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CHAPTER 21

HE KORERO WHAKAMUTUNGA

This, then, is what the Governor intends to do, to assist the Maori in the good work of establishing law and order. These are the first things: – the Runangas, the Assessors, the Policemen, the Schools, the Doctors, the Civil Commissioners to assist the Maoris to govern themselves, to make good laws, and to protect the weak against the strong. There will be many more things to be planned and to be decided; but about such things the Runangas and the Commissioners will consult. This work will be a work of time, like the growing of a large tree – at first there is the seed, then there is one trunk, then there are branches innumerable, and very many leaves: by and by, perhaps, there will be fruit also. But the growth of the tree is slow – the branches, the leaves, and fruit did not appear all at once, when the seed was put in the ground: and so it will be with the good laws of the Runanga. This is the seed which the Governor desires to sow: – the Runangas, the Assessors, the Commissioners, and the rest. By and by, perhaps, this seed will grow into a very great tree, which will bear good fruit on all its branches. The Maoris, then, must assist in the planting of this tree, in the training of its branches, in cultivating the ground about its roots; and, as the tree grows, the children of the Maori, also, will grow to be a rich, wise, and prosperous people, like the English and those other nations which long ago began the work of making good laws and obeying them. This will be the work of peace, on which the blessing of Providence will rest, – which will make the storms to pass away from the sky, – and all things become light between the Maori and the Pakeha; and the heart of the Queen will then be glad when she hears that the two races are living quietly together, as brothers, in the good and prosperous land of New Zealand.[1]

Government policy statement, published in 1861

The above declaration of Government policy in 1861 illustrates the possibilities of the Treaty relationship, which is the central theme of our report *He Maunga Rongo*. On the face of it, the declaration charts a path to peaceful coexistence, Maori self-government, mutual benefit, and the development of both Maori and settlers in their now-shared country of New Zealand. The Governor's path was not the only one; but the 'work of time' described and predicted here reflects the spirit of the Treaty relationship created in 1840 and moulded in the following decades. As Dr Ballara observes:

> many [such] publicly promulgated standards were in accord with the Treaty of Waitangi, and with Lord Normanby's instructions of 1839 to Lieutenant Governor Hobson out of which the terms of the Treaty were constructed. The problem was not that nineteenth-century standards of official behaviour were not based on the Treaty, but that these acknowledged Treaty-based standards were often knowingly breached or ignored by Crown officials.[2]

As we discussed in part II of our report, Governor Grey did not keep to the standards and promises articulated to

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Maori, and the outcome was war, and disempowerment of Central North Island Maori, rather than achievement of the Treaty relationship encapsulated in such public statements. The point, however, is that Maori should have been able to rely on the Crown's commitment to an evolving relationship. In considering that commitment, we have taken care to avoid the pitfalls of presentism, against which we were warned by the Crown. Rather, we have relied on contemporary statements and writings; and we think that twenty-first century Pakeha New Zealanders may be surprised at the range of possibilities their nineteenth-century forbears were willing to consider. The policy options debated by settler politicians were strongly influenced by Central North Island Maori leaders, who engaged with Parliament and officials, articulated a range of possibilities which governments might consider, and prompted colonial leaders to engage with them and their ideas in turn.

We have come to the conclusion that the intentions of Maori and the Crown as at 1840 are best captured in the Treaty principles of partnership, autonomy, reciprocity, active protection, equity, options, mutual benefit, and development. Our description of these principles and their application to the claims of Central North Island Maori is to be found in the opening chapters of each part of this report. We note also that the Treaty principles are in accord with international human rights standards, as seen in the Declaration of the Rights of Indigenous Peoples, adopted by the General Assembly of the United Nations in September 2007.

The Peoples of the Central North Island

Because three inquiry districts have been brought together into one regional inquiry, the number of iwi and hapu involved is large. Many of them are descended from ancestors who arrived on the Arawa canoe, but within that broad kin grouping of Te Arawa waka there are separate (though closely related) strands. The peoples of Te Arawa – including Ngati Whakaue, Ngati Pikiao, Ngati Uenukukopako, Ngati Rangiwewehi, Ngati Rangiteaorere, Ngati Makino, Tuhourangi, Ngati Wahiao, Ngati Tarawhai, and Ngati Rangitihi – settled primarily (though not exclusively) in the inland Rotorua district, around the lakes. On the Bay of Plenty coast there are hapu and iwi such as Waitaha and Tapuika, who are also of the Te Arawa canoe. To the south, in the area between the Rotorua lakes and Taupo, Ngati Whaoa are in a similar position. Further south again, Ngati Tuwharetoa and their many hapu are also of Te Arawa waka and, although maintaining their separate identity, the links that bind them with the kin communities of the Rotorua district and of the coast are very strong.

Other peoples also have interests in the land and resources within the Central North Island inquiry region. On the western side of the region are Ngati Raukawa, of Tainui waka. Others, such as Ngati Awa to the north-east, and Ngai Te Rangi and Ngati Pukenga to the north-west, are of Mataatua waka. On the eastern side Tuhoe, too, have interests that extend into the Central North Island, along with Ngati Manawa and Ngati Whare. Also on the eastern side are Ngati Hineuru, whose interests extend from Hawke's Bay across into Kaingaroa. To the south, Ngati Hikairo, descended in part from Ngati Tuwharetoa ancestors, also have descent lines from other iwi based outside the Central North Island inquiry region. And some peoples, like Ngati Tahu, have a number of different origin traditions and a long-established presence in the region.

Over the generations, reciprocal ties have been carefully built up amongst all these different peoples, through marriages and through social and economic interchanges, and their links with one another are complex. Likewise, their relationships with the land and resources of the region are often multilayered and closely interlinked. In our report, we found that these kin groups formed polities with their own laws and institutions, exercising authority over land and resources within their rohe in accordance with tikanga to ensure the collective well-being and security of those who depended on them. These polities governed their relations with one another through a complex network of kin ties and alliances, and through reciprocal gift-giving,

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customary dispute resolution mechanisms, warfare, and peace agreements. In the period of early contact, before the Treaty, they allocated land and resources to European settlers. Most refused to sign the Treaty in 1840, some accepted it at Kohimarama in 1860, and all have since developed a Treaty-based relationship with the Crown.

Political Engagement, Crown Governance, and Maori Autonomy

In part II of the report, we addressed the overarching theme of Maori autonomy as guaranteed in the Treaty of Waitangi, in relation to the political engagement between the Crown and Maori polities in the Central North Island. We found that the Treaty guaranteed and protected the full authority (tino rangatiratanga) of Maori over their lands, people, natural resources, treasures, and affairs. That authority was inherent in Maori polities, not created by the Treaty. In return for the active protection of their authority, Maori ceded kawanatanga (governance) to the Crown. Neither tino rangatiratanga nor kawanatanga were absolute. Each must respect the other. Maori authority must operate inside the minimum parameters necessary for the proper functioning of the State. There were, however, matters – such as the right to determine their own land titles – over which the authority of Maori must prevail. Indigenous 'sovereignty', therefore, is not about independence from the State but rather about the proper exercise of Crown and Maori autonomy in their respective spheres, and managing, in partnership, the overlaps. The historical evidence suggests that such a partnership was always possible in the Central North Island from 1840 on.

