TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

TE MANUTUKUTUKU

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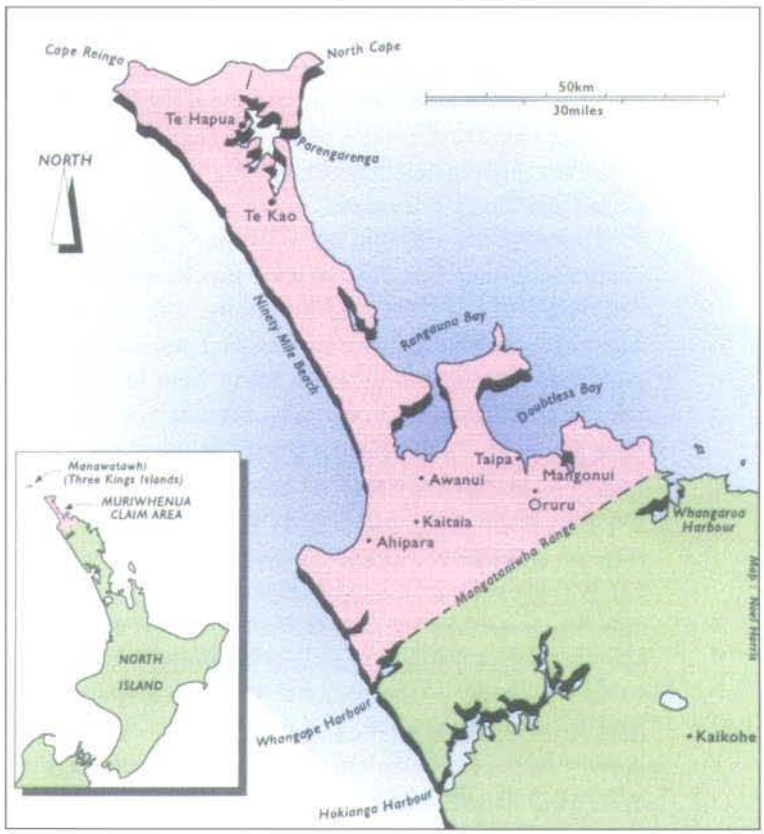
Muriwhenua Land Report

The *Muriwhenua Land Report* was released in Kaitaia on Wednesday 26 March 1997. First lodged in 1986, the Muriwhenua claims involve very early land transactions between Māori and European, both private and official. The *Report* provides the Waitangi Tribunal's findings, and also makes recommendations for relief for the Far North claim.

The Muriwhenua claims relate to pre-Treaty private transactions from 1834, and government transactions from 1840 to 1865, together affecting 430,177 acres (174,093 hectares) of land. Whereas Māori viewed these transactions as contracts for mutually beneficial social relationships, European settlers and officials regarded them as land sales. By 1865, the economic and social status of the Muriwhenua tribes was already in jeopardy, and as land losses continued, the tribes were reduced to penury and state dependence, living on lands insufficient for traditional subsistence and inadequate for farming.



The *Report* details how these transactions involved clear breaches by the Crown of Treaty principles, including protection, honourable conduct, fair process and recognition. It outlines how pre-Treaty transactions were inconsistent with customary gift exchange, tuku whenua, and how the Crown failed in its responsibility to review these transactions fairly and failed to ensure its own purchasing actions were just, fair and equal.

The claims relate to virtually the whole of the Muriwhenua region, land which lies in a broad band north of the Maungataniwha Range, from Whangape in the west to Whangaroa in the east, as well as the two peninsulas of Karikari and the long Muriwhenua peninsula. The area includes Ninety Mile Beach, Cape Reinga, North Cape and the towns of Ahipara, Kaitaia, Oruru and Mangonui. The principal peoples are Ngati Kahu, Te Rarawa, Ngai Takoto, Te Aupouri and Ngati Kuri.

