7. Hakatikangia ngā mahi kino – remedying the atrocities

7.0 Introduction – Ngāti Kahu's recent experiences of Crown representatives

Ever since the breaches of Te Tiriti started, Ngāti Kahu have been trying to find remedies. The systematic bulldozing of our rights and theft of our lands and resources made that extremely difficult. Over the generations a number of approaches have been tried. Some of these have been outlined in the hapū korero (chapter 3) and in the historical account (chapter 6). This chapter focusses on the strategies adopted over the past three decades since the Waitangi Tribunal was established.

7.1 The Waitangi Tribunal

In 1975 the Government created the Waitangi Tribunal. Its primary purpose was to defuse the rising tide of Māori anger and protest over the numerous breaches of Te Tiriti o Waitangi caused by the on-going lawlessness and criminal activities of representatives of the Crown. The Tribunal is a permanent commission of inquiry whose function is to enquire into and make recommendations on claims laid by Māori against the Crown that they have been prejudicially affected by government legislation, policy, action or inaction that is inconsistent with the treaty.[1] Although it is a judicial body, the Tribunal is a Government-controlled body. The Government appoints all its members, determines what resourcing it may have,[2] has progressively reduced its powers and since 1997 and has threatened to reduce its powers further if it uses them to make recommendations that are binding on the Crown.[3]

The first claims in Ngāti Kahu's rohe were lodged with the Waitangi Tribunal by McCully Matiu (Wai 17) and Reremoana Rutene (Wai 16) in 1984. They were the first claims to be lodged from Te Hiku o Te Ika. In 1986, Ngāti Kahu's hapū leaders of that time agreed to allow their claims to be consolidated into WAI 45, along with those of Ngāti Kurī, Te Aupōuri, Ngāi Takoto and Te Rarawa.

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[1] Treaty of Waitangi Act 1975.

[2] The Tribunal has been under-resourced for almost all of the time it has been operational. Hamer, 2004, 'A Quarter Century of the Waitangi Tribunal', p.10.

[3] Hamer, 2004, 'A Quarter Century of the Waitangi Tribunal', footnote 22. In fact, the Tribunal's powers have been reduced considerably since the 1980s. Its power to make recommendations over local government and private lands and over fisheries was removed in 1992. Its power to register historical claims was removed in 2008. Its powers to consider any claim is removed once settlement of a claim has been legislated (the Office of Treaty Settlements website http://www.ots.govt.nz/ lists 54 settlements legislated between 1992 and 2015. Accessed 12 December 2015).

However, the claims were severed soon after they were lodged in response to the Government arbitrarily moving to create property rights in all fisheries through a fisheries quota management system. That resulted in the fisheries portion of the WAI 45 claim being given urgency. The Tribunal found that all our sea fisheries still belonged to us. But Ngāti Kahu was excluded from the negotiations to settle that claim and has never accepted the 1992 Sealords deal.[4] That deal purported to extinguish all our rights to our fisheries in exchange for a half share in the Sealord fishing company, some fish quota, a Māori fisheries commission and reducing our customary fishing rights to regulations determined by agents of the Crown. Ngāti Kahu determined then that our land claims would not be allowed to be similarly high-jacked and that we would make sure that we kept control over them.[5] Hearings into our land claims did not commence until 1990. What followed were thirteen long and arduous weeks of hearings held over five years, from 1990 to 1994.

The Government fought us every step of the way through the hearings but in the end the evidence against them was too overwhelming. And the Tribunal was clear that the severe damage that had been done needed to be addressed urgently and that there should be no further delay in alleviating the conditions of deprivation, poverty and marginalization. Once the Tribunal understood that tikanga was the only law that applied in this country prior to 1840 and that after 1840 tikanga rather than the legal fictions invented by Pākehā settlers[6] still applied for us and our lands, we knew they would uphold our claims. We had made it clear that we had never ceded any of our territories and the Tribunal understood and accepted that. And so, while we waited for their report, we started compiling a settlement package to address each and every claim of the many whānau and hapū of Ngāti Kahu. Implementation of the settlement package would remedy the atrocities committed by the Government against Ngāti Kahu and allow reconciliation to take place. The background to and the content of that package is outlined later in this chapter.

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[4] Margaret Mutu, 2012. 'Fisheries Settlement: The Sea I Never Gave' in Janine Hayward and Nicola Wheen (eds) *Treaty of Waitangi Settlements.* Wellington, Bridget Williams Book, p.118.

[5] Margaret Mutu, 2005, "Recovering Fagin's ill-gotten gains: Settling Ngāti Kahu's Treaty of Waitangi claims against the Crown" in Michael Belgrave, Merata Kawharu and David Williams (eds) *Waitangi Revisited: Perspectives on the Treaty of Waitangi.* Melbourne, Australia, Oxford University Press, p.201.

[6] Deloria, *Behind the Broken Treaties* (see footnote ?? in chapter 6); Morris 'Vine Deloria, Jr., and the Development of a Decolonising Critique'; Mutu 'Unravelling Colonial Weaving'; Waitangi Tribunal *He Whakaputanga me Te Tiriti*; *Muriwhenua Land Report*, p 124.

It took the Tribunal three years after the closing hearings to release its report. Sometime before or during closing submissions a senior Pākehā historian interfered, telling the head claimant for Ngāti Kurī, the Honourable Matiu Rata, that he considered that the Tribunal would not uphold our claims. It was extremely unfortunate for all the iwi of Te Hiku o Te Ika that Matiu chose to believe the Pākehā and not to talk to the other four head claimants before unilaterally instructing the Tribunal on the last day of closing hearings not to report on our claims. We learnt through the newspapers shortly after that he was talking to a government Minister about settling all the Muriwhenua claims, including Ngāti Kahu's, and that he was publicly vilifying the claimant researchers for having wasted five years of the claimants' time.[7]

None of us knew why he did that until several years later when the historian revealed what he had done in the *New Zealand Herald*, the country's largest newspaper.[8] Neither Matiu nor the historian had attended the hearings where our evidence was presented and so they had not heard the Tribunal questioning our kaumātua and kuia, our historians, anthropologists and a linguist at great length. Neither had they been there to hear the Tribunal question the Government's historians who, on several occasions, simply could not answer their questions. Yet with the confidence bred of the historian's standing in the Pākehā world, he presumed to tell Matiu that we didn't know what we were talking about. And Matiu believed him because the man was a professor of history.[9]

That professor could not have been more wrong. Although the Tribunal was set up by the Government who also appoints all its members and controls what it does, its job is to inquire into and to find out the facts relating to the claims. Unlike earlier inquiries, such as the Myers commission of the 1940s,[10] the Tribunal chose to listen to both Māori and the Government instead of listening only to the Government. What Māori

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[7] Margaret Mutu, 2009, 'The Role of History and Oral Traditions in the Recovery of Fagin's Ill-gotten Gains: Settling Ngāti Kahu's Claims against the Crown' in *Te Pouhere Kōrero Journal: Māori History, Māori People*, pp. 32-3.

[8] Bill Oliver, 'Waitangi Tribunal Relied on an Insecure Argument' in *New Zealand Herald* 16 October 1997, p. A17. By the time this confession appeared the Hon. Matiu Rata had been tragically killed in a car accident. As such, the damage that had been done and the divisions it caused amongst the iwi of Te Hiku o Te Ika could not be healed.

[9] Mutu, 'The Role of History and Oral Traditions', pp.32-3.

[10] See section 6.2.1.4.

told the Tribunal was far more consistent with the facts than the Government's stories. After all, as we have already noted, the Government's stories were the myths, fantasies and legal fictions[11] they had created to help them achieve their aspirations of depriving us of everything that is ours.[12] They held little weight before the Tribunal in the 1990s.[13] Some considerable time after the 1994 closing hearings, the other head claimants advised the Tribunal to ignore Matiu's directive and to complete their report.[14]

7.2 Waitangi Tribunal *Muriwhenua Land Report* 1997

The long awaited *Muriwhenua Land Report* was finally released in 1997. It comprehensively upheld all of Ngāti Kahu's land claims to 1865 and found that the Government had breached Te Tiriti grievously, thereby seriously prejudicing Ngāti Kahu. The report detailed the numerous illegitimate and illegal policies and actions used by Government agents to steal over 150,000 hectares (370,000 acres) of Ngāti Kahu's lands and to drive Ngāti Kahu into poverty and deprivation. The Tribunal recommended that the Government make immediate redress for its breaches, starting with a substantial transfer of benefits and properties to the claimants.[15] It did not address land claims relating to the post-1865 period and the many aspects of our claims relating to matters other than our lands such as our language, culture, intellectual property, mana and tino rangatiratanga, seas, waters, air and our other natural resources.

The report was seen at the time, by Ngāti Kahu, as a resounding vindication of the history that they had painstakingly compiled and presented to the Tribunal in respect of our lands. However, right up until the finalisation of our deed of partial settlement more than 18 years later, the Government has never acknowledged, let alone accepted, the findings of its own Tribunal.[16] Nor has it paid a cent in restitution or

[11] Mikaere, *Colonising Myths, Māori Realities*, pp.133-8.
[12] Ibid, pp.154-7.
[13] The Tribunal came under threat from successive governments as a result of its findings and recommendations of the 1980s and 1990s (Hamer, 'A Quarter-century of the Waitangi Tribunal', p.7) and as a result started to revert back to the Crown bias that characterised the Myers Commission.
[14] Mutu, 'The Role of History and Oral Traditions', p.33.
[15] *Muriwhenua Land Report*, p.404.
[16] See, for example, the evidence provided by M.Hickey and P.Snedden for the Government dated 22 August 2012 in Wai 45, Ngāti Kahu remedies hearing.

compensation or relinquished any assets to Ngāti Kahu. Thus the prejudice has continued to compound.

7.3 Ngāti Kahu Settlement Package (Yellow Book 2000)

Two years before that report appeared we started compiling Ngāti Kahu's settlement package. The research team visited each marae and whānau wherever they were to explain the claims and to ask what land they needed the Government to relinquish and what redress they needed in order to settle their claims. That included services our whānau and hapū need, services that are provided to non-Māori living in our territories but not to us. It also included the tools needed to rebuild our shattered economy, and the protection of our natural resources in our territories, our language, our culture, our heritage, our intellectual property, our mana, our tino rangatiratanga and our human and treaty rights. The package is based on living standards enjoyed by the non-Māori community living in our rohe in Kaitāia, Mangōnui, the ever-expanding coastal settlements at Rangiputa, Whatuwhiwhi, Tokerau beach, Taipā, Waipapa (Cable Bay), Koekoeā (Coopers beach), Waitetoki (Hīhī) and the surrounding districts. It forms the basis of a twenty five year strategic plan for the social, economic and spiritual recovery of Ngāti Kahu.

After the Tribunal's report was released, Te Rūnanga-a-Iwi o Ngāti Kahu selected and mandated our negotiators and appointed a team to work with us. We then briefed whānau and hapū on the Tribunal's findings in respect of their specific lands that had been stolen as described in chapter 6. Numerous hui took place and individual kaumātua and kuia who held the oral histories of the whānau, hapū and iwi collectively spent thousands of hours passing on their knowledge about specific lands and whānau and hapū histories. It took five years to compile our settlement package and it covered far more than the Crown forest and State Owned Enterprises lands in our territories. As we were drawing up this package, Ngāti Kahu assumed, wrongly as we discovered several years later, that the Government would adhere to the Tribunal's recommendation that there be "the transfer of substantial property".[17]

[17] *Muriwhenua Land Report*, p.404.

Several drafts of the package were checked and corrected over that time and it continues to be added to as whānau discover more and more about their lands and histories. Despite the Government's refusal to adhere to the Tribunal's recommendations this settlement package remains to this day, the only package that Ngāti Kahu have agreed will fully and finally settle all our historical claims. It is the set of instructions the whānau and hapū gave to the negotiators they appointed to settle their claims. It became known as our Yellow Book because the covers of the booklet were yellow.

By 2000 Ngāti Kahu resolved that the package was sufficiently complete for it to be handed to the Government. In a hui held in the Kaitāia Community Centre in September 2000, it was formally handed over to the Minister of Treaty Negotiations.

The instructions set out in Ngāti Kahu's Yellow Book include

- the aim of any settlement of Ngāti Kahu's claims;
- the key elements of the settlement: the non-negotiable and the negotiable aspects including specific lands to be relinquished and the numerous other areas where action is required to restore Ngāti Kahu's social and economic base;
- the approved settlement process;
- the claims that this settlement will address.

The 2000 edition of the Yellow Book reflected the best information available at that time. It has been significantly revised in this chapter to reflect the best information available in 2015.

7.3.1 Aim of settlement

The aim of any settlement of our land claims is to right the wrongs of the past and remove the prejudice by restoring justice, along with political, social, economic and spiritual well-being and prosperity to the whānau and hapū who comprise the iwi of Ngāti Kahu. In other words, kia pūmau tonu te mana me te tino rangatiratanga o ngā whānau, o ngā hapū, o te iwi o Ngāti Kahu. It also aims to restore the relationship

between Ngāti Kahu and the Crown to that set out in Te Tiriti o Waitangi and, as a result, to achieve reconciliation.

As the Waitangi Tribunal demonstrated unequivocally, the prejudice caused to Ngāti Kahu was extensive. Removing the prejudice necessitates a principled and comprehensive approach that recognises the nature and extent of the damage at whānau and hapū level and moves in a careful and deliberate manner to remove each and every aspect of that prejudice. That cannot be achieved by taking the miserly approach to settlements that all governments to date have chosen.[18] Treaty "settlements" to date can be characterised as focussing on

- nominal recognition and then redefinition of certain Māori groups to meet Pākehā legal and cultural requirements and norms;
- making false assertions that Māori have ceded their sovereignty to the English Crown;
- making further false assertions that the English Crown is sovereign and exercises unilateral power and control over Māori;
- transferring hardly any of the lands that were stolen;
- providing very little money but then demanding it be used to pay for the lands;
- retaining unilateral power and control and almost all of the stolen lands and natural resources of Māori in Government hands.[19]

Rather than removing the prejudice and hence the grievance, this approach has compounded it leaving the relationship between Māori and the Crown precariously unbalanced and Māori sliding even further down the socio-economic statistical scale.[20] The settlement designed by Ngāti Kahu avoids that outcome by addressing the claims and grievances of each of our whānau and hapū and formulating a package that restores the balance between Ngāti Kahu and the Crown.

7.3.2 Key elements of the settlement

[18] Stavenhagen, Rodolfo, 2006, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. Mission to New Zealand. E/CN.4/2006/78/Add.3. 13 March 2006, Geneva, United Nations Human Rights Commission, paragraphs 32-3 and 95. Available at http://www.converge.org.nz/pma/srnzmarch06.pdf, accessed July 7, 2012, paragraphs 32-3 and 95.
[19] Mutu, Recovering Fagin's Ill-gotten Gains; Mutu, Ceding Mana, Rangatiratanga and Sovereignty.
[20] See Tracey McIntosh and Malcolm Mulholland (eds), 2012. *Māori and Social Issues*, Volume 1. Wellington, Huia Publishers.

The key elements of the settlement can be divided into two parts: those matters that are not negotiable for a full and final settlement of our historical claims to be achieved, and those that can be negotiated.

The non-negotiable aspects are:

7.3.2.1 Crown Acknowledgement, Apology and Legislation to Restore the Balance

This part of the settlement provides a full admission and acknowledgement by the Crown of what has been done to Ngāti Kahu in her name by her representatives and servants, a full and unconditional apology and the enacting of legislation that restores to Ngāti Kahu what was stolen and outlaws any and all further violations against Ngāti Kahu.

The admission and acknowledgement details the unfair and dishonourable advantage government agents representing the Crown took of Ngāti Kahu's hospitality and generosity. In doing so they destroyed the balance in the relationship established by Te Tiriti o Waitangi by

- denying, since 1840, that they have continuously breached and been in violation of He Whakaputanga o te Rangatiratanga o Nu Tireni and Te Tiriti o Waitangi;
- denying and then attempting to extinguish Ngāti Kahu's mana and tino rangatiratanga including denying and attempting to extinguish Ngāti Kahu's mana whenua and mana moana and hence ownership of all the lands, seas, waterways, air, minerals, flora, fauna and all other natural resources in our territories;
- falsely claiming sovereignty and supremacy over Ngāti Kahu;
- wrongfully and illegitimately attempting to remove our laws and to replace them with English-style laws and legal fictions (including passing laws that legalised the Government's theft of Ngāti Kahu's lands and resources);
- wrongly and illegally imposing the English language and culture on us and waging war on our language, culture and intellectual property in order to destroy them;

- knowingly and wilfully perpetrating numerous crimes against Ngāti Kahu that caused grievous and unending suffering and harm, and severely impaired our economic, social, cultural and spiritual development.

