

**In the Waitangi Tribunal**

**Wai 207**

**Wai 785**

Under **the Treaty of Waitangi Act 1975**

In the Matter of **the Northern South Island Inquiry (Wai 785)**

And

In the Matter of **a claim to the Waitangi Tribunal by Akuhata Wineera, Pirihira Hammond, Ariana Rene, Ruta Rene, Matuaiwi Solomon, Ramari Wineera, Hautonga te Hiko Love, Wikitoria Whatu, Ringi Horomona, Harata Solomon, Rangi Wereta, Tiratu Williams, Ruihi Horomona and Manu Katene for and on behalf of themselves and all descendants of the iwi and hapu of Ngati Toa Rangatira**

---

**BRIEF OF EVIDENCE OF PROFESSOR HIRINI MOKO MEAD**

**Dated 9 June 2003**

---

**KensingtonSwan**   
TRAVELERS

89 The Terrace PO Box 10246 DX SP26517 Wellington  
Telephone (04) 472 7877 Facsimile (04) 472 2291  
Solicitor Acting: D A Edmunds

Counsel: K Bellingham/K E Mitchell/B E Ross

## **BRIEF OF EVIDENCE OF PROFESSOR HIRINI MOKO MEAD**

### **Introduction**

- 1 My name is Hirini Moko Mead. I am the Chairperson of Te Runanga o Ngati Awa and the Chief Negotiator for the settlement of the Ngati Awa historical claims against the Crown. I was the Research Manager for the Ngati Awa claims before the Waitangi Tribunal and in that capacity co-ordinated all of the claims research. I am of Ngati Awa descent.
  
- 2 I have a Bachelor of Arts and Master of Arts from the University of Auckland (received in 1964 and 1965 respectively). I then gained a Doctorate of Philosophy from the University of Southern Illinois in 1968. I have received a number of awards during my academic career including the Peter Buck Bursary, the Auckland University Anthropology prize, the Carnegie Commonwealth Scholar, the Wenner-Gren Pre-Doctoral Museum Fellowship and the Elsdon Best Memorial Medal. I became a Fellow of the Royal Society of New Zealand in 1990.
  
- 3 I was Professor of Maori at Victoria University from 1977 to 1991 and prior to that held a number of academic positions in the fields of anthropology and Maori Studies at the University of Auckland and McMaster University in Canada. I was President of the Pacific Arts Foundation, and was a foundation member of the Maori Language Board in Wellington.

### **Maori customary land tenure**

- 4 The purpose of my evidence is to explore some aspects of Maori land tenure, in particular on how mana whenua is defined. By mana whenua I mean who has mana over the land, that is who has political control and authority over the land, and who will defend the land from intruders. These issues differ from the usual criteria that informed decisions of the Native Land Court (later to become the Maori Land Court). Actual evidence of occupation was required as a dominant factor and so claimants focused on such things as gardening, raising animals, bird catching, canoe building, work sites, sacred sites, village sites and the like. Much of the evidence is exaggerated, in the sense of trying zealously to meet the criteria of the Court. There was an instance in my tribal area when the presented evidence was checked by the Court and found to be spurious, that is, there was no evidence of canoe

building: no chips from the working of the hull, no leftover branches and no logs in sight.

### **Aspects of Raupatu**

- 5 Particular tikanga I shall explore in more detail are the following:
- a. Take Raupatu;
  - b. Ringa kaha;
  - c. Mana whenua;
  - d. Ahi-ka-roa;
  - e. Te Noho kore mana; and
  - f. Te Whakahoki whenua.

### **Take Raupatu**

- 6 According to traditional Maori custom the victors often claimed to have annihilated their enemy and killed them all. This was, in fact, rarely the case. A case in point is that of the Maruiwi who were partly Ngai Awa. They migrated from the Waimana region in the Bay of Plenty and were supposed to have all perished at Taupo (Best, 1972:78). Yet we learn that some eventually made their way to the South Island.
- 7 However it is not necessary to kill everyone in order to win a fight or attempt to assert **mana whenua**. As stated above there are usually survivors - “nga morehu” - usually women, children and old people. Should the victors attempt occupation some arrangements have to be made to accommodate these **morehu**.
- 8 With respect to the use of muskets in the early decades of the 19<sup>th</sup> century I make the following comments: there is little evidence of consideration as to issues such as fairness and neutrality in combat in Maori custom. There are numerous examples of groups, pa and individuals being attacked and killed whether they were armed or not, involved in the combat or neutral.