In its report, the Tribunal suggests possible settlement options which include the transfer of property such as the Crown forests and state enterprise assets as well as financial compensation. The Muriwhenua Land Report is available from GP Publications, ph 04 496 5690, freefax 0800 804 454. Sections of the Report can also be accessed on the Internet at the Tribunal's homepage: http://www.knowledge-basket.co.nz/waitangi/welcome.html.

From the Director

Muriwhenua Land Report

The *Muriwhenua Land Report* is an important milestone for both the Tribunal and Muriwhenua. It marks the mid-point in a long road that started for the Tribunal in 1986 but for the claimants perhaps around 1834. The end-point is when Muriwhenua makes its settlement with the Crown over the claims – that will herald the new era of revival for the northern tribes both culturally and economically. This is long overdue and the time for reconciliation should not be delayed.

How the Report will be viewed by Government will be significant, although it does provide the rationale for the settlement of the claims and a chance to do what none have succeeded in since the arrival of the European and that is to start the recovery of the Muriwhenua economy. For part of the populace this report will be seen as yet another Waitangi Tribunal Report. There will however be a significant group of Māori and non-Māori who will say this report has been a long time coming and will welcome it as a key missing link in understanding Treaty claims and Treaty grievance.

Morris Love

This Report is novel in that it explores in considerable depth Māori understanding of what was happening in the early transactions over land especially with the Crown. The exact nature of many of the land transactions was poorly understood and although many were irregular and questionable Māori were powerless in complaints and petitions to sustain argument to prevent or reverse the huge loss of land. Muriwhenua characterised most graphically the class of cultural misunderstanding suffered from institutional indifference which was inconsistent with the explicit instructions of Lord Normanby to Governor Hobson. By 1865 the loss of land in Muriwhenua was so extensive that the economy and well-being of the Muriwhenua tribes was already in jeopardy and they were already on the road to state dependence. The report details this and the reasons for it. It details how Muriwhenua Māori far from wittingly being the architects of their own misfortune were the victims of poor understanding, poor administration, avarice and greed.

I will not attempt to precis the report, but to mark some beacons for the road ahead. The report lays down some challenges for the claimants, Crown Counsel (and the Government), for the Tribunal and even for myself. It proposes for the first time that the Tribunal could, through a process of hearings and allied mechanisms, put together a package of remedies for the comprehensive settlement of the main claim. In finding for the claimants over their grievances, the Tribunal has expressed that it wishes to hear counsel on the approach to be taken on the recommendations to be made and to compensate each wrongful loss to the fullest extent.

The Tribunal method thus provides an alternative to a Crown-negotiated compensation settlement, by providing for Muriwhenua the option of a Tribunal assisted and recommended total relief package. In all this the design of such a package is of critical importance not only in overall terms but in just how it would apply to the organisation of iwi, hapū and their various representative bodies. The general claim would be settled without prejudice to the specific claims which would each be considered in turn. This method of settlement is certainly new. I consider it adds another approach to the settlement of claims and should be welcomed and given the opportunity to work.

Muriwhenua has led the way in so much of the claims process and its leaders have lit the way for others to follow. As so often happens, they have not made good relief along the way and today many long years after starting the long march find themselves in a similar predicament as their ancestors prior to 1865. For those who arrive later and with the benefit of hindsight grabbing the spoils looks tempting.

Tino rangatiratanga, or not

Although not of direct import to the Tribunal, few would challenge the Tribunal's role to engage in discussion over the recent spate of attacks on Pākehā icons by Māori. The common factor in each has been reference to tino rangatiratanga. Beyond those references each appears to be the result of little forethought or any collective strategy. The beheading of the statue of Ballance in Whanganui, the chainsaw attack on the pine tree on One Tree Hill and the attack on the Americas Cup: the work of empowered individuals touting a cause that is barely articulated and without any cohesive vision.

Each is the result of empowerment without direction and each signifies the serious lack of any strategic vision when it comes to sorting out what Māori mean by tino rangatiratanga. A lack of that vision will see the demise of any genuine attempt by the Government and non-Māori to come to grips with rangatiratanga. It cannot be that the term means 'whatever we want it to mean' and is condemned to the credibility of the mad hatter's tea party.