Having made these acknowledgements the Crown, currently the Queen of England, then provides a full and unconditional public apology to the whānau, hapū and iwi of Ngāti Kahu. To ensure that the apology is genuine and meaningful the Government then enacts legislation that fully and permanently restores to Ngāti Kahu all our lands, resources, language, culture and intellectual property and social, economic and spiritual well-being as provided in Article 38 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The legislation will make provisions that ensure that this restoration actually takes place in real and practical terms and is not left to languish as empty legislative rhetoric.[21] The legislation will also outlaw any and all violations of He Whakaputanga o te Rangatiratanga o Nu Tireni, Te Tiriti o Waitangi and Ngāti Kahu's human rights, in particular those aspects of the Resource Management Act, the Public Works Act, the Conservation Act and the Marine and Coastal Area Act that breach Te Tiriti o Waitangi. This is provided in Articles 1 and 37 of UNDRIP. It will also provide full acknowledgement and recognition of Ngāti Kahu's mana and rangatiratanga and make mandatory provision for it to be upheld in the manner set out in He Whakaputanga o Te Rangatiratanga o Nu Tireni and guaranteed in Te Tiriti o Waitangi. In other words, rather than simply asserting that it will restore its honour, the Crown will actually legislate to do so and then implement its own legislation.

[21] Many provisions in current Treaty of Waitangi claims settlement legislation fall into this category. Government servants unwilling to implement the legislation simply ignore it (See Mei Chen's 2012 'Post-Settlement Implications for Māori-Crown Relations', in Nicola Wheen & Janine Haywood's edited book *Treaty of Waitangi Settlements*). Other well known examples are the provisions in the Resource Management Act and the Conservation Act which protect and uphold Māori culture and treaty rights. In the Resource Management Act Section 6(e) concerns the recognition and provision of matters of national importance including the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. Section 7(a) concerns the requirement to have particular regard to kaitiakitanga. Section 8 concerns the requirement to take into account the principles of the Treaty of Waitangi. In the Conservation Act section 4 the Department of Conservation is required to "give effect to the principles of the Treaty of Waitangi". In practice many of the Pākehā bodies who are responsible for implementing these sections simply ignore them. See Hirini Matunga, 2000, 'Decolonising Planning: The Treaty of Waitangi, the Environment and a Dual Planning Tradition' in A, Memon and H. Perkins (eds) *Environment, Planning and Management in New Zealand.* Palmerston North, Dunmore Press.

7.3.2.2 Immediate relinquishment of lands claimed by the Government and State Owned Enterprises

This part of the settlement provides for the government as the Crown's representative to immediately relinquish, at no monetary cost to Ngāti Kahu, all Ngāti Kahu lands currently claimed by Crown agencies (some 45,000 hectares most of which are shared with other iwi) or by any State Owned Enterprise (some 7,000 hectares most of which is in Ngāti Kahu's rohe) along with other lands designated as "private" as provided for in Articles 26 and 28 of UNDRIP. This includes some 170 hectares (in 120 parcels) on-sold by State Owned Enterprises which carry section 27B notations on their titles.[22]

Map 29(??renumbering required): State-Owned Enterprise including 27B memorialised lands in Ngāti Kahu's rohe

It is crucially important that lands are relinquished to those they were stolen from. Past and current governments have a bad habit of selling lands that they know belong to particular hapū to other hapū and iwi who express loyalty and support for government policies as part of their "settlements".[23] In other words, the lands are being sold to the wrong people. It is a habit designed to create divisions between closely related hapū and on-going problems for them. An important part of the process of restoring the Crown's honour is weaning governments off this habit.

This part of the settlement takes place and is fully implemented before the settlement is finalised. An indicative list of these lands is provided in table 7.1 below. All lands relinquished and restored to Ngāti Kahu are inalienable in perpetuity so that the whānau and hapū can never have their lands stolen again.

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[22] A section 27B memorial is a notation placed on the title of all State Owned Enterprises lands pursuant to section 27B of the State-owned Enterprise Act 1986 giving legal notice to buyers of the land that they purchase with the risk of the land being returned to Māori ownership on the binding recommendation of the Waitangi Tribunal. (Waitangi Tribunal accessed at http://www.justice.govt.nz/tribunals/waitangi-tribunal/news/muriwhenua-remedies#what-is-resumption 1 May 2014.)

[23] For Ngāti Kahu the most recent example of this is the National-led government, after ascertaining and recognising that Ngāti Kahu are mana whenua in their lands at Hukatere, Sweetwater, Kaitāia, Tangonge, Ngākohu, Takahue, Kaimaumau and Rangiāniwaniwa, then selling the more than 12,000 hectares that the Crown was claiming there to neighbouring Te Rarawa, Ngāi Takoto, Te Aupōuri and Ngāti Kurī. Ngāti Kahu was deliberately excluded from those lands because we do not support the government's treaty claims extinguishment policy and will not allow it to be imposed on us, and we will never cede our mana and rangatiratanga to the government (see Statement of Claim of Timoti Flavell to the High Court 17 April 2014; Mutu, 'Ceding Mana, Rangatiratanga and Sovereignty').

7.3.2.3 Lands acquired for the Crown in future

This part of the settlement provides for current and future governments, as representatives of the Crown, to acquire lands within Ngāti Kahu's territories that are not in Ngāti Kahu control in order to transfer them back to Ngāti Kahu control. Legislation enacted for this part of the settlement provides for Ngāti Kahu to hold the pre-emptive right to take control of those lands if and when they become surplus to government needs as provided in Articles 26 and 28 of UNDRIP.

7.3.2.4 Ownership and kaitiakitanga of natural resources

This part of the settlement provides for the government, as the Crown's representative, to confirm Ngāti Kahu's ownership and kaitiakitanga for all of our natural resources. This includes all our lands (including our foreshores, seabed, marine and coastal areas), seas, waters and waterways, air, airwaves, minerals, flora and fauna, fisheries and all other natural resources in our territories. Legislation the government will enact for this part of the settlement recognises, upholds and protects whānau and hapū ownership and kaitiakitanga over all their natural resources.

These four aspects of the settlement are non-negotiable for a full and final settlement to be achieved. The extent of each of the following requirements can be negotiated with the government in order to reach a settlement.

Negotiable Aspects:

7.3.2.5 Acquiring privately held lands

In order to restore control of Ngāti Kahu's lands to Ngāti Kahu, most of the lands must be recovered from non-governmental 'private' interests. This part of the settlement provides the means and mechanisms for acquiring those lands and restoring them to the individual whānau and hapū or, where that cannot be achieved, providing just, fair and equitable compensation as provided at Article 28 of the UNDRIP. It includes the establishment of the Ngāti Kahu Lands Fund to be administered by a Ngāti Kahu Lands Acquisition Trust. This aspect of the settlement is to be completed before the settlement is finalised.

7.3.2.6 Delivering services, resources and rights available to all New Zealanders

In terms of Ngāti Kahu's article III rights, every whānau and hapū is entitled to receive the services, resources and rights to enjoy at least the same social, economic and spiritual well-being that other New Zealanders enjoy as provided in Article 21 of UNDRIP. The hardship and poverty being endured by so many Ngāti Kahu whānau, especially those trying to survive on their ancestral lands, caused the Waitangi Tribunal great concern[24] and is a shameful blight on this country's human rights record. This aspect of the settlement is delivered at no cost to Ngāti Kahu in partial recognition of the extensive contributions Ngāti Kahu has made to the development of New Zealand over the past 175 years.

7.3.2.7 Restitution

This aspect of the settlement provides for restitution to be paid to whānau and hapū, as provided in Article 28 of UNDRIP for resources the Government is unable to return such as

- forests already sold (including but not restricted to Te Aupōuri and part of Ōtangaroa State Forest[25]),
- lands it is unable to reacquire (with compensation going directly to those who lost the land),
- fisheries plundered and polluted to near extinction,
- land, sea and waterway productivity reduced to virtually nothing by government policies of deforestation, over-extraction and other unsustainable management practices[26]
- the pain, suffering, deprivation, loss of revenue,[27] loss of quality of life suffered by the whānau, hapū and iwi over the past 175 years

[24] *Muriwhenua Land Report*, p.404.

[25] The level of compensation for Te Aupōuri State Forest (which lies in the territory of all five iwi of Te Hiku o Te Ika) and Ōtangaroa State Forest will be determined at 100% of the value of the trees as determined by an independent forestry valuer. This valuation was completed in 2012 for the Ngāti Kahu remedies hearing and valued the combined forest in Ngāti Kahu's territories at $41.4 million (Indufor, 2012, Valuation of Northland Forest Assets – Ngāti Kahu Forest Assets Appraisal, Wellington, Waitangi Tribunal, p.36).

[26] See appendix III for an outline and description of examples of the environmental damage that Ngāti Kahu have fought to prevent or stop.

[27] Income loss alone from 1865 onwards only has been calculated at $3.2 billion. The report prepared by BERL stated "An indicative figure for the total Gross Domestic Product income over the period 1865 to 2011, in real 2011 terms, that would have been generated consequent on Ngāti Kahu being a

- all and every cost associated with bringing, negotiating and settling these claims.

7.3.3 Specifics of the physical redress

The following list provides the specifics and details of the physical redress and restitution to be transferred to each hapū of Ngāti Kahu. The first part deals with lands and is set out in Table 7.1. Each hapū shares at least some of their lands with neighbouring hapū and the table identifies the shared territories. It lists parts of the blocks listed in chapter 6, all of which have been repeatedly partitioned, subdivided and renamed over the past 170 years. It covers very approximately 60 per cent of our lands that were stolen. The remaining 40 per cent will be recovered by our following generations as and when the people occupying them move on.

The lands included in the table include all lands administered and/or occupied by Crown and State Owned Enterprise entities.[28] Should the government department or entity, local authority or State Owned Enterprise wish to continue using the lands, a commercial lease at market rental is available, particularly in respect of schools, the hospital, police stations, the court and roads.

There are also other lands that are now used by private individuals and groups that specific whānau and hapū have indicated must be relinquished. These lands are all of particular significance to the whānau and hapū they belong to, and many are wāhi tapu that each whānau and hapū fought bitterly to stop being stolen or to recover when they discovered they had been stolen. Members of those whānau and hapū continue to suffer

fully participating member of land-based economic activity in their rohe is $3.2 billion." (BERL (Business and Economic Research Ltd), 2012, Assessment of Economic Impact of Ngāti Kahu Land Loss to 1865, report prepared for Te Rūnanga-ā-Iwi o Ngāti Kahu by Dr Ganesh Nana, Kel Sanderson and Adrian Slack, p.21.)

[28] Crown land includes all lands administered and/or occupied by the Departments and Ministries of Conservation, Police, Courts, Corrections, Justice, Social Welfare, Housing New Zealand, Housing Corporation, Te Puni Kokiri, the Māori Trustee, Maritime Safety Authority, Northland Health, Northland Hospital Board, Defence, Education, Transport (Transit NZ), Survey and Land Information or Land Information New Zealand (which includes all roading, public works), New Zealand Historic Places Trust, Office of Treaty Settlements, Top Energy, Transpower, Northland Catchment Commission and local authorities. State Owned Enterprises lands include those lands claimed by Land Corporation Limited, Forest Corporation Limited, Electricity Corporation of New Zealand Limited, Government Property Services Limited, New Zealand Post Limited, Telecom Corporation of New Zealand Limited, Housing New Zealand.

as a result of the on-going desecration of those wāhi tapu by those who subsequently became ‘private owners’ of those lands.

These tables have been compiled in consultation with kuia and kaumātua and other representatives of hapū. They reflect the information we had at the time they were compiled but they are neither exhaustive nor complete.

The list then goes on to detail a further seventeen aspects of the redress in addition to those listed above that are dedicated to restoring Ngāti Kahu’s political, social and economic well-being and prosperity. They cover constitutional transformation, self-determination, representation, marae infrastructure, education, health, housing, local and central government services, food sovereignty, justice, intellectual and cultural property, media services, commercial development, corporate support, restitution and compensation and tax exemption.

Table 7.1 Lands to be Relinquished in a Full and Final Settlement (Yellow Book 2000)

Hapū	Lands to be relinquished to hapū by Crown in full and final settlement (Yellow Book)	Current claimant/user	Location
a. Te Whānau Moana/Te Rorohuri			**Karikari peninsula**
	Pūwheke block approx. 16,000 acres (6,500 ha)	Office of Treaty Settlements; DoC and various others	Rangiputa block including Rangiputa station and Pūwheke maunga
	Pārakerake block approx. 3,054 acres (1236 ha)	Carrington Jade and various others	Northern end of Tokerau beach across to Karikari beach (Carrington Farms) and on-sold sections
	Waikura and Maitai approx. 170 acres (69 ha)	DoC	Hetaraka farm currently used by Maitai Bay camp ground and surrounding farm land
	Pīhākoa, Paraoanui, Whangatūpere, Rangiāwhia approx. 1201.732 acres (488.752 ha)	DoC	Between Maitai and Kauhoehoe (Brodies Creek)
	Kauhoehoe/Paeroa approx. 940 acres (380 ha)	DoC	Knuckle Pt to Brodies Creek
	Lakes: Rotokawau, Waiporohita and Rotopōtaka	DoC	Beside Pūwheke; south east of Pūwheke on Inland Rd and off Ramp Rd.
	Karikari 2C and 2J4 approx. 32.5 acres (13 ha)	Various	Two partitions to north of Wairahoraho stream on Karikari beach.

	Rangiāwhia school site and adjacent block approx. 4.5 acres (1.8 ha)	Ministry of Education	Rangiāwhia Kura Kaupapa Māori
	All beaches, seabed and seas in Rangaunu harbour, Karikari bay, Whakapouaka (Cape Karikari) and the east coast to Aurere.		
b. Matarahurahu			**Kohumaru/Mangōnui/Koekoeā (Coopers beach)/Waipapa (Cable Bay)**
	Parts of Mangōnui block approx. 22,000 acres (8,900 ha) – shared with Ngāti Ruaiti Ngāi Takiora and Ngāti Aukiwa	Crown and various others on-sold to	Lands from Te Whatu, to Whakaangi, to Waitetoki, to "Hīhī" settlement, to Ōruaiti, to Mangōnui harbour and settlement, to Koekoeā (Coopers Beach), to Waipapa (Cable Bay), Te Kuihi Pā and inland to Kohumaru and Ōrūrū blocks.
	Tipatipa (Kohumaru) 11,000 acres (4,450 ha)	Office of Treaty Settlements, DoC and various others	Kēnana and across to Ōtangaroa
	Each of the following lands are key lands within Mangōnui and Kohumaru blocks of major significance to Matarahurahu		
	Waipūmahu	*Various*	*Midgley Rd*
	Kaiwaka (shared with Ngāi Takiora)	*Various*	
	Paewhenua (shared with Ngāti Ruaiti and Ngāi Takiora)	*Various including Crown*	*Acroos the road from the junction of SH10 and Kohumaru Rd.*
	Rangitoto (shared with Ngāti Ruaiti)	*Various*	*Below Moehuri pā*
	Rangikāpiti Pā	*DoC*	*At entrance to Mangōnui harbour*
	Taumarumaru Pā	*DoC*	*Adjacent to Koekoeā (Coopers beach)*
	Paewhenua (shared with Ngāti Ruaiti and Ngāi Takiora)	*Various including Crown*	
	Te Akeake (shared with Ngāti Ruaiti and Ngāi Takiora)	*Crown*	*Old papa kāinga by SH10 bridge over Ōruaiti river on Paewhenua*
	Ōpārihi	*Various*	*On Mangōnui harbour*
	Pukenui	*Various*	*On Mangōnui harbour*
	Kēnana	*Various*	*Papa kāinga of Matarahurahu*
	Takakurī	*Office of Treaty Settlements*	*Above Tipatipa*
	Berghan wāhi tapu in Mill Bay (shared with Ngāti Ruaiti)	*Crown*	*Part of Mill Bay Conservation Area*
	Flavell whānau Old Land Claim at Mangōnui	*Various*	*Mill Bay*
	Koekoeā (Coopers beach) and Waipapa (Cable bay)		
	Mangōnui school	*Ministry of Education*	*19 Colonel Mould Drive*
	Mangōnui Police Station	*New Zealand Police*	*Waterfront Drive*
	Mangōnui Post Office		*Waterfront Drive*
	All beaches, seas and seabed from Te Whatu to Te Kuihi including Mangōnui harbour (shared with Ngāti Ruaiti and Ngāi Takiora)	Matarahurahu, Ngāti Ruaiti, Ngāi Takiora, Te Paatu ki Kauhanga, Matakairiri, Pīkaahu	

