HE WHAKAARO HERE WHAKAUMU MŌ AOTEAROA.

THE REPORT OF MATIKE MAI AOTEAROA - THE INDEPENDENT WORKING GROUP ON CONSTITUTIONAL TRANSFORMATION.

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HE MIHI.

E ngā mana, e ngā reo, e ngā mātāpunawai o ngā mata-ā-waka, e ngā tohunga o te kī, e ngā kaihakairo o te kupu, e ngā puna roimata, e ngā tāmariki, mokopuna puta noa i te motu he mihi aroha, he mihi rangatira tēnei ki a koutou i whai pānga ai ki tēnei taonga ko waihangatia hei huarahi anga mua mō te motu whānui i roto i ngā here whanaungatanga katoa.

He hokinga mahara ki te hunga nā rātou te huarahi i para, nā rātou te kaupapa i hakaarotia, nā rātou te mahara i whao ki ō tātou hinengaro, ko ō tātou tūpuna ēnā. Haere mai haere koutou. Ko koutou rā ko ngā kaiwhatiwhai kōrero, ko te aweawe o te rangi, ko te aweawe o te whenua. Kia tū pea mai kia piri, kia tū pea mai kia tata. Ka whitirere-ā-manu ki te paepae o Uenuku. Ka tahuri ō koutou mātakitaki mutunga ki te ao mahue ake nei koutou, ka wheriko, ka nunumi ki tua. E moe, e moe, e moe mai rā koutou.

Hāunga tēnā me mihi anō ki te hunga kaiamo i te kaupapa, e kara Moana e te tuahine Mākere, nā kourua te hakamomori kia puta ai tēnei pūrongo ataahua te takoto o te kōrero, hōhonu te hakaaro, piripono ki ngā mātāpono o ō tātou tūpuna.

E te iwi whānui, puritia ēnei taonga kia titī ki te hinengaro, kia ngoto ki te whatumanawa hei raukura hakaatu ki te ao.

- Hone Sadler, Kaumātua, Matike Mai Aotearoa.

The Working Group on Constitutional Transformation would not have been able to undertake its mahi without the support of many people and organisations. We are grateful first of all to the Iwi Chairs' Forum and the other Iwi and Māori organisations which have supported the Project. The commitment to even embark on the discussion of constitutional transformation was an honourable tribute to the tīpuna who have so often raised the issue since 1840 and a mark of trust in the awareness and insight of our people.

We are of course equally grateful to everyone who participated in the Project. The thoughts you shared about Te Tiriti and the possibility of a transformative constitution were thoughtful and considered as well as imaginative and wise. Your willingness to respond with good humour and common sense to what some might see as its daunting complexity while coping with the undoubted frustration of ongoing Crown inaction was inspiring.

The Working Group is especially grateful for the generous financial support given to us throughout the whole of the Project by the J. R. McKenzie Trust. The Board and the Kaitohutohu Mārama Takao have been considerate and kind in their commitment to the work we have tried to do and the implications it might have for everyone in this country. Thank you.

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We also acknowledge the support which our rōpū rangatahi, Matike Mai Aotearoa Rangatahi received from the United Nations Small Grants Fund for Projects Implementing the Declaration on the Rights of Indigenous Peoples. The fact that the UN Permanent Forum on Indigenous Issues was willing to acknowledge our work in this way was particularly gratifying. For their support of the rangatahi group we would also like to thank Te Putahi a Toi, School of Maori Studies at Massey University and community group Te Ata Kura, Society for Conscientisation.

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The burdensome work of Group Secretary was originally undertaken by Catherine Murupaenga-Iken and we are grateful for her help, especially in organising the logistics of our early hui and planning. The role was later undertaken by Kayleen Neho whom we thank for her dedicated and supportive mahi that frequently went beyond the call of duty. Kayleen also transcribed all of the discussions we attended and was helped in this work by Tira Ruru. Thank you both for managing that laborious task with efficiency and surprising good humour.

Finally, we would to thank Tamatea Kopua for designing the logo for the Working Group which was used throughout our mahi and is now featured at the front of this Report. He tino mihi e te hoa.

Ngā mihi ki a koutou katoa.

Margaret Mutu, Chairperson. Moana Jackson, Convenor.

THE REPORT OF MATIKE MAI AOTEAROA – THE INDEPENDENT WORKING GROUP ON CONSTITUTIONAL TRANSFORMATION. EXECUTIVE SUMMARY.

Matike Mai Aotearoa, the Independent Working Group on Constitutional Transformation, was first promoted at a meeting of the Iwi Chairs' Forum in 2010. The Terms of Reference given to the Working Group were deliberately broad –

> ***"To develop and implement a model for an inclusive Constitution for Aotearoa based on tikanga and kawa, He Whakaputanga o te Rangatiratanga o Niu Tireni of 1835, Te Tiriti o Waitangi of 1840, and other indigenous human rights instruments which enjoy a wide degree of international recognition".***

The Terms of Reference did not ask the Working Group to consider such questions as "How might the Treaty fit within the current Westminster constitutional system" but rather required it to seek advice on a different type of constitutionalism that is *based* upon He Whakaputanga and Te Tiriti. For that reason this Report uses the term "constitutional transformation" rather than "constitutional change".

A Forum Representative, Professor Margaret Mutu, was appointed the Working Group Chair and Moana Jackson was invited to be its Convenor. Members of the Working Group were nominated by Iwi and other organisations or were co-opted. The Chairperson and Convenor facilitated 252 hui between 2012 and 2015. The rōpū rangatahi that was convened by Veronica Tawhai presented 70 wānanga.

The Working Group also invited written submissions, organised focus groups, and conducted one-on-one interviews. The views we received canvassed a number of topics such as the relationship between Te Tiriti and democracy, what is meant by a treaty relationship, what is a constitution, and other related issues such as –

- The meaning of tikanga and its constitutional relevance.
- The relationship between the Hapū referred to in Te Tiriti and the current Crown policy emphasis on Iwi.
- The effects of increasing immigration on the Tiriti relationship.
- The ongoing implications of the emigration of our people overseas.
- How to engage with others to progress the kaupapa.

This Report synthesises those views and acknowledges both the complexity of the issues our people were asked to address and the insights which they brought to the whole kaupapa. It also recognises, as our people did, that there will be opposition to the ideas presented and that more work needs to be done. This Report should be read as part of an ongoing dialogue into the future. We stress however that it is not a new dialogue as the kaupapa of constitutional transformation has been part of Māori political debate for over 170 years.

The first issue which the Report considers is whether the Terms of Reference were in fact valid grounds for advocating and developing a process of constitutional transformation. In the view of the Working Group history clearly indicates that they are, and that prior to 1840 Iwi and Hapū were vibrant and functional constitutional entities. That is, they had the right, capacity and authority to make politically binding decisions for the well-being of their people and their lands.

The second issue covered in the Report is the historical and contemporary relevance, in constitutional terms, of tikanga, He Whakaputanga, Te Tiriti, and other indigenous instruments. On this matter our people were clear – they were fundamentally relevant because they all express the right for Māori to make decisions for Māori that is the very essence of tino rangatiratanga.

For that reason this Report does not consider in any great detail the contrary views that the Crown has maintained since 1840, and especially its presumption that Iwi and Hapū ceded sovereignty in Te Tiriti. We simply note that they have always been at odds with Māori understandings. Our Terms of Reference were based upon those understandings and we proceeded upon that basis.

