.3.6 Forced migration of whanau out of their tribal rohe to survive compounded the disadvantages caused by absentee owners. Rates and charges, including rabbit rates, were imposed on Māori land in circumstances where the title held by owners who were fragmented and geographically severed from the land, caused immense difficulties in meeting the rates, and causing rating liability to rise.

3.4 Counsel adopts the submissions of other counsel on the prejudicial nature of the Native Land Court processes themselves:

3.4.1 The protracted hearings, often away from the traditional rohe;

3.4.2 The awards of partitioned blocks based on customary use and occupation with little cognisance to the future needs of consolidated blocks for economic development;

3.4.3 The cost of the hearings, and the surveys.

3.5 Question 17 of the TSOI queries how the Native Land Court practices relating to succession and intestacy affected the processes of partitioning, fragmentation and alienation of Taihape Māori land.

3.6 In the context of intestacy, succession laws following the 1867 *Papakura* decision resulted in all children of intestate Māori inheriting equal shares, which resulted in "extreme fragmentation", according to Native Land Court historian David Williams.[3] It is perhaps worthwhile pausing to consider the actual text of the *Papakura* decision,[4] as it encapsulates a number of the key themes of the claimant submissions:

3.6.1 The cultural superiority which is inherent in the decision;

3.6.2 The interpretation that the Court gives to the "intention of the Legislature" that English law shall regulate the succession of real estate among "the Maoris";

3.6.3 The classic summation by the Court of its "duty" to subordinate Māori custom to English tenure and rules of descent:

> "It would be highly prejudicial to allow the tribal tenure to grow up and affect land that has once been clothed with a lawful title, recognised and understood by the ordinary laws of the country. Instead of subordinating English tenures to Maori customs it will be the duty of the Court in administering this Act to cause as rapid an introduction amongst the Maoris, not only of English tenures, but of the English rules of descent, as can be secured without violently shocking Maori prejudice."

[3] Williams, D., *Te Kooti Tango Whenua, The Native Land Court 1864-1909* (1999), pg 179-181.
[4] *Papakura – claim of succession* New Zealand Gazette, 12 April 1867, pages 19-20.

Papakura - Claim of Succession 12 April 1867 *Gazette*

YESTERDAY the Court sat at the usual hour, and the evidence of Mr. Rogan was taken in reference to Ihaka's case, after which they adjourned to consider their decision. Upon re-assembling the Chief Judge gave the following judgment :—

This grant was made on the 25th day of February, 1863, and assured to Ihaka Takaanini Te Tihi, his heirs and assigns, an estate near Papakura, containing 1120 acres. The grantee died in the month of February, 1864, seized of these lands, without having made a valid disposal thereof by will or otherwise, leaving three children born in wedlock surviving him, named Erina, Te Wirihana, and Ihaka, one girl and two boys. The widow, on behalf of herself and these children, asks for an order of the Court declaring them entitled to succeed to the above estate, and the right to do so is contested by Heta Te Tihi, a cousin of the deceased, and other members of the tribe. The section of "The Native Lands Act, 1865," under which the jurisdiction of the Court in these matters arises, directs the Court to ascertain who, according to law, as nearly as it can be reconciled with Native custom, ought in the judgment of the Court to succeed to the hereditaments the subject of the investigation. The intention of the Legislature appears to be that English law shall regulate the succession of real estate among the Maoris, except in a case where a strict adherence to English rules of law would be very repugnant to Native ideas and customs. The leaning of the Court will always be to uphold Crown grants and the rules of law applicable to them, and will decline to consider the particular circumstances under which the grant was originally obtained, or the equities which might have been created or understood to have been created at the time thereunder, unless the evidence shall disclose strong reasons for deviating from so obvious and desirable a rule. It would be highly prejudicial to allow the tribal tenure to grow up and affect land that has once been clothed with a lawful title, recognized and understood by the ordinary laws of the country. Instead of subordinating English tenures to Maori customs it will be the duty of the Court in administering this Act to cause as rapid an introduction amongst the Maoris, not only of English tenures, but of the English rules of descent, as can be secured without violently shocking Maori prejudices. In this case we think that the evidence . . . . . equities in favor of the tribe, and we see no reason to make any interference with the ordinary law, except in one particular. The Court does not think the descent of the whole estate upon the heir-at-law could be reconciled with Native ideas of justice or Maori custom; and in this respect only the operation of the law will be interfered with. The Court determines in favor of all the children equally. The judgment of the Court, therefore, is unanimous that Erina Takaanini, Te Wirihana Takaanini, and Ihaka Takaanini, ought to succeed to the hereditaments above mentioned in equal shares as tenants in common.