c. **Ngāti Ruaiti**			**Waitetoki (Hīhī) /Mangōnui/Whakaangi**
	Parts of Mangōnui block 22,000 acres (8,900 ha) shared with Matarahurahu, Ngāi Takiora and Ngāti Aukiwa		Lands from Te Whatu, to Whakaangi, to Waitetoki, to "Hīhī" settlement, to Ōruaiti, to Mangōnui harbour and settlement, to Koekoeā (Coopers Beach), to Waipapa (Cable Bay), Te Kuihi Pā and inland to Kohumaru and Ōrūrū blocks.
	Each of the following lands are key lands within Mangōnui block of major significance to Ngāti Ruaiti		
	Whakaangi (shared with Ngāti Aukiwa and Ngāi Takiora) approx. 2,400 ha	*DoC and various others*	*Mountain range inland from Te Whatu and Waitetoki*
	Te Whatu	*DoC*	*Headland – the boundary between Ngāti Ruaiti and Ngāti Aukiwa*
	Te Kuihi Pā	*Various*	*On coast just to the south of Taipā*
	Tangiteperehere		*Below Whakaangi beside Waitetoki river*
	Pukewhau		*A mountain close to the sea at Waitetoki*
	Waitetoki	*Various*	*"Hīhī" settlement*
	Waiaua	*Various*	*Part of Waitetoki – Reremoana Rēnata's house is on Waiaua.*
	Tauranga	*DoC*	*A lake between Waiaua and Kaiwhetū*
	Kaiwhetū	*DoC*	*Below Whakaangi*
	Hīhī camping ground and surrounding lands	*Various*	*At Waitetoki on the beach front*
	Te Pā o Moehuri	*Various*	*Butler Point*
	Rangitoto (shared with Matarahurahu)	*Various*	*Below Te Pā o Moehuri as far as Waitetoki*
	Mārakai	*Various*	*From the turnoff to Taemārō to Waitetoki*
	Te Akeake (shared with Matarahurahu and Ngāi Takiora)	*Various*	*The old papakāinga beside the bridge on SH10 across Oruaiti river.*
	Paewhenua (shared with Matarahurahu and Ngāi Takiora)	*Various*	*Paewhenua Island in Mangōnui harbour next to Te Akeake*
	All beaches, seabed and seas from Te Whatu to Te Pā o Moehuri (including Mangōnui harbour with Matarahurahu)	*Ngāti Ruaiti and Matarahurahu*	
d. **Ngāi Takiora**			**Aputerewa (Back River)/ Mangōnui/Whakaangi**
	Part of the Mangōnui block 22,000 acres (8,900 ha) shared with Matarahurahu, Ngāti Ruaiti and Ngāti Aukiwa	Crown forests	Lands from Te Whatu, to Whakaangi, to Waitetoki, to "Hīhī" settlement, to Ōruaiti, to Mangōnui harbour and settlement, to Koekoeā (Coopers Beach), to Waipapa (Cable Bay), Te Kuihi Pā and inland to Kohumaru and Ōrūrū blocks.
	The following are key lands within Mangōnui block of major significance to Ngāi Takiora		
	Whakaangi (shared with Ngāti Aukiwa and Ngāti Ruaiti) approx. 2,400 ha	*DoC and various others*	*Mountain range inland from Te Whatu and Waitetoki*
	Kanopungapunga		*On coast between Waitetoki and Te Whatu*
	Muriwai		*Whakaangi*
	Te Maunga Ngātete		
	Ōkōkori		*First bay before Waimahana*
	Taemārō		*South of Te Whatu*
	Te Reinga		*West of Te Whatu on the coast*

	Paewhenua (shared with Matarahurahu and Ngāti Ruaiti)		*Across the road from the junction of SH10 and Kohumaru Rd*
	Te Akeake (shared with Matarahurahu and Ngāi Takiora)		*On Paewhenua beside Nilssion bridge*
	Kaiwaka Landing (shared with Matarahurahu)		*Opposite Kohumaru River on Ōruaiti river*
	Tokotoko river		*Discharges into Ōruaiti river at Paewhenua (its natural discharge point is to the west of Paewhenua)*
	Waiaua (where Ngāti Ruaiti reside)		
	Aputerewa block 1410 acres (570.6 ha)	DoC	At Aputerewa (Back River)
	Mangōnui harbour, beaches, seabed and seas (shared with Matarahurahu and Ngāti Ruaiti)	Ngāi Takiora, Matarahurahu, Ngāti Ruaiti	
e. Te Paatu ki Pāmapūria			**Pāmapūria/Maungataniwha/ Kaitāia/Te Oneroa-a-Tōhē (Ninety Mile beach) / Hukatere/Maungatohoraha/ Rangaunu**
	Parts of Muriwhenua South block as far north as Hukatere (shared with Patukōraha, Ngāi Tohianga, Ngāi Takoto, Te Rarawa and Ngāti Kurī) approx. 43,000 acres (17,400 ha)	Crown forest, DoC and various others	Lands adjacent to Te Oneroa-a-Tōhē from west of Rotoroa to north of Hukatere.
	Parts of Wharemaru block (shared with Patukōraha and Ngāi Takoto) 13,555 acres (5,486 ha)	Crown, DoC and various others	Lands from Maungatohoraha south to Kaimaumau.
	Parts of Awanui to Kaitāia blocks (shared with Patukōraha, Ngāi Tohianga, Te Rarawa and Ngāi Takoto) 32,165 acres (13,017 ha)	Office of Treaty Settlements and various others	Awanui to Karepōnia lands and south to Kaitāia
	Parts of Kaitāia North 5,806 acres	Various	
	Parts of Kaitāia South 5,220 acres	Various	
	The following are key lands within Kaitāia blocks of major significance to Te Paatu ki Pāmapūria		
	Pā sites: *Tirotiro (Tinotino)* *Moeti* *Ōtarapoka* *Ūpokonui* *Te Kāhuiroa* *Ōmokonui* *Ōhārae*		
	Kōtipu		
	Kōnoti block 2,674 acres		
	Ōkahu block (shared with Ngāi Tohianga, Tahaawai hapū and Walker whānau)-		
	Maungataniwha (shared with all Te Paatu hapū and relevant Ngāpuhi hapū) 32,591 acres (13,189 ha)	DoC	Maungataniwha ranges
	All rivers, waters and associated waterways in this rohe		
	Te Oneroa-a-Tōhē as far north as Hukatere (shared with all Ngāti Kahu hapū, Te Rarawa, Ngāi Takoto and Ngāti Kurī); all rivers, lakes and associated waterways in the rohe (shared with Ngāti Taranga, Tahaawai, Ngāi Tohianga, Patukōraha)		Beach from Te Kohanga to Hukatere (southern half of Ninety Mile beach); Karemuhako, Mangataiore, Whangatāne, Awanui river

f. **Te Paatu ki Kauhanga**			**Pēria/Ōrūrū/Maungataniwha/ Taipā**
	Parts of Ōrūrū block (shared with Pīkaahu and Matakairiri) approx. 14,700 acres (5,949 ha)	DoC	Taipā, Ōrūrū valley
	Taunoke (shared with Ngāti Taranga and Pīkaahu) 44 acres (17.8 ha)		Taunoke
	Parts of Kaiaka (shared with Pīkaahu) 7,367 acres (2981 ha)	DoC and various others	Fairburn Rd
	Maungataniwha (shared with all Te Paatu hapū and relevant Ngāpuhi hapū) 32,591 acres (13,189 ha)	DoC	Maungataniwha ranges
	Ōrūrū river and all associated waters and waterways (shared with Matakairiri and Pīkaahu); beaches, seas and seabed from Koekoeā to Aurere shared with Matarahurahu, Matakairiri, Pīkaahu, Ngāti Tara/Ngāti Te Rūrūnga		
g. Patukōraha			**Karepōnia/Rangiāniwaniwa/ Te Oneroa-a-Tōhē/ Hukatere/Rangaunu/Rangiputa**
	Pūwheke block (shared with Te Whānau Moana/Te Rorohuri and Ngāti Tara) approx. 16,000 acres (6,500 ha)	Office of Treaty Settlements; DoC and various others	Rangiputa block including Rangiputa station and Pūwheke maunga
	Parts of Awanui to Kaitāia blocks (shared with Te Paatu ki Pāmapūria, Ngāi Tohianga and Ngāi Takoto) 32,165 acres (13,017 ha)	Office of Treaty Settlements and various others	From Te Oneroa-a-Tōhē to Awanui to Karepōnia lands and all southern and eastern reaches of Rangaunu harbour including Kawakawa, Waingākau, Karaka, Matakou, Pūngaungau, Tūtarakihi and south to Kaitāia
	Parts of Muriwhenua South block as far north as Hukatere (shared with Te Paatu ki Pāmapūria, Ngāi Tohianga, Ngāi Takoto, Te Rarawa and Ngāti Kurī) approx. 43,000 acres (17,400 ha)	Crown forest, DoC and various others	Lands adjacent to Te Oneroa-a-Tōhē from west of Rotoroa to Hukatere.
	Parts of Wharemaru block (shared with Patukōraha and Ngāi Takoto) 13,555 acres (5,486 ha)	Crown, DoC and various others	Lands from Maungatohoraha south to Kaimaumau.
	Parts of Mangatete block 5,346 acres (2,163.449 ha)	DoC and various others	Lands adjacent to south-eastern reaches of Rangaunu harbour including Toanga, Pukewhau, Pākeretu, Ngakuraiti and Mangatete and Lake Ōhia
	Te Oneroa-a-Tōhē as far north as Hukatere (shared with all Ngāti Kahu hapū, Te Rarawa, Ngāi Takoto and Ngāti Kurī); all rivers, streams and associated waterways in the rohe	Crown	Beach from Te Kohanga to Hukatere (southern half of Ninety Mile beach); Mangatākuere, Whangatāne, Pekerau, Kaingaroa
	Maungataniwha (shared with all Te Paatu hapū and relevant Ngāpuhi hapū) 32,591 acres (13,189 ha)	DoC	Maungataniwha ranges
h. **Ngāi Tohianga**			**Ōturu/Rangiāniwaniwa/Kaitāia/ Tangonge/Ngākohu (Ōkahu)/Te Oneroa-a-Tōhē/Hukatere**
	Parts of Awanui to Kaitāia blocks (shared with Te Paatu ki Pāmapūria, Patukōraha and Ngāi Takoto) 32,165 acres (13,017 ha)	Office of Treaty Settlements and various others	From Te Oneroa-a-Tōhe to Awanui to Karepōnia lands and all southern reaches of Rangaunu harbour and south to Kaitāia and Ōkahu/Ngākohu

	Parts of Muriwhenua South block as far north as Hukatere (shared with Te Paatu ki Pāmapūria, Ngāi Tohianga, Ngāi Takoto, Te Rarawa and Ngāti Kurī) approx. 43,000 acres (17,400 ha)	Crown forest, DoC and various others	Lands adjacent to Te Oneroa-a-Tōhē from west of Rotoroa to Hukatere.
	Part of Tangonge (shared with Te Paatu ki Pāmapūria, Tahaawai and Ngāti Te Ao) 514.5 ha	Office of Treaty Settlements; DoC and others	Lands to south west of Kaitāia – Te Paatu's papa kāinga on Tangonge lake.
	Te Oneroa-a-Tōhē as far north as Hukatere (shared with all Ngāti Kahu hapū, Te Rarawa, Ngāi Takoto and Ngāti Kurī)	Crown	Beach from Te Kohanga to Hukatere (southern half of Ninety Mile beach)
	Ōturu block 763 acres (308.775 ha)		
	Pūriri block 300 ha??	DoC and various others	Church Rd – Puriri Block Rd, North East of Ōturu
	Maungataniwha (shared with all Te Paatu hapū and relevant Ngāpuhi hapū) 32,591 acres (13,189 ha)	DoC	Maungataniwha ranges
i. Ngāti Taranga			**Mangataiore (Victoria valley)/Maungataniwha/Raetea**
	Parts of Mangataiore/Victoria valley blocks 18,075 acres (7,314.693 ha) (see p 306 of *Muriwhenua Land Report*)	DoC and various others	Victoria Valley
	Maungataniwha (shared with all Te Paatu hapū and relevant Ngāpuhi hapū) 32,591 acres (13,189 ha)	DoC	Maungataniwha ranges
	Raetea forest 12,709.584 ha (shared with Tahaawai)	DoC	South of Mangataiore and Takahue
	Mangataiore river and associated waters and waterways		
j. Pīkaahu			**Toatoa/Ōrūrū valley/Taipā/Maungataniwha**
	Parts of Ōrūrū block 14,700 acres (5,949 ha) (shared with Te Paatu ki Kauhanga and Matakairiri)		Taipā, Ōrūrū valley
	Parts of Māheatai (shared with Matakairiri) 287 acres (116.145 ha)	Various	Taipā
	Ōtengi (shared with Matakairiri) 2,801 acres (1133.524 ha)	Various	Taipā
	Parts of Waipuna (includes Waimutu 79 acres (31.9702 ha), Whatianga and Waipapa		Immediately south of Taipā
	Parts of Hikurangi 5,227 acres (2115.292 ha)	Various	Hikurangi
	Toatoa, Te Āhua and Ōpouturi blocks 4,269 acres (1,727.603ha)	DoC and various others	Toatoa, Paranui
	Parts of Kaiaka 7,367 acres (2981.319 ha) includes Tuanaki (Blue Gorge)		
	Whakapapa 470 acres (190.202 ha)		
	Taunoke (shared with Ngāti Taranga and Te Paatu ki Kauhanga) 44 acres (17.8 ha)		
	Maungataniwha (shared with all Te Paatu hapū and relevant Ngāpuhi hapū) 32,591 acres (13,189 ha)	DoC	Maungataniwha ranges
	Ōrūrū river and all associated waters and waterways (shared with Matakairiri and Te Paatu ki Kauhanga)		
k. Matakairiri			**Taipā/Waipapa (Cable Bay/Koekoeā (Coopers beach)/ Ōrūrū/Maungataniwha**
	Parts of Māheatai (shared with Pīkaahu) 287 acres (116.145 ha)	Various	Taipā
	Ōtengi (shared with Pīkaahu) 2,801 acres (1135.524 ha)	Various	Taipā

	Parts of Waipuna (includes Waimutu 79 acres (31.9702 ha)), Whatianga and Waipapa (shared with Pīkaahu and Matarahurahu)		Immediately south of Taipā
	Maungataniwha (shared with all Te Paatu hapū and relevant Ngāpuhi hapū) 32,591 acres (13,189 ha)	DoC	Maungataniwha ranges
	Ōrūrū river and all associated waters and waterways (shared with Pīkaahu and Te Paatu ki Kauhanga)		
l. Tahaawai			**Takahue/Maungataniwha/ Raetea/ Herekino**
	Parts of Takahue No.1 block 24,122 acres (9761.8271 ha)	Various	Takahue and surrounding lands
	Takahue river, and all associated water and waterways		
	Raetea forest including the maunga Kaipāua, Pukemiro, Tūtaha, Tūai, Matewheinui and Kōtipu 12,709.584 ha (shared parts with Ngāti Taranga)	DoC	South of Mangataiore and Takahue
	Maungataniwha (shared with all Te Paatu hapū and relevant Ngāpuhi hapū) 32,591 acres (13,189 ha)	DoC	Maungataniwha ranges
m. Ngāti Tara and Ngāti Te Rūrūnga			**Parapara/Aurere/southern end of Tokerau beach/Lake Ōhia/ Taipā/Maungataniwha**
	Ōkōkori block 340 acres (138 ha)		Southern end of Tokerau beach
	Puketūtū Is		Island off Aurere
	Parapara block 6,977 acres (2823.492 ha)		Parapara Rd
	Lake Ōhia 526.2 ha (shared with Patukōraha)	DoC	Lake Ōhia
	Part of Pūwheke block approx. 16,000 acres (6,500 ha) (primarily Te Whānau Moana/Te Rorohuri and Patukōraha)	Office of Treaty Settlements; DoC	One section of Rangiputa block off Ramp Rd
	Parapara and Aurere rivers and associated waters and waterways		
	Beaches, seas and seabed from Aurere to Herewaka (Taipā)		
	Maungataniwha (shared with all Te Paatu hapū and relevant Ngāpuhi hapū) 32,591 acres (13,189 ha)	DoC	Maungataniwha ranges

7.3.4 Further aspects of redress – political, social and economic well-being and prosperity

7.3.4.1 Constitutional Transformation

At the core of the dysfunctional relationship between Ngāti Kahu and the Crown lie the illegitimate constitutional arrangements set in place unilaterally by English settlers in breach of He Whakaputanga o te Rangatiratanga o Nu TIreni and Te Tiriti o Waitangi.[29] Transforming them so that they are grounded in tikanga, He Whakaputanga and Te Tiriti and furthermore, are consistent with the United Nations Declaration on the Rights of

[29] Mikaere, *Colonising Myths, Māori Realities*, pp.134-7.