The third task for the Working Group arose from the participants' belief that a constitution had to be based on certain values. For example the equality provided for in Te Tiriti was itself seen as a value while others ranged from the importance of the land to a belief that a constitution should enhance the sense of belonging that Te Tiriti reaffirmed for Māori and offered to others. Others related to constitutional conventions such as transparency and mechanisms to ensure that the authority of Māori was not subordinated to that of the majority.

The predominance of the discussions about values indicated that in the view of participants a constitutional model (or models) can only be properly developed once there is clarity about the values it should be based upon. The Working Group accepts that view and notes that the Rangatahi Report which is attached is devoted entirely to suggested constitutional values – it was the major topic at all of their wānanga.

It is also our considered view that the identification of such values indicates a very real desire for a more open constitutionalism and what we describe as a conciliatory and consensual democracy rather than an adversarial and majoritarian one.

In the final Part of the Report the Working Group draws some conclusions and attempts to translate the kōrero about the nature, foundations and values of a constitution into a vision for constitutional transformation. It also describes six indicative constitutional models that have arisen from the kōrero.

We describe the suggested models as indicative because they indicate what models might best ensure the values involved in tikanga and the Tiriti relationship. We also call them indicative because they simply indicate the range of possibilities that are available for those who really want a good faith honouring of Te Tiriti.

It is hoped that the models might at least provide some options for the discussions which lie ahead. They would obviously need to be given detailed consideration, including the financial implications, before any final choice is made. The discussions may even produce an entirely different model.

The underlying kaupapa behind each model is that tikanga and our own history always recognised the independence of each Iwi and Hapū. The only restraint on that independence was the further and unique tikanga of interdependence – that is the belief that whakapapa ultimately bound everyone together and that any concept of constitutional and political authority was reflective of that.

The other kaupapa underlying the suggested indicative models is that Te Tiriti envisaged the continuing exercise of rangatiratanga while granting a place for kāwanatanga. It provided for what the Waitangi Tribunal recently described as “different spheres of influence” which allowed for both the independent exercise of rangatiratanga and kāwanatanga and the expectation that there would also be an interdependent sphere where they might make joint decisions.

We call those spheres of influence the “rangatiratanga sphere”, where Māori make decisions for Māori and the “kāwanatanga sphere” where the Crown will make decisions for its people. The sphere where they will work together as equals we call the “relational sphere” because it is where the Tiriti relationship will operate. It is the sphere where a conciliatory and consensual democracy would be most needed.

The six indicative models are –

1. A tricameral or three sphere model consisting of an Iwi/Hapū assembly (the rangatiratanga sphere), the Crown in Parliament (the kāwanatanga sphere) and a joint deliberative body (the relational sphere).

2. A different three sphere model consisting of an assembly made up of Iwi, Hapū and other representation including Urban Māori Authorities (the rangatiratanga sphere), the Crown in Parliament (the kāwanatanga sphere),and a joint deliberative body (the relational sphere).

3. A further three sphere model consisting of an Iwi/Hapū assembly (the rangatiratanga sphere), the Crown in Parliament (the kāwanatanga sphere), and regional assemblies made up of Iwi, Hapū and Crown representatives (the relational sphere).

4. A multi-sphere model consisting of an assembly of Iwi/Hapū and other Māori representation (the rangatiratanga sphere) and the Crown in Parliament (the kāwanatanga sphere). It also includes a relational sphere which would have two parts – a constitutionally mandated set of direct Iwi/Hapū/Crown relationships to enable direct Iwi/Hapu-Crown decision-making plus a unitary perhaps annual assembly of broader Māori and Crown representation.

5. A unicameral or one sphere model consisting of Iwi/Hapū and the Crown making decisions together in a constitutionally mandated assembly. This model does not have rangatiratanga or kāwanatanga spheres. It only has the relational sphere.

6. A Bicameral Model made up of an Iwi/Hapū assembly and the Crown in Parliament. This model has distinct rangatiratanga and kāwanatanga spheres but has no provision for a relational sphere.

Some similar models have been considered before of course but the kōrero we have has suggested substantial and substantive refinements. Perhaps the most important of those is the jurisdictional positioning of the relational sphere and the overarching constitution itself upon values drawn from tikanga Māori while recognising the integrity and independence of both rangatiratanga and kāwanatanga in their respective spheres.

The Working Group recommends:

1. **That during the next five years Iwi, Hapū, and other lead Māori organisations promote ongoing formal and informal discussions among Māori about the need for and possibilities of constitutional transformation.**

2. **That such discussions also be included as an annual agenda item at national hui of lead Māori organisations such as the Waitangi hui of the Iwi Chairs' Forum.**

3. **That a Māori Constitutional Convention be called in 2021 to further the discussion and develop a comprehensive engagement strategy across the country.**

4. **That at an appropriate time during the next five years a further Working Group be appointed to begin consideration of relevant structural and procedural issues as they pertain to Māori.**

5. **That at an appropriate time during the next five years Iwi, Hapū, and lead Māori organisations initiate dialogue with other communities in their rohe about the need for and possibilities of constitutional transformation.**

6. **That at an appropriate time during the next five years Iwi, Hapū, and lead Māori organisations initiate formal dialogue with the Crown and local authorities about the need for and possibilities of constitutional transformation.**

7. **That in 2021 Iwi, Hapū, and lead Māori organisations initiate dialogue with the Crown to organise a Tiriti Convention to further discussions about the need for and possibilities of constitutional transformation.**

We believe that 2040 would be a good year to set as a goal for some form of constitutional transformation. We accept that task will not be easy but what is available to both Māori and the Crown from the kōrero we have been privileged to hear is the very real generosity of spirit which our people continue to display. In spite of all that has happened there is still good will and a belief that the many obstacles to transformation can eventually be overcome and a new constitution established. It would be fair to say that throughout the last four years of discussion people did not see that as some pious hope but as a legitimate treaty expectation.

THE BACKGROUND TO THIS REPORT.

Matike Mai Aotearoa, the Independent Working Group on Constitutional Transformation, was formed at a meeting of the Iwi Chairs' Forum at Haruru in February 2010.

The reasons for its formation have historic origins because ever since 1840 Māori have tried to ensure a respectful and equal constitutional relationship with the Crown as promised in Te Tiriti o Waitangi. That has not occurred of course as the history and consequences of colonisation too clearly show.

Yet Māori have never abandoned the treaty promise. Whether it was the establishment of Kotahitanga or the Kīngitanga, or the discussions prior to the first sitting of the Māori Parliament at Waipatu in 1892, or even the establishment of Māori Congress nearly a century later, the kaupapa of constitutionalism as a way of Māori making Māori decisions was always present.

When the Iwi Chairs' Forum was established at a National hui held at Takahanga Marae in Kaikoura in 2005 it was the latest step in that history of revalidating tino rangatiratanga and seeking a proper treaty-based relationship with the Crown. Indeed its main aim then, as now, was to provide a vehicle through which Iwi might share information and support each other in matters of common interest as they pertained to the Crown.

The Forum respects the rangatiratanga of each Iwi while recognising both the need for a united voice on various issues and the shared goal of Mana Māori Motuhake. It seeks co-operation and the restoration of Māori control over matters affecting the lives of Māori.

Shortly after its establishment representatives from the Forum established a process of meeting with Ministers and officials of the Crown but by 2010 it was concerned about the lack of progress being made on key issues such as water use and management, the environment, housing, education, welfare, and treaty settlement policy. In some cases such as the foreshore and seabed any options offered by Māori simply seemed to be ignored or subordinated to Crown policy imperatives.

