

KEI MUA I TE ROOPU WHAKAMANA
I TE TIRITI O WAITANGI

Wai 2490

IN THE MATTER

of the Te Tiriti o Waitangi Act 1975

AND

CONCERNING

a claim (Wai 2341) by Rudolph Taylor, Lizzie Mataroria-Legg, Heremoananuiakiwa Kingi and others, on behalf of themselves and a number of hapū regarding the application of the Crown's Settlement policy over the whanau and hapū of Ngāpuhi

BRIEF OF EVIDENCE IN REPLY OF RUDOLPH TAYLOR
DATED this 25th day of November 2014

RECEIVED

Waitangi Tribunal

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Ministry of Justice
WELLINGTON



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Introduction

1. My name is Rudolph Taylor. I am a claimant on the Wai 549 Claim and I am the Chairman of the Hokianga Collective of Claimants.
2. As mentioned in my previous evidence, (Wai 2490, #A1 and Wai 2490, #A45) I am also the Co-Chair of Te Kotahitanga o Ngā Hapū Ngāpuhi ("Te Kotahitanga").
3. I have read the evidence filed by the Crown, the Tūhoronuku Independent Mandate Authority ("TIMA") and those in opposition to this application and I wish to respond to some issues that arise.
4. Before speaking to specific issues, I wish to make an overall comment.
5. I don't think the Crown will change in their position to support and protect the Tūhoronuku Independent Mandate Authority ("TIMA"). This is despite years and years of hapū protesting and voicing our concern with this body.
6. The Crown and TIMA evidence shows that they have done all they could to ensure that TIMA was the body that would eventually be recognised by the Crown. They have a preference and they have their own version of how things will roll out and how things will be done. There is no changing that.
7. I believe this is only emphasised by the Prime Ministers recent comments, **attached and marked "A"**, regarding the Waitangi Tribunal Stage One Report on He Whakaputanga me Te Tiriti¹ when he said²,

In my view New Zealand was one of the very few countries in the world that were settled peacefully

8. I don't understand how our own Prime Minister, having considered the Waitangi Tribunal report and New Zealand history, that documents thousands dying in the land wars after the Te Tiriti was signed, could make comments like that.

¹ Wai 1040, *He Whakaputanga me Te Tiriti* Stage One Report on the Declaration and the Treaty Nov 2014

² "New Zealand Settled Peacefully" Stuff.co.nz, 20 November 2014

9. For me it shows that the Crown have their own agenda, they have their own way of thinking and this is despite the views of the hapū that entered into a partnership with the Crown in 1840.

Tūhoronuku Information and Mandating Hui

10. There has been a lot of discussion around the TIMA information and mandating hui that were held in New Zealand and Australia. I attended a majority of the hui and as others have said, I do not believe that the hui were “functional and a success”³.
11. I admit that at some hui the behaviour of attendees was not great and matters could have been addressed in a better way. We have never denied that. But what do you expect when the very thing we fight for, the recognition of our hapū rangatiratanga through the claims process, is being taken away? How were we supposed to react?
12. TIMA themselves recognise this behaviour in their evidence but interestingly do not note their behaviour as well. Despite that, they still maintain that the hui were functional and a success. How can TIMA claim that their hui were successful, when, according to TIMA:
- a. Many of these hui had to be shut down early;
 - b. TIMA presentations were not complete;
 - c. Not all participants at hui were able to speak;
 - d. Questions from the floor were not answered; and
 - e. Participants had to approach TIMA after hui for further information as they didn’t understand?
13. Even if the disruptions at the hui were caused by the same people “monopolising the floor”⁴ you cannot then turn around and say that the hui were a success. Clearly there were questions and issues that needed to be addressed and this was not handled well by Tūhoronuku. It certainly was not functional or successful.

³ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 4.42

⁴ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 4.30

14. Despite the disruption, lack of engagement from non-Te Kotahitanga attendees, incomplete TIMA presentations and lack of information provided, Ms Carol Dodd still states in her evidence⁵ that she came away from the hui with no doubt that the significant majority of Ngāpuhi, both from within the rohe and from further afield, strongly supported Tūhoronukus mandate to enter into settlement negotiations. I personally don't see how Tūhoronuku can come to those conclusions after attending these hui.
15. Furthermore, Sonny Tau criticises a number of people attending each hui and putting the same views at every hui⁶. But weren't each hui held for the same purpose? Perhaps if the questions asked were sufficiently answered by TIMA, they would not have had to keep attending the hui.
16. It is my understanding that video footage from these hui was taken. I have not yet viewed that footage and therefore am not in a position to comment but I think it would be helpful if only to show the Tribunal that TIMA did not maintain a professional and diligent approach within these hui⁷, as stated by Sonny Tau in his evidence.
17. The Crown too recognise that they played in role in these hui at an early stage⁸. Ms Maureen Hickey states that it was the Crowns role to:
- a. to provide advice and comment on a sequence of mandate strategy drafts; and
 - b. to provide independent observers for all mandate strategy hui in New Zealand.
18. In relation to the second point, Te Puni Kōkiri undertook this role. I have viewed the reports and reiterate the comments made by others within this inquiry that:
- a. The reports themselves note the tension within the hui but then the conclusions reached don't seem to reflect their observations; and

⁵ Wai 2490, #A82 Brief of Evidence of Carol Dodd dated 14 November 2014 para 37

⁶ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 4.30

⁷ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 4.42

⁸ Wai 2490, #ATBC Brief of Evidence of Maureen Hickey dated 20 November 2014 para 51

- b. A huge portion of the hui were conducted in Te Reo Māori. It is my understanding that there was never a TPK observer, responsible for writing the reports that spoke or understood Te Reo Māori. I believe the Crown should have ensured that whomever was responsible for this role would have been able to understand the entire hui and report accordingly.
19. Before moving to the next topic, it is interesting to me that TIMA keep referring to the pre-mandate hui as “the biggest communications and public awareness and participation campaign in the history of Iwi Māori”⁹.
20. Firstly I think that those involved in campaigns such as the 1975 Land March *Not One More Acre* and campaigns for justice such as Ngā Tama Toa would not think that 14 hui running for approximately 2 hours each, the establishment of a few internet pages and regular advertisements would be bigger than the huge efforts they went to for our rights to be recognised.
21. For TIMA to even suggest this shows their detachment with not only hapū within Ngāpuhi but also Iwi Māori.
22. Secondly, I simply don’t see how this can be the biggest communications campaign in the history of Iwi Māori when some hapū and marae, just down the road from TIMA offices, have never been approached or had a hui with TIMA representatives.
23. Mere Mangu states herself in her evidence that when she talks to people from Ngāti Hine it is clear that they have no idea what Tūhoronuku is about and what its purpose is.¹⁰ She goes on to suggest that it is for the hapū to inform their people but surely this is not required if TIMA’s biggest communication campaign in the history of Iwi Māori was successful.

Facilitation process

24. The Crown and TIMA have provided evidence that during the facilitation processes, they were willing participants at every step, addressed Te Kotahitanga concerns and amended the Deed of Mandate to ensure those concerns were dealt with.

⁹ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 4.30

¹⁰ Wai 2490, #TBC Brief of Evidence of Mere Mangu dated 24 November 2014 para 3

25. While I agree changes were made to the Deed of Mandate, at no point did they significantly address hapū concerns. And at no point did they ever reach a point where we would support their model. As we have seen though, this didn't matter and they went ahead anyway.
26. At the time of facilitated discussions with Mr Bolger, TIMA already had 15 representatives on its body, 7 of which were supposedly hapū kaikōrero. They maintained then, as they do now, that they were representative of hapū and that hapū were the ones that led their processes.
27. It is interesting to note than that TIMA would easily just ignore any hapū election process or tikanga base election to just "offer Te Kotahitanga four seats on Tūhoronuku"¹¹. While TIMA say they made this offer in good faith and with a desire to work together, why then did they announce only hours after the Whitiara hui that there would proceed with their mandating hui? It was clear to me that TIMA was not representative of hapū at all and would simply do what they wished.
28. Sonny Tau mentions a number of times Te Kotahitanga's refusal to participate in discussions. I find his evidence on this particular issue selective as there were also a number of times, for whatever reason, that TIMA refused to participate as well. Yet he doesn't mention those instances.
29. Following the last attempt at facilitated discussions with Tukuroirangi Morgan, TIMA, at the request of the Crown, made amendments to the Deed of Mandate. Sonny Tau states that the amendments specifically addressed concerns regarding the respective roles of hapū and the Rūnanga on Tūhoronuku, and that they took on board Mr Morgan's recommendations¹².
30. I would disagree with that statement because our concerns were not fully addressed. The Crown and TIMA response to each of our concerns was a watered down version of what we were actually asking for and made little change at all.
31. I believe it was a tick the box attempt to say that they listened and addressed our concerns but in reality, little changed. I want to speak to some of those amendments in this reply evidence.