Indigenous Peoples, is an issue that Māori throughout the country have been discussing for at least several decades now.[30] The two Special Rapporteurs from the United Nations who visited in the past decade, Rodolfo Stavenhagen in 2005 and James Anaya in 2010 both noted that Māori are constitutionally disadvantaged.[31] and that constitutional change is needed.[32] Stavenhagen considered "that entrenchment of the Treaty of Waitangi in constitutional law is long overdue".[33] In recent years the group Matike Mai Aotearoa has been mandated by the leaders of a large number of iwi to conduct research and recommend strategies for implementing such a transformation. That includes drafting a model constitution for the country.[34] This part of Ngāti Kahu's settlement provides for constitutional transformation as outlined above to take place. It will necessarily take several years and a long, careful, national conversation before it is implemented. However without this fundamental change the relationship between Ngāti Kahu and the Crown will remain seriously unbalanced.

7.3.4.2 Self-determination

Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples states that "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." The right to self-determination recognises the right for us to make our own decisions through our own institutions and processes. Ngāti Kahu tikanga determines that the primary decision-making bodies are the whānau as part of hapū. Important decisions for the hapū are made on the marae according to tikanga. The United Nations Special Rapporteurs and Waitangi Tribunal have noted repeatedly that English settlers and the governments they set up for themselves have never recognised or

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[30] James Anaya, 2011, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. The Situation of Māori People in New Zealand. Geneva: United Nations Human Rights Council. Available at http://unsr.jamesanaya.org/country-reports/the-situation-of-maori-people-in-new-zealand-2011, accessed July 7, 2012

[31] Stavenhagen, Mission to New Zealand, paragraphs 13 and 78; Anaya, Situation of Māori People, paragraphs 46 to 51 and 77.

[32] Stavenhagen, Mission to New Zealand, paragraphs 84 and 85; Anaya, Situation of Māori People, paragraph 77.

[33] Stavenhagen, Mission to New Zealand, paragraph 10.

[34] Matike Mai Aotearoa was established by the National Iwi Chairs' Forum in 2009 to develop a model for a Constitution for Aotearoa New Zealand based on tikanga and kawa, He Whakaputanga o te Rangatiratanga o Nu Tireni of 1835, Te Tiriti o Waitangi of 1840, and other indigenous human rights instruments which enjoy a wide degree of international recognition. See also Moana Jackson, 'Matike Mai Aotearoa: A Preliminary Report on the Development of a New Constitution', report to National Iwi Chairs' Forum, February 2014. [Note to publisher: The final report should be available in a month at which time I will provide a summary of it in this section.]

acknowledged Māori governance bodies that are part of our hapū, iwi and marae. Instead they tried persistently to outlaw our institutions and processes and impose their English ones on us as part of their assimilationist agenda.[35] It has not worked. Even though whānau, hapū, marae and iwi do not exist as decision-making bodies in Pākehā law, they are alive, well and fully functioning in Māori law, especially in Ngāti Kahu as is demonstrated in the hapū kōrero in chapter 3 and the kaupapa and tikanga discussion in chapter 4.

This part of the settlement provides for Europeans to constitutionally recognise and respect Ngāti Kahu's right to self-determination through our own governance bodies, that is, our decision-making institutions, structures and processes as we define them. It also acknowledges and supports Ngāti Kahu's right to make our own decisions about our own lives, lands and resources and our own economic, social and cultural development in accordance with our own laws/tikanga and that those decisions are binding in both tikanga and in Pākehā law.

7.3.4.3 Representation on Pākehā governance bodies

Ngāti Kahu's right to self-determination includes the right to be in decision-making roles in non-Ngāti Kahu bodies whose activities affect Ngāti Kahu. Many Pākehā bodies fall into this category. These are institutions and structures such as Parliament and local government that Europeans brought with them from the other side of the world. They are very different from those of Ngāti Kahu and other Māori. Te Tiriti o Waitangi restricted English governance to dealing with Pākehā matters only. In practice they grossly exceeded their authority and have made numerous decisions that have had severe and long term negative effects on Ngāti Kahu. They also wrongly presumed to be able to represent us, to make decisions for us and to dictate every aspect of our lives. Because of the damage these institutions have and continue to do, Māori have sought representation on them. While we achieved token representation in Parliament through the current seven Māori seats[36] (in a Parliament of 120 members) we have only ever

[35] For example, as part of the current government treaty settlement process the government dictates that iwi representative bodies that receive the proceeds of settlement must be bodies set up according to English culture and subject to Pākehā law.

[36] It is often claimed that Māori have more than seven representatives in Parliament by virtue of the fact that as many as 22 members have indicated they are of Māori descent. However, the only MPs who represent Māori are those in the seven Māori seats. All other Māori represent their party, not Māori. This was clearly demonstrated during the foreshore and seabed debacle of 2003-4 when MPs of Māori

been there as marginalised observers trying our best to curb the worst of European excesses and greed. The Māori seats are there at the political whim of the European and can be abolished at any time by a simple majority vote.[37] As such Māori participation in Parliament is not guaranteed. In local government we are only permitted to be represented if the European majority who live in our territories agree. Europeans residing in Ngāti Kahu's territories have never agreed to any Māori representation on their bodies and as a result we are constantly embattled with them.[38] This lack of adequate representation is one of the many aspects of the lack of constitutional security for Māori rights that led the United Nations Special Rapporteurs to recommend constitutional transformation.

This part of the settlement aims to address the serious representation problems we have in respect of Pākehā governance bodies as provided in Article 18 of UNDRIP. It provides for Ngāti Kahu to have direct representation and decision-making roles on all Pākehā governance bodies that impact upon Ngāti Kahu such as Parliament and its subsidiaries. The subsidiaries include a range of statutory bodies such as the Tribunals, Royal Commissions, Commissions of Inquiry, Crown Research Institutes, the State Owned Enterprises, health and hospital boards, school, university and other tertiary educational institutions' councils or boards of trustees, Housing Corporation New Zealand, New Zealand Conservation Authority, Northland Conservation Board, Northland Regional Council, Far North District Council, Historic Places Trust and the New Zealand Tourism Board. It also recognises and provides for direct Ngāti Kahu representation in international fora such as the United Nations.

7.3.4.4 Marae infrastructure

As we noted earlier, our marae are at the centre of our communities and our decision-making. All of Ngāti Kahu's fifteen marae struggle to build and maintain their building complexes to the standard appropriate for that role. This part of the settlement will

descent who wanted to support the very strong Māori call opposing the legislation to confiscate our foreshores and seabed were ordered by their Pākehā controlled parties to support the legislation. Georgina Beyer, MP for Wairarapa, was the standout example of this.

[37] Māori seats can be abolished on a simple majority vote because they are not entrenched. Pākehā (General) seats are entrenched and a 75 per cent majority is required to abolish any of them.

[38] Ngāti Kahu hapū have taken legal action against the Department of Conservation, the Far North District Council and the Northland Regional Council on a number of occasions. See Mutu,'Ngāti Kahu Kaitiakitanga'.

provide for building or renovating and fully resourcing every Ngāti Kahu marae according to the wishes of the marae community. The centrality of marae to the identity and culture of Māori means that a number of the articles of UNDRIP apply here, but most particularly Articles 2, 3, 4, 5, 11 and 12. This part of the settlement includes the establishment of a Ngāti Kahu Marae Infrastructure Fund to be administered by a Ngāti Kahu marae restoration and development trust.

7.3.4.5 Education

Education relevant to and meaningful for Ngāti Kahu has always been highly valued but largely inaccessible.[39] Kaupapa Māori education comes closest to meeting our needs and so this part of the settlement provides for the establishment, on-going support and funding for a fully staffed and resourced Kohanga Reo, Kura Kaupapa Māori and Whare Kura for every marae community in Ngāti Kahu that wishes to have them. This is provided for in Article 14 of UNDRIP. An important factor in the successful implementation of this part of the settlement will be removing the current barriers to the establishment, resourcing and independence of these institutions.[40] Like our marae, one of their main roles is to model the exercise of Ngāti Kahu mana and rangatiratanga both in their operations and programmes. There is no place in them for the imposition of English culture. Likewise any attempts to assimilate them into the Pākehā education system, as the Ministry of Education was found guilty of doing in respect of Kōhanga Reo,[41] are inappropriate and unacceptable.

Access to university and/or tertiary training has also been highly valued but beyond the means of too many of Ngāti Kahu wanting to take it up. This part of the settlement provides for full funding (both living and training expenses) for all Ngāti Kahu students who attend any university or tertiary institution either in this country or overseas.

7.3.4.6 Health

[39] Stavenhagen, Mission to New Zealand, paragraphs 60-4 and 97-8; Anaya, Situation of Māori People, paragraphs 58-9 and 80.
[40] See the successful claims of Te Kohanga Reo Trust against the Crown (Waitangi Tribunal, 2012, *Matua Rautia: Report on the Kōhanga Reo Claim: WAI 2336*, Wellington, Legislation Direct).
[41] Ibid.

Ngāti Kahu's overall very poor state of health, like that of all other Māori,[42] requires urgent primary health care intervention. This part of the settlement provides for the setting up of a fully functioning and fully resourced health and medical centre in every marae community wishing to have one. This is provided for in Article 24(2) of UNDRIP.

7.3.4.7 Housing

One of the key factors influencing our health is the state of our housing. It is another area that requires urgent intervention.[43] This part of the settlement will provide high quality housing suitable for whānau accommodation for every whānau of Ngāti Kahu descent as provided for in Articles 21 and 23 of UNDRIP. It includes the establishment of a papa kāinga restoration and development fund to be administered by a Ngāti Kahu Housing Trust. Very urgent intervention is required in this respect for papa kāinga housing within each hapū's territories.

7.3.4.8 Food sovereignty: Protection of our customary foods

Another factor severely impacting on our health is our diet. Very few Ngāti Kahu still have access to and include our traditional foods as staples in our diet. And that is largely because many of our customary food supplies have come under severe threat or have been destroyed as a result of our lands being stolen and then misused and abused. The numerous examples include our toheroa on Te Oneroa-a-Tōhē, our fish and shellfish, our birds and many of the delicacies we used to gather from the bush or cultivate.[44]

This part of the settlement provides recognition and complete protection for Ngāti Kahu's food sovereignty and use rights, including the protection of our customary fisheries, flora and fauna as well as the habitats of our fisheries, bush and forest resources as provided in Article 31 of UNDRIP. It also ensures that Ngāti Kahu will always be able to take sufficient supplies of fish and shellfish from our seas and rivers, and food and other resources from our bush and forests, for our own purposes and that we have priority rights in this respect.

[42] Stavenhagen, Mission to New Zealand, paragraphs 71-3 and 101; Anaya, Situation of Māori People, paragraphs 61 and 82.
[43] Stavenhagen, Mission to New Zealand, paragraphs 74 and 101.
[44] See the many examples provided in the hapū kōrero in chapter 3.

7.3.4.9 Local and central government services

For many Ngāti Kahu living in our territories access to services provided by local and central government such as roading, water, electricity, telephone, internet, rubbish collection and sewerage is very variable. Those living in Pākehā settlements usually have access to all these services. However those living on the small, scattered remnants of our ancestral lands still in our control almost all receive few or none of these services. This part of the settlement provides full services to all Māori lands wherever it is requested at no charge (see 11 below – Tax Exemption).

7.3.4.10 Justice system

For too long Ngāti Kahu has been subjected to a justice system that operates according to principles belonging to a culture from the other side of the world. It is a vindictive system which is based on punishment and revenge. Wherever the English have introduced this system it has always favoured them and discriminated against indigenous peoples. In New Zealand Māori are so badly targeted that over 50 per cent of the male population in prisons is Māori even though Māori make up just 15 per cent of the population. It is worse for Māori women with over 60 per cent of the female prison population being Māori.[45] Ngāti Kahu is strongly represented in those figures. The United Nations Special Rapporteurs were particularly concerned about this area.[46]

Justice in Ngāti Kahu is dispensed according to tikanga and this part of the settlement provides for Ngāti Kahu to conduct our own justice system in accordance with our own tikanga as provided for in Article 34 of UNDRIP.

7.3.4.11 Intellectual and cultural property

In the hapū accounts in chapter 3, kaumātua frequently noted their experiences of being deprived of our language and as a result, many of our traditions and our history. Those whose parents deliberately defied Europeans' attempts to destroy our intellectual and cultural property recall the difficulties they experienced and now help those who were deprived of that knowledge.

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[45] Robert Webb, 2011 'Incarceration' in Tracey McIntosh and Malcolm Mulholland (eds) *Māori and Social Issues*, vol. 1, Wellington: Huia Publishers, pp. 249-262.

[46] Stavenhagen, Mission to New Zealand, paragraphs 56-8 and 80; Anaya, Situation of Māori People, paragraphs 62-3 and 83.

This part of the settlement provides for the full protection of all Ngāti Kahu's intellectual and cultural property as provided in Article 31 of UNDRIP. This includes our language, history, traditions, arts, crafts, tikanga, place names and their backgrounds and our knowledge and uses of all our natural resources. An essential component of this part of the settlement is establishing and maintaining a fully resourced and staffed art and cultural centre which houses and preserves the traditional art and craft forms of Ngāti Kahu and encourages the on-going development of contemporary Ngāti Kahu art. It also funds the research and publication of the history of Ngāti Kahu whānau, hapū and iwi, especially those who did not have the opportunity to present their claims to the Waitangi Tribunal. Research for and publication of a Ngāti Kahu history covering the periods both prior to and after the signing of the Treaty of Waitangi is also a component of this part of the settlement.

7.3.4.12 Media Services

Until relatively recently Māori had to endure media services, that is, radio, television and print media that frame their representations of events and entertainment solely through a mono-culturally English lens. Māori were portrayed negatively, the media industry was often hostile towards Māori and those Māori who dared to publicly challenge white supremacy were demonised by the media.[47] Pākehā media treatment of Māori drew harsh comment from United Nations Special Rapporteur, Rodolfo Stavenhagen who recommended "public media should be encouraged to provide a balanced, unbiased and non-racist picture of Maori…"[48] The advent of Māori radio in the 1980s and the Māori Television Service in 2004 provided some relief and model for a Ngāti Kahu media service.

This part of the settlement establishes a complete, fully funded and resourced media service, that is, radio, television and newspaper for Ngāti Kahu as provided in Article 16 of UNDRIP. It includes providing the necessary journalism, production and management expertise plus training programmes for Ngāti Kahu to fully participate in that industry.

[47] Stavenhagen, Mission to New Zealand, paragraphs 66 and 104; Sue Abel and Margaret Mutu, 2011, 'There's Racism and Then There's Racism – Margaret Mutu and the Racism Debate', *The New Zealand Journal of Media Studies* 12(2).
[48] Stavenhagen, Mission to New Zealand, paragraph 104.

7.3.4.13 Commercial Development – Fishing and Other Areas

While Ngāti Kahu has always wanted to pursue commercial development, significant barriers have prevented that happening. Trading is a key economic activity that Ngāti Kahu engaged in long before the English arrived in this country. Yet once settled here, they set about destroying Māori commercial and entrepreneurial activities, selfishly claiming sole rights to all such activity. In some areas they went as far as outlawing Māori participating in commercial activity. The best known example was that of banning Māori from taking part in commercial fisheries.[49] This was incomprehensible for Ngāti Kahu given that our livelihood was dependant on the sea and fisheries have always been a major component of our economic base. We have many centuries of experience in trading kaimoana (seafood).[50]

The 1988 Waitangi Tribunal decision that upheld our claims to all the fish and fisheries in our rohe made it clear that we cannot be denied the right to take part in commercial fisheries activities.[51] The English had justified excluding us from commercial fishing by inventing a myth that we only ever fished to feed ourselves and knew nothing about commercial activities.[52] The Tribunal report confirmed that Māori fishing was not confined to fishing and taking shellfish for subsistence, but was a highly developed commercial enterprise.[53]

In 1992 the government claimed to have settled all Māori claims to fisheries. Ngāti Kahu has never accepted that and continues to reject claims that our fisheries claims have been settled.[54] Ngāti Kahu does now own a small amount of quota and shares in Māori fishing companies that we manage through Ngāti Kahu Fisheries Ltd. However the company's assets are too small for us to be able to engage fully in the business and activity of fishing, which (these days) includes aquaculture, in the manner we used to.[55]

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[49] Mutu, 'Fisheries Settlement: The Sea I Never Gave', p.115.
[50] Ibid, p.114.
[51] Waitangi Tribunal, *Muriwhenua Fishing Report.*.
[52] M. Mahuika, 2006, 'Māori fishing', in Malcolm Mulholland (ed) *The State of the Māori Nation: Twenty-First Century issues in Aotearoa*, Huia, Wellington, p.237; Kelly Lock and Stefan Leslie, 2007, *New Zealand's Quota Management System: A History of the First 20 Years*, Motu Working paper 07-02, Wellington, Motu and Ministry of Fisheries, p.28, footnote 37.
[53] *Muriwhenua Fishing Report*, pp.xv, 196 and 200-201.
[54] Mutu, 'Recovering Fagin's Ill-gotten Gains', p.192-5; Mutu 'Fisheries Settlement: The Sea I Never Gave', p.123, footnote 57.
[55] Mutu, 'Fisheries Settlement: The Sea I Never Gave', p.123

As such, this part of the settlement provides for the purchase of at least one fully operational and successful fishing company. It includes staff, management, quota and a fleet of boats which will operate solely for the benefit of Ngāti Kahu. It also provides full training programmes to up-skill Ngāti Kahu to fully participate in the fishing industry.

