

**BEFORE THE WAITANGI TRIBUNAL
TE ROOPU WHAKAMANA I
TE TIRITI O WAITANGI**

**WAI 262
WAI 621**

IN THE MATTER

of the Treaty of Waitangi Act 1975

AND

IN THE MATTER

of a claims to indigenous flora and
fauna me o ratou taonga katoa

Statement of Evidence of Richard Renata Niania

Dated 11 August 2006

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1.0 He kupu whakamihi

1.1 Ko Whakapūnake te maunga,
Ko Wairoa te awa,
Ko Ngāti Kahungunu te iwi.
Tihe i mauri ora!

1.2 Tū mai awa, tū mai maunga, ko koe kei takahia noatia e au.
Au, ko Ngāti Kahungunu-ki-Te Wairoa, me ōna kārangaranga iwi, hapū, whānau marae, e mihi ana ki ngā mana, ki ngā reo e pae nei, tēnā koutou katoa.

1.3 Tēnā tātou i raro i ngā manaakitanga a te Runga Rawa, i runga anō hoki i o tātou mate huhua e hinga atu, e hinga mai i te ao ki te pō. Ko te tangi mō koutou haere atu rā, haere atu rā. Haere, hoatu ki te tōnuitanga. Werohia ki waho ko te ūrauranga o te rā, kia whiti ki tua o tāwauwau ki te poho o Hawaiki, ki Rangiātea, te haupūranganga o te kauheke kaumatua ka oti atu koutou e.

1.4 Hei te iwi kāinga karanga mai. Whakatau mai rā ki ngā manuhiri waewae tapu kua tae mai nei hei tarawhānui mō te tarawhāiti o te whare kōrero o te Taraipiunara o Waitangi i tēnei wā. Tēnā koutou, tēnā tātou katoa.

2.0 He Kupu Whakataki

2.1 My name is Richard Renata Niania. I was born at Pāraeroa, in the Ruakituri Valley, Wairoa on 7 April 1954. I live at TeReinga, five kilometres east of where I was born. I was educated at Te Reinga Native School (1958 - 1967), St Stephen's School, Bombay, Auckland (1968 – 1972) and Victoria University (1973 –1975). I returned to Victoria in 1990 and graduated with a Bachelor of Arts degree in 1991.

2.2 I currently work for Kahungunu Maori Executive, which is one of four Hauora groups in Wairoa. I am a project coordinator working with many of the thirty five marae in the

district in terms of strengthening and revitalizing marae governance structures and management systems.

- 2.3 My tribal affiliations are to Te Aitanga-ā-Mahaki, Ngāriki and Te Aitanga-ā-Hauiti on my mother's side and Ngāti Kahungunu and Te Urewera on my father's side. Both of my parents are deceased. Through them I and seven brothers and sisters have whakapapa links to whanau land interests between Tolaga Bay and Wairarapa including Mangahauini (Tolaga), Mangatū and Tahora Blocks (Gisborne), Manuoha – Pāharakeke and Pāpuni Blocks (Te Urewera), Tauwharetoi, Pohaturoa and Mahurangi Blocks (Wairoa) and the Akitio Blocks in Wairarapa.
- 2.4 We spent the early years of our lives at Pāraeroa where our father was a dairy farmer and shearing contractor. During this period much of our upbringing fell to my grandparents who lived at Te Reinga.
- 2.5 From them we learned to *mahi kai*. That is, to utilize flora and fauna according to their nutritional, medicinal or spiritual values. *Poaka puihi, kouka, puha, tuna, kakahi, koura* and *kōrau* were staple foods. We were all taught how to prepare and apply *kōhai* to treat cuts and sores, *koromiko* to treat dysentery and constipation and *karamu* as a general health tonic.
- 2.6 The *tororaui* or silver belly eel was of particular significance to our Hapū, Ngāi Kohatu. This is a migrating eel or *tuna rere*. The beginning of the migration is marked by the first coloured water in mid February and continues until the March floods. During this time different families would operate eel weirs at Tauwharetoi on the Ruakituri River, at Pohaturoa on the Hangaroa River and at Mahurangi on the Wairoa River. Our grandfather taught us that like the *tororaui* we were descended from Hinekorako, the *tipuna* and *taniwha* of Ngāi Kohatu. He believed that the *tororaui* migrated to Hawaiki to renew itself and reconnect with the wairua of the numerous generations of Ngāi Kohatu that have passed over.
- 2.7 In 1963, my father became the manager of the Tauwharetoi 3B1 Incorporation, a 7,200-acre hill country block adjacent to Pāraeroa. We lived here until his retirement in 1986.
- 2.8 During the 1970s Tauwharetoi was involved with various development schemes. The