¹¹ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 4.29

¹² Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 4.30

32. *The number of hapū representatives on Tūhoronuku was increased from seven out of 15 representatives to 15 out of 22 representatives.* TIMA say that this now gives hapū the “control” over TIMA and therefore the settlement process. We still remain adamant that hapū representation must be by hapū and having only 15 representatives for over 110 hapū does not achieve that.
33. *The Rūnanga's two representatives on Tūhoronuku were reduced to one.* It has always been our position that the Rūnanga should play no role at all in any settlement for our hapū. Whether there were 15 positions on TIMA for the Rūnanga or 1 position on TIMA for the Rūnanga, any position at all would play a role in this process and was strongly objected to.
34. *Tūhoronuku agreed to register as an independent charitable trust upon any recognition of mandate.* They considered this sufficiently addressed the concern of hapū that TIMA were separate from the Rūnanga. However, in actual fact not much changed. You cannot say that you are independent from the Rūnanga when you share the same offices, are funded in part by the Rūnanga and have the same employees in both bodies. There is just no separation. In fact, in some of the TIMA evidence, the lines are blurred as to when they are TIMA and when they are Rūnanga. Carol Dodd refers to the Rūnanga throughout her whole chronology, even though she was clearly referring to events “post separation”.
35. *There was to be police vetting of election candidates but only in certain circumstances.* Once again, this is an attempt to say that concerns were addressed when in actual fact criminal convictions would only be checked if a dispute was raised. For us, it only makes us ask further questions for our hapū – well what then do they have to hide? And why would the Crown not ensure that this be a requirement?
36. *Tūhoronuku IMA trustees are prevented from being negotiators.* While I understand that this is the position in the Deed of Mandate it is slightly misleading. If a TIMA representative wished to be a negotiator, they could apply and only if they were successful would they have to resign from their position on TIMA. So until that happened, they could hold their position on TIMA and place their bets to become a negotiator as well. It would be interesting to see if that has been the case, but because TIMA will not

release that information, we just don't know. Once again hapū are left in the dark on these important matters.

Election Process

37. I am aware of a substantial amount of evidence on the hapū kaikōrero election process that has already been filed for the claimants in this inquiry and I support what has been said to date. I do not wish to add much more other than to make the following brief comments.
38. Tūhoronuku say that following the recognition of the Deed of mandate, they have been actively updating the Crown about its activities and carrying out its processes professionally and diligently¹³.
39. Given that TIMA assert that hapū are at the forefront of this process, why are these updates not provided to hapū to view? Why have some hapū not heard from TIMA at all following the recognition of the Deed of Mandate?
40. As I mentioned above I believe TIMA have been selective in their evidence and at times misleading. At para 5.11 of his evidence and in relation to the elections process, Sonny Tau states that

Following Judge Reeves' decision dated 21 March 2014 (Wai 2341, #2.5.7), in which Her Honour noted possible concerns with provision of information under the Official Information Act 1982 and the effect of that on MHK nominations, the Crown requested that the Tūhoronuku IMA consider re-opening and extending that nominations process. The Tūhoronuku IMA duly extended the MHK nomination period from 21 March 2014 to 17 April 2014. This is yet another indication of the Tūhoronuku IMA's desire to see hapū participate as broadly as possible in its processes.