Ngāti Kahu has also been involved in a number of other commercial activities but usually, it has only ever been in a marginalised way. Most ventures have faced a great deal of hostility and have either failed or been taken over by Europeans. In respect of farming, those caught up in the Farm Development Schemes of the Department of Māori Affairs from the 1930s to the 1980s often had their land confiscated for debts wrongly imposed by the Department. Other areas Ngāti Kahu has struggled to participate in include forestry and wood processing, horticulture, hospitality, tourism, retail and construction. These areas along with farming, fisheries and aquaculture remain the areas that Ngāti Kahu are most interested in. A 1997 report commissioned by Ngāti Kahu identified four main opportunities: tourism, forestry, oyster farming and horticulture, with the greatest potential being in tourism.[56]

As such this part of the settlement provides for the purchase and support of several viable and fully operational commercial ventures for Ngāti Kahu across a wide range of commercial enterprises as provided for in Articles 26, 28 and 39 of UNDRIP. In order to maintain the on-going viability of these ventures and to ensure that they provide sufficient return to Ngāti Kahu, the settlement includes the professional expertise of those with proven track records in the commercial world including trustworthy industry experts and specialists, management and financial specialists, lawyers and accountants. It also provides for full training programmes, including university and other tertiary training, so that Ngāti Kahu can fully participate in the commercial world.

7.3.4.14 Corporate Support

Over the last two decades corporate support for Ngāti Kahu whanau, hapū and marae has been provided when requested by Te Rūnanga-ā-Iwi o Ngāti Kahu. In 1990 Ngāti Kahu established Te Rūnanga as a tikanga based traditional rūnanga, that is, a council

[56] Margaret Mutu, 2006. 'Recovering Ngāti Kahu's Wealth and Prosperity' in Malcolm Mulholland (ed) *State of the Māori Nation*, Wellington, Huia, p.131.

of elders and rangatira. Its role is to be Ngāti Kahu's iwi representative body. The nearest equivalent to our Rūnanga in the English culture is Parliament. Fifteen marae of Ngāti Kahu make up the Rūnanga, each of whom appoints two representatives. It is responsible for all matters that the whānau, hapū and marae mandate it to deal with, and its monthly hui are open to all Ngāti Kahu descendants. Matters it has dealt with since the 1990s have included

- preserving, protecting and promoting Ngāti Kahu mana and tikanga
- prosecuting most of the Tiriti o Waitangi claims of the whānau and hapū of Ngāti Kahu, including McCully Matiu's claim for all of Ngāti Kahu;
- fisheries, both customary and commercial;
- resource management matters as hapū struggle to restrain the Crown and Pākehā developers from abusing and desecrating their lands, rivers and seas and particularly their wāhi tapu;[57]
- communications which involve the weekly Ngāti Kahu Show on the Kaitāia based radio station, Te Reo Irirangi o Te Hiku o Te Ika, membership of the station's board, and the Ngāti Kahu website;
- promoting the revitalisation of the Ngāti Kahu dialect of the Māori language;
- supporting Te Taumata Kaumātua o Ngāti Kahu (Ngāti Kahu's council of elders);
- setting up and running Ngāti Kahu Mortgage Services Ltd which bought the mortgage over the Ngāti Kahu farm at Taipā to stop it being stolen through a mortgagee sale;
- being Ngāti Kahu's mandated representative on National Iwi Chairs' Forum;
- being Ngāti Kahu's mandated representative in meetings of the United Nations Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples;
- being Ngāti Kahu's mandated representative in respect of Crown agencies (including central and local government).

The Rūnanga, through its offices in Kaitāia, provides a range of advice and moral support on a wide range of matters. This has included

- supporting the setting up of Kohanga Reo, Kura Kaupapa Māori, Whare Kura and Wānanga (Māori medium education);

[57] Mutu, 'Ngāti Kahu Kaitaikitanga'.

- providing support and advice on social welfare matters;
- providing advice on Ngāti Kahu tikanga;
- providing hakapapa advice;
- maintaining a Ngāti Kahu register;
- fielding huge numbers of queries, often relating to problems with government departments, and requests for assistance and advice on a wide range of issues.

All of this has been done with a very small number of dedicated staff, a large team of long-term volunteers and minimal financial resources.

This part of the settlement provides full funding and resources, including the services of trustworthy professional advisors and consultants and support staff, for Te Rūnanga-ā-Iwi o Ngāti Kahu to manage all matters mandated by the whānau, hapū and marae of Ngāti Kahu and to produce revenue and income to ensure Ngāti Kahu's self-sufficiency as provided in Articles 20, 23, 34 and 39 of UNDRIP. It also provides for a fully resourced and professionally administered research facility to be included within this structure.

7.3.4.15 Restitution and Compensation

At 7.3.2.7 above, the broad areas requiring restitution and compensation are listed as provided in Article 28 of UNDRIP. One of these is compensation for the pain, suffering, deprivation, loss of revenue, loss of quality of life suffered by the whānau, hapū and iwi over the past 175 years. In this area whānau have identified in particular the ill treatment meted out by government departments and the Māori Land Court as they implemented the consolidation and land development schemes. In addition to the restitution and compensation listed, this part of the settlement provides specific compensation to the following whānau:

- the Raharuhi, Reihana and Pōharama whānau at Merita;
- the Reihana whānau at Wairahoraho;
- the Rūpāpera whānau at Whakapouaka and at Whatuwhiwhi;
- the Matiu whānau at Waiari, Karikari and Ahipara;
- the Mānuera whānau at Taumatawiwi and at Toatoa;
- the Phillips whānau at Ōkokori;
- the Nōpera/Pōpata whānau at Kōnoti;
- Ngāi Tohianga hapū at Ōturu.

There are almost certainly other whānau who should be included here. Any remaining debt from these schemes is also written off in this part of the settlement. This includes the debt on the various Ōturu A2B1B, B2 and B3 blocks currently administered by Te Puni Kokiri.

7.3.4.16 Tax Exemption

The contribution that Ngāti Kahu has made to the development of the European economy of New Zealand is extensive. Apart from more than 150,000 hectares (370,000 acres) of land that was stolen for the benefit of Europeans, Ngāti Kahu have been coerced into taking positions of servitude in the employ of European individuals, groups, government bodies and companies with little or sometimes no recompense. These days that is reflected nationally in the Māori median personal income still lagging well behind that of Europeans living in this country. It is only 79 per cent of the national median (overall average) personal income.[58] Exacerbating this situation are the numerous taxes then levied on what is earned including property taxes (rates), goods and services tax, income tax, road user charges and accident compensation corporation levies.

In recognition of the huge contribution that Ngāti Kahu has made to the development of the European economy, this part of the settlement exempts Ngāti Kahu from all Government-imposed taxes as provided for in Article 28 of UNDRIP.

7.4 Process approved by Ngāti Kahu for settling their claims against the Crown

Given the huge size of the task the negotiators have to complete this settlement, Ngāti Kahu gave explicit instructions not only for the lands and other redress to be recovered but also how the process was to be carried out. The Ngāti Kahu claims settlement process involves five key steps: lodge the claims with the Waitangi Tribunal; obtain reports which uphold the claim and make recommendations; enter into consultation with whānau, hapū and iwi on how they want their claims settled; approve a Settlement

[58] See the Statistics New Zealand website at http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-income/personal-income-ethnic.aspx accessed 19 March 2015.

Plan which outlines exactly and precisely how the claim is to be settled;[59] implement the Plan.

7.4.1 Lodging claims

The first step, lodging our claim with the Tribunal, took two years for the first Ngāti Kahu claims, and as many as another twenty four years for the rest of our claims. Most of the claims of the whānau and hapū were not formally lodged in the Waitangi Tribunal but have, nevertheless, been included in our Ngāti Kahu settlement package and in the negotiations conducted to date. Those formally lodged with the Waitangi Tribunal that Te Rūnanga-ā-Iwi o Ngāti Kahu is mandated to represent are[60]

- WAI 16 for Karikari and Pūwheke lodged by the late Reremoana Rutene
- WAI 17 for Taipā and Ngāti Kahu-wide lodged by the late McCully Matiu and now continued by Timoti Flavell
- WAI 117 for Karikari, Waikura, Merita, Taumatawiwi and other lands lodged by Margaret Mutu for Te Whānau Moana
- WAI 284 for the rating of Māori land lodged by Margaret Mutu
- WAI 320 for Kohumaru and other lands lodged by the late Muriwai Pōpata and now continued by Steve Lloyd for Kēnana marae trustees
- WAI 544 for Takahue School and other lands lodged by Keith Tobin for Te Paatu
- WAI 548 for Takahue No.1 block, Takahue School, Takahue Domain and Takahue Cemetery lodged by the late Sidney Murray for Tahaawai, Te Paatu, Ngāti Kahu and Te Rarawa now continued by Zarrah Pineaha
- WAI 736 for Pīkaahu hapū lands, forests and resources lodged by the late Riana Pai and now continued by Lloyd Pōpata
- WAI 913 for Karepōnia lands lodged by the late Mei Paerata Coleman

[59] This aspect followed the advice of Chief Judge E.T. Durie's broadcast on the Marae television programme, 2 August 1998.

[60] WAI 45 is not included in this list. It is often cited as "the Muriwhenua Land Claim" but is not in fact a claim. The Tribunal, for purely practical and administrative reasons, consolidated all claims lodged within a certain geographic area which came to be known as Muriwhenua in the late 1980s, under WAI 45 for hearing and reporting purposes only. It was never intended that they remain consolidated for settlement purposes and it would be both impractical and very unfair to do that given that the claimants themselves have expressed very clear wishes to retain control over their individual claims.

- WAI 1176 for Te Paatu lands from Hukatere to Maungatohoraha to Rangaunu to Maungataniwha to Takahue to Ngākohu to Te Oneroa-a-Tōhē to Hukatere lodged by Te Karaka Karaka[61]

There are other claims in Ngāti Kahu's rohe that the Rūnanga does not have a mandate to represent. In accordance with Ngāti Kahu tikanga, claimants retain mana over their claims and are the only ones who determine who will represent them.[62] Whānau and hapū had the final chance to lodge an historical claim in 2008 when the government changed the legislation, once again, in breach of Te Tiriti, to stop Māori making any more such claims to the Tribunal.

7.4.2 Obtaining reports upholding claims

The second step, obtaining reports upholding our claims from the Tribunal, took place between 1986 and 1997. The *Muriwhenua Fishing Report* was released in 1988 and the *Muriwhenua Land Report* in 1997. Both upheld our claims, although the lands report only dealt with the period to 1865.

7.4.3 Settlement plan

The third and fourth steps for compiling, drafting and approving a settlement plan, started in 1995, resulted in the approved Yellow Book being released in 2000 and has continued to the present time.

7.4.4 Implementation of settlement plan

The last step, implementing the plan, has taken fifteen years to date. A Treaty Claims Settlement Management team was set up and negotiators were selected. The team comprised claimants, kuia and kaumātua, researchers, administrators and legal counsel. The negotiators, as mentioned earlier, were the late McCully Matiu, the late Steve Herewini, Professor Margaret Mutu, Archdeacon Lloyd Pōpata and Te Kani Williams. Negotiations meetings, including those for Ngāti Kahu alone, those with other iwi and those with government representatives, are open to all Ngāti Kahu. Over

[61] Te Rūnanga-ā-Iwi o Ngāti Kahu did not receive a mandate to represent this claim until 2008.

[62] Other iwi treaty claims negotiators in Te Hiku o Te Ika have allowed the Government to include all claims with in their rohe (and at least one outside their rohe – Wai 763 for lands in the Northern Wairoa) in legislation for the extinguishment of those claims against the wishes of several of the claimants. A number appeared before the Māori Affairs Select Committee hearing on Te Hiku Claims Settlement Bill to express their anger.

the years large numbers have attended these meetings and seen for themselves how the negotiations have been conducted. It has strongly influenced decisions they have subsequently made about settling their claims. And to ensure that all of Ngāti Kahu who are interested can follow the progress of their claims and the negotiations, the negotiators provide monthly written progress reports and seek and take regular instructions from claimants, whānau and hapū. Since 2008 the chief negotiator, Professor Mutu, has given extended weekly radio interviews on the Kaitāia based Te Reo Irirangi o Te Hiku o Te Ika, reporting on the claims and answering queries.

After the Management team was set up it took several years before we could even enter into a written agreement with the Government on the negotiations and settlement process. It was completed in 2003 but within a month of signing it the Government seriously violated it by announcing that it would confiscate our foreshore and seabed. A number of other acts of bad faith by representatives and servants of the Government followed. They included refusal to conduct negotiations in accordance with Te Tiriti o Waitangi, refusal to acknowledge or discuss the Waitangi Tribunal's *Muriwhenua Land Report*, refusal to acknowledge our Yellow Book for five years or to ever discuss it, trying to sell Rangiputa station to stop us recovering it, refusing to meet for many months with no explanation and simply not turning up to agreed meetings. Ngāti Kahu eventually gave up, discarded the agreement and continued negotiations with Government representatives on a tikanga basis.

If Negotiations Succeed

If negotiations were successful and Ngāti Kahu was able to reach agreement with the Government, we would then draft a deed of settlement for approval and ratification by Ngāti Kahu. In the event, because the Government refused to comply with the Yellow Book, Ngāti Kahu entered into an agreement in principle with a Labour-led government for the relinquishment of a very small portion of our settlement package as a partial settlement. The content of the partial settlement is set out in chapter 8. We then drafted the Ngāti Kahu deed of partial settlement which is contained in this book. Because the Government was relinquishing so little, it was agreed at the behest of kaumātua of Te Whānau Moana, Te Rorohuri, Matarahurahu and Patukōraha, in whose rohe the large Rangiputa and Kohumaru blocks are, that what was relinquished would be managed

for the benefit of all Ngāti Kahu rather than lands being relinquished to the various whānau and hapū they had been stolen from.

Once a deed of settlement agreed to by Ngāti Kahu is accepted by the Government, legislation is then drafted to make the settlement binding in Pākehā law. The legislation must also be approved by Ngāti Kahu. It then goes through the Pākehā parliamentary process, the readings in the House and a Select Committee hearing before it is enacted as legislation.

The final step to implement the plan is that the Crown must relinquish lands and provide all the other redress covered by the legislation. A number of claimants who have settled have found themselves having to take legal action to force the Government to implement their own legislation on settlements.[63] The gap between this final step and reaching the ultimate goal of reconciliation with the Crown continues to be difficult to bridge when the Government is so reluctant to make any real change to its attitude and behaviour.

The Stumbling Block to Success – the Government's Claims Extinguishment Policy

Although governments and their Crown agencies often portray their treaty claims settlement/extinguishment policy internationally as a model for addressing indigenous claims against English colonisers, it has drawn extensive criticism both here and overseas, particularly from indigenous scholars and experts working in the field of indigenous rights.[64] Submissions to parliamentary select committees about the

[63] See for example Chen's 'Post-Settlement Implications for Māori-Crown Relations' for examples of this behaviour.