There are an array of meanings for tino rangatiratanga and I thought I would mention a few without really subjecting them to intensive analysis. The first relates to the exercise of chieftainship within a group (iwi), whereby the populace raises one of its number to provide leadership. That leader is subject to the reciprocal relationship of trust much like that of any trustee. The group that does the elevating entrusts decision-making with the rangatira, who in turn has to act in the best interest of the elevating group or risk losing the status. This applies equally to men or women, people elected to positions or those who assume positions of leadership. It usually follows a democratic model but is not confined to that paradigm.

Waitangi Tribunal Open Day 1997

Tribunal researcher Campbell Duncan outlines research for the Taranaki claims during an Open Day tour.

On Friday 7 February the Waitangi Tribunal held its biennial open day at the Tribunal premises in Seabridge House. Over three hundred people took the opportunity to broaden their understanding of the role of the Tribunal and its present work.

Events started with a pōwhiri at 8.30am, followed by 1 1/2 hour guided tours of the offices and library, which continued throughout the day. Presentations were given on administration and law pertaining to the claims process. Information on research specific to the Taranaki report and the Rangahaua Whānui project provided visitors with a clear understanding of the claims processes in an interactive way.

Other events included static displays and exhibitions by publishers, National Archives and electronic media. Information from other treaty-related agencies was widely available, and the day provided a unique opportunity to view the Tribunal's taonga collection and video footage. Television, radio and print media gave the day very positive coverage.

The next meaning of tino rangatiratanga is about how a group and its leaders relate to other groups be they Māori or non-Māori. The exercise here is about authority and control over resources or populations. An example could be where a tribe has a power of veto over the use of a natural resource achieved through statute or some other mechanism whereby other groups recognise the right. This is a power often sought in regard to natural resources especially those from which common or dispersed rights spring. The various forms of water such as rivers, lakes and sea have a variety of rights associated with them and authority or rangatiratanga could be exercised as a right. This exercise has been long sought especially in its broadest sense of ownership of all potential uses of a resource. Those rights have been slow in coming in part because of a reluctance of Governments and lobby groups to limit or give over such power. There has been little that could be seen as a concerted and strategic approach by Māori to seeking the recognition of such authority. There have been many unstrategic assertions of such authority in claims and the like but few attempts have been made to plan and orchestrate change. The mechanisms this form of rangatiratanga could potentially be delivered by are quite varied, but will take a real effort to achieve.

The most nebulous form of rangatiratanga and one I am not sure really exists is what some call personal rangatiratanga. More correctly this is personal mana and relates to a person's status. This was enhanced in tradition not by the finery of your korowai, but by your ability to be generous (manaakitanga), selfless and enhance the mana of the people (iwi). It seems that some variation of this type of assertion could be the basis for random acts of destruction which have occurred against the icons of wealth and power held by non-Māori.

Much is maligned about tino rangatiratanga as a result of saying all acts of assertion are expressions of tino rangatiratanga, whereas it is my belief that as there is no strategic vision behind them – they are often just random and senseless acts of violence with no relationship to rangatiratanga. If people want to get attention for a 'cause' then that cause needs a vision and a strategy which other people are willing to sign up to; anything else is simply a downhill road to anarchy, not for the general New Zealand population, but for those who have proudly identified as Māori. The challenge here is the kaupapa has yet to emerge in its full grown form. If ever there was a time for a kaupapa for which Māori people could say 'that is what I stand for' it is now.

Morris Te Whiti Love
Director

Two Claims Settled with Crown

Two claims involving land taken under Public Works legislation have been settled with the Crown. They are, Rotoma No 1 claim (Wai 90)and Te Maunga Railway Lands claim (Wai 315).