41. However, the Tūhoronuku media release of 31 March 2014 (**attached and marked "B"**) states that,

The reason we have reopened the Hapū Kaikōrero nomination period is because the Crown has dilly-dallied around in releasing Official Information Act requests for submissions made about the Tūhoronuku Deed of Mandate

¹³ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 5.4

42. There is no mention whatsoever in that media release of TIMA's desire to see hapū participate as broadly as possible. In fact, it was only when the Tribunal directed TIMA to extend the nomination period did they even consider it. And even then, this media release, showed they that didn't really want to.
43. To me, this is yet another example of TIMA shaping their evidence to make it seem like they and the Crown had hapū concerns at the forefront when that was just not true.

Hapū Rangatiratanga

44. Hapū rangatiratanga within this process has not been recognised and that is an issue that remains as one of our main concerns. Together with our desire to lead our own process and shape our own settlement, we have been strong in our position that the Rūnanga, or any subsidiary of, cannot play a part in this process.
45. As early as September 2008 the Crown were aware of our desire to lead our own process and for the Rūnanga to stay out of it. Maureen Hickey states in her evidence that¹⁴

officials advised the Minister in Charge of Treaty of Waitangi Negotiations (Dr Cullen) in relation to the forthcoming Tribunal hearing process: There are a large number of Wai claimants in Northland. While there have been some moves towards clustering – such as the Ngāpuhi Design Group – not everyone has been involved. Although Te Rūnanga a Iwi o Ngāpuhi is involved in the process, Ngāpuhi claimants are very much marae and hapū-led at this stage and the groups do not want the Rūnanga to run the process. Mr Tau has previously told officials that the Rūnanga is there to support the process but the marae and hapū want control of it.

46. So despite these early concerns hapū had, and preference for a hapū driven process, the Crown ignored that and entered into discussions with, and then funded, the Rūnanga to become the body to enter into negotiations with the Crown.
47. While TIMA assert that the Deed of Mandate recognise hapū authority and allows hapū to participate and be involved within the elections process, there are huge flaws that go directly against this assumption.

¹⁴ Wai 2490, #ATBC Brief of Evidence of Maureen Hickey dated 20 November 2014 para 17

48. Sonny Tau says that TIMA were able to list 110 hapū within Ngāpuhi. He believes that many of those hapū are dormant and estimates that there are approximately 28 inactive hapū leaving approximately 80 active hapū¹⁵.
49. On that basis he provides the Tribunal with some figures for hapū support that he says TIMA has. These are outlined at paragraph 5.12 and at paragraph 5.13 he also provides reasoning for the “wrong impression” that the remaining 62 hapū may not support TIMA.
50. I think it is concerning that TIMA is trying to indicate further support for this process by saying that one hapū kaikōrero may in fact speak for a number of hapū.
51. For example he says, Te Hikutu is affiliated and considered the tuakana or senior hapū for Ngāti Parenga, Ngāti Kerewheti, Ngāti Tuapango, Ngāti Kairewa, and Whanauwhero. I doubt that those hapū were involved in the election of the Te Hikutu representative and I doubt that they would even know he would be speaking for them in the settlement process.
52. In summary, Sonny Tau claims that 48 hapū received nominations for kaikōrero, 7 of which required an election to take place. Taking account the figure of 80 active hapū, and the fact that many are cross claim hapū he concludes that the majority of hapū within Ngāpuhi support and are involved in the TIMA process.
53. But there are certain things that Sonny does not mention:
- a. At paragraph 6.9 of his brief Sonny Tau discusses those hapū who have changed their positions from opposing Tūhoronuku and supporting Te Kotahitanga to supporting Tūhoronuku. But he doesn't mention those who may have been in support but now oppose. I take into consideration those views and the number of hapū who have since withdrawn their kaikōrero from TIMA;