After much consideration a sense in fact developed that the lack of progress in achieving specific Māori-centred objectives was not just due to Crown disinterest. Neither was it due to a disjunction between the policy aspirations of the Crown and Māori. Rather it was felt that a more fundamental imbalance existed between the Crown's exercise of constitutional authority and the constitutional powerlessness of Māori.

That realisation was not a new one of course, and Forum members were all acquainted with the long struggle against the exercise of unilateral Crown power ever since the signing of Te Tiriti o Waitangi. Indeed the very notion of Crown breaches of the Treaty is at its base a question of constitutionalism and the use or misuse of the power taken by the Crown in 1840.

In order to respond to that situation the Forum sought advice on a number of constitutional issues. At the August 2009 hui of the Forum at HopuHopu Judge Caren Fox presented a thoughtful and considered Paper "Change, Past and Present". The Paper noted that historically Māori were familiar with the notion of political autonomy and had long developed a fluid and dynamic constitutionalism that provided a natural "rhythm" and order to Māori society.

At the next Forum hui at Haruru in February 2010 reference was made to another Paper "Constitutional Transformation" that had been written by lawyer Moana Jackson in which the concepts of a Māori constitutionalism were further explained. After more discussion a constitutional plan of action was proposed including a decision to form an Independent Constitutional Transformation Working Group.

A Forum Representative, Professor Margaret Mutu, was appointed its Chairperson. The Forum also resolved to approach Moana Jackson to convene the actual work of the Working Group.

It was also decided that membership of the Working Group would consist of Iwi and other representatives chosen for their tikanga or constitutional expertise. Extra members could be co-opted from time to time, and kaumātua and kuia would also be approached for advice and guidance.

Because of funding restraints and the other commitments it was decided that the Chairperson and Convenor would facilitate any process developed to engage with our people on the kaupapa. Other members would assist at hui in their rohe. It was also agreed that the Working Group would meet as and when required and contributing members were to be available for specific advice and guidance. The Contributing members of the Working Group are listed in Appendix One.

The Working Group Terms of Reference:

The Terms of Reference given to the Working Group are deliberately broad –

> ***"To develop and implement a model for an inclusive Constitution for Aotearoa based on tikanga and kawa, He Whakaputanga o te Rangatiratanga o Niu Tireni of 1835, Te Tiriti o Waitangi of 1840, and other indigenous human rights instruments which enjoy a wide degree of international recognition".***

However the Terms of Reference are also quite specific. They do not ask the Working Group for example to consider such questions as "How might the Treaty fit within the current Westminster constitutional system" or "How might Māori representation be adequately addressed within the existing Parliamentary framework"? Rather they require the Working Group to seek advice and invite discussion on a different type of constitutionalism that is *based* upon He Whakaputanga and Te Tiriti. It is for that reason that this Report uses the term "constitutional transformation" rather than "constitutional change".

The latter is commonly used only when considering what reforms might be made to the existing Westminster system by co-opting or giving some recognition to Te Tiriti within it. "Transformation" on the other hand suggests an ideal of constitutionalism which does not assimilate Te Tiriti but rather derives from and gives more effective expression to it.

The reference in the Brief to a "model" for an inclusive constitution is predicated on that understanding and is informed especially by the need to consider "tikanga" and "kawa". These terms imply a more transformative approach and also suggest that emphasis should be placed on the broader values which would inform any model or models.

The Terms of Reference do not require the Working Group to draft a substantive constitution. That was rightly seen as a matter for further discussion after the initial Working Group process is completed. Neither were we asked to give detailed consideration to practical structural issues such as the franchise, the costings, the possible jurisdictional issues, nor the relative merits of a written or unwritten constitution. Those matters were discussed but often as part of a general kōrero about what was meant by a Tiriti-based constitution or the more philosophical debate about how to balance the authority of rangatiratanga and kāwanatanga.

Organisation of the Working Group:

Discussions with prospective members of the Working Group were held throughout 2010 and several weekend strategy meetings were held during 2010 and 2011. The Group then held its first formal planning meeting at Waipapa Marae on January 21, 2012.

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At that meeting a Finance Committee was established to seek independent funding to augment Iwi support. A rōpū rangatahi was also set up to engage with young people. Veronica Tawhai was asked to co-ordinate the work of the rangatahi which was eventually organised in thirteen different regions. The regions are listed in Appendix One.

The meeting also began the detailed planning to engage with Māori through hui, focus groups and interviews. It also discussed a communications strategy and the preparation of fact sheets, surveys, questionnaires, and a Constitutional Primer. The Work Plan is attached as Appendix Two.

At subsequent and substantive planning meetings the Working Group discussed the complex issues raised by its Terms of Reference. It accepted that the task ahead might be difficult because the only constitutional model most people know is the Westminster system established by the Crown. It seems to be the only constitutional reality and it brooks no questioning of its primacy except on peripheral matters such as its operation or its composition and suffrage. In its stubborn presence it simply seems immoveable and unchallengeable. However we agreed that it was that very reality which we were being asked to address. Constitutional transformation required that we attempt nothing less.

The Group therefore sought particular advice on some of the constitutional strategies that Māori had adopted since 1840. It received Briefings on the formation of Kotahitanga and the Māori Parliament, and the history of the Kīngitanga. It also held a workshop on the three National Constitutional hui convened at Hīrangi in 1995 and 1996.

At subsequent Planning hui a literature review was also commissioned on international indigenous examples of government and the various constitutional ideas developed by other indigenous nations. A Report was also received on the Constitutional Issues Conference held at Parliament in 2000.

What was perhaps most pertinent to the Working Group's actual planning however was an awareness that even discussing a constitution might not be a high priority for people who are burdened with the stresses of everyday life and its too frequent poverty and ill-health. We

presumed that it probably did not even feature among the most urgent concerns of our people.

Yet we also believed that while it might not be an immediate priority the actual exercise of constitutional authority impacted on everything in our people's lives from the decisions that determine the cost of taking their children to the doctor to the sending of their young men and women into combat. Everything was a constitutional decision and if they did not know the constitutional rhetoric they would certainly live its effects.

That indeed proved to be the case. The wide range of people who responded to the invitation to kōrero with us had an almost instinctive grasp of constitutional matters and their effects on them. They certainly also knew what it was in everyday terms, and, most importantly, what it was meant to be in treaty terms.

The Working Group also accepted that some Pākehā would see the process as divisive and threatening. Most would probably dismiss it as "unrealistic". On many occasions those views were conveyed to us. Yet we also believed that many others would accept that Te Tiriti is about a constitutional relationship, as every treaty is, and that there would be interest in the outcomes of our deliberations. That also proved to be the case and we have appreciated that understanding.

The Aims of the Working Group:

As part of the Work Plan the Working Group members had to clarify its aims while being aware of the frustrations which had led to its establishment. Throughout our mahi those frustrations continued to surface as various Crown initiatives continued to adversely impact upon Iwi and Hapū. One obvious aim was therefore to reduce the frustrations by finding a more constitutionally transformative relationship with the Crown according to our Terms of Reference.

At the same time the Working Group acknowledged that Te Tiriti is not just a constitutional document. It is also about the wider social and cultural relationships between Māori and everyone else in this land. Thus while our initial priority was to focus on hui with Māori we also set a longer-term aim of encouraging all New Zealanders to seek a more inclusive understanding of the relationships that are meant to be constitutionally acknowledged through Te Tiriti.