[64] Mikaere, Ani, 1997, 'Settlement of Treaty Claims: Full and Final, or Fatally Flawed? *New Zealand Universities Law Review*, Vol 17; Rumbles, Wayne, 1999, 'Treaty of Waitangi Settlement Process: New Relationship or New Mask' available at http://lianz.waikato.ac.nz/PAPERS/wayne/wayne1.pdf ; Tuuta, Dion, 2003, *Māori Experiences of the Direct Negotiations Process*, Wellington, Crown Forestry Rental Trust; Coyle, Michael, 2011, 'Transcending Colonialism? Power and the Resolution of Indigenous Treaty Claims in Canada and New Zealand', *New Zealand Universities Law Review*, Vol.24.; Joseph, Robert, 2012, 'Unsettling Treaty Settlements: Contemporary Māori Identity and Representation Challenges', in Wheen & Haywood, *Treaty of Waitangi Settlements*, pp.151-165; Coxhead, Craig, 2002, 'Where are the Negotiations in the Direct Negotiations of Treaty Settlements?' in *Waikato Law Review* Vol.10; Mutu, 'Recovering Fagin's Ill-gotten Gains'; Mutu, *The State of Māori Rights;* Sir Edward Taihākurei Durie, 2013 'Land Claims, Treaty Claims and Self-determination' in S. Katene and M. Mulholland (eds), *Future Challenges For Māori: He Kōrero Anamata*, Wellington, Huia Publishers.

process reveal total rejection of the policy by Māori.[65] There are a very large number of common complaints about it. They incude:[66]

- The process is a serious breach of Te Tiriti o Waitangi and a violation of human rights;
- The settlements are mean, grossly inadequate, unfair and unjust;
- The lack of a statutory framework for the process leaves claimants at the mercy of the whim of Pākehā politicians;
- Neither the process nor the legislation addresses the on-going lawlessness and treaty breaches of governments which started in the 1840s – the settlements allow them to carry on as if nothing has changed;
- Settlements force assimilation into Pākehā law and outlaw tikanga. Individual hapū and iwi are redefined in legislation and settlements are with corporate bodies purporting to represent iwi or 'large natural groupings' rather than with the whānau and hapū whose treaty rights were violated;
- Hapū histories are replaced with government lies;
- Deeds and legislation purport to cede sovereignty and to give powers to government that it does not possess;
- Despite government and legislative assertions, the settlements are not full and final – they are interim only;
- The government policy and approach causes bitter in-fighting amongst claimants throughout the entire process and beyond it. Government divide and rule tactics and picking favourites, threatens whanaungatanga and results in many being excluded or marginalised by the process but their claims are still extinguished in legislation;
- There is a huge power, resource and experience imbalance between government and claimants;
- Lands are vested in those who are not mana whenua;
- Underlying native title is wrongly extinguished;
- Being forced use settlement monies to pay for lands stolen from claimants is unfair, unjust and wrong;

[65] McDowell, Tiopira, 2015, Transcribed MASC submissions from Archives, Field notes, Te Wānanga o Waipapa, University of Auckland, 11 June 2015.
[66] Mutu, Margaret, 2015, and Tiopira McDowell, What Do the Claimants Say? Research Workshop Presentation, James Henare Research Centre, University of Auckland, 11 June 2015.

- Government encourages its own servants to become negotiators for the claimants and ignores claimant complaints about conflicts of interest;
- There are no negotiations – the government dictates; settlements are completed under duress and the use of intimidation and bullying is common;
- Financial and resource constraints hinder or prevent many from participating and only those favoured by government are funded;
- There is no reconciliation between the claimants and the Crown;
- The policy and process must be revisited and agreed between Māori and the government – not imposed unilaterally by government;
- An independent arbiter is required.

The United Nations Special Rapporteurs both made lengthy comments on the policy and process. Rodolfo Stavenhagen recommended in 2006 that "The Crown should engage in negotiations with Maori to reach agreement on a more fair and equitable settlement policy and process."[67] James Anaya recommended in 2011 that "In consultation with Māori, the Government should explore and develop means of addressing Māori concerns regarding the Treaty settlement negotiation process, especially the perceived imbalance of power between Māori and Government negotiators. In this regard, consideration should be given to the formation of an independent and impartial commission or tribunal that would be available to review Treaty settlements."[68] Most recently in January 2014 the United Nations Human Rights Council in its second New Zealand Universal Periodic Review made four recommendations relating to the need to address Māori concerns about the policy and process.[69]

The problems besetting the policy and process are the result of Europeans dictating what can be included in the legislation to deal with claims and then unilaterally determining the settlement policy. This has allowed governments to adopt a high-handed approach and to arbitrarily and severely restrict and bias the process in their own favour. This type of approach has failed to produce enduring settlements in the

[67] Stavenhagen, Mission to New Zealand, paragraph 95.
[68] Anaya, Situation of the Māori People, paragraph 75.
[69] Specifically recommendations 128.40, 128.41, 128.87 and 128.88 of the United Nations General Assembly report number A/HRC/WG.6/18/L.1, January 2014. See footnote ?? in Chapter 5.

past with a number of so-called "full and final settlements" being revisited by successive generations.[70] There is no reason to believe the current drive to extinguish all Māori claims against the Crown will be any different despite the tortuously detailed manner in which the legislation tries to irrevocably extinguish Māori sovereignty, self-determination, rights and claims.

Government representatives nevertheless have been desperate to rid themselves of the huge liability the Government carries in respect of several thousand claims, including those of Ngāti Kahu. Their alternative to doing what is right and honourable has been to decree that Ngāti Kahu, following on from what other iwi have done, must give up almost all our lands so that the Government can legitimise its claims to them. In many deeds of settlement agreed to by other iwi this is disingenuously portrayed as great magnanimity on the part of Māori who give up almost all their lands and forego compensation "to contribute to New Zealand's development".[71] The reality is that they were forced into agreeing to give up most of their lands in order to get the Government to withdraw its claims to tiny portions of them. Furthermore Government representatives have also decreed that we must accept that we have ceded our sovereignty,[72] although they will struggle to maintain this stance following the Waitangi Tribunal's 2014 report on He Whakaputanga and Te Tiriti which finds that we did not.

Successive governments, in the guise of the Crown, have used the vast resources of the state to bully claimants into accepting unfair "settlements" and to ostracize and punish those who do not kowtow to their demands.[73] Many claimants take a pragmatic

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[70] See, for example, Tainui and Ngāi Tahu. Both these iwi have continued to revisit their early and mid 20th century full and final settlements and even their 1990s settlements. These latter ones are revisited not only because of the relativity clauses both iwi secured (which guarantees them each 17 per cent of the total settlements across the country) but because of matters not covered in those settlements such as the Waikato river and Tainui's harbours.

[71] Of the recent deeds see for example the deeds of settlement of Te Aupōuri (January 2012), Raukawa (June 2012), Te Rarawa (October 2012), Ngāi Takoto (October 2012), Ngāti Toarangatira (December 2012), Ngāti Koata (December 2012), Te Atiawa o te Waka a Māui (December 2012), Ngāti Koroki Kahukura (December 2012), Ngāti Pūkenga (April 2013), Ngāti Rārua (April 2013), Ngāti Tama ki te Tau Ihu (April 2013), Ngāti Hauā (July 2013). Available at http://www.ots.govt.nz/ accessed 2 September 2013.

[72] See Margaret Mutu, 2012, 'Ceding Mana, Rangatiratanga and Sovereignty to the Crown: The Deeds of Settlement of the Crown for Te Rarawa, Te Aupōuri and Ngāi Takoto' published as a serial in the *Northland Age* newspaper, March-April 2012.

[73] See, for example, the articles by legal scholars Craig Coxhead, 2002, 'Where are the Negotiations in the Direct Negotiations of Treaty Settlements?' in *Waikato Law Review* Vol.10, and Michael Coyle, 2011, 'Transcending Colonialism? Power and the Resolution of Indigenous Treaty Claims in Canada and New Zealand', *New Zealand Universities Law Review*, Vol.24. Many claimants, having perceived

approach and accept settlements that are less than one per cent of what was stolen in the belief that it is the only option available to them. For Ngāti Kahu the Government deployed its resources in the Waitangi Tribunal in the 1980s and 1990s to try to refute each and every one of our claims. In the Tribunal of that time, the might of the State could not overwhelm the historical facts. Unable to escape the findings that the Government is guilty of the charges laid by Ngāti Kahu, politicians and bureaucrats shamelessly chose to continue trying to dictate to Ngāti Kahu in a vain attempt to force us to submit to their unreasonable demands. When we refused, they simply called on more and more of their resources to sustain an on-going battle to maintain their supremacy over us. Most recently they have introduced legislation to prevent Ngāti Kahu receiving any contribution towards settling our claims until such time as we cede our rights under He Whakaputanga and Te Tiriti o Waitangi and accept that only the Government will determine what settlement we may have.[74] At the end of it all, if the Government does not carry out its responsibilities then tikanga will take over as determined by the process that Ngāti Kahu has agreed to.

If Negotiations Fail

The implementation plan provided for the possibility that negotiations would fail. Two options were available: return to the Waitangi Tribunal for binding recommendations, and repossess the lands component of the redress. Individual whānau and hapū manage the repossession of their lands. As for returning to the Tribunal for binding recommendations, we have done it three times to date but have yet to achieve the binding recommendations the law provides for and that the Tribunal promised us in 1997.

Binding recommendations force the Government to relinquish small tracts of lands that are or have been held by State Owned Enterprises, by the Ministry of Education or as Crown forests. For Ngāti Kahu the available lands include Rangiputa, Kohumaru and Sweetwater stations, the forests at Kohumaru, Aputerewa, from Hukatere south and

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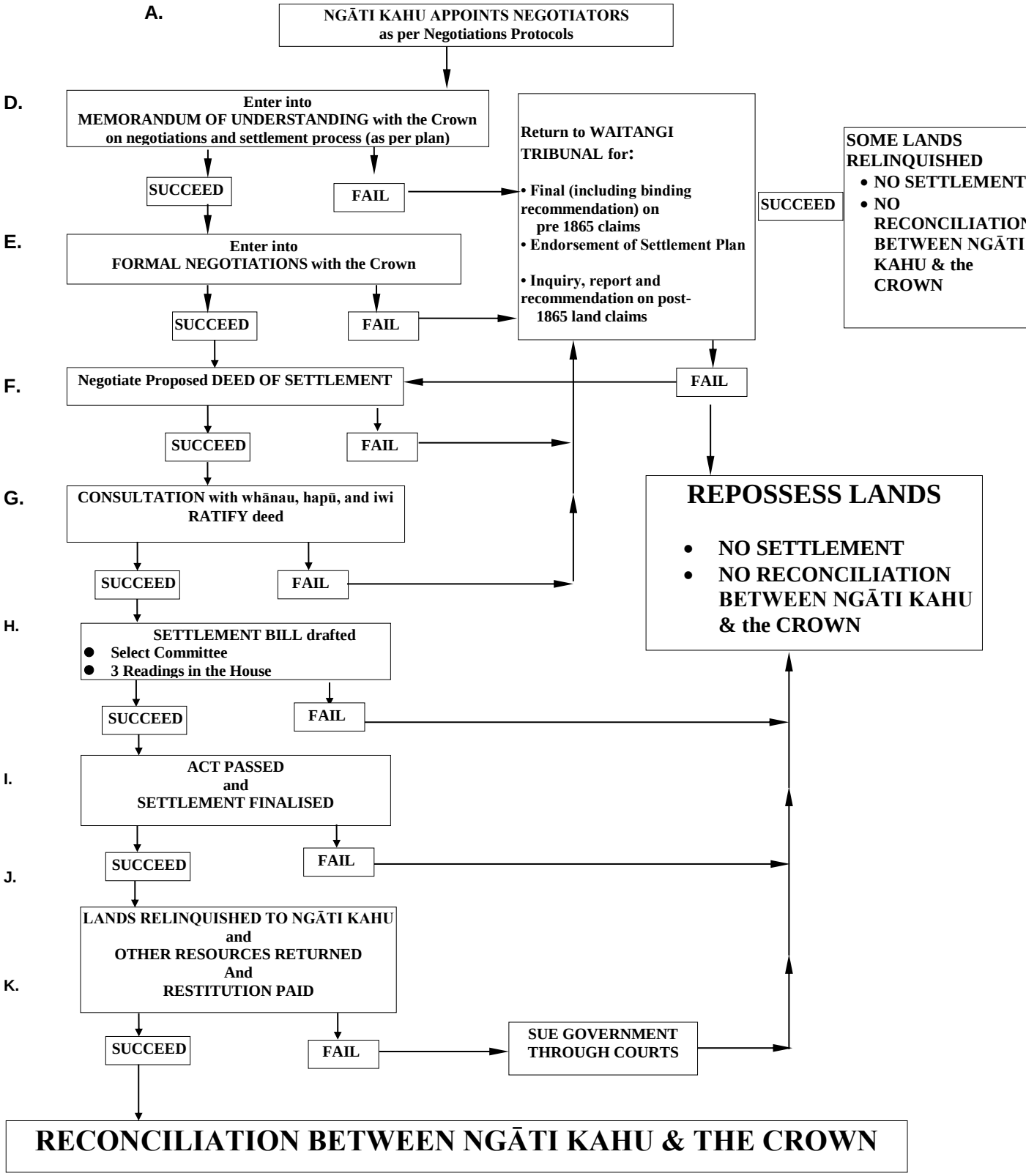
that they have no options in this matter, have accepted settlements that all acknowledge are unfair and unjust.

[74] Letter of Christopher Finlayson, Minister of Treaty of Waitangi Negotiations to Professor Margaret Mutu, Chairperson, Te Rūnanga-ā-Iwi o Ngāti Kahu 8 April 2014 setting out his intention to introduce legislation, the Ngati Kahu Accumulated Rentals Trust Bill, preventing Ngāti Kahu from continuing to access funds held by the Crown Forestry Rental Trust for Ngāti Kahu until such time as Ngāti Kahu accepts a Crown determined settlement.

at Takahue and a number of smaller properties in Mangōnui, Waipapa (Cable bay) and Kaitāia.[75] Binding recommendations do not settle our claims. Ngāti Kahu decided that once we had recovered the lands available by way of binding recommendations, recovering the rest of the lands and other redress would then be passed on to the next generation to complete.

[75] See map 47???

Implementation of the settlement plan for the Ngāti Kahu land claims



7.5 Ngāti Kahu and Government Negotiations

The story of the negotiations between Ngāti Kahu and the Government is long and frustrating. Almost all of it is about Ngāti Kahu adhering to the instructions of her whānau and hapū, and the kōrero handed down from the tūpuna while successive governments have been hell-bent on imposing their will on Ngāti Kahu's negotiators to give up the claims that the Waitangi Tribunal upheld.

7.5.1 Negotiations Start 2003 – 2006

By mid-2000 Ngāti Kahu were ready to open negotiations with the Government. However it was not until June 2002 that the Government finally recognised the mandate Ngāti Kahu had given to Te Rūnanga-a-Iwi o Ngāti Kahu in 1995 and had confirmed in 1996 and every year since, to negotiate the settlement of the Ngāti Kahu hapū claims. Despite the very robust process of four hui-ā-iwi and a final decisive vote on which body was to hold the mandate to represent Ngāti Kahu, the Government insisted on starting the process again and on its mandating process being used.

That process was a highly divisive, long, drawn out and extremely expensive process. Rather than being a tikanga driven process that seeks to keep the people together it used an English cultural process which fostered long term division as it sought to identify winners and losers. It was only when the losers were unsuccessful in their attempt to test the people's decision through the courts that the Government gave up and accepted Ngāti Kahu's decision. The Minister of Treaty Negotiations at the time went as far as trying to have a particular person she favoured appointed as a negotiator. Ngāti Kahu angrily rejected her attempts to interfere even more than she and her predecessor had already done. However the process she imposed caused long-term divisions within Ngāti Kahu which remain to this day. It wasn't until May 2003 that the Government and Ngāti Kahu signed Terms of Negotiations. Negotiations started soon after with Ngāti Kahu kuia, kaumātua and whānau representatives attending every meeting as observers.

From the start they were bedevilled by the Government's poor attitude and bad faith towards Ngāti Kahu. It quickly became clear that the Government did not want to negotiate at all. Rather it adopted a patronising and supremacist attitude in order to impose its deeply racist and discriminatory 'fiscal envelope' policy, ignoring the on-

going criticism of the policy discussed above.[76] That means there is no negotiation. It is simply the Government imposing its will and Māori having to jump through the Government hoops.[77] And that carries on to this day. The Government refuses to discuss the policy with Māori, despite numerous requests and repeated advice that it must do so.[78] As noted above, indigenous and legal scholars and experts in indigenous rights have been particularly strident in their criticisms because of the number of human rights violations the policy relies on.[79]

For Ngāti Kahu this played out with the Government refusing to accept or even acknowledge either the Waitangi Tribunal's *Muriwhenua Land Report* or our Yellow Book. We would go into meetings specifically to talk about the report, we would explain the relevant parts only to be told that the Government refuses to discuss the report. It was the same with our Yellow Book. No matter how many times we raised it as being the mandated instructions for Ngāti Kahu's negotiators, both bureaucrats and ministers stubbornly refused to discuss it, dismissing it was irrelevant. Instead government bureaucrats presumed at the outset that they would dictate both the timelines of the negotiation process and the content of Ngāti Kahu's settlement package. The only document that was relevant in their view was their 'fiscal envelope' policy and they refused to discuss anything else. The only thing they were interested in was having us give up our claims and becoming compliant and submissive subjects of the Crown.

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[76] At least eleven Waitangi Tribunal reports address the problems associated with the government's settlement process including the 2000 *Pakakohi and Tangahoe Settlement Claims Report* (Wai 758, Wai 142), Wellington, Legislation Direct; two Te Arawa reports in 2004 and 2005, *Te Arawa Mandate Report* (Wai 1150), Wellington, Legislation Direct; *Te Arawa Mandate Report: Te Wāhanga Tuarua* (Wai 1150), Wellington, Legislation Direct; the 2007 *Final Report on the Impacts of the Crown's Treaty Settlement Policies on Te Arawa Waka and Other Tribes* (Wai 1385), Wellington, Legislation Direct; the 2007 *Tāmaki Makaurau Settlement Process Report* (Wai 1362), Wellington Legislation Direct; and the 2010, *East Coast Settlement Report* (Wai 2190), Wellington, Legislation Direct.