Wai 90 concerned the Rotoma No 1 block in Rotorua and was lodged on 7 August 1989. The claim involved 13 acres of land taken in 1944 by the Crown under the Public Works Act 1928 to be used as a quarry. Part of the lands were subsequently designated for a telephone exchange and a fire station. Prior to the taking of the land in 1944 and the payment of some compensation, the Crown ventured onto the land between 1936 and 1944 and extracted quarry material. This claim was settled on 6 October 1996 by direct negotiations. In settling the claim the Crown has made an apology for its actions with respect to entering onto and extracting quarry material from the Rotoma No 1 block, returned the land to the claimants and paid the claimants' costs.

Wai 315 was lodged on 7 October 1992 in respect of Papamoa 2 section 10B2C2, Mt Maunganui. The Te Maunga lands were taken in 1955 for Railways housing under the Public Works Act 1928. The claimants argued that the Crown did not consult properly, failed to seek out the successors to the land when it became vacant, and did not offer it back to them. The Tribunal issued a report on Wai 315 in 1994. Since then the Crown and claimants have been in direct negotiation and the claim was settled on 2 October 1996. The settlement includes an apology by the Crown for its actions regarding that block, the return of the land to the claimants and the payment of the claimants' costs.

The hearing process

Since the Waitangi Tribunal was established 21 years ago, there have been over 650 claims lodged by Māori. While over one hundred and fifty of these claims have been reported on or otherwise concluded in some way, more than four hundred remain to be heard by the Tribunal.

The Tribunal has had to prioritise the way in which it hears claims. The priority has been to hear raupatu claims before other historical claims, and then claims relating to more contemporary issues. In exceptional circumstances, the Tribunal may hear a claim urgently.

The Tribunal's practice is to group claims together which raise the same or similar issues (such as claims affecting the same lands and resources). Before a hearing takes place, the issues need to be adequately researched. This process may take a long time, sometimes years. Once all the research has been completed, it is compiled into a casebook. A tribunal will then be constituted to hear the claims.

The Chairperson of the Waitangi Tribunal, Chief Judge E T J Durie, constitutes panels of the Tribunal to hear the claims. In addition to the Chairperson, there are 16 other members to draw upon. The Chairperson may appoint a judge of the Māori Land Court to act as the presiding officer of a claim; this role may also be fulfilled by a Tribunal member who has at least seven years' standing as a barrister or solicitor. The presiding officer has responsibility for the particular procedures to be followed at the hearing.

Between two and six members may also be appointed to hear the claims. Careful consideration is given to ensure that there is a balance of Māori and non-Māori members. And, as far as possible, members are appointed with expertise and experience in the issues raised in the claims. Gender equity is also taken into account. As most Tribunal members are part-time, sometimes their availability is uncertain.

With the appointment of a presiding officer, a pre-hearing conference will be held to determine *how* the hearing will proceed. Normally, the presiding officer chairs the conference. It is attended by claimants and/or their counsel if they are being represented, Crown counsel and any third parties intending to present submissions at the hearing. The conference usually decides the date by which outstanding evidence should be submitted, when the first hearing will take place, the order in which claimants will present their evidence and the venue or venues for the hearing. Similar conferences will take place throughout the course of the Tribunal's inquiry.

The Tribunal makes every effort to hear claimant groups on their own marae and according to their protocols. The Crown, too, can select a venue for the hearing of its evidence and submissions. Hearings on marae normally begin with a pōwhiri, after which the kawa is handed over to the Tribunal until the conclusion of the inquiry.

At the hearing, claimants are the first to present evidence. This is usually a combination of oral evidence given by kaumātua and written evidence prepared by specialist researchers. Where, as is often the case, claimants are represented by legal counsel, the lawyer summarises the claimants' contentions and makes any submissions on legal matters which arise in the claim. Those who give evidence may be asked questions by the Tribunal members and the counsel representing other parties, including the Crown. The Tribunal does not encourage extensive cross-examination of kaumātua evidence, however. Once the claimants' evidence has been presented, the Crown presents its evi-

Claims Administration

The Tribunal's claims administration staff are responsible for co-ordinating and administering the hearings. Once the presiding officer directs that a hearing be set down, staff contact claimants, counsel and members, in order to find a suitable date for the hearing. Once the date has been confirmed pre-hearing arrangements begin. Staff liaise with claimant counsel or a claimant representative about a range of matters, including: a suitable venue (usually a marae), catering requirements, pōwhiri details, site visit itinerary, hearing agenda, equipment hire, an interpreter (if required), and costs. In addition, travel and accommodation arrangements are made for Tribunal members and staff attending the hearing. Notice of the hearing is advertised and distributed to all parties concerned; public notice is also given.