- 9 A vanquished people may also remain on their lands – this does not necessarily negate their defeat. There were generally three methods of dealing with vanquished people. The first was to annihilate them completely, the second was to send them into exile somewhere else while the victors occupied the land and the third was to allow them to remain but at the sufferance of the victors to be used as labour or to live as ‘tenants’ at the will of the victors. Iwi forced to live under the third option can hardly be said to retain **mana whenua**. More important in this case is the exertion of **ringa kaha** (force of arms) by the victors to ensure the subjugation of the defeated party.
- 10 An iwi living under the **ringa kaha** of another can escape from the political and economic ties placed upon them. They can either fight their way out of the bond by defeating the victor and therefore restore their own **mana** or they can have their **mana** restored to them either by the victors or by an outside party. There are examples of both within the region of Ngati Awa.
- 11 Inter-marriage is a usual consequence of conquest. It would be inconsistent with traditional practice for there to be no marriages. Marriage was one way open to a victor to cement **mana whenua**. However marriages weren’t necessarily required. I discuss this point in more detail later.
- 12 As explained further in paragraph 26 it cannot be said that an iwi living on land at the sufferance of another is keeping its fires burning. The land is still under the control of the victor through the principle of **ringa kaha**. The **ringa kaha** claim is therefore stronger than that of ancestral rights. The basic distinction is that of tino rangatiratanga. **Ahi-ka-roa** is based on mana and the freedom to practice and enjoy the benefits of tino rangatiratanga over the land and over themselves.
- 13 The question of how long an invader stays in actual occupation is not as important as the completion of the two phases of raupatu – conquest and undisturbed occupation. Conquest is the actual defeat of an occupying group but that in itself does not constitute raupatu. It is the second phase – undisturbed occupation – that confirms the raupatu. It is important to note here that occupation did not necessarily entail physical occupation.

- 14 There are at least two examples within Ngati Awa history of an area being conquered but left unoccupied by the victors. The land was taken by **ringa kaha** – extinguishing the ancestral right of ownership, the **ahi-ka-roa** – and it was under this principle that the land was held. The original owners could not re-claim the land because the **ringa kaha** was still in place. An example of this was the invasion of the Maketu area by Te Rangihouhiri. Shortly after invasion Te Rangihouhiri’s people (who became known as Ngai Te Rangi afterwards) invaded and captured Maunganui leaving Maketu. Despite this, Ngati Te Rangi retained **mana whenua** at Maketu through **ringa kaha**. This involved the occasional show of force at Maketu to ensure the retention of the mana. It was not until the 1830s that this mana was finally extinguished through the defeat and expulsion of Ngai Te Rangi from Maketu.
- 15 Another example is the defeat of Te Whakatohea by Ngati Awa in the early 1800s. Ngati Awa then banished Te Whakatohea to Tauranga but did not occupy the lands of Te Whakatohea. It was only upon the making of peace that Te Whakatohea were returned and the mana restored.

### **Ringa Kaha**

- 16 As mentioned above the principle of ringa kaha or occupation by force of arms had the effect of extinguishing ancestral title if employed successfully. This is not to say however that the ancestral owners could not regain title through various means as discussed further in paragraph 24. The rights gained through the conquest and occupation could be added to through marriage with the previous owners so that the next generation held rights to the land both through ancestral title (ahi-ka-roa) and conquest (ringa kaha).
- 17 It must be emphasised that the defeat in a single battle did not automatically confer the right of ownership, rather it was the defeat combined with the undisturbed occupation of land. If there was no challenge to the occupation of the victors then they could be said to hold the land by ringa kaha.
- 18 In Ngati Awa’s case the principle of ringa kaha is called “toa”. It is through the concept of **toa** that military strength was used to exert or gain influence over land. In the matter before us we are dealing with an iwi called Ngati

Toa, and I am sure that the association of their name with ringa kaha did not go unnoticed.

### **Ahi-ka-roa**

- 19 The principle of ahi-ka-roa entails the occupation of an area of land by a group, generally over a long period of time. This group is able, through the use of whakapapa, to trace back to primary ancestors who lived on the land. This group holds influence over the land and is able to exercise tino rangatiratanga over their land and themselves – thereby keeping their fires burning. The ability to do this is based firmly in the ability to exert **ringa kaha** over the land.
- 20 As stated earlier land may be held in the form of absentee ownership especially where that land has been conquered or did not form an integral part of the tribal estate. This generally required the exertion of **ringa kaha** to ensure that no-one encroached on the land. Therefore while not actually “keeping the fires burning” on the land it was still under the influence and **mana** of the group.
- 21 Within the principle of ahi-ka-roa is the concept of “ancestral title” – land that has been within the group for a number of generations and to which there is a whakapapa link. This ancestral title can be removed through the imposition of **ringa kaha**. This is dealt with in paragraphs 16-18.