This decision was communicated to the claimants by Mr. Munro.

3.7 The Court was "administering" the Act, being the Native Land Act 1865. The preamble to that legislation read in part that the Act was to "encourage the extinction of such [Maori] proprietary customs":

Title.

AN ACT to Amend and Consolidate the Laws relating to Lands in the Colony in which the Maori Proprietary Customs still exist and to provide for the ascertainment of the Titles to such Lands and for Regulating the Descent thereof and for other purposes.

[*30th October* 1865.]

Preamble.

WHEREAS it is expedient to amend and consolidate the laws relating to lands in the Colony which are still subject to Maori proprietary customs and to provide for the ascertainment of the persons who according to such customs are the owners thereof, and to encourage the extinction of such proprietary customs, and to provide for the conversion of such modes of ownership into titles derived from the Crown, and to provide for the regulation of the descent of such lands when the title thereto is converted as aforesaid, and to make further provisions in reference to the matters aforesaid;

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority thereof as follows—

3.8 The individualisation of title, and the fragmentation of those shares, facilitated (and was designed to facilitate) the alienation of land out of Māori hands. For example, in 1896, the Crown had acquired over 70% of the Awarua block (of about 250,000 acres).

3.9 Judge Maning in 1867 stated that:[5]

> "The difference between a people holding their property as commonage and holding it as individualised real property is, in effect, the difference between civilisation and barbarism."

3.10 Professor Richard Boast refers to this being a "*standard, and indeed highly developed, attitude shared by many British people of his day, or at least by people of the governing class*."[6] It represented a "tenurial revolution".

3.11 The imposition of a individualised land title system, the breakdown of collective tribal authority, and the subversion of tino rangatiratanga led to loss of land, economic and social impoverishment and cultural alienation.

3.12 Question 14(a) of the TSOI asks what impact the Native Land Court had on "*decision-making structures, mana whenua and tino rangatiratanga*." The claimants rely on the technical evidence relating to the undermining of decision making processes through the Court, and rely on the oral evidence of claimants themselves as to the significant prejudice to them, down through the generations.

3.13 In one example, David Armstrong and Mōkai Pātea witnesses have given evidence of the impacts on the mana whenua and tino rangatiratanga of those who affiliate to Ngāi Te Ohuake, and the impacts of the 1891 Court judgment in the Awarua case, which ignored the evidence of the Rangatira as to their iwi and hapū affiliations to the land. Tribal evidence in 1886 told of the "meeting of natives" at Te Houhou on 11 March 1886 where it was decided that

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[5] [1867] AJHR A10, p8.
[6] Boast, R., *The Native Land Court, A Historical Study. Cases and Commentary 1862-1887* (Thomson Reuters, Wgtn, 2013), p55.