The day before the hearing the claims administrator ensures that the hearing venue is set up as required, including the sound and video equipment to record the hearing.

At the hearing staff keep minutes, allocate reference numbers for evidence and submissions presented, maintain the sound and video equipment, and generally ensure that the hearing is running smoothly. Once the hearing is over, all equipment, documents, and supplies are packed and couriered to the Tribunal.

After the hearing claims administration staff reconcile accounts and claim expenses, update the records of inquiry with evidence and submissions presented at the hearing, distribute those documents to all parties concerned and complete a post-hearing report.

Hearings are only one aspect of a claims administrator's work. To be effective, a claims administrator needs to be highly organised, be able to work independently and as a team member, and have a high level of written and oral communication skills. They must work well under pressure, have a lot of initiative and be highly energetic. It is crucial that they interact well with people, and most importantly, are interested in and believe in the work of the Tribunal.

Moana Murray, claims administrator, summarises how she feels about her work: 'The Waitangi Tribunal is a taonga, it is 'living history', and I am privileged to be a part of it.'

Claims Administrator Turei Thompson

Waitangi Tribunal Claims Administration staff, (left to right): Moko Matoa, Geoff Melvin (Registrar), Pam Wiki, Lyn Fussell, Moana Murray, Hemi Pau, Cath Sinclair.

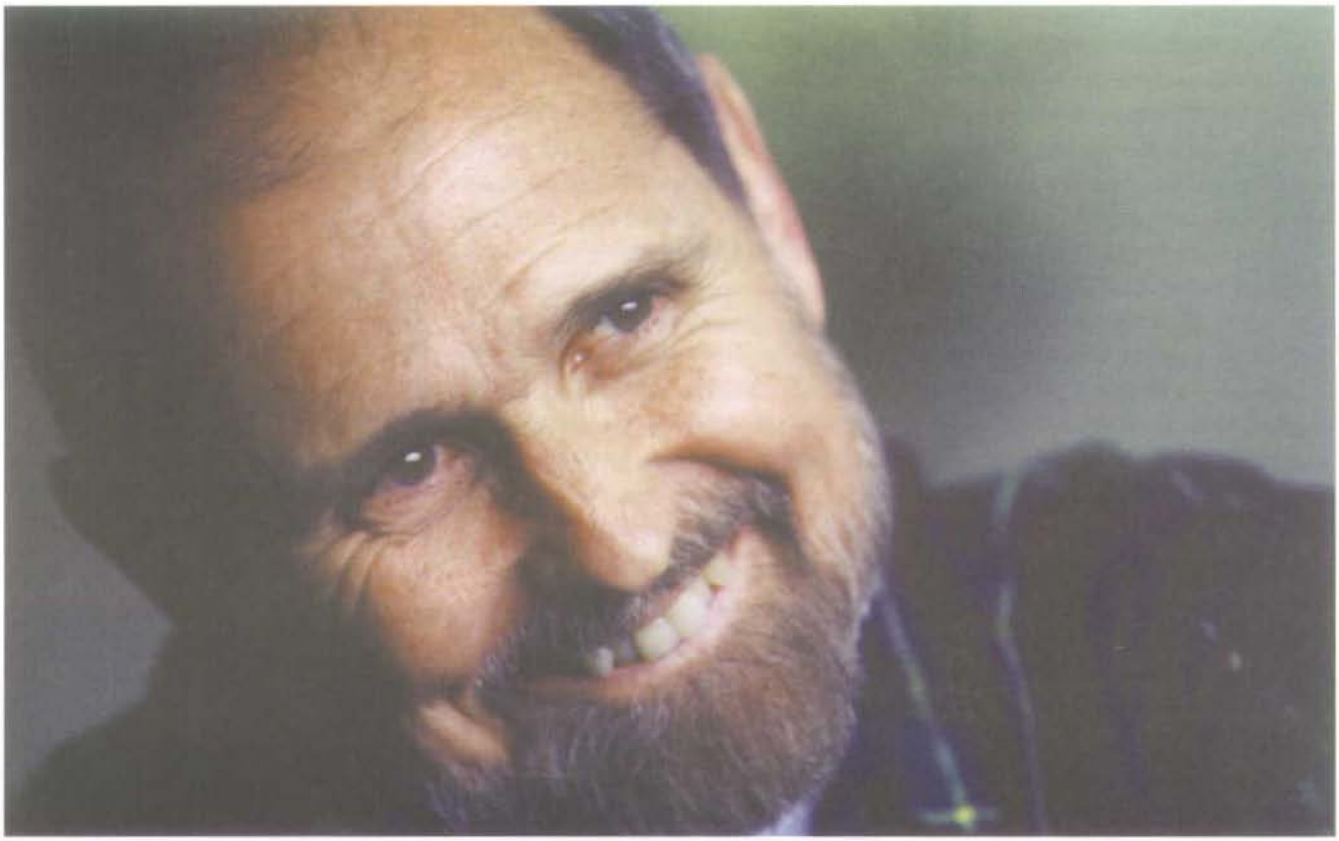
The hearing process (continued)