main objective of these programs was to bring undeveloped land into production. I obtained work during school holidays cutting secondary growth manuka and taihinu, chipping variegated thistle and rotor slashing *wiwi*. By this time the Pāraeroa block had been amalgamated with Tauwharetoi. By this time also Pāraeroa was covered in blackberry that stood higher than a man on a horse. As the general hand I was tasked with the spraying of blackberry here. Tordon, the 2,4,5-T and 2-4D based herbicides were the weed killers that were used and because the blackberry was so profuse the application rate ran to thousands of gallons .

- 2.9 In 1975 I left Victoria University and returned to work on Tauwharetoi until 1987 when I became a public servant with the Department of Maori Affairs. At the present time I am a member of the Committee of Management for Tauwharetoi.

3. PURPOSE

The primary purpose of my brief, on behalf of the Board's beneficiaries, is to outline to the Tribunal our concerns spraying in Wairoa lands with Tordon, and other herbicides, which are of particular concern here are those who may affiliate to the modern tribal collective of Ngāti Kahungunu ki Te Wairoa. I am also authorised to table public domain information and concerns we have with the operations of Crown Research Institutes.

4 Dioxins – 2,4,5-T & 2,4D

- 4.1 Since completing the Urewera Inquiry I as WAI 621 claims co-ordinator have been preparing our case for the Wairoa Inquiry District. During the course of that work our Counsel was also retained, and worked for the Sawmill Workers Against Poisons Inc.; a group peoples in a High Court environmental injunction action. The public domain information that came out of that case alerted us to the potential danger in the use of dioxin chemicals to treat wood, (we have two sawmills in Wairoa) and the downstream affect of pollutants that arise from said activity. That case also made us aware of the impact such contaminants have once they enter waterways and are ingested by tuna/eel. Attached to this brief, **marked "A"** is a copy of Dr C Mitchell's affidavit filed in the SWAP case, at paragraph 3.1 he states

... ***.Longfinned eels are the top predator in [Ne sic] furthestmost inland reaches of New Zealand river systems***

and at para 3.4

... ***Unfortunately, fat-soluble bioaccumulating chemicals such as Dioxins ., DDT metabolites and methyl mercury make eels risky eating in modern New Zealand. As very long-lived , high fat content , top predator fishes , eels are clearly the worst possible species to harvest from dioxin contaminated systems ...***

In that case exhibited to 3rd Affidavit of plaintiff Mr Harawira were two documents issued by the local Health Board and Medical Officer that highlight this modern day health hazard (attached **marked “A1” and “A2”**)

4.2 This then lead us to an examination of dioxin chemicals in agric-chemical usage in our district . This then lead to Counsel meeting with New Plymouth ex IWD worker Neil Herdson (Executive member of Paritutu dioxin affected residents and IWD ex-workers action group “DIAG”); in an examination of the IWD Paritutu industrial pollution case. From SWAP, from DIAG, and a Board meeting with Wai 861 claimants co-ordinator , Mr R Nathan we have in the last 8 months assembled a fairly formidable set of documents that gave rise to our flora and fauna concerns expressed in our application for joinder and in our additional SOC filed on 24 July 2006.