As a first step the Working Group accordingly resolved to ask Māori to contribute to a discussion aimed at creating a future environment:

- where Māori as the indigenous people of Aotearoa are fully recognised and respected in constitutional, political, social, cultural and economic terms;
- where tikanga and mātauranga Māori, He Whakaputanga and Te Tiriti are a part of the natural order of the country
- where Iwi and Hapū are able to exercise their own mana while working in co-operation with others
- where all peoples have a respected constitutional place in this country as envisaged in Te Tiriti
- where a constitution for good, just, and participatory government for and by all peoples is consistent with those values and benefits everyone in the changing demographics of this country
- where all New Zealanders can prosper and celebrate our heritage;
- where Māori can contribute positively to the growing international interest and activity around constitutional transformation encompassing the rights and authority of indigenous peoples.

The Working Group's Engagement Process:

The Working Group originally intended to have thirty representative hui throughout the country. However because the Group also wanted to develop an outreach programme that would involve a broad cross-section of Māori it quickly became clear that both the number of hui and the time for them would need to be extended.

The Working Group eventually held 252 hui between 2012 and 2015. They were held on marae, in kura, in hauora and social service clinics, in wānanga and universities, in disability centres, in law offices, in Trust Board offices, in gang pads, and in private homes.

The rangatahi group organised four national training hui for their members to develop their presentation. The presentations were then organised on a rohe basis with different groups implementing the programme in wānanga with youth organisations, kura, universities, marae, and a prison.

The report on the findings of the rōpū rangatahi is attached as Appendix Three.

All of the hui were recorded and transcribed and this Report is a synthesis of those transcripts as well as the written submissions and completed surveys. It provides some indicative trends noted in the responses as well as the most common views about the constitutional expression of tino rangatiratanga.

There was naturally a wide range of views expressed at the hui. Some were a result of the different traditions of Iwi while others were shaped by the experience of living away from the hau kāinga, sometimes for generations. On occasion they were reminders of historical conflicts between different Iwi and Hapū. At other times they were influenced by the participants' involvement in current political Parties, in Parliament, or in other political and activist movements.

Other life experiences naturally influenced the kōrero as well. Thus for example people with disabilities and gang members had their own perspectives while gay people also brought unique insights that were often affected by the particular prejudices they had encountered in their lives. In each case however there was unanimity about the need for some kind of constitutional change.

Rangatahi and pākeke often expressed their views in quite different ways although there was a remarkable consistency in their views on the kaupapa as well. Age did not affect the enthusiasm or depth of discussion.

Some hui focussed on one or two matters, say Te Tiriti and He Whakaputanga, while others were devoted almost entirely to the values and ideals of good government. Examples of international constitutional transformation were often explored, particularly the constitution in Bolivia, the Sami Parliament in Norway, and the various forms of Native American government.

After the hui were completed a number of interviews and focus groups were arranged to seek expert guidance on particular matters or to focus on certain discussion points that had been raised in the hui at large. These often included structural matters such as the desirability or otherwise of a written constitution, the status of He Whakaputanga within Iwi who had not signed it, and the nature of collective and individual representation in a treaty-based constitutional system.

The smaller discussions were also used to clarify some of the constitutional values identified in the hui as well as the effectiveness of the governance initiatives that have been developed by other Indigenous Peoples. The United Nations Declaration on the Rights of Indigenous Peoples and the work being done to implement it was also part of those discussions as were Reports from the United Nations Permanent Forum for Indigenous Peoples. A number of other international human rights instruments were also considered such as the Kari-Oca Declaration and the Mataatua Declaration on Indigenous Intellectual and Cultural Property.

The interviews and focus groups also covered a number of what we have termed whakapapa matters. The Working Group sought advice for example on the contemporary meaning or applicability of the direct references to Hapū in He Whakaputanga and Te Tiriti, and how Māori would be defined for the purposes of representation in a different Treaty-based constitution. Discussions were also held about whether or how to give constitutional effect to the relationship between Iwi and Hapū and other recognised entities such as Urban Māori Authorities.

The relationship between Iwi and Hapū and statutorily mandated bodies such as the New Zealand Māori Council was also discussed and advice was sought on the place those organisations might have, if any, in a different constitutional framework.

The focus groups also included questions about the whakapapa and traditional relationship between Māori and other peoples from the Pacific and whether that has treaty and constitutional implications.

Interviews were also conducted with kaumātua or kuia on particular matters of tikanga or Iwi history. In six cases we also met with people whose tīpuna had signed He Whakaputanga and/or Te Tiriti.

Members of the Working Group also interviewed rangatira who had been involved in earlier constitutional issues such as the revision of the constitution of the Anglican Church. Meetings were also held with some of the people involved in the organisation of the three National Constitutional hui held at Hīrangi in 1995 and 1996.

We also met with members of the Crown Constitutional Advisory Panel including Professor Ranginui Walker and Hinurewa Poutu. The Panel was convened in August 2011 as part of the Relationship Accord and Confidence and Supply Agreement between the Māori and National Parties.

To meet the objective of developing an inclusive constitution we also held meetings with Pākehā treaty education groups in Wellington, Christchurch and Dunedin. We also met with Samoan and other Pasifika groups in Auckland.

The work was also discussed at Rotary Club meetings, with the Tertiary Education and other Trade Unions, and at numerous conferences such as the 2013 Adult Community Education Conference and the 2015 Indigenous Nurses' Conference. A Progress Report was also presented at the Te Papa Treaty Lecture in 2014 and at three National Leadership Hui for Māori in Public Health hosted by Digital Indigenous at Tūrangawaewae Marae in 2013, 2014, and 2015.

The Structure Of This Report:

Introduction.

Part One – The Nature of Constitutions gives a general outline of the Working Group's understanding of constitutions.

Part Two – The Constitutional Foundations outlines the constitutional import of the four topics that inform the Working Group's Brief –

(a) Tikanga.
(b) He Whakaputanga o te Rangatiratanga o Niu Tireni.
(c) Te Tiriti o Waitangi.
(d) The United Nations Declaration on the Rights of Indigenous Peoples and other indigenous precedents.

Part Three – Constitutional Values summarises some of the main values that became apparent in the various streams of the programme – in hui, in interviews and focus groups, and on the Facebook Page established by the Working Group.

Part Four – Constitutional Visions provides a summary of where the discussions now point to and offers indicative models for constitutional transformation.

Part Five – recommendations.

Appendices.

Note: - Apart from the Executive Summary each Part of the Report includes some analysis and explanation by the Working Group about the topics under consideration.

We felt it was appropriate to do this as the nature of our Brief makes a number of presumptions about He Whakaputanga, Te Tiriti, and the very nature of constitutions, which are contested by the Crown. We accept them as givens and offer our reasons for doing so.

Each Part of the Report also naturally includes quotes and relevant views from participants or advisers. Indeed the Report is a synthesis of those views and the constitutional conclusions they lead to. The quotes are italicised.

INTRODUCTION.

Any discussion among Māori about the effective application of tino rangatiratanga inevitably builds upon the history of constitutional debate that has engaged Iwi and Hapū since 1840. Those which took place as part of this process were often lengthy and painful history seminars that revisited many of the earlier debates but they were also wānanga in a hope-filled future planning.

They were exercises too in imaginative and even brave contemplation about the need for change and a different Treaty-based future. The many hundreds who took part were aware of the practical difficulties involved in any kind of constitutional transformation but were prepared to debate and offer constructive suggestions about how it might be achieved and the important values it should incorporate.

What some might see as an "unrealistic" discourse was in fact seen as an expression of a deeply-held understanding about what was promised in Te Tiriti o Waitangi. In a very real sense it was a kōrero about hope and justice.