dence and submissions in the same way. Crown witnesses may also be cross-examined.

The number of hearings in an inquiry depends on the number of claims being heard, and on the size and complexity of the issues involved. Even when the hearings have been completed, the Tribunal's work is far from over. It must then distil the evidence into a readable report which will ultimately be presented to the claimants and the Crown.

World Renowned Mediator Works with Tribunal Members

Photo: Sunday Star Times



Dr Dudley Weeks

World renowned mediator Dr Dudley Weeks worked with Tribunal members and Māori Land Court judges recently. Twice nominated for the Nobel Peace Prize, Dr Weeks has worked with Nelson Mandela and F W de Klerk in South Africa and with the Dalai Lama's international ambassadors. He has mediated conflicts in more than 60 countries including South Africa and Bosnia and with racial and ethnic violence in the US. Dr Weeks was here at the invitation of the Legal Resources Trust.

During the workshop Dr Weeks focused on his 'conflict partnership' technique and how this might be applied to the Tribunal's work. It is likely that mediation will be used more to resolve conflicts which arise in the course of a claim inquiry, and this meeting was an opportunity to share ideas. Dr Weeks said that the Tribunal showed a unique awareness of the need to address the disadvantages and wrongs experienced by Māori. He is expected to make a return visit to New Zealand later this year.

Primary School Educational Resource

The Waitangi Tribunal is producing a resource for standard three to form two students (levels 3 and 4) on Te Tiriti o Waitangi – The Treaty of Waitangi.

The resource kit will be comprehensive, bilingual, and self-contained. It covers:

- Aotearoa before the settlers came
- the arrival of Pakeha in Aotearoa
- the signing of the Treaty of Waitangi
- what happened after the Treaty was signed
- what the Treaty means today

The resource will take students from pre-settler times to the present day through active, thought-provoking activities relevant to their daily lives. Developed in consultation with a group of primary school teachers, it will indicate how activities correspond to the achievement objectives in the draft social studies curriculum.

All schools will be informed when the Treaty of Waitangi resource is available.

New staff members

Nicola Bright and **Evaan Aramakutu** have joined the Waitangi Tribunal staff as research cadets. Both attended Massey University and graduated with BA in Maori Studies and Honours degrees in History. They will be working twenty hours a week with research staff whilst completing Masters theses through Massey University. They say they are thrilled to have the opportunity of working as cadets and learning how claims are researched before becoming full-time research staff.