Further, we found that article 3 of the Treaty of Waitangi guaranteed Maori the same rights as other British subjects, which included the right of self-government through representative institutions. That right was soon accorded to settlers through the Constitution Acts of 1846 and 1852. These Acts provided for settler and Maori local self-government (through provinces and Native Districts) and a central Parliament, but only the provinces and Parliament were created. A Maori national assembly was also contemplated in various forms, and given partial and temporary effect in the Kohimarama Conference of 1860. Although the settler Parliament voted funds for it to be reconvened, Governor Grey refused to keep the promise of his predecessor, Governor Gore Browne, to do so. Article 3, therefore, in conjunction with article 2 and the Treaty principles of autonomy and partnership, required the Crown to give effect to Maori autonomy through such bodies and mechanisms as were known and were reasonably practicable at the time. Native Districts and the Kohimarama Conference were two such mechanisms. Evidence was made available to us of models available to nineteenth-century policy-makers, including the legal pluralism in parts of the British Isles, the self-government proposals of the Irish Home Rule movement, the domestic nation arrangements of the United States in respect of indigenous polities, and many others.

Practical options for Maori self-government included:

- at the local level, their own county or borough councils or tribal committees;
- at the regional level, their own provincial assemblies or Native Districts as provided for by section 71 of the Constitution Act 1852; and
- at the national level, fair representation in the settler Parliament proportionate to their population (as they requested), and/or a national Maori assembly.

All these things were sought by Central North Island Maori, were discussed or contemplated by governors or settler parliaments, and (from time to time) were the subject of legislation or policy initiatives. None was impossible. The Crown submitted to us that it was not obliged to follow any one particular policy, but that it could justly be held to account for failing to adopt *any* policy that kept the Treaty.

In part II, we examined the detail of the practical options available from 1840 to 1920 for the Crown to give effect to its Treaty guarantee of Maori autonomy and self-government. We found that many options were canvassed

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at the time, all of them commanding some degree of attention from policy-makers, and many of which were pressed on the Government by Central North Island Maori. These included:

- self-governing Native Districts as provided for under the Constitution Act 1852, which could have created domestic nations similar to the United States model;
- legal powers for Maori runanga (local tribal councils) and for the Kingitanga (a pan-tribal institution established in 1858 to protect Maori lands and autonomy) – the granting of legal powers to them was a solution contemplated by both the New Zealand Government and the Colonial Office;
- the 1858 Native Districts legislation and the state runanga (New Institutions) set up under it in the 1860s – definitive proof that the Crown could give funding and legal powers of self-government to runanga;
- an increase in the number of Maori seats in the New Zealand Parliament proportionate to their population size, as sought by Central North Island Maori;
- several Government and Maori members' Bills in the 1870s and 1880s, which would have provided powers of self-government and title determination for Maori tribal committees;
- legislation of the 1880s which did in fact provide for district and block committees;
- negotiations with the Rotorua Komiti Nui and the Rohe Potae alliance in the 1880s;
- the Kotahitanga parliaments organised on a national basis by Maori leaders, which met throughout the 1890s; and
- the agreement of 1898–1900, negotiated between the Crown and Maori leaders, which set up local Maori councils and a national forum (annual general conferences of the councils) in the first decade of the twentieth century.

Central North Island iwi and hapu established their own runanga or committees in the 1850s, some under the auspices of the Kingitanga. These institutions were renewed in various forms throughout the nineteenth century, ranging from local hapu bodies to larger intertribal komiti (committees). We were impressed by the sheer range and volume of iwi attempts to engage with the Crown and to obtain legally enforceable powers of self-government. They tried time and time again, despite constant discouragement. The Government abolished the New Institutions in the 1860s, abandoned Native Council Bills year after year in the 1870s, drew the teeth of Native Committee Bills in the 1880s, and ensured that Maori parliament Bills failed in the 1890s. But Central North Island iwi did not give up.

In particular, the hapu and iwi of our inquiry region wanted their komiti to replace the Native Land Court and decide their own titles to land and resources, and then to manage their lands and resources on a community basis. The Native Minister, John Ballance, promised them this (and more) in the 1880s. From time to time, Central North Island komiti and tribal bodies achieved sufficient political clout to win concessions from the Government. These included:

- The negotiation of the Fenton Agreement with the Komiti Nui in 1880 (representing Ngati Whakaue, Ngati Rangiwewehi, Ngati Uenukukopako, and Ngati Rangiteaorere). These central Rotorua tribes agreed to the introduction of the Native Land Court to create a legal title for the Rotorua township block, in return for which they expected that their komiti would have a role in determining that title and governing the proposed township in partnership with the Crown. The potential for further such partnership agreements, and for Maori self-government under the old 1858 Acts, was enacted in the Thermal Springs Districts Act 1881. Some Te Arawa came to see this Act as their own Magna Carta.
- The negotiations with the Rohe Potae alliance in the mid-1880s (including Ngati Tuwharetoa and Ngati Raukawa), under which the Central North Island tribes believed that they had obtained reform of the Native Land Court and its restriction to rubber-

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stamping an outer boundary for a vast inter-tribal district. After that, it was believed that a District Committee would decide on tribal boundaries inside the district for the new purpose of creating a title for use in the economy, followed by intratribal committees giving titles to hapu.

- the District Committees of the Native Committees Act 1883, the block committees of Ballance's 1886 legislation, and the Maori Councils and general conferences of the 1900 legislation.

But all these concessions proved either short-lived or illusory, as we explained in chapters 6 and 7, and they gave no substantive legal powers of self-government or land management to Maori bodies.

So many opportunities; all of them lost, adroitly avoided, or even actively repressed or subverted by the Crown over an 80-year period. The result, as we found in part II, was a sustained breach both of Treaty principles and of the plain meaning of the Treaty's second and third articles. Prejudicial consequences included the lack of legal powers for Maori communities to govern themselves or their resources, with flow-on effects examined in parts III, IV, and V of our report. From this fundamental Treaty breach and its prejudice, all other Treaty breaches in the Central North Island followed.

The Crown's repression of Maori autonomy led to wars between itself and Central North Island Maori (see chapter 5). We found that these wars were avoidable in general and on the particular occasions in which the tribes were attacked. War might have been avoided:

- first, had there been the political will and statecraft to negotiate a solution on the lines of Maori regional self-government advocated by the Colonial Office and believed to have been acceptable to the Kingitanga; and,
- secondly, had the Crown respected the authority and rights of Central North Island Maori when it entered their territory in pursuit of leaders like Te Kooti or Kereopa.

From the beginning, therefore, the Crown's resort to war against Central North Island Maori communities was in breach of the Treaty. The punishment/pacification that followed some of these wars in the form of confiscation of land was also in breach of the Treaty. Central North Island iwi and hapu who had lands confiscated include Ngati Makino, Waitaha, Ngati Te Pukuohakoma, Ngai Te Rangi, Ngai Tukairangi, Ngati Hineuru, and (to the extent that they have interests in the Western Bay of Plenty raupatu district) Tapuika.

War and confiscation had devastating prejudicial effects, some of them casting shadows to the present day. These included loss of life, loss of land and resources, economic harm, social disruption, divisions among kin, indirect loss of land and resources (through war-influenced absence from the Native Land Court), and stigmatisation as 'rebels'. Ultimately, war and confiscation undermined the autonomy of all Central North Island Maori (including those who allied with the Crown), in breach of Treaty principles. In the long term, however, the Crown's repression of Maori autonomy had its most profound effects in the Central North Island not through raupatu, but in terms of the disempowerment of Maori in respect of their lands and natural resources.