The reality that is being lived now was therefore never a straight jacket that inhibited discussion. Rather it was a spur to imagine something different. People accepted that seeking constitutional transformation is simply the tika thing to do and yet realised that any change of this magnitude will take time.

It was a privilege for the Working Group to be part of that exercise and to gain some insight into the views of our people about the past and future of this country. The ideas which they shared with us are rarely articulated in forums organised by the Crown where different dynamics are at play. However they are sincerely held and they are not new. They are certainly worthy of acknowledgement.

It was a special privilege at many hui to have participants present us with documentary and other evidence from their tīpuna which indicated the long and considered nature of that conversation. The evidence was often astute and diplomatic befitting of rangatira, and it was also perceptive and marked by considerable foresight. Sadly it was also a reminder of how consistent Māori have been on such issues and how consistently the Crown has ignored them.

During the discussions there was little debate about the interpretation of Te Tiriti or the recent judicial findings about its "spirit" or what some have called the "confusion" of its Māori and English texts. They were in some ways seen as a distraction. However there was genuine interest in four topics that were much broader in scope –

1. The nature of government – what is it, what does it do?
2. The nature of representation and democracy – What does Te Tiriti suggest about how people should be represented in any democratic governing system?
3. The values in Te Tiriti – what is meant by the term a "treaty partnership" or a "treaty relationship"? What values are implied in that relationship?
4. The values of a constitution - what are they, how are they defined?

Much of the emphasis was on values. Participants felt it was especially important for the values to be clarified and properly understood before any actual constitutional model or structure was developed. In fact they saw "getting the kaupapa right" as a necessary precondition for any Tiriti-based constitutional transformation.

Within each of those general frameworks it was also possible to discern a number of related but quite specific concerns –

- The meaning of tikanga and its constitutional relevance.
- The relationships envisaged in He Whakaputanga and Te Tiriti.
- The nature of those relationships in the 21st century.
- The effects of increasing immigration on those relationships.
- The ongoing implications of Māori urbanisation and the emigration of our people to Australia and elsewhere.
- The future of marae in rural areas with declining populations.
- The many diverse realities of our people's lives today.
- The ongoing debate about the relationship between the Hapū referred to in Te Tiriti and the current Crown policy emphasis on Iwi.
- Colonisation and the ongoing costs and constitutional ramifications of inequality, ill health, and the continued incarceration of too many Māori.
- The contributions that whānau, Hapū and Iwi might make to constitutional transformation in the future.
- The relevance or otherwise of engagement with other Indigenous Peoples.
- The engagement with others in New Zealand to progress the kaupapa.

As the Working Group had predicted there was inevitably some discussion at most hui about the current structures of local and central government – the current "reality" was never dismissed nor seen as completely irrelevant. Indeed we received considerable information about the difficulties individuals or communities have had with their local Council or with the Crown, as well as some positive initiatives that they had managed to implement in various parts of the country.

We also heard from people who worked in central and local government and received information about a number of Māori advisory groups that currently liaise with District or Regional Councils. We also received some detailed material about the "co-governance" arrangements that have been incorporated into some Treaty Settlements as well as the Māori Statutory Board that was established as part of the Auckland "Super City" structure.

At many hui we also heard divergent views about the Treaty Settlements process and the Post Settlement Governance Entities (PSGE's) that have been established to administer settlement monies. While there is relief that some grievances are at last being settled, and while there has been some innovative use of the settlement putea, there is a very real concern about the process and what it purports to settle.

> *"I see the treaty settlements as part of a process not the end of it…the end or the beginning of the end is to settle the constitutional relationship that was flagged in He Whakaputanga and then directly stated in Te Tiriti".*

> *"It really is past the time to think about this constitutional kaupapa or we will carry on having to ask the Crown for everything. I don't believe our tīpuna signed Te Tiriti just so that we would be flying to Wellington every week …we had a hui last week about Orākau and that's not why we fought all those wars everyone wants to get commemorated…our tūpuna didn't die there to be ruled by someone else. Maybe the challenge of the 21st century after all the treaty settlements are done is to get serious about a new constitution because the settlements don't even go there".*

> *"Post-settlement actually means post-Parliament and making decisions over everything we do. It doesn't mean getting rid of Parliament although I'd hope the Crown would change the way it does things but settling means something different for us...it means what the old people expected when they signed Te Tiriti".*

The Working Group accepts the misgivings expressed to us and also accepts the tributes paid to the many people who have worked so hard for so long to achieve some sort of settlement redress. However in the context of our engagement process there was also some quite specific debate about whether the PSGE's and other bodies such as Council Advisory Groups were part of a constitutional transformation as understood in our Terms of Reference.

It is our view that they clearly are not. Like the Rūnanga first proposed in the 1852 Constitution Act and the many other subsequent Crown proposals to allow for a Māori "voice" they are constitutional in the very limited sense that they provide some limited Crown

access for Māori. However they are neither transformational nor consistent with Te Tiriti. They are merely adjuncts on sufferance to the existing Westminster system.

Perhaps more than anything else the discussions we have been part of were shaped by the often bitter experience many Māori people have had and continue to have in dealing with the Crown. Together they have engendered a very firm belief that the Westminster constitutional system as it has been implemented since 1840 does not, indeed cannot, adequately give effect to the terms of Te Tiriti.

In many ways those who took part in the discussions understood that Te Tiriti promised something quite different and better. There was a sense that the ongoing Crown interpretation of it as a cession of sovereignty by Iwi and Hapū was simply a deliberate misreading that was not just wrong and unjust but contrary to the facts. It was unworthy of an honourable treaty relationship.

An equally strongly held view conveyed to us was that the effective dismissal of He Whakaputanga by the Crown after 1840 was unjust. Even many people whose Iwi were not Party to the Declaration considered that the possibilities it offered for a different and more tikanga-based way of making decisions were a constitutional precedent that should be reconsidered.

Most often there was a view that the discussion was part of an ongoing historical trajectory that would not cease merely because the Crown or others might be uncomfortable with it.
One interviewee concluded –

> *"I remember the hui called by Sir Hepi Te Heuheu at Hīrangi in 1996 where these matters were all discussed. We discussed all the old kaupapa there and how our people have struggled for change in their own way ever since 1840…sometimes even signing their own treaties with the Crown. I don't think our views have changed in the twenty years since then even though circumstances are very different now. The treaty is still there and in spite of all the settlements and everything else that has changed in the last few years so is the kōrero to find a more effective way of exercising our rangatiratanga…having mana doesn't disappear over time or because someone says you don't have it anymore".*

A kaumātua in one of the focus groups noted –

> *"This is really just a continuation of the kōrero that really began with He Whakaputanga and later led Waikato-Tainui to set up the Kīngitanga in the 1860's…and Kahungunu and others to set up the Māori Parliament. Pākehā talk about those movements like they*

were just reactions to what the Crown was doing but they came from our own tikanga…and I don't have a problem talking about them as constitutional issues of those times and it's sad that we are still having to have the same kōrero today…but it does indicate how Te Tiriti is not understood or honoured as an agreement about our mana and their kāwanatanga and how each one had to find their own space".

A kuia who was interviewed noted –

"If you look out at that land there that's all we have left now. It might look like a lot but it's not really and my grandfather and grandmother had to really fight to keep just that little bit. It exhausted them, killed them really…but they fought because they knew the land was ours, it made us tangata whenua and gave us our mana…but oh the fight was with the Crown and the local council and a number of greedy Pākehā who didn't care what they did to take it…and they had all the power and we were almost powerless except we knew that we were right…and I imagine that's what this constitutional kōrero is all about, that we might get the power and the right back because that's what the treaty's about…that we would never be powerless in our own land…that we will never be powerless again".