4.3 I note that in a wordsearch of the supplied transcript of the past 14 hearing Weeks of this inquiry there is no reference whatsoever to the 2,4,5-T, 2-4D, or herbicide related aspects of the use of this as a agric-chemical. We felt this ***take / issue*** was of such magnitude, and given the Tribunals direction to examine the Crown’s policies and practices in regards flora & Fauna issues arising since 1975, that this inquiry was our sole opportunity to raise this matter as a Treaty grievance. We do not pretend that this is a matter that solely applies in the Wairoa district, but on the documentation we have gathered, our discussions with various parties; and based on my experience working the lands here in Wairoa it was right and proper that we put to this inquiry what we know, see what the Crown has to say in response; and what a Treaty based

Court decides is, was, or is, was not appropriate Treaty conduct on the part of the Crown.

- 4.4 Attached, **marked “B”**, is an extract from the 1986 NZ Listener article of 2,4,5T authored by a Ms Sue Mc Taggart copy of a cablegram and draw this Courts attention to the words

“Only South Vietnam has been doused with more 245-T than is sprayed in New Zealand ...”

All I would add to that is Agent Orange (a mixture of 2,4,5-T and 2-4D) was used in wartime to remove ground cover from the enemy so as to kill them it was war. In Aotearoa New Zealand the Crown permitted in peacetime from 1967-1987, an estimated 11000 tonnes (cf. 22000 tonnes) used in Vietnam. So the question must be asked does Aotearoa New Zealand have within its food chain half the damage and harm done in Vietnam in the name of war. This amount of tonnage is estimated from using the data obtained via published articles but most pertinently from internal IWD correspondence such as that annexed hereto **marked “C”** which is a copy of a letter dated 26 November 1984, from IWD Research manager, B Moffat to Professor Dr Wasserman, University of Otago, Toxicology Research Unit , Dunedin, which states

“(8) The volumes vary from year to year but in general terms our annual production is in the order of 800 tonnes of 2,4,5-T with 200 tonnes being exported and the remainder used in New Zealand”¹

- 4.5 Attached, **marked “D”**, is an article authored by Dr Mann and Professor Elliott (HOD paediatrics Auckland Medical School). In this article they write ...

“ As the scientists who first (1971) pointed out to the New Zealand public the potential for birth defects caused by the dioxin in the herbicide 2,4,5-T we would like to draw together main facts at this late stage in the career of a chemical”

....

“ Some farming districts in New Zealand had higher densities of dioxin-containing 2,4,5-T aerially sprayed upon them than the total attributable to Agent Orange (50:50 2,4,5-T/2-4D) in Vietnam.”

....

“One of us (R.E) discovered that the birth defect rates across Northland were correlated with the 2,4,5-T spray densities from one coast to another”...²

4.6 Of additional serious concern is the recent article published by the Research School of Public Health , Massey University , Wellington Campus (Sept 2004) [article attached **marked “E”**] wherein the authors concluded that , after an examination of 1728 persons engaged in the production and spraying of phenoxy herbicides there was a 24% increased risk of cancer related mortality. The authors stated

“Results showed 24% non-significant excess cancer mortality in phenoxy herbicide with a significant excess for multiplemyeloma”

And after an interesting technical discussion section the authors noted at the end of the article ...

...”. this historical cohort in New Zealand phenoxy pesticide producers exposed to chlorophenoxy herbicides and TCDD showed increased cancer mortality risks for departments with complex exposure profiles occurring during production process”

4.7 This coupled with the evidence as adduced in the SWAP case by freshwater fisheries expert Mr C Mitchell, lead us to a serious concern as to the potential if not actual continuing harm done when eel as the best bio-accumulators / ie vacuum cleaners in sucking these dioxins into their fatty tissues, may well mean that what occurred in Sydney recently could , may in fact be happening , to those of us who consume the tuna from caught in our waterways. This bioaccumulation process has been to our mind proven beyond a reasonable doubt with the recent publication of blood serum results for Homebush Sydney, Australia fisher families [see article attached **marked “F”**].

¹ Copy supplied by N Herdson, [ex Union Secretary, IWD], New Plymouth

² Copy supplied by R Nathan, Wai 861 Hapu claims committee.