Nicola Bright grew up in Gisborne and the Manawatu and is affiliated to Tuhoe and Ngati Awa. As part of her Honours degree she completed a research essay on the Urewera. Evaan Aramakutu is from Ngati Pahauwera and was brought up in the Hawkes Bay. He researched the Ngati Pahauwera and Mohaka lands for his Honours degree.

Steve Quinn has joined the Waitangi Tribunal research staff on secondment from Te Puni Kokiri until May 1997. He is working on Nineteenth Century Native Reserve Policy and Legislation. Steve is from Wellington and has Irish, British, German and Russian ancestry. He graduated from Waikato University with an LLB and a Bachelor of Social Sciences in politics and economics. Steve has also completed a Graduate Diploma in Economics and worked at Woodward Law Offices on Tribunal claims work and employment law. As a commissioned researcher Steve wrote reports for Wai 145, Wai 204, Wai 438, Wai 571 and Wai 282. At Te Puni Kokiri Steve is a Senior Policy Analyst in Asset Management.

Nicola Bright

Evaan Aramakutu

Steve Quinn

NEW CLAIMS REGISTERED

Wai No.	Claimant	Concerning
634	Te Aroha Ruru Waitai	Maori Lands and the Laws of Succession
635	Wihapi Winiata	Horohoro State Forest, Rotorua Grouped for inquiry with Wai 293, 316, 317, 531
636	Rangi Makarauri	Papamoa No. 2, Section 6B, No.1A Block Consolidated with Wai 215
637	Shane Ashby	Tauranga Raupatu Consolidated with Wai 215
638	Nigel Baker	Tataraakina C Block Consolidated with Wai 201
639	Nigel Baker	Tarawera Township Consolidated with Wai 201
640	Nigel Baker	Stoney Creek Forest, Tarawera 10B Block Consolidated with Wai 201
641	Heemi Biddle and others	Ngati Hine lands and resources, Taupo
642	Elizabeth Mataroria-Legg and others	Loss of land, Motatau 5A No.2 Block
643	Rev. Puti Murray and others	Te Kao lands Grouped for inquiry with Wai 45
644	Wayne Richard Robinson	Kapuni to Otakeho lands, Taranaki Consolidated with Wai 143
645	Enoka Ngatai	Tauranga Maori Trust Board Act Consolidated with Wai 215
646	Grace Kerenapu Saxton	George Hori Toms and Colonial Laws of Succession
647	Maria Muri and another	Land at Taihape taken for Railway purposes
648	Charlene Porter and others	Tolaga Bay lands
649	Hone Te Kauru Kaa and others	Aotearoa Maori Radio
650	Toko Renata Te Taniwha and others	Athenree Forest and Surrounding Lands Consolidated with Wai 215
651	Turoa Andrew Karatea	Te Reu Reu land
652	Josephine Hape and another	Sale of land in the Tamaki Nui A Rua rohe
653	William Blake and others	Opoutama land
654	Te Raa Nehua and others	Ngati Rahiri rohe
655	Ngahina Matthews	Whanganui/Rangitikei block
656	Linda Cudby and others	Section 137 of Maori Affairs Act 1953
657	Elizabeth Helen Graham and another	Aorangi settlement
658	Waipapa Pomare Totoro and others	Lands and resources in the Kaipara region
659	Desmond Matakoriri Tata and others	Ngai Tamarawaho Tribal Estate (consolidated with Wai 215)
660	Ann Reweti	Land in Lower Hutt taken for housing purposes (aggregated for inquiry with Wai 145)
661	Shane Ashby and others	Wharekawa East No 2 Block
662	Peter Wairehu Steedman	Mangaohane No 1 Block
663	Tanengapuia Te Rangiawhina Mokena	Te Aroha lands

WAITANGI TRIBUNAL HEARING SCHEDULE FOR APRIL 1997
(These dates may change)

21–24 April1997, Mohaka Mohaka ki Ahuriri Hearing	**30 April – 2 May 1997, Mohaka** Mohaka ki Ahuriri Hearing

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