Land

In part III, we examined the consequences of the Crown's repression of the autonomy of Central North Island Maori communities for their ability to manage, derive benefit from, and exercise tino rangatiratanga over their lands. In respect of the nineteenth century, we were in agreement with the findings of the Tribunal in its report *Turanga Tangata Turanga Whenua*. Maori and settlers required certainty in their dealings with one another over land, which in turn required some security of title for engaging in the new economy. The Crown, however, should not have introduced a new tenure system for Maori land, a matter so fundamental to their rangatiratanga, without their consent. It

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should have provided for legal community titles: the clear and continuously expressed wish of Central North Island Maori. Its failure in these two key respects was a breach of Treaty principles with lasting prejudice for all the iwi and hapu of our inquiry region. This was so not only in the nineteenth century but, as tends to be forgotten, throughout the twentieth century as well.

After examining the evidence, we found that Central North Island Maori were not consulted on, were not informed about, and did not consent, to the creation of the Native Land Court, the individualisation of title, or the introduction of the court and its title system to their region. Rather, they fought a long and spirited rearguard action against it, often on the political front and by dint of petitions and boycotts. They had some short-lived success, forcing the Crown to negotiate with the Komiti Nui (leading to the Fenton Agreement, which we discussed above) and the pan-iwi Rohe Potae alliance in the 1880s. Central North Island Maori constantly pressed upon the Crown their desire to decide their own land titles through their own committees and institutions, and then to manage them collectively by those institutions. Both aspirations were reasonable and could have been given effect to in the circumstances of the nineteenth and twentieth centuries. Maori could and should have had, as one settler politician put it, 'an executive power over their lands through representatives chosen by themselves from among themselves; a Government, in fact, of the owners by the owners for the owners'.[3] This was the fundamental connection between Maori self-government and the management of their lands.

Nonetheless, governments persisted with the court and individualised titles despite Maori opposition. As early as 1867, for example, the Government was aware of Maori anger at the 10-owner rule introduced by the 1865 legislation, which affected numbers of owners in the Central North Island. From time to time, there were concessions in the direction of Maori deciding their own titles, such as in 1883 and 1900, and of collective owner management of lands, such as in 1867, 1886, 1894, and 1900 (see chapters 6 to 11). Ultimately, however, the Crown succeeded in imposing the Native Land Court and its system of individualised titles on all the iwi and hapu of our inquiry region. Maori had to use the court because it was the only way for them to get a legally recognised title. In light of the persuasive evidence before us, their participation in the court process cannot be seen as an endorsement of it, or of the kind of titles it created. Their choices were, in fact, the court or nothing, with the risk of losing land to others on the one hand, or not being able to use it in the economy on the other. Participation on that basis was not an act of tino rangatiratanga, nor was it compliant with the Treaty. A state-created court presided over by settler judges, then, with the responsibility of turning Maori customary rights into exclusive and individualised titles derived from the Crown, was engaged in a process diametrically opposed to Treaty guarantees. The outcomes were necessarily in breach of the Treaty.

Further, the system of deciding title was expensive and burdensome. Its costs, especially survey fees, placed an unfair burden on communities which had no alternative but to take part in its processes. The various costs were cumulative and difficult to meet where communities had little cash flow. A frequent result of these costs was sale of lands. Even this would have been more tolerable had the outcome of the court process been a title that actually enabled Central North Island Maori communities to manage and derive benefit from their lands and resources in the new economy. Instead, communities' tino rangatiratanga was replaced by individual interests useless for much other than piecemeal alienation. The new titles removed lands and resources from traditional community sanctions and decision-making. They failed to provide for strategic community management of land and resources, and were not adequate for raising capital, or developing retained lands.

In conjunction with introducing this flawed title system, the Crown imposed a land-purchase system on the Central North Island that foreclosed on the possibility of a viable leasing economy, despite the clear wish of Central North Island Maori to lease instead of sell their land. While

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successful in subverting leasing, the purchase system was otherwise something of a false start for the Crown in the 1870s, because it did not achieve the absolute alienations desired by governments. Officials made advances before title determination, picking 'owners', and thereby locking whole communities into transactions without genuine consent or an agreed price. Sometimes the Crown agreed to leases instead of purchases, especially to get a foothold in the land, and then failed to sublease it to settlers or (often) to pay rent itself. Thus the transactions were used to tie up the land with little benefit for owners until outright sales could be obtained. When the Crown abandoned this system in the 1880s, admitting its many defects, it nonetheless insisted on 'completing' many of the defective transactions.

Most land transacted in the 1870s had been dealt with on this pre-title basis. For a few areas of our inquiry region, however, land had in fact passed the court under the deeply flawed 1865 legislation (see chapter 9). In those cases, it proved possible to purchase land from the 10 or fewer individuals granted absolute title under that legislation. Attempts were unsuccessful to make those individuals trustees rather than absolute owners, even though the Crown admitted that its 1865 '10-owner rule' had dispossessed the great majority of owners in such blocks.

The Crown's purchase system in the 1880s and 1890s relied on the Native Land Court and had more success. Officials bought up individual shares for low prices, taking advantage of debt (much of it incurred in securing titles) to obtain sales, and often relying on monopoly powers to get sales and to keep prices low. Although maximum prices were set, there was no effort to ensure that such prices were fair, or to set a minimum price. Also, many individuals (especially the first to sell) received less than others. The Government then manipulated the court process to partition out its interest, in such a way that it secured the locations it wanted from its purchase of these individual, undivided, paper shares. Hapu communities had no control, and their tino rangatiratanga was subverted. The Government was able to use the partitioning process to obtain taonga with which Maori did not wish to part, which further assisted its targeting of key geothermal and other valued resources. Having disempowered Maori from protecting their own land base for themselves, governments set up state mechanisms to protect a 'sufficiency' of Maori land and prevent landlessness. We found in part III that these protections were no more than nominal in their operations and effects. All these features of the Crown's purchase system were in breach of the Treaty.

As a result of the repression of Maori autonomy and the disempowerment of tribal committees and leaderships, the imposition of the Native Land Court and individualised titles, and the Crown's purchase system:

- The tribes of coastal Rotorua were left with insufficient land and resources by 1900.
- The tribes of inland Rotorua retained more land, but none of it was 'surplus' to their needs, and they had lost possession of many of the key natural features on which to base development in tourism at that time. Only Ngati Pikiao, in the view of the Stout–Ngata commission, really had sufficient land by the first decade of the twentieth century.
- The tribes with interests in Kaingaroa had lost them either through the decisions of the Native Land Court or through alienation, leaving insufficient land and resources for Kaingaroa to form a base for their customary practices or for economic development.
- The tribes of northern Taupo may have retained insufficient land, but the evidence is not entirely clear. Many of their key geothermal features of value for tourism development in Taupo at that time had been lost.
- Some Taupo groups retained sufficient land and resources for the possibility of economic development in the twentieth century. Land sales, however, had not left them with capital for such development.

Such was the situation moving into the twentieth century and a new environment for Maori land. By this time, all lands had been clothed with a form of title which ensured that the Maori peoples of our inquiry region were deprived of their tino rangatiratanga. This situation of Treaty breach

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and prejudice persisted, despite the reorganisation of the land administration system in 1909. First, however, there was an abortive attempt at reform as a result of the successful political pressure of Maori (including Central North Island Maori) through the Kotahitanga movement. In 1900, the Crown attempted to substitute for its failure to provide legal community titles by providing for land management by regional Maori land councils. These councils were to have elected Maori members and a Maori majority, the result of a carefully negotiated agreement with Maori leaderships. At the same time, the Government suspended its purchasing in response to sustained Maori pressure, providing instead for the councils to lease the land. Five years later, without consultation or the consent of Maori leaderships, including Central North Island Maori leaders, and without a fair trial period or adequate support, the councils were replaced by land boards with only minimal Maori membership, in breach of the Treaty principles of autonomy, partnership, and active protection.