4.8 I have read copious government publications³ on dioxin however in an attempt to keep this brief of evidence succinct, the report entitled **“Ngaa Matitapu o te Haakino”** published by Greenpeace NZ is attached **marked “G”**. That report describes in 23 pages exactly our concern for human life well-being, and that of Maori in particular may well have been damaged by the manufacture, disposal and use of the herbicide defoliants 245-T and 2-4D. Leaving aside the colourful language and any perceived bias of Greenpeace, this report by footnoted evidence and the material cited in its references canvasses in our view a readable and understandable fashion, the last 18 year old debate fairly well, and warranted exhibiting in full. It is of some relevance in our view that it is the only one we have seen that examines the statistics with Maori & non-Maori comparisons clearly shown. See for example the chart at page 17 where Dioxins from a serum in Maori and Non=Maori are shown. See also the breast cancer pie chart at page 21. To place all this data in a global context to this issue we have annexed the first (contents and summary) parts of an international study commissioned by the United Nations Environment Programme, the ILO, the WHO, Geneva which at para 1.1.5 states as regards human health effects of these chemicals states

“PCDDs and PCDFs occur throughout the environment and we all probably carry a body burden of them. They have sometimes produced complex toxic effects following occupational and accidental exposure.... However the uncertainties related to the real dose received by humans and the difficulties of assessing toxic effects other than chloracne in humans prevents a firm conclusion as to the relative resistance of humans to the toxic effects of these compounds”⁴

4.9 It really was not until documentation arrived from the DIAG (New Plymouth Paritutu residents) people (our thanks to Mr A Gibbs and Mr N Herdson) made available to us photocopies of 1981correspondence of the New Zealand Agricultural Chemicals Board with its attached the NZ Ottawa / Canadian Embassy cablegram advice to NZ health department that we began to question the then Crown’s failure to protect us our lands our flora and fauna⁵. We read in that cablegram note phrases like

... Mr Whelan explained that because Agriculture Canada was the first agency in the world to discover dioxin contamination of 2,4D there

³ “Investigation of Organochlorine Contaminants in the milk of NZ Women” April 2001, Ministry of Health , M Bates, B Thomson, N Garrett ESR; “ Evaluation of toxicity of dioxins and dioxin-like PCBs A Health Risk appraisal for NZ population” Min. for Environment, Feb 2001; and others

⁴ Downloaded and printed copy of extract cited annexed **marked “H”**

was incomplete information available on what the presence of dioxins means in terms of health

This then at the very least ought to have been made known publicly at the time., certainly the Crown knew as at 1981 the uncertainty and the gravity of the situation. When one couples that with the early publicity surrounding Professors Elliott & Mann, and one must seriously question the Crown's role in Aotearoa New Zealand in permitting the continued usage of 2-4D esters, 245-T in the agri-chemical industry.

4.10 More legalistically we instructed our Counsel to look at if indeed these pollutants result in said human health damage where is there provision for ACC or medicare for those of our peoples who are suffering non-workplace related gradual process disease caused by eating this rubbish. Our Counsel's work with SWAP yielded a public statement [attached **marked "J"**], that summarises the Crown measures taken to date for those communities affected by dioxin contaminated workplace and we draw attention to the health matters listed at page 3 of that statement which speak of dedicated free health care clinics, access to specialists, fee reductions. Our Counsel met and discussed Agent Orange issues with a ex-Major J Moller of the NZ Vietnam Veterans Association, and amongst the huge amount of documentation supplied to us was an 11page paper prepared by the association in 1990 seems to encapsulate that communities struggle for justice [attached **marked "K"**]. When one couples that data with the Diag and SWAP data, one can only agree with the cited statement from an Agent Orange affected family in the NZ Herald on 7 /8/06 that their decision to have children was akin to playing "Russian Roulette"⁶. Mr Griffiths made this statement after the publication last week by Massey University, that after studying 24 Vietnam veterans exposed to Agent Orange during wartime, there was DNA damage and it was passed on to subsequent generations. A copy of the "Participants Report" issued by Massey University behind this newspaper article, has been supplied to us this very morning of signing off of this brief (our thanks to NZ VV Assoc. Past President J Moller). It is attached electronically in full without any labelling (i.e. too late for us to scan with an attachment label) but the data is we submit of such relevance to the implications of the impact of 2,4,5-T and 2,4D on Aotearoa flora & fauna, me nga taangata, it ought be considered in full. In reading this report we , and I do not pretend to be molecular scientists but