Such views are typical. They indicate not just a sense of frustration with the functioning of the current constitutional/Parliamentary system but a deeper sense of grievance that what was contemplated in Te Tiriti has not yet come to pass. Indeed there was a genuinely held belief that the existing system continues to disempower our people.

There was genuine respect for the work that many Māori MP's and local councillors have done over the years within that that system but there was also a belief that it was not the answer - that ultimately the disempowerment can only be alleviated through a process of constitutional transformation. How that might be achieved was discussed at some length but what seemed more important was the need to accept that it was both necessary and right for the transformation to take place.

"I respect that our people want to be at the table and that Parliament or the Council is where the table's at right now but that doesn't mean that's where it should always be at or even where it's meant to be at…I want my tamariki to know we can change that and reset the table because it's the right thing to do".

"I work for Council partly because I've got a mortgage but also because I think it can be better for some of our people to be in there but it's a struggle, especially in a little place like this…I'd love it if there was a better way to do things…not just because it might be

easier…and I only say might be easier because our people can be hard taskmasters, but because at least we would be responsible for ourselves and wouldn't have to keep asking for permission for things".

"We never talk about constitutions in our mahi but we know that the people we deal with have no say over the government decisions that affect their everyday lives. They have no say over the economic policies that make them poor or take away their jobs. I know that's not what the treaty was about and it just seems important to get it right".

"I was in court before this hui for my mahi and everyone up on a charge was a Māori. They don't know what to do and even if they did they have no power to change it. That might seem a long way away from any kōrero about this kaupapa but it isn't really".

"I've been in this wheelchair for eighteen years and I know all about the frustration of all of this. It's not just policy decisions that affect me and others like me but the other power and the system that talks about partnership yet here we are…just where the old people were when they were having hui like this fifty or a hundred years ago".

"I know some people might say all this talk is unrealistic but the reality we have now isn't working. Parliament isn't about us or the treaty…it's not even from us and unless things change we're just going to keep on having protests or making submissions or forming new Parties and nothing will really change".

"When we told a friend we were coming to this hui she said 'dream on' and I know none of this will be easy…lots of others will probably think it's unrealistic as well but Te Tiriti was a bit of dream because it was generous to the Crown and it had a tikanga…we haven't got that tikanga right yet but we have to keep trying".

Perhaps the views of a kuia in Wairoa, a kaumātua in Taranaki, and a rangatahi in Porirua sum up all the history and the challenge that was evident at the hui –

"I have waited for this kōrero all my life… I remember my old people talking about this. They never used words like constitution but they talked all the time about deciding for ourselves what is best for us, like we always used to…that wouldn't be a new thing just taking back something really".

"We have always had the whatukura tangata whenua or cornerstones of a constitution that rest in our tikanga and our mana and tino rangatiratanga. They are part of our whakapapa and are what joins humans to everything in this world and the

universe…mai te wenua ki te rangi…The key will be giving effect to them for the benefit of our mokopuna…and identifying the values that would make it unique and long-lasting…being true to what is tika rather than what is expedient".

"Oh man this is going to be hard because heaps of people won't like this sort of kōrero but I think it's only about our rangatiratanga and all the things my koro and nanny used to fight for…It's got to be worth talking about even if it seems impossible to get right now…I'm in".

Not everyone agreed on every point at every hui of course, and there was often a very palpable fear that advocating any real constitutional transformation might provoke a Pākehā backlash. But the overwhelming consensus was that more needed to be done, and should be done. Like the rangatahi in Porirua, the people wanted to be "in".

In that regard it was especially encouraging for participants in later hui to learn that the Waitangi Tribunal had rejected the long-standing Crown assertion of Iwi and Hapū cession in its Report on the Paparahi o te Raki claim: "He Whakaputanga me te Tiriti". Although the Crown was almost indecent in its haste to reject the Report's findings it nevertheless changes the whole constitutional debate and reaffirms what Māori people have been saying ever since 1840.

The Working Group also acknowledges the Report. We have found especially useful the Tribunal's use of the phrase "different spheres of influence" to describe how Māori agreed in Te Tiriti to acknowledge a Crown role. It has helped us conceptualise the Tiriti relationship in constitutional terms and to translate the people's emphasis on the values of constitutionalism into a number of indicative constitutional models.

Each model came from the kōrero and although they differ in some structural detail they eventually crystallised into two distinct rangatiratanga and kāwanatanga spheres where Māori and the Crown could make their own decisions and a third common site where they might make joint decisions. We describe that common site as the relational sphere.

Similar suggestions have been made in the past but were refined in the discussions we have had. Those refinements bear in mind the practical difficulties of change that will need to be addressed through ongoing community discussion as well as ongoing consideration of more specific issues such as how the respective jurisdiction of each sphere will be determined.

Throughout this Report we acknowledge that the kōrero we have heard has always been both consistent and considered. It has displayed a level of political and historical awareness that

may have been surprising to some but was merely evidence of an undiminished desire for change that was always humbling and challenging. It was also a rebuke to the Crown for its failure to seriously engage on constitutional issues and a reaffirmation of the need to constantly raise them if the costs and consequences of colonisation are ever to be fully and finally settled.

For the discussions ultimately raised the profound question of whether a State built upon the taking of another people's lands, lives and power can ever really be just or treaty-based if it maintains a constitutional order that was part of the taking. It was a recognition that in the end a full and final "settling" of colonisation should mean more than a cash payment and even an apology. It requires a transformative shift in thinking to properly establish the constitutional relationship that Te Tiriti intended by restoring the authority that was once exercised through mana and rangatiratanga.

The kōrero was also in a way about justice and rights, and especially the right of self determination. Like all human rights it inheres in all peoples because they are people and it is not diminished by disagreement or doubt or the passage of time. It is certainly not diminished because the challenge to achieve it may seem too hard.

The Working Group is grateful to all those who have contributed to this dialogue. Like them we realise that there is much more work to do in the years ahead. Filling in the detail of some of the suggestions in this Report will indeed take time. However we hope that the Report does justice to the views which people shared with us. We also hope that it helps point the way to the deliberative constitutional transformation which they sought.

PART ONE –

THE NATURE OF CONSTITUTIONS.

The first issue the Working Group was required to address was whether the Terms of Reference were in fact valid grounds for advocating and developing a process of constitutional transformation.

In our view history clearly indicates that they are, and that prior to 1840 Iwi and Hapū were vibrant and functional constitutional entities. That is, they had the right, capacity and authority to make politically binding decisions for the well-being of their people and the protection of their lands.

The authority was exercised within the constructs and values of our own culture and according to the quite specific rights and responsibilities that the tīpuna assumed were implicit in any constitutional and political power. It was part of a unique constitutionalism that jealously guarded the independence of each polity while stressing the interdependence that is fundamental to whakapapa.

It included all the usual attributes of constitutional independence including the obligation to maintain the peace or make war and the right to define what we would now call citizenship. It also included the authority to decide who could enter into our jurisdiction as immigrants, what tikanga would govern their presence, and what entitlements, if any, they might be granted.

In spite of all that has happened in the last 170 years to the effective practice of that constitutionalism it is our firm view that the right to it remains intact. We take that as a given.

However because that fact has so often been challenged we felt it was appropriate to discuss in this opening Part of the Report the general nature and meaning of constitutions, the authority they give expression to, and the distinct cultural contexts within which they arise. We also briefly consider what has happened to the Māori understandings of constitutionalism since 1840 and synthesise some of the views given to us on the subject.