¹⁵ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 3.32

- b. There are some hapū that have a kaikōrero on TIMA but they don't in fact support. They have stated that they are trying to effect change from the inside but remain in opposition to TIMA; and
 - c. There are some kaikōrero on TIMA that do not have the support of their hapū and are on TIMA DESPITE the wishes of their hapū to withdraw.
54. Taking into account that information, I provide the following figures from my understanding and that I believe show a more accurate level of support and opposition to TIMA:
- a. Of the 48 hapū that originally provided kaikōrero representatives to TIMA, 2 have formally withdrawn¹⁶;
 - b. Of the then remaining 46 hapū, 4 of those hapū kaikōrero have advised that they have engaged in the process but remain in opposition¹⁷; and
 - c. Of the then remaining 42 hapū, at least 8 of those hapū kaikōrero do not have the significant support of their hapū¹⁸.
55. I do not support TIMA's assertion that one hapū kaikōrero represent more than one hapū and therefore I conclude that only 36 hapū, at most, support TIMA. Given that TIMA have stated that 80 hapū are active within Ngāpuhi, this is not a sign of significant support. Even then, this is just the information that I have been provided and there may be more in opposition.
56. Lastly, Sonny Tau continuously states that there is a "silent majority" that support TIMA. I would be interested to hear how he measures a silent majority.
57. My last comment in relation to hapū rangatiratanga concerns TIMA's constant assertion that hapū drive this process and it is up to hapū who they have sitting on TIMA. The Crown and TIMA both say that the process significantly recognises and caters for hapū rangatiratanga. However, when it comes to the issue of hapū withdrawal and hapū elections, the tide changes.

¹⁶ Ngāti Uru and Te Waiariki Kaikōrero

¹⁷ Ngāti Kawau, Ngāti Pou, Te Uri o te Aho and Ngai Tuteauru

¹⁸ Ngāti Hine, Te Patukeha, Te Kau I Mua, Ngāti Kahu o Torongare, Ngāti Kaharau, Te Hikutu, Te Mahurehure, Te Ngahengahe

58. Regarding withdrawal, TIMA say the “point is that hapū did not vote on the Tūhoronuku Deed of Mandate, Ngāpuhi as a whole did”¹⁹. And then in the very next paragraph when addressing the election process, they say, “to deny an individual their right to represent their hapū because some disagree is to usurp the mana of the individual”²⁰.
59. I am confused. Is it the collective voice of the iwi, the hapū rangatiratanga or individual mana that they say this process protects? Maybe they are confused too. How can you assert at one point that the mana of hapū is recognised and the very next minute say that hapū didn't vote so we don't get a say?

Conclusion

60. On 14 November 2014, ngā hapū o Ngāpuhi received the Waitangi Tribunals findings on the Stage One inquiry into He Whakaputanga o Niu Tirenī and Te Tiriti o Waitangi. This was a momentous occasion for all the hapū in Ngāpuhi. For those of us who live and breathe the claims process day in and day out, it is a feeling that cannot be described.
61. The Tribunal confirmed what we have always known, that in February 1840 the rangatira who signed te Tiriti did not cede their sovereignty, they did not cede their authority to make and enforce law. The Tribunal found that rather, they agreed to share “power and authority”, they agreed to “a relationship”.
62. It is that relationship between the Crown and hapū that we urge the Crown to respect today. Their process of recognising the TIMA Deed of Mandate while ignoring the wishes of a huge number of hapū does not reflect that partnership and I say it is wrong. In fact the whole Crown mandating process does not reflect our standing as equal partners with a shared power. I have seen this since the start of the Crowns engagement within Northland to address settlement.
63. The Crown evidence and the TIMA evidence show that the Crown only has to ask for changes to be made to the TIMA Deed of Mandate and it is done. Yet when hapū ask for changes it is denied or a “token” watered down version is made. How can this be an assertion of our hapū rangatiratanga

¹⁹ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 6.16

²⁰ Wai 2490, #A98 Brief of Evidence of Sonny Tau dated 17 November 2014 para 6.17

when we bend at will to Crown preference? Doesn't this go directly against what we have been arguing before the Tribunal the last 7 years?

64. There is more interest in what the Crown want to see and will recognise in a Deed of Mandate then what will actually work for hapū and what the hapū actually want.

Dated this 25th day of November 2014

Rudolph Taylor