Similarly without consent, the Crown resumed purchasing in opposition to clearly expressed Maori wishes. The Stout–Ngata commission reminded the Crown in 1907 that it had a fiduciary duty to Maori, and must ensure the preservation of a tribal estate for future generations. Nonetheless, the Crown embarked on new policies to facilitate land purchase while at the same time watering down protections for retention. This was the focus of Maori land administration for the early decades of the century.

In the Native Land Act of 1909, the Crown provided for private buyers (and for itself) to deal with Maori through a new system of 'meetings of owners' via the land boards (which could pass good title, as Maori owners themselves could not). Though this could have been a useful mechanism, and was touted by the Government as a return to runanga management of land, it was undermined by provision for a very low quorum. Decisions to sell could legally be made by a small number of owners, resulting in the dispossession of many others without their consent. In failing to monitor these provisions and address the problems that soon became evident, the Crown breached the plain meaning of article 2 of the Treaty and the principle of active protection. Also, the Crown legislated to give itself an advantage over both Maori owners and private buyers, exempting itself from the meetings of owners' provisions and resuming piecemeal purchase of individual shares. At the same time, governments continued to use monopolies to obtain sales.

As a result of continuing Crown and private purchases in the first half of the twentieth century:

- Further pockets of Maori land were alienated along the Bay of Plenty coast, cementing the unenviable position of the coastal Rotorua tribes, who had already had insufficient land at 1900.
- The tribes of inland Rotorua were affected by a substantial number of private purchases, especially in the 1910s and 1920s. Most land around Lake Rotorua passed out of Maori ownership by the 1950s, as had significant blocks around Lakes Tarawera, Okataina, and Rotokakahi. Owing to the failure of the Crown's protection mechanisms, these alienations occurred despite the warning of the Stout–Ngata commission that, with the possible exception of Ngati Pikiao, inland Rotorua Maori had no surplus land.
- In the area between Rotorua and Taupo, interests that had been acquired by the Crown in the late nineteenth century were consolidated by way of applications to the Native Land Court for partition. This resulted in significant loss of land for tribes in this area.
- Tribes with interests in Kaingaroa, whose land and resources in that district were already insufficient by 1900, experienced further alienations.
- In the Taupo district, there were substantial alienations as the Crown pushed ahead with major purchases from 1918 into the 1930s. Private purchasing, though on a smaller scale, was notable in some areas. By mid-century, the Taupo Maori land base had been reduced, leaving some hapu without sufficient land and resources. Remaining land was still significant in some areas, but plagued by the constraints of the title system, which also hindered development.

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Another form of obtaining Maori land was to take it compulsorily for public works, which became a principal way in which the State acquired land from Central North Island Maori in the second half of the twentieth century. In our view, the taking of land without consent, or compensation, or both, was in breach of the plain meaning of article 2 of the Treaty of Waitangi. Also, from 1882 to 1974, the public works regime operated in the Central North Island in a manner that discriminated between Maori and general land, providing fewer rights and protections for the owners of the former, and thus operated in breach of the Treaty. When Maori land was acquired for public works, compulsory taking was often an early or first resort due to the legacies of the nineteenth-century title system, rather than a last resort in the national interest. Legislators and officials considered that it was just too difficult to identify, consult with, or obtain agreement from Maori owners. The land of Maori owners, unlike that of general landowners, was often taken as a matter of course, and the problem of identifying owners was left until compensation was paid (if any was due). Although the total amount of land taken by this means was not large in acreage, it affected all Central North Island iwi and hapu, and included many taonga of cultural and spiritual significance to them.

In sum, the Crown's initial focus at the beginning of the twentieth century was on reform, but it soon switched back to acquiring land for settlement, relying on mechanisms that perpetuated the Treaty breaches of the past. Circumvention of community decision-making, manipulation of a title system designed to facilitate sales, and the increasing fractionation of titles through the court's succession rules, all contributed to sales and to systemic barriers to developing retained farmable lands.

From the 1920s, however, the Crown did try to find solutions to title problems in the Central North Island – and thus to mitigate its Treaty breach in visiting those problems on Maori. Some solutions seemed punitive in effect, if not in design. Simplifying titles by exchanging and consolidating owners' scattered interests, for example, proved a long and difficult process for Maori owners, the benefits of which were limited. In our inquiry region, the Crown failed to allocate sufficient resources to complete the consolidations expeditiously, to the prejudice of the owners. Similarly, two post-Second World War solutions were coercive, discriminatory, and in breach of the Treaty. These were:

- 'conversion' (taking small interests from those entitled to succeed to them and vesting them in the Maori Trustee, despite the fact that such interests might represent the remaining links of many successors to their ancestral lands); and
- the change of status of Maori land to 'European' land if it had no more than four owners.

Some of this 'European' land was re-converted to Maori land after 1973.

Alongside the Crown's efforts to solve the fundamental problems its title system had created, we note the extent to which its post-war solutions were imposed without proper consultation or consent. This was so despite the efforts of the Maori leaderships of our inquiry region to engage with the Crown, as for example over the major 1953 legislation and its 1967 amendment. Also, we note the extent to which these measures were coercive. They occurred alongside compulsory takings of Maori land for public works. In neither instance – title 'improvement' or public works takings – did Central North Island Maori have representative bodies with the legal power to influence policy or the economic development strategies of their region. It would be a mistake, therefore, to think that the Crown's failure to consult, failure to obtain consent, and its tendency to act coercively, were confined to the nineteenth century.

The prejudice to Central North Island Maori was lasting and cumulative. This was in part because the legal and economic climate was hostile to the kind of multiple ownership created by the native land legislation. In our view there is no greater indictment of the Crown's title system. The Crown-derived titles bestowed upon Maori in place of their customary rights were of limited practical use even before they became overcrowded and fractionated. Owners faced serious difficulties in borrowing because the security

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they could provide was not acceptable to lenders. No care was taken to ensure that all Maori owners had the protection of secure, registered title in the land transfer system. Further, the Crown considered in the mid-twentieth century that the rights of multiple owners were not worthy of legal protection in the same way that those of other owners were, and its immediate post-1945 policies were based in part on removal of owners from titles without their consent. Many of the disadvantages of the title system were exemplified in the taking of Maori land for public works, as we discussed above.

More positively, post-Second World War governments made forms of corporate title and management a more realistic option at last for those Central North Island Maori who had retained land. Trusts and incorporations, as the claimants and the Crown agreed, have been popular and effective management structures. It was not, however, until the provisions of Te Ture Whenua Maori Act 1993 that we think the Crown has finally provided a range of options for groups of owners to exercise greater control over their land. The provisions in relation to trusts are a notable example. For the first time they have also enabled Maori to adopt a process that prevents further fractionation of interests on succession. That process is the whanau trust option.

Ultimately, therefore, the Crown has accepted that collective ownership and management can work. Because of the nineteenth-century title system, however, this has meant reconstituting or empowering groups of owners identified by Native Land Court processes, or rather those owners who had, over generations, survived the structural pressures to sell their (often small) interests. They were not hapu. The loss of hapu autonomy and of tino rangatiratanga over their lands and resources in the intervening generations remains important. The loss of connection with their taonga, and the loss of responsibility for decision-making and management, persists so long as solutions are cast in terms of the past ownership regime. For some tribes, such as Ngati Whakaue, it is evident that they have been able to use their trusts and incorporations to begin the process of rebuilding a hapu base. Others remain disconnected, as they demonstrated in their evidence to us. It remains for the Crown to give effect to Treaty guarantees by empowering iwi and hapu to fully re-establish proper governance and resource bases in their rohe. We hope that such will be the outcome of negotiated Treaty settlements.