At every hui and in every written statement we received it was never questioned that Iwi and Hapū had the authority to make their own decisions: they had constitutions. It was the given from which all of the discussion proceeded –

> *"I can't see how we could have existed without mana meaning that we governed ourselves...You just have to look at all the things we did before Pākehā came to know that. We made mistakes…but humans do that everywhere…it doesn't mean they're not in charge of their own lives".*
>
> *"Of course we governed ourselves. I'm Tūhoe and I know that no other Iwi had the right or would even claim the right to make decisions for us…and I would think that because we never signed the Treaty we never intended to let the Crown do what other Iwi had never been able to do to us before 1840".*
>
> *"I don't know of any people who never governed themselves. Self determination is just a reality which our tūpuna lived every day. It was real because they did it and they would literally fight to keep it".*

In that sense it was also taken as a given by the Working Group that while constitutionalism and government are often regarded as complex ideas they are really very simple. Government is the process that people choose to regulate their affairs and a constitution may be understood as the code they use to describe how government will function.

A constitution is also the kaupapa or set of rules that a community sets about who can make the rules and how the people should abide by them and live amicably together. They may be written or unwritten and they give expression not just to the ways of government in terms of structures and procedures but the values that a community think should underpin them.

In functional terms constitutions are based on what may be termed a concept and a site of power. The concept of power is the idea or philosophy a society develops about what constitutional authority is and the values or interests that underpin it. The site of power is the institution or place where a society decides the power may be exercised and the limits that might, or might not, be placed upon it.

It was taken as a further given that every constitution, every way of governing, every concept and site of power, is based upon and gives expression to the values of the people from which it comes and which in turn it is designed to serve. Like the law of any society, a constitution is a cultural creation.

The Western Concept and Site of Power -

The Westminster constitutional system developed in the particular cultural circumstances of England. Its hierarchical structure headed by a Crown or sovereign is a cultural product that grew out of the historical tensions between the monarchs and those deemed to be below or in opposition to them.

It is a distinct artefact that over the centuries has sought to accommodate the long-disputed interests of the nobility, the Church and the "lower classes" while preserving the notion of individual property rights. Its concept of power became known as sovereignty which was exercised in a site of power known as Parliament.

Although the concept of sovereignty is generally understood as an English or Westminster construct it was first defined in France by the political philosopher Jean Bodin in 1569. It may be helpful to briefly summarise his definition as it is still apposite today and still marks the distinctive cultural ethos that is inherent in the Crown notion of political and constitutional authority.

Bodin's view of sovereignty was essentially based in a belief that it marked a hierarchy of progress from societies of apolitical barbarism (such as those of the recently "discovered" Indigenous Peoples in the Americas) to those countries in Europe with a "civilised" constitutional order. It presumed that proper political power could only exist once "man…purged himself of troubling passions" and moved up "the great chain of being…and its hierarchical order".

Once a peoples became "civilised" they attained the reason to develop a concept of power vesting in a sovereign, "a single ruler on whom the effectiveness of all the rest depends". Sovereignty was thus the "most high…and perpetual power over the citizens" and it was that power "which informs all the members and…to which after immortal God we owe all things". It was a hierarchical ideal of constitutionalism that could only be held by civilised peoples.

The site of that power throughout Europe was the monarch or alternatively the "monarch in Parliament" which had absolute authority and dominion over the land and its peoples. It that was that culturally-defined and "civilised" notion of constitutional authority or "dominion over" which the Crown of course brought to Aotearoa after 1840.

Indigenous Concepts and Sites of Power -

Yet other nations have also developed their own distinct and quite different ideas of a concept and site of power. For example the Haudenosaunee Confederation developed within a quite different cultural milieu in which six different nations came together in territories that now stretch from Upper New York State to Southern Quebec.

Constitutionalism in their cultural context was about making joint decisions in accordance with their concept of power that was known as the "Kaswentha" or Great Peace. It did not presume dominion over the land but rather required an acknowledgement of the need to live with it. The earth was the Mother and all human authority ultimately derived from her.

The Haudenosaunee site of power was a "long house" within which decisions were made to maintain what the Faith Keeper of the Haudenosaunee Oren Lyons Has called "the good relationships between humans and the universe". It was an institution based upon a relational ideal of constitutionalism.

Every indigenous nation developed similarly distinct ideas about concepts and sites of power that were consistent with their view of the world. Thus for example the Kanaka Maoli in Hawaii use the word 'mana' as their concept of power and define it as a force 'that can move heaven and earth'. It is part of the 'malama aina' or responsibility that was given to the kupuna to care for the land from which ea or the ultimate authority for life comes.

The Māori Concept and Site of Power -

The Working Group understood that Iwi and Hapū developed similarly unique constitutional systems based upon our history and cultural reality. Just as we were never a law-less people because we developed a philosophy of law to regulate our behaviour, so we were never incapable of devising ways to make ordered political and constitutional decisions. We were never power-less.

It is not appropriate in this Report to traverse all of the historical evidence of how Iwi and Hapū, or collectives of Iwi and Hapū, have endeavoured to assert and maintain the essential constitutionality of our history and indeed our relationship with the Crown. However like all cultures our people recognised that we could not survive in a power vacuum.

As Iwi and Hapū developed their own distinct dialects and attachment to whenua so they also became polities and constructed their own concepts and sites of power. Governing, and the right to make our own decisions, was an inherent part of who and what we were.

The concept of power was known generally as mana (and much later in the 19th century as rangatiratanga). It was also defined in some Iwi and Hapū as mana motuhake, mana taketake, or mana tō rangapū. It implied an independence that Dame Mira Szazy once defined as "the self determination" implicit in "the very essence of being, of law, of the eternal right to be, to live, to exist, to occupy the land".

The concept of mana as a political and constitutional power thus denotes an absolute authority. It was absolute because it was absolutely the prerogative of every polity, but it was also absolute in the sense that it was commensurate with independence and an exercise of authority that could not be tampered with by any other polity.

The site of power was vested in the institution of ariki and rangatira who were charged with the responsibility of making decisions. John Rangihau once cogently noted that "rangatiratanga was people-bestowed and could only be exercised in a way that the people thought was tika".

As the rangatira Manuhuia Bennett once sagely noted all rangatira learned that good leadership depended upon how well they responded to their people and how well they were able to protect them and their whenua. In a well-known aphorism he described the necessary attributes of rangatira in way that also sums up its constitutional as well as its cultural parameters -

"Te kai a te rangatira, he kōrero
Te tohu o te rangatira, he manaaki
Te mahi a te rangatira, he whakatira te iwi".

Such values, the notion of what might be, have always been the political and constitutional reality that guaranteed the independence of Iwi and Hapū.

The 'kai' of the rangatira, and thus the sustenance of mana, was not just the gift of oratory but the responsibility to heed and articulate the voice of the people. The 'tohu' was the obvious obligation to care for both the people and any manuhiri, while the 'mahi' or prime role of rangatira was to keep the people together with all of the necessary implications to husband and care for the taonga of Papatūānuku which that entailed.

Just as one could not really be tangata whenua without any whenua to stand upon, so an Iwi or Hapū could only claim mana if it had the ability and capacity to effectively govern. To be "mana enhancing" was to keep the whenua and the people safe.

It was through those constitutional values and presumptions that the concept of power was given effect. The responsibilities they implied and their exercise in everyday political affairs were always sanctioned by tikanga and the acceptance that the existence of mana in relation to a particular whenua (mana whenua) was also dependent upon the mana in the land – mana i te whenua.