there were five hapū owning the block called Awaura-Riuopunga (including Motukawa), namely Ngāti Whiti, Ngāi Te Ohuake, Ngāti Hauiti, Ngāti Hinemanu and Ngāti Tama. Utiku Potaka gave evidence of this in May 1886 (10 WHMB 131) as did Hiraka Te Rango (10 WHMB 235). In the 1890 Awarua subdivision case, the evidence of Heperi Pikirangi, Ihakara Te Raro and Winiata Te Whaaro aligned their mana whenua claims to the Awarua lands with those hapū, including Ngāi Te Ohuake. The Committee of Rangatira on 22 July 1890 had set out their list of owners in each subdivision, as recorded in the Blake minute books. Yet the 1891 Awarua judgment ignored this and the name of Ngāi Te Ohuake was lost from the record.[7]

3.14 In support, Armstrong sets this out in two tables in his report at Tables 7 and 8:[8]

[7] Summarised from Richard Steedman evidence, Wai 2180, #H18.
[8] Armstrong, #A49, Table 7 page 56 and Table 8, page 60.

Table 7. Blake's Subdivisions and Ownership Lists

Sub-division	Area (in acres)	Owners
No. 1. 'Mokaipatea'	130,548	Ngati Hauiti, 74 Ngati Whiti-Hauiti, 38 Ngati Te Ohuake, 26 Ngati Hinemanu, 89 Ngati Upokoiri-Hinemanu, 16 Ngati Marao, 5 **Total: 248**
No. 2. 'Riu-o-Puanga'	52,350	Ngati Whiti, 76 Ngati Ohuake-Whiti, 62 Ngati Ohuake-Hinemanu, 42 Ngati Upokoiri, 37 **Total: 217**
No. 3. 'Rangitauria'	32,200	Ngati Tama, 128 Ngati Whiti, 76 Ngati Whiti-Ohuake, 47 Ngati Whiti-Hinemanu, 42 **Total: 293**
No. 4. 'Whakauae'.	40,000	Ngati Tama, 42 Ngati Whiti, 76 Ngati Hauiti, 74 Ngati Hauiti-Hinemanu, 13 Ngati Hauiti-Te Ngahoa, 45 **Total: 250**

Table 8. 1891 Partitions

Partition	***Acres***	***Owners***
Awarua 1		Ngati Hinemanu, Ngati Paki, Ngati Ruaiti, Ngati Kea, Ngai Te Upokoiri, certain descendants of Tamakorako
Awarua 1A		Ngati Hauiti, Ngai Te Ngaruru, Ngati Haukaha, Whiti-Hauiti people
Awarua 2		Ngati Whiti and certain descendants of Tama Korako
Awarua 2A		Ngati Mataroa
Awarua 3		Ngati Tamakopiri
Awarua 3A (Papakai)		Ngati Whititama
Awarua 3B		Ngati Hauiti and Ngati Hauiti-Whiti
Awarua 4		Ngati Hauiti, Ngati Haukaha, Ngati Hauiti-Whiti

3.15 As such, the Awarua investigation is an obvious example of where the aspirations of the Rangatira were undermined by Crown authority. The Rangatira had reached agreement on customary interests and hapu boundaries in an "out of court settlement". However, two groups had not agreed with the settlement, which was sufficient to mean that the block had to go through a full investigation at a crippling cost.

3.16 The problem was one of where the authority for decision-making lay. It did not ultimately lie with the Rangatira through recognition of their tino rangatiratanga.

> "The existence of the Native Land Court, clothed with the sole legal authority to determine land titles, was a major disincentive to unity and cooperation."[9]

3.17 By the 1920s, Taihape Māori were on the social and economic margins in their own traditional rohe. Remaining land held as Māori freehold was in isolated areas, with much of it landlocked. These various factors contributed to an alienation of the community from

[9] Wai 2180, #A49, Armstrong, D., *Mokai Patea Land, People and Politics* (January 2016) at pg 5.

their hapū roots. As such, the unique identity and tino rangatiratanga of Taihape Māori was almost destroyed.

4. Assessing the "protective measures" of the Crown

4.1 Question 15 of the TSOI focuses on whether "protective measures" such as restrictions on alienation were available to Taihape Māori and whether they were effective in protecting customary interests.