Development

For Central North Island Maori – who claimed ownership of key natural resources within the region and some of whom also retained significant blocks of land in the twentieth century – the Treaty right of development was particularly important. In many ways, development claims involve the most significant twentieth-century grievance in our inquiry. The failure to give effect to the Treaty guarantee of Maori autonomy or tino rangatiratanga was at the core of this grievance. Maori communities were denied the right to exercise authority over their natural resources, their taonga, and the manner and effect of development of those taonga. Their tribal authorities had limited powers to participate in and affect regional or national decision-making about development. They had no community titles or legal bodies (until later in the twentieth century) to make hapu decisions about development or strategies of land and resource use. Ultimately, too, they had no control over the Native Land Court and its empowering legislation, which decided what they owned in Maori custom and then granted them Crown-derived titles which were restricted to English legal definitions of land. Such titles did not recognise Maori customary interests in waterways, geothermal energy, and other taonga. In all these ways, therefore, the Crown's failure to give effect to Maori autonomy shaped further breaches of the Treaty right of development.

In part IV of our report, we found that the Treaty-guaranteed Maori right of development includes:

- the right as property owners to develop their properties in accordance with new technology and uses, and to equal access to opportunities to develop them;

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- the right to develop or profit from resources in which they have (and retain) a proprietary interest under Maori custom, even where the nature of that property right is not necessarily recognised in, or has no equivalent in, English law;
- the right to positive assistance, where appropriate to the circumstances, including assistance to overcome unfair barriers to participation in development (especially barriers created by the Crown);
- the right of Maori to retain a sufficient land and resource base to develop in the new economy, and of their communities to decide how and when that base would be developed;
- the opportunity, after considering the relevant criteria, for Maori to participate in the development of Crown-owned or Crown-controlled property or resources or industries in their rohe, and to participate at all levels (such criteria include the existence of a customary right or an analogy to a customary right, the use of tribal taonga, and the need to redress past breaches or fulfil the promise of mutual benefit); and
- the right of Maori to develop as a people, in a cultural, social, economic, and political sense.

Farm land was the obvious – and at the same time, perhaps the least important – property for development in the Central North Island. By the opening of the twentieth century, the Crown's title and purchase systems had prevented Central North Island communities from managing strategic sales and acquiring capital to develop retained land. At the same time, the Crown had withdrawn from some purchases because it was obvious that there was much poor-quality land in the region, unsuitable for farming on anything other than a large, station-based scale. That such a scale was eminently suited to hapu farming was not a consideration for the Crown, even though it was so advised by the Stout–Ngata commission. Although it was found that large areas of the Central North Island inquiry region were stubbornly resistant to farm development, some areas were considered potentially farmable with advances in knowledge and technology. The Crown therefore had an obligation to protect iwi and hapu in sufficient lands to enable them to participate meaningfully in farming as it was expected to develop at the time.

Despite the prevailing laissez faire economic philosophies of the nineteenth and early twentieth centuries, governments in New Zealand took an active role in promoting economic enterprises that were identified as important for national growth. Governments provided active assistance to sectors of the community to enable them to participate in new economic opportunities. From the beginning of colonisation, the Crown also accepted a responsibility for actively assisting Maori economic development. In the event, governments assisted settlers with loan finance to develop their land for farming from the 1890s to the 1920s, but effectively excluded Central North Island Maori from this assistance. At a time when state rural lending policies had a powerful influence on private lenders, this is likely to have contributed to the persistent prejudice of private lenders against lending on all forms of Maori land. This had long-term consequences for the peoples of our inquiry region, affecting their development prospects beyond the provision of finance for farming. Also, the Government provided training and other forms of assistance to settlers that it did not provide for Central North Island Maori, despite recommendations of the Stout–Ngata commission.

It was not until the 1930s that the Government began to provide significant assistance for Central North Island Maori to develop their land. Ngata's schemes provided a means of sidestepping title difficulties, securing investment finance (through State loans) to develop lands for farming, and training and supervision for chosen owner-occupiers. The success of individual schemes and the benefits they provided for owners varied widely in the region, and we did not make findings on particular schemes in this inquiry. We observed, however, that the emphasis on individual farms was damaging to Maori communities and took little or no account of their preferences. State control was pervasive and made little provision for community decision-making or Maori autonomy. Not until the 1970s did owners gain a more meaningful say and participation

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in management of the schemes, and even then the Crown retained control of strategic decision-making. We think it reasonable also to suppose that, had loan finance been available earlier to Maori (and managed by them) during the key period of 1890 to 1930, the unsuitability of the small farm model for much of the land in our inquiry region would have been apparent in time to prevent some of the mistakes of the Ngata (and post-Ngata) state-controlled schemes there.

In any case, farming was not the principal development opportunity for Central North Island Maori. As we explored in detail in part IV, there were greater opportunities in the natural resources of the region, over which Maori claimed tino rangatiratanga at 1840 and after. This includes the forests, the lakes, the rivers, and the geothermal resource (the surface manifestations, fields, and the underlying heat and energy system (the Taupo Volcanic Zone (TVZ)). Tourism was an important opportunity, based often on possession or control of access to key natural features. Also, as new technology developed later in the century, exotic forestry on (often former) Maori land was a realistic alternative to farming. In our view, past Treaty breaches could have been mitigated and the Treaty kept in the twentieth century had the Crown:

- recognised Maori rights and interests in their natural resources (in a way sought by Maori and at least partly permitted by the common law); and
- provided the same development assistance to Central North Island Maori that it did to settlers.

In particular, the Crown's own title system had created real barriers to Maori development that governments were obligated to assist them to resolve.

Because of the outstanding natural scenery and resources of the Central North Island, and the willingness of hapu and iwi to provide hospitality to travellers wishing to see their taonga, tourism was identified very early as a major potential economic opportunity for the region. Maori took the lead in developing a fledgling tourist industry by guiding visitors to sites of interest and providing associated services, such as transport, accommodation and entertainment. The Crown had an obligation actively to protect hapu and iwi of the region in their Treaty development right to utilise their properties and taonga in expected tourism opportunities, according to their custom and preferences. This obligation included protecting hapu and iwi in a sufficiency of those properties and resources identified at the time as likely to be important for tourism. This was particularly important because of the problems associated with farming in the region in the nineteenth and early twentieth centuries.

We found in parts IV and V that the Crown actively undermined Maori tourism opportunities by a determined campaign to purchase or otherwise acquire taonga central to the industry. These included outstanding geothermal surface manifestations like hot springs at Whakarewarewa, and angling waterways like Lake Taupo and its tributary rivers and streams. Rather than fostering Maori development, the governments of the day were determined to remove tourist attractions from Maori control. By the early twentieth century, hapu and iwi of the Kaingaroa and Taupo districts had lost most of their sites and resources identified at the time as important for tourism, although those in the Rotorua district had retained some significant taonga.

From the 1880s, hapu and iwi of the Central North Island were becoming increasingly marginalised as tourism entrepreneurs. As well as the loss of suitable sites and resources, major barriers to continued Maori participation in tourism were the title problems identified in part III of our report, and difficulties with obtaining investment finance. These barriers were of the Crown's own making. As part of its duty of active protection, the Crown had an obligation to assist Maori to overcome them. The various township ventures in the region offered some potential for this, and the thermal springs district legislation allowed for joint Crown–Maori partnerships in developing key tourist sites. However, the Crown failed to take advantage of such opportunities. Nor did it take steps to assist Maori when it was clear that they were effectively excluded from the major source of lending finance for their enterprises: private lenders.