⁵ Copy of said documentation annexed **marked "I"**

⁶ Hearld article copied off internet attached **marked "L"**

words in conclusion[are plain] they read ...”***there is an indication that these men may have incurred genetic damage***” ... the summary of diseases accepted as linked to 245-T & 2,4D exposure at paragraph 2.4, and finally at paragraph 4.2 dealing with Children of NZ Vietnam War veterans the authors write ...

Whilst not wanting appear alarmist, inherited genetic damage can be passed on to the next generation...

5. TAKE TWO – Crown Research Institutes

5.1 As a matter of maintaining existing good business relationships the WAI 621 claimants have resolved to support the wishes of Ohuia Incorporation and not go in any detail as regards the actual operations of a Crown Research Institute known as Hortresearch here in the Wairoa region. Rather we wish by way of this brief make our concerns known in regards the apparent lack of Crown statutory direction that as a matter of Treaty relationship there be requirements upon CRIs to deal with Maori to guarantee that there be in regards mutually generated intellectual property, there be mutual ownership, governance which as a direct consequence mean mutually ongoing sharing of royalty or licensing income.

5.2 We note from a discussion paper entitled “*Bioprospecting in New Zealand*” issued by Ministry of Economic Development , November 2002 [extract attached **marked “M”**] as a matter of a proposed over-arching policy objective for bioprospecting MED stated ...

To ensure New Zealand takes advantage of economic development opportunities and other benefits from the bioprospecting of our biological resources , while safeguarding associated environmental, social and cultural values, by :

- ***establishing clear rules about access to biological resources on Crown-owned / managed areas;***
- ***ensuring bioprospecting policy recognises the principles of the Treaty of Waitangi ;***
- ***etcetera (3 other bullet points)***

- 5.3 We note also the Crown policy encapsulated in the policy framework that is implemented today via Vote Research , Science and Technology in particular as expressed in the document “Vision Mataranga” which as a 32 page booklet can be found on the MoRST website (copy attached **marked “N”**); and whilst we acknowledge such policy as 21st century forward thinking this still does not go far enough it leaves Maori to the whim of free-market negotiations with CRIs who in many cases hold all the western scientific cards. The policy relationship needs codifying into statute.
- 5.4 Unlike State-owned Enterprises CRI legislation contains no Treaty principles section, however when one views recent Treasury papers to Cabinet [example attached **marked “O”**] one begins to question even with Treaty principles in legislation is the Crown by way of policy avoiding them.
- 5.5 The Board has been itself investing in commercial kumara pilot projects, however direct joint venture operations with a Crown Research Institute have only been undertaken by Kahungunu ki te Wairoa Maori via their ownership in a land incorporation known as Ohuia [see attached extract from Hortresearch Annual Report 2005, **marked “P”**]. The Board respects the contractual privacy of that incorporation and wishes to direct the Tribunal’s inquiry towards the lack of legislative Treaty protection in that arena. We have endeavoured via a number of sources, in particular Maori scientists, and Federation of Maori Authorities engaged in CRI related activity to source documentation which best evidence our concerns as regards the protection of matauranga Maori which over generations makes us kaitiaki of our lands, quite likely the best intellectual property type knowledge concerning those lands and their unique climates from being exploited in a fashion which sees no proper and fair return for our beneficiaries. However at this stage this is the best we could do , but if material requested arrives we may endeavour to table that by further brief.

Dated this 11th day of August 2006

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R Niania - Deputy Chairperson Wairoa Waikaremoana Maori Trust Board