4.2 The short answer is "No". But it is first important to record that the "protective measures" sought by the Rangatira were of a very different scale: recognition of collective title and authority/control in the Rangatira. These proposals were known to the Crown, and were achievable had there been a will to do so:

4.2.1 In 1862, Governor George Grey had suggested that district runanga have the authority to investigate land boundaries.[10]

4.2.2 The 1891 Rees Commission had made detailed proposals itself which would have provided Māori committees with legal authority to investigate titles and administer the lands.

4.3 However, the Crown ignored those proposals. Rather, the "protective measures" of the Crown remained firmly within the Crown's tenurial regime whereby the expression of tino rangatiratanga and decision-making authority of the Rangatira was subverted. In the context of Treaty jurisprudence, it is submitted that the measures discussed below did not meet the basic threshold of "active protection" of Māori interests in their whenua and their taonga.

4.4 The reinstatement of the Crown right of pre-emption (which had been "waived" in the preamble to the Native Lands Act 1862) was regarded by the Rees Commission as a form of protection against the wholesale alienation of land to private interests. The Crown agreed to this proposal, by enacting section 17 of the Native Land Court Act 1894. But Armstrong argues that the government simply pursued its

purchasing agenda more aggressively, and that pre-emption "was seen by the Crown as a means of eliminating competition from private purchasers and advancing its own settlement objectives."[11]

4.5 Nor can the Native Land Alienation Restriction Act 1884 be regarded as an adequate "protective measure" but in the case of the Awarua block, Armstrong has given evidence that this facilitated the Crown's need to acquire land for the North Island Main Trunk Railway and to thereby block private acquisition. In 1889, the Crown had declared that Awarua was "under negotiation", and private dealings were prohibited.

4.6 The majority of the Awarua block was alienated to the Crown between 1891 to 1896 (during this period of Crown pre-emption, which lasted until 1905). The context of the times and the impacts of the earlier Native Land Court processes played a significant part in facilitating this alienation:

4.6.1 The Awarua hearings had been long, costly, and held away from traditional homelands, resulting in owner debt and vulnerability;

4.6.2 The partitioning of land into whanau economic units had not occurred;

4.6.3 Over-stocking of sheep on the remaining uneconomic blocks resulted in decline of stock and in prices, and financial strain;

4.6.4 The re-hearing had been granted in February 1892 which created uncertainty and the prospect of further lengthy litigation.

4.7 Armstrong points out that by the time partitioning of owner interests took place in 1896, it "*essentially involved not the identification of*

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[10] [1862] AJHR E2, p12.
[11] #A49, Armstrong, D., p8.

whanau farms, but rather a definition of the interests of non-sellers in the remaining Awarua lands."[12]

4.8 Sheep returns indicate thus:[13]

	Sheep	Māori Owners	Average Size of Flock
1895	140,000	43	3,545
1896	152,448		
1905	12,502	15	833

4.9 To put that 1905 total of Māori-owned sheep in context, the total number of sheep recorded in the 1906 Sheep returns for the Rangitikei County was 661,656.[14]

4.10 The cost of the hearings (1890-1891) and the costs of the surveys to 1892 for the Awarua block was estimated by the press reports to be around 25,000 pounds, which would equate to $5.4m in today's money.[15] Then there was the cost of the 1892 rehearing, the subsequent surveys and the 1896 partitioning.

4.11 By 1896, the Crown had acquired some 250,000 acres, or over 70% of the Awarua block.

4.12 It is in this context that the Crown submission must be assessed that:[16]

> "once corporate forms of title became more effective and readily accessible through the incorporation provisions of 1894, Taihape Māori did not avail themselves of these opportunities notwithstanding having proposed arrangements in relation to Awarua two years previously."