[77] Durie, 'Land Claims, Treaty Claims and Self-determination', p.44.

[78] The most recent advice has come from the United Nations Human Rights Council with several recommendations in the second Universal Periodic Review of New Zealand that the Government work with Māori to achieve a fairer way of settling treaty land claims. See recommendations 128.40, 128.41, 128.87 and 128.88 of the United Nations General Assembly report number A/HRC/WG.6/18/L.1, January 2014.

[79] In addition to the reports of Rodolfo Stavenhagen, 2006, at paragraphs 27–35, 79 and 93–95 and James Anaya, 2011, at paragraphs 35–42 and 73–76 see also Rumbles, 'Treaty of Waitangi Settlement Process: New Relationship or New Mask?'; Tuuta, *Māori Experiences of the Direct Negotiations Process*; Mutu, 'Recovering Fagin's Ill-gotten Gains'; Mutu, *The State of Māori Rights;* Durie, 'Land Claims, Treaty Claims and Self-determination'.

Although Government bureaucrats from the Office of Treaty Settlements fronted for the Government throughout the initial period of negotiations, it is certain that their behaviour reflected the attitude of the representatives of the Crown, the government of the day. This was confirmed for Ngāti Kahu when in 2003, a representative of the Government, the Attorney-General, announced her intention to confiscate the foreshore and seabed from Māori. The government then passed into law the deeply racist Foreshore and Seabed Act 2004 ignoring the condemnation, protest and resistance of the hapū throughout the country who own those lands. As a result, already tense relations between Ngāti Kahu and the Government became even more strained, and negotiations were increasingly futile, frustrating and ineffectual.

As further evidence of the serious disconnect between the Government and Ngāti Kahu, in 2005 the then Minister of Treaty Negotiations offered Ngāti Kahu just $8 million cash, no land and no recognition or acknowledgement of our mana and rangatiratanga, to settle all our claims fully and finally. It was a clear indication of the Government's determination to keep everything it had stolen and to ignore the Tribunal's clear recommendations. The Minister seemed genuinely flabbergasted when the negotiators indicated that such an offer was a joke. It was subsequently taken back to the Ngāti Kahu hapū and, predictably, rejected.

Then in August 2006, Ngāti Kahu discovered that the Government intended to put part of Rangiputa Station, a key component of Ngāti Kahu's settlement package, on the open market. In spite of strong protest from Ngāti Kahu, the Government allowed the attempted sale to proceed. Although the hapū had consistently instructed the Ngāti Kahu negotiators to remain at the table, even when the Government had sorely tested their tolerance with the Foreshore and Seabed Act, this final provocation was considered a deal-breaker; they mandated individuals from within the iwi to take direct action and repossess Rangiputa.

7.5.2 Ngāti Kahu return to Waitangi Tribunal (2006 – 2008)

By October 2006 the hapū had come to the conclusion that the Government had no intention of settling their claims fairly. So they instructed their negotiators to formally withdraw from negotiations and return to the Waitangi Tribunal to seek binding recommendations which would order the Government to return to Ngāti Kahu the

control of all State-owned Enterprise and Crown Forest lands in their rohe. Although that would not have provided the full and final settlement Ngāti Kahu had envisaged and sought, and would result in the Government relinquishing less than four per cent of our lands it had stolen, it would still have left open the possibility to pursue that outcome in the future.

The Tribunal heard Ngāti Kahu's application for a hearing for binding recommendations in April 2008. However it declined to grant the application at that time, instead opting to direct the Government to make an acceptable offer to Ngāti Kahu within three months, after which time both parties were to report back on progress.

This was not the first time the Tribunal had declined to allow hearings for binding recommendations. The threats from successive ministers of Treaty of Waitangi negotiations to remove the Tribunal's powers, or to abolish the Tribunal if it ever made such recommendations has been influential in this and almost all other Tribunal decisions to date in respect of binding recommendations.[80] Bereft of both honour and integrity, representatives of the Government have seen fit to interfere with the Tribunal, effectively removing it from its role as an independent commission of inquiry and making it part of the government arm. This raises wider issues of bias, natural justice and judicial independence in terms of the Crown's so-called 'Rule of Law'.[81] It also demonstrates the constitutional powerlessness of Māori within the Pākehā legislature and legal system where measures put in place by parliament purportedly to protect us are so easily undermined by unscrupulous ministers of the Crown.

Although disappointed at the Tribunal's direction, which required us to re-enter negotiations with the Government, Ngāti Kahu agreed to do so at that time, on one condition; we refused to negotiate or meet any further with Government bureaucrats, instead insisting we would only talk to the Minister of Treaty Negotiations.

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[80] For many years the Tribunal simply refused to hear any application for binding recommendations until the Supreme Court intervened in 2011 in *Haronga v Waitangi Tribunal* (NZSC 53). The Tribunal still declined several appplications for hearings, but for those it did very reluctantly allow to proceed to hearings, it still refused to make binding recommendations (see the *Ngāti Kahu Remedies Report* 2013 and the *Mangatū Remedies Report* 2013).

[81] Durie, 'Land Claims, Treaty Claims and Self-determination', pp.43.

7.5.3 Ngāti Kahu and Government Negotiations (May – September 2008)

On 3rd May 2008 the Minister, who was also the Deputy Prime Minister, Dr Michael Cullen, met with Ngāti Kahu and apologised for the way the Government had treated Ngāti Kahu in negotiations. That was the first time the Government had ever apologised to Ngāti Kahu for anything.

As a result, negotiations officially recommenced, with the Minister appointing a Chief Crown Negotiator to represent him. On 27th June 2008, the Government made an indicative offer that Ngāti Kahu accepted on 28th June 2008.

7.5.4 Ngāti Kahu Agreement in Principle

That heartening progress was reported back to the Waitangi Tribunal, and negotiations then continued until 17th September 2008 when the Government and Ngāti Kahu signed an agreement in principle. The agreement was conditional on the specific claims of particular hapū, including Te Paatu ki Pāmapūria and Ngāti Tara, which were not covered in the agreement, being satisfactorily addressed. It established the key components of a settlement package, and contained two ground-breaking elements:

1. A Statutory Board to control all lands currently administered by the Department of Conservation and not yet being relinquished by the Government to the sole ownership and control of Ngāti Kahu. Board membership would comprise fifty per cent Government and fifty per cent Ngāti Kahu, Ngāti Kahu would chair it, and it would operate under Ngāti Kahu tikanga.
2. A Social Revitalisation Fund of $7.5 million to be used for the papa kāinga and marae building needs of Ngāti Kahu.

While the bulk of the agreement dealt with the exclusive rohe of Ngāti Kahu, one of its components was the very important aspect of interests shared with other hapū and iwi, specifically Maungataniwha, Mangamuka Scenic Gorge and Raetea, which the agreement acknowledged would need to be discussed between Ngāti Kahu and their neighbouring iwi and hapū.

There were also several other critical areas of shared interest which, though not addressed specifically in the agreement, both the Government and Ngāti Kahu had recognised would need to be addressed before a settlement agreement could be signed. These included Te Oneroa-a-Tōhē, Te Aupōuri Forest and Te Rerenga Wairua which held significance for all five Iwi in Te Hiku o Te Ika.

7.5.5 Te Hiku o Te Ika and Government Negotiations (2009 – 2010)

Once the Government had secured an agreement in principle with Ngāti Kahu it set about dictating once again how the rest of Te Hiku o Te Ika's claims were to be settled. It demanded that the five iwi form a group to sort out their shared interests. It was very disruptive and caused a great deal of unnecessary tension amongst the five iwi all of whom were at different stages of pursuing their claims. The Government kept agitating and in November 2008, Te Hui Tōpu o Te Hiku o Te Ika (Te Hiku Iwi Forum) was established to develop a joint negotiation strategy between the five iwi over their shared interests, and to then negotiate and design an agreement in principle with the Government that reflected agreed principles between all parties on how to deal with those interests.

A fundamental principle that Ngāti Kahu had required before entering the Forum was that, although there would be a Te Hiku agreement in principle covering the areas of shared interest between the five iwi, there would not be a joint Te Hiku deed of settlement. Instead Ngāti Kahu would negotiate and settle our own claims, and our deed of settlement would include a section on how the shared interests were to be dealt with, as per any Te Hiku agreement in principle.

Upon joining the Forum, Ngāti Kahu had also made it clear that, once a Te Hiku agreement in principle was concluded, we would withdraw from the Forum to get on with the drafting and negotiation of our own deed of settlement.

At the time the Forum was established, representative bodies of only three of the five iwi had mandates to settle claims and agreements in principle with the Government. So it was agreed by all five iwi to take the best of the existing agreements as a benchmark in designing a Te Hiku agreement. In the event, because of the gains in it, the Ngāti Kahu agreement provided those benchmarks.

Between June 2008 and January 2010, the mandated negotiators of Ngāti Kahu collaborated to co-design a Te Hiku agreement in principle alongside the mandated negotiators of Te Rarawa and Te Aupōuri, as well as representatives from various factions within Ngāi Takoto[82] and Ngāti Kurī.[83]

The incoming National government had reappointed the same Chief Crown Negotiator who worked alongside Ngāti Kahu on our individual agreement in principle, and mandated him to do the same with the Te Hiku Iwi Forum in designing their shared agreement in principle. However the climate had changed and, under the new government, Government bureaucrats had also reappeared at the negotiation table alongside the Crown's negotiator.

For Ngāti Kahu, problems soon arose again when those bureaucrats began pressuring behind the scenes and at the table for the five iwi to comply with Government-determined timetables, parameters and control of the negotiations. They micromanaged the process including circulating their own timetables, listing the work they wanted done and prescribing deadlines for completion of each piece of work that was required to meet the Government's electoral cycle plans. Numerous reports were to be completed for consideration by the bureaucrats, meetings were to be held with a wide range of other government bureaucrats and reports were to be prepared for them to complete their requirements. The workloads the bureaucrats were imposing demanded that negotiators and their teams work full-time for the Office of Treaty Settlements. It did not allow for the full involvement of the whānau and hapū whose claims were supposed to be addressed. Nor did it allow for any whanaungatanga processes needed to determine matters such as mana whenua. Some iwi negotiators were government bureaucrats as well and their departments were happy to have them seconded to do the bidding of the Office of Treaty Settlements. They were, of course, conflicted and one such negotiator openly admitted that he could not bring himself to

[82] Ngāi Takoto Research Unit received Government recognition as the mandated body for Ngāi Takoto on 18th August 2008 (Rangitane Marsden: personal communication, 28 March 2011) although the source of that mandate was never clear. In 2015 criticism of the negotiators not ever having held any mandate from Ngāi Takoto hapū and marae was still being raised (see Select Commiittee hearing on Te Hiku Claims Settlement Bill, 2 March 2015 in Kaitāia and the submission of Waimanoni marae).
[83] Ngāti Kurī Trust Board received Government recognition as the mandated body for Ngāti Kurī on 17th April 2009 (Catherine Davis: personal communication, 28 March 2011)

challenge any minister because “they pay my mortgage”.[84] Repeated complaints of conflict of interest from several hapū members who strongly objected to government servants conducting negotiations on their behalf were simply ignored.

As always, Ngāti Kahu resisted pressure from government agents and bureaucrats firmly and bluntly; more so than the other iwi. We refused to allow the Office of Treaty Settlements to control our claims or the settlement process. The Tribunal had been clear that the Crown was guilty as charged and Ngāti Kahu was not about to let the convicted criminal determine whether and how it would provide reparations and restitution. The claimants had to be able to take an active role in everything to do with their claims and it was not the place of government bureaucrats to dictate what work should be done and what the timelines were to be. That was for the claimants and their negotiators to determine. Furthermore each of our negotiators also had full-time obligations as (non-government) professionals and refused to give up their jobs to become servants to the Office of Treaty Settlements. Despite this they still gave huge amounts of their time attempting to deliver some semblance of justice to the whānau and hapū.

Ngāti Kahu was taken aback when the other four iwi’s negotiators seemed to accept the bureaucrats’ dictatorial behaviour and set about doing as they were told. As a result of Ngāti Kahu refusing to do the same we began to be pressured and even attacked by individuals from the other iwi who did not support our consistently harder line with the Government than their own. The highly developed divide and rule tactic that the English have used so successfully against Māori and other indigenous peoples for so long was on us again. It brought to mind the words of Vine Deloria, Jr who observed that in North America

> From Plymouth Rock to the lava beds of northern Carolina, the white man divided and conquered [Native Americans] as easily as if he were slicing bread. The technique was not used simply to keep tribes from uniting, but also to keep factions of the same tribe quarrelling so that when their time came they would be unable to defend themselves.[85]

[84] Hugh Kārena, personal communication, 2008.
[85] Deloria, *Custer Died for Your Sins*, p.204.

After the attacks had become intensely and increasingly personalized, particularly to our Chief Negotiator, the Ngāti Kahu hapū instructed all our negotiators to withdraw from the Forum until an apology was received and the Forum's facilitating chair replaced. However, even after those conditions were met and Ngāti Kahu returned to the Forum, the problems persisted as a result of ongoing interference and pressure by Government bureaucrats.

Those same Government bureaucrats then began to focus on limiting the ability of Te Hiku Forum to leverage off the benchmark gains in the Ngāti Kahu agreement in principle. This was accompanied by a campaign to reduce and undo those gains, particularly those to do with the conservation lands and the social revitalisation funds. While the other iwi had been unable or unwilling to counter the officials' pressure, in the end Ngāti Kahu was able to protect our core position and to make sufficient gains in the Te Hiku agreement in principle for the hapū to agree that our negotiators were to sign it. However it was signed on the condition that the settlement indicated for Ngāti Kahu was partial only, and that following generations would pursue reinstatement of Ngāti Kahu control over all our lands and territories, and the extinguishment of all Government claims.

7.5.6 Te Hiku o Te Ika Agreement in Principle (2010)

On 16th January 2010 Ngāti Kahu and the other iwi signed the Te Hiku agreement in principle.[86] Although it had originally been intended to cover only the shared interests of Te Oneroa-a-Tōhē and Te Aupōuri Forest, the agreement in principle eventually covered a wider range of redress for all five Te Hiku iwi to settle their historical claims; in particular in relation to Te Oneroa-a-Tōhē, Te Rerenga Wairua and Te Ara Wairua. In most other respects, it was agreed that the existing agreements in principle of Te Rarawa, Te Aupōuri and Ngāti Kahu were to be preserved and maintained.

As already noted, it had originally been intended that the Te Hiku agreement would at least match the benchmark gains in the Ngāti Kahu agreement. However there were two areas in particular where that was not achieved.

[86] The full agreement in principle can be accessed and read http://nz01.terabyte.co.nz/ots/DocumentLibrary%5CNgatiKahuAgreementinPrinciple.pdf

- Instead of ‘social revitalisation funds’ equitable to the $7.5 million secured by Ngāti Kahu in our agreement, the Te Hiku agreement included a ‘social accord’ with no cash component.[87]
- And instead of a Statutory Board with clear parameters weighted in favour of mana whenua, as was contained in the Ngāti Kahu agreement, the Te Hiku agreement left the parameters for Te Hiku Statutory Board largely undefined.[88]

The other iwi negotiators had been generally satisfied with the quite significant gains they had made in other areas of the Te Hiku agreement, and they had also agreed to sign it. Although the gains for the Ngāti Kahu hapū were markedly smaller, we had also been generally satisfied that it addressed our shared interests in a way that did not compromise our existing agreement in principle. So we had also instructed our negotiators to sign it, subject to the conditions outlined above, that the settlement be partial only.

7.5.7 Ngāti Kahu Deed of Partial Settlement Drafting (2010-11)

Immediately following the signing of the Te Hiku agreement in principle, as we had earlier indicated we would, Ngāti Kahu hapū withdrew our negotiators to get on with drafting our own deed of partial settlement. The instructions and brief for drafting this Ngāti Kahu deed came from the hapū of Ngāti Kahu and were very precise: it had to be written by and for Ngāti Kahu, and it was to cover every expression of Ngāti Kahu mana and rangatiratanga.

It took more than a year to draft the deed. Throughout that time Ngāti Kahu were pressured by Government bureaucrats, and even by representatives of some of the other iwi, to return to the Te Hiku Forum and work jointly with the Crown negotiator, the bureaucrats and the other iwi on their deeds of settlement. Negotiators would receive phone calls, some abusive, and visits to our work places and homes during which attempts were made to threaten and bully us into submission. The similarities between this behaviour and that of the likes of William Bertram White and Thomas

[87] This was further reduced in the deeds of settlement of each of the other four iwi to setting up a bureaucracy within each iwi corporate body to provide policy advice to government departments.
[88] This was reduced in the deeds of settlement of the other four iwi to establishing a conservation board whose members are appointed by the Minister of Conservation and which provides policy advice to the department and to the New Zealand Conservation Authority.