### **Te Noho kore mana**

- 22 The concept of “te noho kore mana” covers the situation where a group is living on land without the mana over that land. This generally occurs where the group has been defeated and bonded to the victor through that defeat or where the group has been banished from some other place and is living on the land of another. In both cases the group does not have mana over the land and cannot exercise tino rangatiratanga over that land. A group in that situation cannot claim to be keeping their fires burning.
- 23 It is possible for a group to escape from this position either by finding somewhere else to live, having their mana restored to them or by restoring their own mana – by defeating the ‘oppressor’ for example.

## **Te Whakahoki Whenua**

24 “Te Whakahoki Whenua” – the return of the land – can be brought about, as discussed earlier, in a number of ways. The removal of the ringa kaha and restoration of ancestral rights can be achieved either by defeating the group holding the ringa kaha or by arranging to have the land – and therefore the mana over it – restored. An example of this is the re-taking of Maketu by the hapu of Te Arawa – thereby restoring the ancestral rights of Te Arawa over that area – some 200 years after Ngai Te Rangi seized the land by conquest.

## **Occupation and political authority**

25 Occupation of land did not of itself indicate political authority. There would be times when occupation and political authority coincided. But there are other occasions when they did not. A whanau or remnants of a hapu that have become refugees are landless as a result of warfare. The group cannot sustain itself let alone rebuild itself without a land base. This appears to have been recognised in traditional times as one way of dealing with the refugees of warfare. The advantage to the political authority over the land is that the “settled” group contributes both to the labour force and the fighting strength of the conquerors, thus there are advantages to both sides.

26 There are many examples of this. When land is offered to a group of people who, in our terms, are “settled” upon that land so the group has a place to stay, and has food available for its members the “settled” group does not have political authority over the land and the responsibility for defending that land against others does not rest with the group. It is obvious that such a group cannot appeal to the principle of ringa kaha as justification for their occupation.

27 The “settled” group has a right to use the land, and to pay something to the “owning” group by way of an annual tribute of food usually, although in some cases the authority may be transferred to the settled group over time and this point is signalled by the cessation of the expected annual tribute. By this time occupation is confirmed by the iwi and neighbours and alliances have been established.

- 28 There are examples of “settled” groups in the history of Ngati Awa. While the facts are known, people today do not talk about such events because of the circumstances of certain hapu who were down on their luck as it were, or who had done something to trigger a response from the larger iwi grouping.
- 29 In such cases it is plain that a hapu did not necessarily have political authority over the land they regarded as theirs. They had a right to use the land but if a hapu abused this right or did some deed that affronted the neighbouring hapu then the iwi would collectively banish the hapu from the district.
- 30 A generation later the banished group would be invited back and “resettled” on land that they occupied before or on new land. In time the hapu settles back into the iwi grouping and its association with the land is reconfirmed. A question remains, however. Will it ever have political authority over the land it occupies? Or is it that it occupies the land with the tacit agreement of the iwi? The facts concerning the case outlined here are set out in Best 1996 (*Tuhoe* pp. 170-177). Another case is also described by Best (1996: 172-6). The date is given by Best (1996: 183) as before 1817.
- 31 One hapu was given land at Ruatahuna. The block was named Te Hapere and the hapu stayed there for three generations (Best 1996: 184). The hapu banished by Ngati Awa were invited back into the region by the chief, Te Rangitukehu at about 1847 a few years after the signing of the Treaty of Waitangi.
- 32 In the Ruatahuna case mentioned here can it be said that occupation by a group equated to ownership in a western sense? Far from it. In fact, this sort of occupation had special conditions attached to it, namely that the settled group was given a right to use the land at the behest of the iwi or a related hapu. In no sense can it be said that the “settled” and “resettled” groups “owned” the land.

### **Conclusions**

- 33 In conclusion it can be seen that in traditional Maori society a group able to take control of an area and hold that area whether by occupation or by influence could claim a valid raupatu. There were few generally accepted rules governing raupatu and issues such as ‘fair-play’, passiveness and



neutrality formed little obstacle to achieving conquest. It was left to the leaders of a conquering group to deal with the conquered in a manner they saw fit.

34 The raupatu carried out by the Crown in the rohe of Ngati Awa, Taranaki and Waikato were examples of a raupatu that was invalid. These raupatu were invalid because they were carried out by the Crown, not exclusively by another Maori group. In Ngati Awa's case a Maori force was used but they were not the ones claiming raupatu. Even had they claimed raupatu it would have been invalid because the force was Crown led and authorised by the Crown.

35 May I finally say in conclusion that we of Ngati Awa clearly understand the effects of raupatu upon an iwi. We understand the pain of the Kurahaupo people. For in the end we come back to the whakatauki:

He aha te mea nui, he tangata, he tangata, he tangata.