4.13 David Armstrong has given evidence that the possibility of Māori land incorporations was not taken up in the Mōkai Pātea rohe for a variety of reasons relating to this historical context:[17]

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[12] #A49, Armstrong, D. p62.
[13] #A49, Armstrong, Appendix 1.
[14] [1906] AJHR H23, p2.
[15] #A49, Armstrong, D., p70.
[16] Wai 2180, #3.3.1, Crown opening submissions, 2 March 2017, para 61.
[17] #A49, Armstrong, D. p84-85

4.13.1 Crown interests existed in a number of the blocks, so incorporations could not be established;

4.13.2 Fears given that incorporation representatives were given powers of alienation;

4.13.3 The Public Trustee was involved in loans to incorporations;

4.13.4 Title fragmentation resulted in a difficulty in securing majority of owner support.

4.14 Hiraka Te Rango had complained in 1895 that the result of the Court's awards were that the owners received shares on paper and not shares in the land itself, so consolidation of the interests was futile.

4.15 Bruce Stirling summarises the situation of the Awarua and Motukawa owners through this period of the 1890s:

> "The original intention of the owners of Awarua and Motukawa had been to alienate 100,000 acres of their rohe potae – the last intact and productive land they retained in 1886 – across five Awarua titles and Motukawa in order to meet the Crown's desire for land for settlement in the vicinity of the North Island Main Trunk Railway. The settlement of that land would assist in funding the railway while also stimulating local economic development. This approach would have meant Māori retaining the 200,000 acres balance for occupation and development under their ownership and collective management, acting in cooperation with the government, which they anticipated would assist them in obtaining finance to fund development of their retained lands. Instead, it was they who were left with the 100,000 acres, while the Crown had acquired more than twice as much as they had wanted to part with, as a result of a disorganised, shambolic and protracted process that cost them a decade of delay and an enormous amount in title-related costs. Nor was any assistance in land development forthcoming, at least not in this century, nor in the lifetimes of the Rangatira among the Awarua ownership."

5. Opposition, Disputes and Remedies

5.1 Questions 22-24 of the TSOI focuses on the processes of opposition, disputes and remedies within the Native Land Court processes. Submissions have already canvassed the extensive opposition expressed by Taihape Māori to the Court investigations without giving due cognisance to the wish of Rangatira to exercise their collective control.

5.2 The first point to note is that the re-hearings and appeals processes themselves sat within the Crown imposed tenure system, which itself was a breach of the principles of Te Tiriti o Waitangi.

5.3 But Taihape Māori also made use of the re-hearings, appeals and re-investigation processes that were at play. An actual appellate structure from the Native Land Court did not come into force until 1894. Re-hearings were the only option initially, or seeking redress by way of petitioning the Crown itself.

5.4 The Owhaoko investigation is a truly complex web of hearings and re-hearings. The initial investigation took from 1875 to 1876, but was not actually partitioned until 1885. There was an Order in Council issued in 1880 for a re-hearing which did not eventuate (and was then deemed to have lapsed). In 1886, special legislation was passed approving the reinvestigation of the Owhaoko and Oruamatua-Kaimanawa blocks, which resulted in a new hearing in 1887. That decision was reheard in 1888. Subsequent hearings were required for the Owhaoko partitions.

5.5 The Te Koau investigation resulted in significant prejudice to owners, given the title investigation errors that had underpinned it.[18]

5.5.1 The Otaranga purchase had wrongly assumed that the Te Koau block had been included;

5.5.2 The Royal Commission upheld the concerns of Mōkai Pātea Rangatira, finding that Te Koau had not been included in the purchase, but that some 7,100 acres had already been alienated for the education endowment;

5.5.3 A controversial investigation of title hearing in 1900 resulted in appeals in 1905-1906, with significant survey liens on the block contributing to the alienation of Te Koau B in 1922;

5.5.4 Te Koau A (3,400 acres) which was retained by Māori owners was economically challenging, and practically landlocked, burdened with rates debts;

5.5.5 Of the total 17,000 acres of Te Koau, the Crown holds 7,100 as Crown land, and evidence to the Tribunal has traversed the extent to which opportunities the Crown had to alleviate the landlocked nature of the block were ignored.