McDonell in the 1800s and the Department of Māori Affairs over the farm development schemes and school teachers trying to obliterate our language in the 1900s was not lost on Ngāti Kahu except now we refuse to be bullied into giving up our and our ancestors rights. Each of the incidents was reported back to Ngāti Kahu who took a very dim view of outsiders trying to overturn the instructions they had given to their negotiators.

As already noted, from the beginning of negotiations, the Government agents had attempted to unilaterally and arbitrarily dictate the processes and timelines of settling with Ngāti Kahu, determine who Ngāti Kahu's mandated negotiators were to be, what was to be negotiated, who was permitted to have access to what was discussed, and what the content and value of Ngāti Kahu's 'settlement package' was to be. The only time that modus operandi had changed had been during the brief five month period in 2008 following the Waitangi Tribunal's direction to the Government to make an acceptable offer to Ngāti Kahu, or risk binding recommendations for the return to Ngāti Kahu control of all State-owned Enterprise and Crown Forest lands in their rohe.

From May to September 2008 the Labour government of the day, facing an imminent and major election defeat, had temporarily modelled integrity and respect of the highest degree towards Ngāti Kahu. That had been a major contributor to the successful designing and signing of the Ngāti Kahu agreement in principle.

Sadly the genesis for this remarkable change in Government behaviour also became its terminus. As all pre-election polls had indicated, the Labour government did indeed lose the election, and the brief season when all things had seemed possible – even a fair partial settlement for Ngāti Kahu – ended.

As already noted, under the new National government, Government bureaucrats had reappeared at the Te Hiku Forum negotiations alongside the Crown negotiator. When that happened Ngāti Kahu saw and understood the limits that had been put on the authority of the negotiator to be collaborative and creative

Therefore, when the time came to draft our deed of partial settlement, the hapū of Ngāti Kahu were clear in their instructions to their negotiators; they were to draft it themselves and the Government and its agents were not to be allowed anywhere near

it until it was completed. And until it was completed, the negotiators and their support team were not to return to Te Hiku Iwi Forum.

In April 2011 the first draft of this deed was sent to the Government. In May the Minister met with Ngāti Kahu to discuss it. He said that he was giving careful consideration to how he could accommodate the deed and that he wanted to go ahead with settling the claims of the other four iwi of Te Hiku o Te Ika.[89] Kaumātua were disappointed that he did not apologise for having said on national television the previous year that Ngāti Kahu could "go to hell".[90]

The same day the Minister met with the other Te Hiku iwi. The message he delivered there was very different. He told them he had rejected our deed of partial settlement.[91] Such a shameful act of treachery demonstrated clearly to Ngāti Kahu that the Government had no interest in restoring its honour or achieving any reconciliation with us. It had effectively withdrawn from negotiations.

7.5.8 Ngāti Kahu Return to the Waitangi Tribunal for the second time (2011 – 2013)

Ngāti Kahu's patience with the Government was finally exhausted. In an attempt to have the Crown's own legal system force it to do what is right and relinquish at least some of our lands to us, we returned to the Waitangi Tribunal once again. The Supreme Court had just intervened ordering the Tribunal to hear applications for binding recommendations.[92] We decided to see whether that Court's directive to allow Māori to pursue our legal rights had provided enough reassurance for the Tribunal to set aside its fear of Government retribution.

The Government retaliated almost immediately, attempting to isolate Ngāti Kahu. It had agreed to relinquish its claims to lands at Hukatere, Te Oneroa-a-Tōhē, Te Make, Tangonge, Rangiāniwaniwa, Kaitāia and Takahue, lands that Ngāti Kahu shares with neighbouring iwi. But when it drew up the deeds of settlement for those iwi, it excluded Ngāti Kahu from all those lands, severely damaging the whanaungatanga that binds

[89] Findlayson, Christopher, Letter to Professor Margaret Mutu 2 June 2011.
[90] See http://tvnz.co.nz/national-news/minister-tells-maori-protesters-go-hell-3899355
[91] Paul White, Te Rūnanga o Te Rarawa, personal communication June 2011.
[92] *Haronga v Waitangi Tribunal* [2011] NZSC 53.

all the iwi of Te Hiku o Te Ika and creating yet another modern day breach of Te Tiriti o Waitangi.

Then, in the Tribunal hearings, representatives of those iwi repaid the Government's generosity in giving them exclusive rights to lands they had only ever shared with Ngāti Kahu by turning their backs on us, their own whanaunga. They supported the Government, attacking Ngāti Kahu[93] and trampling on the mana and the tapu of our hapū and of our marae. While that was an extremely serious breach of tikanga, the deeds of settlement each of them had signed meant they probably had little choice but to publicly demonstrate their loyalty and obedience to the Government. It was yet another example of the divide and rule tactic.

Opposition from those iwi combined with the fear the Tribunal still harbours of being abolished and the dissatisfaction of some Ngāti Kahu whānau whose claims the Government continued to refuse to address were all successfully deployed by the Government to deny Ngāti Kahu's legal right to binding recommendations. Instead the Tribunal made non-binding recommendations which urged the Crown to restore its honour by relinquishing just five per cent of the lands it has stolen as a settlement of Ngāti Kahu's claims to 1865,[94] in other words, a partial settlement. The non-binding nature of the recommendations ensured that the Government would, once again, ignore them.[95] So despite the assurances Ngāti Kahu has received of the efficacy of the Crown's legal system, once again it failed to deliver justice.

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[93] See in particular the evidence of Haami Piripi http://www.docstoc.com/myoffice?q=haami%20piripi&page=1 Malcom Peri http://www.docstoc.com/myoffice?q=malcolm%20peri&page=1 Paul White http://www.docstoc.com/myoffice?q=%22paul%20white%22&page=1 and Hector Busby http://www.docstoc.com/myoffice?q=hector%20busby&page=1
representing Te Rarawa,
Waitai Peterea http://www.docstoc.com/myoffice?q=waitai%20petera&page=1
and Hugh Karena http://www.docstoc.com/myoffice?q=hugh%20karena&page=1
both representing Te Aupōuri,
Rangitane Marsden http://www.docstoc.com/docs/127295348/22-August-2012---Memo-of-Ngaitakoto-A-Iwi-Research-Unit-Trust
representing Ngāi Takoto. It must be noted that Ngāti Kurī has never acceded to the Government's wishes in this respect.

[94] Waitangi Tribunal, 2013, *Ngāti Kahu Remedies Report,* p.171 and pp.189-242.

[95] A more detailed commentary of the Tribunal's recommendations is provided in the Afterword.

The decision not to grant us binding recommendations in 2012 but rather to make non-binding recommendations based on the government's treaty claims settlement policy resulted in us applying to the High Court in 2014 to judicially review that decision. The repeated failure of negotiations to produce any results for Ngāti Kahu was proof that the Government's preferred process would not settle Ngāti Kahu's claims. And the Government's rejection of key aspects of the Tribunal's recommendations, including that the settlement be for claims to 1865 only, was proof of its unwillingness to reach a settlement acceptable to Ngāti Kahu. In 2015 the High Court ordered the Tribunal to rehear our application.

We are aware that government threats are continuing to emasculate the Tribunal in respect of making binding recommendations and to deprive us of the legal remedies that we are entitled to. We are also aware that although such threats are a very serious violation of the English Rule of Law, the government will stop at nothing to achieve its desired goal. All that is required to break this deadlock is a principled and honourable Minister of Treaty Negotiations who will replace the current treaty claims settlement policy with a policy that both Māori and the Government agree with.[96] The last Labour government had one in Dr Michael Cullen. It remains to be seen whether another one will emerge. In the meantime the remaining alternative is to simply repossess the stolen lands. Several whānau have already commenced this part of the process having lost patience with the recalcitrant and recidivist criminal behaviour of the Government.

7.5.9 Fallout from Other Iwi's Deed of Settlement – Te Hiku Kuia Kaumātua hui

As the extent of the disenfranchisement and marginalisation of many hapū and claimants became apparent once the deeds of settlement of Te Rarawa, Ngāi Takoto and Te Aupōuri had been signed and were finally available, many sought help and advice from Ngāti Kahu. Several hui of kuia, kaumātua and claimants of the five iwi were held in 2011 and 2012 on marae throughout Te Hiku o Te Ika. Large numbers attended to express their concern and anger. Complaints raised and discussed included

[96] As recommended by both United Nations Special Rapporteurs (see footnote ?? below) and the Human Rights Council of the United Nations (see footnote ?? in Chapter 5).

- kuia and kaumātua, the backbone and fonts of wisdom of our communities, being trampled on and ignored in the negotiations and the drafting of the deeds of settlement;
- whanaungatanga being cast aside and divisions amongst whānau, hapū and iwi not being addressed;
- lands of hapū being vested in iwi who are not the rightful owners;
- each of the deeds attempting to extinguish the unextinguished native title to all the lands throughout their territories;
- claims being extinguished without the authority or permission of the claimants and without being addressed;
- solemn promises made by negotiators to remedy Government atrocities being broken;
- the histories recounted so faithfully in Tribunal hearings being abandoned and replaced by Government lies;
- hapū were being redefined to suit government dictates;
- bottom lines about the return of lands being abandoned.

However the most serious complaint was the manner in which the deeds of settlement undermined the mana and rangatiratanga of the iwi and ceded their sovereignty to the Crown.[97]

The third hui asked Ngāti Kahu's chief negotiator to prepare a paper explaining how this had been done in the deeds. The paper she wrote examined each of the deeds of settlement noting the passages that asserted the Crown's indivisible sovereignty and those which ceded the mana, rangatiratanga and/or sovereignty of each iwi to the Crown. It was circulated for comment, a number of changes were made to it and it was published in the local newspaper, the *Northland Age*, in serial form in March 2012.[98]

Having heard the complaints the hui then considered the best way forward for the whānau and hapū of Te Hiku o Te Hika. The kuia and kaumātua returned to the

[97] Records of Kuia Kaumātua hui held on 17 December 2011, 7 January 2012, 18 February 2012 (records for two other hui were not kept); Waitai, Bundy, and Mere Rollo and Timoti Flavell, 2012, Press Release 'Kuia Kaumātua Reject Deeds of Settlement' 10 January 2012.

[98] Mutu, Margaret, 2012, 'Ceding Mana, Rangatiratanga and Sovereignty to the Crown: The Crown Deeds of Settlement for Te Rarawa, Te Aupōuri and Ngāi Takoto' published in the Northland Age, Kaitāia, 6 to 27 March 2012.

fundamentals and looked to tikanga and to He Whakaputanga o te Rangatiratanga o Nu Tireni of 1835 and Te Tiriti o Waitangi. They were clear that mana and rangatiratanga and hence sovereignty does not reside in iwi corporate bodies. Rather it resides in whānau and more particularly hapū. As such the numerous assertions in the deeds of settlement to the iwi corporate bodies ceding their mana, rangatiratanga and sovereignty made no sense. They didn't have it to be able to cede it. The kuia and kaumātua issued a press release urging whānau and hapū not to ratify the deeds.[99]

The Te Rarawa, Ngāi Takoto, Te Aupōuri and eventually also the Ngāti Kurī negotiators once again turned a deaf ear to many of their kuia and kaumātua. Instead they became even more shrill and strident mouthpieces for the Government, urging people to ignore their elders. With missionary-like zeal they drove through their deeds of settlement, convincing many that what they had negotiated was something they should vote for. Several Te Rarawa hapū responded by announcing that they had withdrawn from Te Rūnanga o Te Rarawa. Once again, tikanga was set aside and English decision-making processes were used instead to achieve the Government's desired outcome. The Government rewarded three of the iwi chief negotiators with Queen's honours once they had achieved ratification of the deeds of settlement for their iwi.[100] The on-going divisions and bitterness fostered by these settlements was once again on display in 2015 in the Māori Affairs Select Committee hearing. There kaumātua, kuia and rangatira from a number of Te Rarawa and Ngāi Takoto whānau and hapū expressed their vehement opposition to the legislation purporting to settle the claims of those iwi.[101] Despite repeated attempts to call negotiators to account, they continued to turn deaf ears to those who sought justice rather than government-determined settlements.

7.5.10 Government Offer (2013)

In respect of Ngāti Kahu the Government's primary concern is to prevent us pursuing justice for past and on-going atrocities through their legal system. So in 2013, at the

[99] Waitai, Rollo and Flavell, 2012.
[100] Samuel Phillips (Haami Piripi), chief negotiator for Te Rarawa and Rangitane Marsden (chief negotiator for Ngāi Takoto) were awarded Queen's Birthday honours in 2014. Henri Jacques Burkhardt (chief negotiator for Ngāti Kurī) was awarded a Queen's Birthday honour in 2015. http://www.dpmc.govt.nz/honours/lists
[101] For a live streamed broadcast of the Māori Affairs Select Committee hearing held in Kaitāia on 2 March 2015 see https://tehiku.nz/te-hiku-radio/live-stream-of-maori-affairs-select-committee/

behest of the Tribunal, it made an offer[102] to fully and finally extinguish all our claims in exchange for allowing Ngāti Kahu to purchase just three per cent of the lands it has stolen. The offer required Ngāti Kahu to cede all the rest of the lands the Government has stolen to date – some ninety five per cent of our territories – along with our mana, rangatiratanga and sovereignty. It has also offered to make us servants and advisors to its bureaucrats and representatives.

Public notices are issued regularly reminding everyone that it is Ngāti Kahu who are mana whenua and hence sovereign in Ngāti Kahu's territories.[103] The Crown is not.

7.5.11 Return to Tikanga – Repossession of our Ancestral Lands

With the Government so reluctant to restore its honour in respect of Ngāti Kahu, and the imposition and implementation of their law so unbalanced and biased against Māori as a result of the "tyranny of the majority",[104] recourse to what is right and just lies now within our own law, our tikanga. Ngāti Kahu has refused to condone the Government's criminal recidivism[105] by entering into a full and final settlement that would dishonour both our ancestors and the Crown and retain an unbalanced and dysfunctional relationship between Ngāti Kahu and the Crown. We have exhausted almost every avenue within the Crown's legal processes to bring about the peaceable relinquishment of our stolen lands and resources.

Ngāti Kahu have always reserved the right to repossess any and all our lands when and how our hapū decide to do so and in accordance with our own legal processes. Some of Ngāti Kahu's hapū are already exercising that right, upholding the mana of our ancestors and honouring the solemn agreement they entered into with the Crown in 1840. Repossessions carried out at Waikura (Maitai Bay), Rangiputa and Taipā were all done very publicly and attracted significant media attention. They also attracted a lot of support from neighbouring whānau and hapū. Many other

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[102] Letter of Chrisopher Finlayson, Minister of Treaty Negotiations, to Professor Margaret Mutu, Chair, Te Rūnanga-ā-Iwi o Ngāti Kahu, 31 July 2013.
[103] See the Ngāti Kahu Mana Whenua Mana Moana Declaration which is reproduced at the end of chapter 5.
[104] David V. Williams, 2007, The Treaty of Waitangi: A 'Bridle' on Parliamentary Sovereignty? *New Zealand Universities Review* 22 No.4 (December), p.600.
[105] Mikaere, *Colonising Myths, Māori Relaities*, pp.147-178, a chapter entitled 'Three (Million) Strikes and Still Not Out: The Crown as the Consummate Recidivist'.

repossessions were carried out quietly and away from the public gaze. They take into account that there are now two reports of the Waitangi Tribunal that have confirmed that even within the Pākehā's law, the whānau's and hapū's ancestral lands are still theirs. As such their underlying title to and the ownership of those lands that was passed on to them by their ancestors remains unextinguished. In other words the desperate attempts by successive generations of Government bureaucrats to extinguish underlying hapū title and to claim our lands for others have failed.

Conclusion

To date six generations of Ngāti Kahu have been unable to stop and then remedy the lawlessness of our English manuhiri. The current generation of kuia, kaumātua and rangatira resolved that rather than the next generation having to retread the well-worn paths we and our tūpuna trod in search of justice, that we would provide a full and detailed record for the future generations of we had done, the ground work we had laid down for a full and final settlement of all our claims and our experiences of dealing with the Waitangi Tribunal, six successive governments and five Ministers of Treaty Negotiations. This chapter has provided detail of what has transpired in the past three decades. That has included drawing up a detailed statement of the components of a full and final settlement of Ngāti Kahu's Te Tiriti o Waitangi claims, our Yellow Book that our negotiators have used as their instruction manual. The next chapter considers the compromise that this generation agreed to in order to start restoring the Crown's honour – a partial settlement of our claims.