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By the early twentieth century, the Crown had identified some particularly outstanding sites in the region as having national value, and thus had legitimate kawanatanga responsibilities to ensure that these sites were adequately protected. Such protection did not, however, require Crown ownership of sites of great cultural and spiritual significance to Maori.

As the modern tourism industry developed later in the century, some of its activities were of course different from those contemplated in the 1840s. A significant part of modern tourism, however, remains closely linked to the outstanding natural scenery, resources, and other taonga of the Central North Island, and to the hospitality and culture of the hapu and iwi associated with them. The modern industry is therefore analogous to the tourism trade pioneered by iwi and hapu of the region. In our view, the long-established tradition of tourism for some Central North Island hapu and iwi, the close association between modern tourism and their taonga and cultural practices, and the need to redress past Treaty breaches and economic disparities, together require the Crown as a reasonable Treaty partner to provide positive assistance today for those Central North Island hapu and iwi who wish to participate in new tourism ventures.

The other key development opportunity in the first half of the twentieth century was indigenous forestry. The overwhelming imperative to clear land for farming did not obscure the commercial value of indigenous timber at the time. In its nineteenth-century land purchasing, the Crown targeted accessible, good-quality timber lands, and it failed to ensure that hapu and iwi were protected sufficiently for their present and future needs. The impact varied across our inquiry region. Some hapu and iwi were able to retain significant timber resources, while others, whose timber was regarded as especially accessible and suitable for settlement purposes, had lost the opportunity to benefit from this resource by the beginning of the twentieth century. The resumption of Crown purchasing in the Taupo district in the twentieth century, and the introduction of mechanisms to enable private purchasing in the Rotorua district, had a further impact on the amount of timber lands retained. A significant amount remained in Maori hands in Taupo, while in Rotorua almost half the remaining Maori timber lands were lost.

At the same time, the Crown's selective development of transport infrastructure, its refusal to purchase timber separately from land, and its imposition of purchase monopolies limited the opportunities for hapu and iwi to utilise their timber resources and to participate in the developing Central North Island sawmilling industry. Despite warnings and requests from Maori leaders and from its own commissions of inquiry, the Crown failed to provide positive assistance to overcome barriers to accessing finance, and for hapu to make considered choices about development in the absence of community titles or decision-making bodies with legal powers.

Thus, a pattern emerged of Crown marginalisation of hapu and iwi in the Central North Island in the critical period of economic development of the farming, tourism and forestry industries from the late nineteenth century to the early 1930s. This economic marginalisation was reflected in the poverty suffered by many Maori communities in the region at this time, who relied on traditional resource-gathering, mill and seasonal rural work. Welfare agencies reported poor standards of Maori health and housing in the region up to the 1940s. These were prejudicial effects of the Crown's repression of Maori autonomy, its land title system, and its failure to give effect to the Treaty right of development.

In the second half of the century, tourism remained an important development opportunity alongside new opportunities arising from technological and economic change. In particular, the Treaty right of Central North Island Maori to develop their properties became relevant in the use of their taonga to generate (and profit from) electricity. As we discussed in parts IV and V, Maori retained developable property rights in the waterways and geothermal resources of the region. The battle of Taupo Maori to secure their rights with regard to hydroelectricity was waged particularly in the 1940s, but also from time to time thereafter.

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The battle of Central North Island Maori to receive appropriate recognition of their interests in the generation of electricity from their geothermal subsurface resource (the geothermal fields and the TVZ) was waged from time to time in the second half of the century. In essence, Maori lost both battles with the Crown, which was in breach of their Treaty development rights, their article 2 and article 3 property rights, and also the principles of partnership and active protection. We found that Central North Island Maori are owed compensation for the past use of their taonga for electricity, from which the nation has had both great benefit and also (for the Crown and now for private enterprise) significant profit.

In considering the tribes' Treaty development right with respect to electricity today, we found in terms of our criteria (described above) that:

- the development or activity is a legitimate outgrowth or development of a customary property right;
- the development or activity is in their rohe;
- the development or activity involves their taonga, in which (in Pakeha terms) they have a proprietary interest;
- they have had a long association or history of involvement in the development or activity;
- tribal initiatives are involved or contemplated;
- the development or activity may contribute to the redress of past Treaty breaches; and
- the development or activity may assist their cultural, social, or economic development.

The Crown should now give effect to this Treaty right of development if that is the preference and wish of Central North Island Maori.

In contrast, the record of Crown–Maori relations in our inquiry region is partly redeemed by aspects of the exotic forestry industry in the second half of the twentieth century. Our findings were preliminary (owing to lack of evidence on some points), but in our view the Crown did meet its Treaty obligation to assist the development of Maori land in the case of two large Taupo trusts, affecting many thousands of acres of retained land (the Lake Taupo and Lake Rotoaira Forest Trusts). We are not in a position, however, to comment on other forestry leases of Maori land. Significant areas of land suitable for forestry do remain undeveloped, despite their owners' wishes. The Crown's failure to provide appropriate development assistance to these owners was, in our preliminary finding, in breach of the Treaty.

By the mid-twentieth century, much of the land suitable for exotic forestry (in Kaingaroa, for example) had passed out of Maori ownership in circumstances which breached the Treaty. Nonetheless, we found that the Crown has met its Treaty obligation in terms of Maori development and the principle of mutual benefit in the particular case of exotic forestry on that land, fostering its growth in the Central North Island to provide employment, housing, and development for generations of Maori. Maori have paid a high price for that development, in respect of their cultural, environmental, and social interests. The price need not have been so high had the Crown met its obligation to give effect to their tino rangatiratanga (full authority), or had it assisted them to overcome known obstacles to their gaining management and business positions and experience. As a result of these failures, they were left particularly vulnerable to the restructuring of the 1980s.

In terms of late twentieth-century forestry, we found that the Crown failed to consult properly with Central North Island Maori or actively to protect their social and economic interests in its restructuring of the industry, including the provision of appropriate development assistance. This was in breach of the Treaty. The parties agree that Maori suffered significant prejudice from this Treaty breach. The relative success of exotic forestry as a Maori development opportunity has been overshadowed by the manner and effect of the Crown's withdrawal from the industry at the end of the century.

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Te Taiao: The Environment and Natural Resources

There are key connections between the Crown's failure to give effect to its Treaty guarantees of Maori autonomy and development, its title system, and its policies for ownership, management, control, and exploitation of natural resources. Many of the claims in our inquiry relate to these connected issues, and also to a key prejudicial effect of disempowering Maori: damage to taonga and the environment. This is not to say that had they been empowered to make or properly influence the decisions, Central North Island Maori would never have chosen to alter or modify taonga and the environment as necessary for development. What emerged in our inquiry were the cultural, social, and economic influences on what *was* considered necessary. As we found in respect of exotic forestry on Maori and non-Maori land, tangata whenua of the Central North Island have tended to reconcile development and modification so as to give proper weight to their culture and values wherever they are able to make or properly influence decisions. Many of the claims, therefore, relate both to the Crown's failure to take proper account of Maori proprietary and other interests in natural resource taonga, and its modification (or permission for modification) of those taonga without sufficient consideration of Maori wishes and interests. Of great concern here to the hapu and iwi of the Central North Island is damage to and degradation of taonga.