5.6 Other examples are the long saga involving the Mangaohane title investigations and the persecution of Winiata Te Whaaro and whanau, and the long-running hearing into the Timahanga block. These are covered in detail in other submissions.

5.7 The Tau and Fisher report focuses on the apparent "over-emphasis" by the Native Land Court in the recognition of customary interests of Ngāti Honomokai and Ngāi Te Upokoiri in the eastern blocks of the Mōkai Pātea rohe – particularly the Timahanga, Owhaoko C and the Mangaohane blocks.[19] In the Mangaohane investigation, the Native Land Court's inclusion of Ngāti Honomōkai and Ngāi Te Upokoiri may well have, according to the joint evidence of Bellamy, Hawira and Steedman, had the effect of "minimising the rightful claims of Ngāti Paki and Ngāti Hinemanu descendants", and been a major fact in the events which led to the eviction of Ngāti Paki from Pokopoko.[20]

5.8 Another example of an error from the Court arose in the context of Ngāti Hinemanu customary rights in Owhaoko and Owhaoko C. Bellamy, Hawira and Steedman gave evidence of this:

> "Some of Ngāti Hinemanu – specifically those descended from Tuterangi (of Tarahe) claimed in the Tikitiki area of the Owhaoko Blocks and up to Tawake Tohunga. This claim was recognised (and was legitimate) but the actual area of land which was awarded to this group of claimants was combined into the Ngāti Honomōkai area in the <u>southeast</u> of the block,

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[18] See for example the evidence of Peter Steedman, and summary of the Native Land Court processes in Subasic/Stirling, *Sub-District Block Study – Central Aspect* (2012).
[19] Wai 2180, #O2(a), Tau and Fisher, for example, pages 107, 121.
[20] Wai 2180, #P1(a) Steedman, Bellamy, Hawira, at page 28.

for the convenience of the court, rather than the specific area of Tikitiki which is in the southwest of the block.[21]

5.9 At the southern end of the inquiry district, the investigation of the Otumore block from 1906 with the subsequent survey in 1923 resulted in a significant lien, a charging order and alienation. This case study is set out in detail in the Armstrong report,[22] which chronicles the fact that the Otumore block was not included in the Mangoira investigation, was then investigated in 1906 by the Court, with claims and counter-claims, ultimately awarded in favour of Ngāti Hauiti. Utiku Potaka's attempt to settle a partitioning of the block on the basis that the "whole tribe had agreed" was rejected by the Court and Potaka was directed to provide a list of owners.[23] Further appeals and partitions occurred, including a petition to Parliament in 1907. The survey undertaken in 1923 reduced the land area of 7,000 acres by almost 2,000 acres, then the costs were applied as a charge on the land, with interest at 5% accruing. The Crown through the Forest Service acquired Otumore because of the survey charging order could not be satisfied.

5.10 In such circumstances as outlined above, the claimants submit that the Crown consistently failed in its obligations to Taihape Māori. The consequences of title or boundary or survey errors fell disproportionately on the Māori owners and often led to further alienation of land out of Māori hands. Specific compensation was not forthcoming.

5.11 The complex web of rehearings and petitions and reinvestigations created an environment where tāngata whenua were pitted against each other, and which incentivised those who had little substantive claims to be heard and to cause delays and division. Fundamentally,

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[21] Wai 2180, #P1(a) Steedman, Bellamy, Hawira cites the following minute book references in support: Owhaoko C Partition 1894 NaMB 34 P225 – JM Fraser, P226 – ALD Fraser, P235 - Court

[22] #A49, Armstrong, D., Part X.

[23] #A49, Armstrong, D., p398-399.

the processes did not allow for tribal authority to be meaningfully exercised in accordance with tikanga.

Dated this 21st day of December 2020

Leo Watson
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