In terms of Treaty guarantees, we found in part v of our report that water bodies such as springs, rivers, and lakes, and other natural resources such as fisheries and geothermal resources, can be taonga protected by the Treaty of Waitangi. In the particular circumstances of New Zealand, English common law should have been sufficient to recognise Maori customary or native title to these resources, given the nature of the doctrine of aboriginal title. To safeguard Maori rights, however, some formal recognition in legislation was needed to ensure their protection within the introduced legal order. That protection has not happened except in relation to their fisheries. We note that Maori customary or native rights to indigenous freshwater and sea fisheries remain legally enforceable so long as there is compliance with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Whether or not Maori customary or native title to natural resources has been extinguished, the claimants retain Treaty rights and interests in those resources that they consider taonga, albeit in some cases modified. One of the continuing Treaty rights held by Maori is the right to exercise rangatiratanga in the management of their natural resources or taonga (irregardless of whether they still own them) through their own forms of local or regional self-government or through joint-management regimes at local or regional level. To give effect to the Treaty, therefore, the Crown must give effect to Maori autonomy and actively protect the rights and interests of its Treaty partner. As one of the primary claimant concerns, we examined whether the Resource Management Act 1991 (RMA) has done so and found that it has not.

In exploring these generic issues, we looked in detail at two taonga of enormous value to Central North Island hapu and iwi: Lake Taupo and its tributaries; and the geothermal resource (the surface features, fields, and subterranean heat/energy of the TVZ). In considering Lake Taupo, we determined that the Crown now acknowledges the lake and its tributaries as taonga, although its title system still confines legal ownership to beds and banks, with no provision for a proprietary interest in water or in the waterway as an indivisible entity. This does not accord with customary law or proprietary rights guaranteed by the Treaty. Further, the Crown acquired the beds and banks – and the right to use the waters – improperly in 1926, through arrangements which breached the Treaty. It then used the taonga as a reservoir for storing water to generate electricity, raising the level of the lake in such a way as to damage the lakeshore lands and geothermal taonga of the tangata whenua, for which it has not properly compensated the affected iwi.

The Treaty-guaranteed fishing rights of Taupo Maori have in part been recognised by the arrangements of 1926 (modified in the 1990s), but without full and proper compensation for the knowing destruction of indigenous

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fisheries before 1926. On balance, however, the Crown's annuity in exchange for fishing rights, its agreement to a tribally based administration of that annuity, and its return of the lake and riverbeds in 1992, are positive steps in partial satisfaction of its Treaty obligations.

In terms of the geothermal resource, we found that this taonga was viewed as the creation of the sisters and taniwha of Ngatoroirangi, gifted by him to his descendants, separate from the land and waterways in which it manifests. As at 1840, the hapu and iwi of the Central North Island who whakapapa to Ngatoroirangi, and who are the keepers of the rich oral history of the geothermal taonga, possessed it in a manner akin to ownership. In the 1950s, the Crown sought to nationalise geothermal energy, partly to defeat Maori opposition to using certain sites. Had the Crown inquired at that time, it would have found that Maori possessed this taonga with three layers of rights:

- the rights of whanau, hapu, and iwi to particular surface features, inextricable from their rights to the surrounding land;
- the rights of hapu and iwi to the fields underlying their lands; and
- the rights of hapu and iwi to the subterranean heat and energy resource as a whole (the TVZ), which they inherited from Ngatoroirangi and which they have never alienated.

The Crown's nationalisation of use of the resource in 1953, its appropriation to itself of incidents of ownership (including the right to profit from its development and use), and its failure to manage the resource with due involvement of Central North Island Maori in its allocation and conservation, were all in breach of the Treaty. Also, the Crown's intentional stripping of Central North Island Maori of particular surface features of great value, its creation of a title system that enabled it to obtain such taonga by individual purchasing and court partitions, its refusal to recognise or protect Maori customary ownership of the fields and TVZ, and its failure to give effect to Maori development rights in respect of their geothermal taonga, are all in breach of the Treaty. The modern management of the resource through the RMA similarly fails to adequately protect the claimants' interests or to give real effect to the Treaty. As a result, Central North Island Maori have been denied their tino rangatiratanga over the resource. As its kaitiaki, they are required to ensure its sustainable use and its conservation for future generations. The RMA does not provide properly for them to do so.

We also considered the operation of the RMA in respect of a number of other waterways and taonga raised with us by the claimants. At heart, this too is an issue of Maori autonomy. The Treaty of Waitangi envisaged that Maori would continue to exercise their autonomy by managing their own policy, resources, and affairs, within the minimum parameters necessary for the proper operation of the State. Overlaps in decision-making – particularly where resources have been shared with the wider community – need to be resolved in partnership. Central North Island Maori do not seek absolute control of these resources, but rather seek to negotiate their management in partnership with the Crown. After reviewing the history of many such resources in the Central North Island, we found that the Crown did not provide for Maori rangatiratanga in environmental management before 1991, and has not done so adequately since the enactment of the RMA in that year.

While the RMA is an advance on the earlier legislative regime, as is the Act's amendment of 2005, it is still inadequate in Treaty terms. The Crown submitted in our inquiry that increased Maori representation in local government had solved the issue. We considered the initiatives that the Crown has taken in terms of enacting the Bay of Plenty Regional Council (Maori Constituency Empowering) Act 2001 and the Local Government Act 2002, which are an improvement on the previous local government regime. However, the evidence is that Maori representation is still too limited. Central North Island iwi and hapu groups still have no direct right to attend meetings of councils or consent hearings other than as members of the public, applicants, or concerned parties. In particular, participation is not based on tribal or hapu representation, and cannot have any meaningful effect on outcomes under the RMA.

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The evidence of Raewyn Bennett and Tipene Marr before us, both of whom were councillors on Environment Bay of Plenty, was that there were too few Maori on the council, and that their views were often marginalised.

In short, Maori in the Central North Island have suffered major disadvantage. Increasing the level of Maori representation in local government does not address the issue of how to ensure decisions made under the RMA are Treaty-consistent. Only a further amendment to the RMA will ensure that those exercising powers and duties under the Act should do so in a manner consistent with the Treaty. This would address past problems and ensure that present activities, carried out under resource consents, do not impinge on the Treaty rights and interests of the claimants. Our view is that an amendment is necessary to section 8 of the RMA, as we explained in detail in part v.

Finally, the Crown argued in our inquiry that the key to its kawanatanga role in managing the environment was an appropriate balancing of interests. The Treaty requires Maori interests to be given significant weight and protection but, in the Crown's view, its ability to carry out its policies cannot reasonably be restricted to 'extremely constrained and unusual circumstances':

> This issue may be most pressing in 20th century issues and environmental issues where a decision which directly affects one Maori group may directly or indirectly affect a number of other interested groups, Maori and non-Maori around the country. The Crown is required to balance the various interests involved in such a decision. Where issues of significant national infrastructure are included (as with electricity), such a balancing process must occur by considering the relative interests in the national context.[4]

We agreed that the Crown must govern in the interests of all. It is the only body with the overview and capability necessary to assess the national status of New Zealand's environment and natural resources and provide for all communities of interests, whilst ensuring that its actions or those of its delegates are consistent with its obligations under the Treaty of Waitangi. In other words, the balancing of interests must be done in a manner consistent with the Treaty, and Maori rights cannot be balanced out of existence. The Crown's right to govern was recognised in return for its guarantee of tino rangatiratanga. That guarantee included full authority over properties and taonga. Otherwise, Maori have nothing more than a limited right to be consulted – the position taken in the RMA, in breach of the Treaty. Any balancing of interests, therefore, must give due and appropriate weight to the Treaty relationship and to Treaty rights, as we outlined in chapter 17. Maori ownership of, and rangatiratanga over, their taonga should not be negated by the requirement of balancing unless it is in exceptional circumstances in the national interest. Maori also must do their part in the Treaty relationship. As we noted above, Central North Island Maori do not seek absolute control of natural resources, but rather want to negotiate their management in partnership with the Crown. The Treaty envisaged a future for all peoples in this country – sharing, developing, and protecting its natural resources for the welfare of us all and the generations to come.

Conclusion

Ultimately, Central North Island tribes have been deprived of their authority to manage their own affairs and their own taonga. This has resulted in economic, social, and cultural harm to all the Maori peoples of the region. First, they have been refused the right to govern themselves and their own properties and affairs, although such a right was guaranteed in the Treaty. Secondly, they have had a form of land titles imposed upon them that broke the tino rangatiratanga of their communities and led to real or virtual loss of much of their land. Thirdly, the English common law and the statute law has deprived them of authority over – and sometimes customary ownership of – the natural resources that were the key to economic development in their region. Fourthly, they have been denied their Treaty right to develop their properties and taonga, and

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to develop as a people. All these factors combined to deny Central North Island Maori the mutual benefit from the new society that had been promised by the Treaty. Instead, they have suffered economic, social, cultural, and political marginalisation. They have not been able to control the environmental – and other – effects of the development that has occurred. In our view, these Treaty breaches and resultant prejudice are serious and require swift and substantial redress.

Recommendations

From time to time in our report, we have made recommendations about how the Crown could rectify particular problems and remove current or potential prejudice. These included our recommendations that the RMA be amended, that Central North Island Maori be compensated for the use of their taonga to generate electricity, and that the Crown should recognise a current Maori development right in the tourism, forestry, and electricity industries of the Central North Island. We note, too, that there are no fewer than 40 applications for remedies hearings or binding recommendations extant before the Tribunal. Those applications affect former state forests currently held in trust – including Kaingaroa, Rotoehu, Horohoro, Whakarewarewa, Crater, Waimihia, Marotiri, Pureora, and Waituhi – with accumulated rentals of $256,946,214 as at 31 March 2007.[5]

Broadly speaking, however, we do not wish to make formal recommendations about settlement at this stage of our inquiry. We have reported on the generic issues affecting most or all claimants in the three inquiry districts of Rotorua, Kaingaroa, and Taupo. We heard evidence and submissions from many groups. The Crown has already negotiated a settlement with a large grouping of Rotorua claimants. We understand that the Government has accepted the mandate of other groups to commence negotiations. As noted above, we think that the Central North Island claims are serious, justifying substantial redress. In our view, it would now be possible to settle the claims without further inquiry by the Tribunal. We recommend that the Crown and claimants negotiate using all best endeavours. Should negotiations prove unsuccessful, the Tribunal may reconvene – although whether it would sit to hear stage 2 of this inquiry or proceed directly into a remedies hearing remains to be decided.

Summary

- The Crown has failed to give effect to the Treaty principle of autonomy and to Maori Treaty rights of self-government in the Central North Island. It has failed to protect the tino rangatiratanga of Central North Island iwi and hapu over their affairs, lands, and resources. The principal means by which the Crown breached the Treaty was its continuing refusal to accord legal powers to Maori institutions so that the tribes could govern themselves, manage their lands collectively, and have their fair say in state decision-making on social, economic, environmental, and regional development.
- In particular, the Crown missed, refused, or actively repressed opportunities for Central North Island Maori to govern their own affairs, their lands, and their resources through representative institutions of their own devising, or of mutual devising by the Crown and Maori in partnership.

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- As a primary part of this breach of Treaty principles, the Crown insisted on the individualisation of customary title by a state-created court presided over by settler judges. This was entirely inconsistent with the tino rangatiratanga of Central North Island Maori, as guaranteed by the Treaty.
- The resultant title system has had devastating effects on the iwi and hapu of the Central North Island. These include the destruction of community authority and control over land, the piecemeal alienation of individual interests against the wishes of hapu communities, the loss of treasured land and resources without proper consent or fair compensation, and the creation of long-term barriers to development of remaining assets. Maori held surviving blocks as multiple owners in a legal and economic climate hostile to such ownership, unable to borrow because they could not offer adequate security. From the mid-twentieth century, trusts and incorporations, providing for the corporate management of Maori land, became a realistic option for Central North Island Maori. Recent reforms (in Te Ture Whenua Maori Act 1993) have further improved the situation for many groups of owners. Nevertheless, restoration of hapu and iwi governance and resource bases for the exercise of their tino rangatiratanga is still required. We hope that such will be the outcome of negotiated Treaty settlements.
- Also, the Crown's title system did not give effect to Maori customary rights over their waterways and geothermal resources, even though such rights ought to have been protected by the common law or (in the event of that protection proving insufficient) by statute. As a result, Maori lost control over many of these resources and were marginalised from their development. The enactment of the Resource Management Act (and its amendments) has resulted in some improvement, but not enough for the Crown to keep its full Treaty obligations to Central North Island Maori. We recommend that section 8 of the RMA be amended and further improvements made.
- The Crown has breached the Treaty right of development for Central North Island iwi and hapu. It has failed to give effect to that right in terms of land and resources owned or claimed by Maori. It failed to provide the same or equivalent development assistance to Central North Island Maori that it provided to settlers. It failed to assist Central North Island Maori to overcome barriers to development that had been created by its own title system. It failed to keep to its early commitment to assist Maori social and economic development, and the associated Treaty promise that both Maori and settlers would prosper (the principle of mutual benefit). The Crown still has opportunities to give effect to the Treaty right of development in tourism, the electricity industry, forestry, and any new Crown-owned or Crown-controlled resources/industries that are created in the Central North Island.
- As a result of these breaches of the Treaty, Central North Island Maori were disempowered in their own rohe by the late nineteenth century. They had no legal powers to govern themselves and their affairs, or to manage their lands collectively as tribal communities. Rather, their land titles were individualised and their community authority damaged, with significant social, cultural, and economic prejudice. Further, Crown actions and inactions led to the 'development of under-development' for the hapu and iwi of the Central North Island. For the

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first half of the twentieth century, the result was poverty and also social and cultural dislocation, as reported by welfare agencies and officials of the time.

- In the second half of the century, there was some improvement as a result of farm development schemes, provision for collective management (trusts and incorporations), and economic assistance for forestry. Farm development was limited, however, and the Crown conceded that its sector restructuring dealt a crushing blow to Maori forestry in the final decades of the twentieth century. Overall, many Central North Island Maori remain economically and socially marginalised at the beginning of the twenty-first century, partly as a result of avoidable actions on the part of the Crown and in breach of the Treaty of Waitangi.
- The Treaty breaches and resultant prejudice have been significant. In our view, generous redress is required. We recommend that the Crown and claimants negotiate.

Notes

1. Government policy statement, 1861, reproduced in Henry William Tucker, *Memoir of the Life and Episcopate of George Augustus Selwyn, DD, Bishop of New Zealand, 1841–1869, Bishop of Lichfield, 1867–1878*, 2 vols (London: William Wells Gardner, 1879), vol 2, pp 179–180. The original version of this policy statement was published in the Government's Maori-language newspaper, *Te Karere/Maori Messenger*, vol 1, no 18, 16 December 1861.

2. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65), pp 640–641

3. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), p 1457

4. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 1, p 37

5. Crown Forestry Rental Trust, *Annual Report to Appointors, 2006–2007* (Wellington: Crown Forestry Rental Trust, [2007]), p 49

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