Indeed in the hundreds of years prior to 1840 the common land mass that made up the islands of Te Ika a Maui and Te Waka a Maui was occupied by distinct Iwi and Hapū polities. Each polity exercised its own mana and lived according to its tikanga secure in both its political independence and its whakapapa-based interdependence with others.

Where effective governance on a day to day basis resided in the Hapū the authority is encapsulated in the word "hapū" itself which means to be pregnant or swelling with life. The Hapū was thus the place of power where the most life affirming (and life threatening) decisions were made.

Just as the common land mass of Europe was occupied by a number of different polities exercising their own sovereignty according to their law so Iwi and Hapū did the same. They were distinct and constitutionally regulated polities.

Within this reality two fundamental prescriptions and proscriptions underpinned the effective exercise of mana –

(a) Firstly the power was bound by law and could only be exercised in ways consistent with tikanga and thus the maintenance of whakapapa relationships and responsibilities.
(b) Secondly the power was held as a taonga handed down from the tīpuna to be exercised by the living for the benefit of the mokopuna.

For those reasons it was a constitutional authority that could never be ceded or given away. Indeed no matter how much mana might vest in an Iwi or Hapū, and no matter how powerful individual rangatira might presume to be, they never possessed the authority nor the right to subordinate the mana of the collective to some other entity because to do so would have been to give away the whakapapa and responsibilities bequeathed by the tīpuna.

The fact that there is no word for "cede" in te reo is not a linguistic shortcoming but an indication that to even contemplate giving away mana would have been legally impossible, culturally incomprehensible, and politically and constitutionally untenable.

In that context political power and tikanga were like the maihi and amo of a whare tīpuna – they held the "house" of the people together. Tikanga set the parameters of legitimate political and constitutional conduct and tikanga was in turn enhanced by the power and certainty of mana –

> *"We were always really clear where mana lay both in terms of the whenua upon which we could assert it and the authority and responsibility that went with it. I once heard the rangatira Monita Delamere say that governing was about diplomacy and whakapapa as well as practical decision-making and I think he was right".*
>
> *"Although times have changed those old tikanga remain…we never lost or ceded our mana and never forgot what was tika about how we should exercise it. The challenge now is to adapt those things for the21st century".*
>
> *"Politics was always about whakapapa…how we would look after our mokopuna and the land…if that was done properly and according to tikanga then the people were secure. If there was a war it was always about those things, just like it is in other societies…but then politics and diplomacy would bring an end to the fighting through a houhou rongo or a tatau pounamu and the whakapapa would be restored again".*

Such discussions reaffirmed the Working Group's view that there is a distinct and legitimate Māori constitutionalism. It was clearly defined and understood prior to 1840 and it ensured the survival of our people for hundreds of years.

Tikanga was fundamental to its evolution and practice and both He Whakaputanga and Te Tiriti were adaptive expressions of it. Its actual institutions (its effective sites of power) may have been suppressed in colonisation but its founding ideal (its concept of power) has remained, as has the belief in a right to exercise it once again.

The Working Group was not surprised by the re-statement of that certainty throughout the engagement process. It was expressed in different ways at different times but it became clear to us that any talk about tino rangatiratanga was at its base a talk about constitutionalism and all that it implies.

We were also not surprised that discussion also took place about what had happened to diminish or take away the effective exercise of that constitutionalism. An encounter with colonisation was an inevitable part of every hui.

Iwi and Hapū all have their own stories to tell of colonisation and the ongoing costs and trauma it has exacted upon them. The Working Group does not presume to tell those stories in any detail but simply acknowledges what it has done, and what it continues to do.

> *"We wouldn't be having this discussion if it wasn't for colonisation…In practical terms we can't revert to what we were in 1840 but rangatiratanga hasn't disappeared and we just need to begin what will be a long kōrero among ourselves and with others about that might mean today…what it really means to move on from colonisation".*

> *"I read somewhere that colonisation was about taking power more than anything else and that's what has happened to us. We just need to listen to the old people or read a (Waitangi) Tribunal Report to know that…I mean if you read something like the Settlements Act that led to the raupatu that's about power and not just land".*

> *"We need to acknowledge colonisation but not get stuck in some sort of grievance mode that stops us understanding how we got to where we are now…the grievances are real and still aren't getting properly settled but the things our old people went through should make us think about what steps we have to take to go somewhere else in the future".*

> *"In all of this kōrero like in lots of others we're the ones who have to justify why we should have something…why we should have a karakia, why we should have this and that, why we should even have this constitutional kōrero…but the Crown never has to justify what it does to us or what it's set up…it's just there…this great colonising thing".*

> *"Sometimes we get caught in the trap of just accepting what colonisation has done, like setting up its own government, and saying that it's right or it can't be changed because it's too hard…but as rangatahi we think we should try because that's what the treaty talked about".*

The history and inherent injustice of colonisation was thus the often unspoken reality that people acknowledged when discussing why a different constitutionalism was needed. It was the "thing" which also made it necessary to discuss what a constitution is, whether Iwi and Hapū ever had one, what its concept and site of power were, and whether it could and should be seen now as an expression of the treaty relationship.

In a general sense the challenge for the Working Group was to seek views on how Māori might answer those questions and overcome the effects of colonisation through a restoration of the constitutional right and authority to make our own decisions once again. However any

consideration of that question also meant discussing the relationship between rangatiratanga and kāwanatanga and how the authority granted to the Crown in Te Tiriti might actually be reconciled in ways that are consistent with it.

As we canvassed views on that relationship between rangatiratanga and kāwanatanga the notion of different spheres of influence as interpreted by the Tribunal was constantly referred to. Particular reference was made for example to the efforts of the Anglican Church and other organisations to find different ways of modelling those different spheres. Reference was also made to what we call the relational sphere where Māori and the Crown might make decisions together.

However the relationship was most often contextualised in kōrero about the foundations and values of a new constitutionalism. People didn't just want to talk about structures but rather the ideals that might transform how their right to make their own decisions is perceived.

PART TWO -

THE CONSTITUTIONAL FOUNDATIONS.

The second issue the Working Group asked our people to consider was the historical and contemporary relevance, in constitutional terms, of tikanga, He Whakaputanga, Te Tiriti, and other indigenous instruments.

Each topic has of course been the subject of ongoing debate and kōrero among Māori people. The intricacies of tikanga and its many variants have been considered in wānanga and by some of our best thinkers and tohunga for centuries and we were keen to see how or whether that knowledge has been translated over time into a constitutional discourse.

He Whakaputanga too has been intensely debated and honourably protected as an expression of change at a difficult time in our people's history, particularly among the Hapū in Te Tai Tokerau. Te Tiriti too has of course also been the subject of a proud history and has been jealously guarded in the face of Crown indifference and redefinition. Māori involvement in human rights issues overseas is also much longer than most people realise although it has accelerated in recent years and has also had to contend with Crown obstruction or lack of interest.

It is our considered view that it is not necessary in this Report to consider the contrary views that the Crown has maintained about those matters since 1840, and especially its views on Te Tiriti. We simply note that they have always been at odds with Māori understandings. Our Terms of Reference were based upon those understandings and we proceeded upon that basis.

Of course the most contrary Crown view that Iwi and Hapū ceded sovereignty in Te Tiriti has affected the "reality" within which our people have had to live. The changing dynamics of power have meant that Iwi and Hapū have increasingly had to adapt to and engage with the Crown's assumptions and the eventual exercise of its absolute authority.

However it is also our view that while much of that engagement has been courageous and innovative it has not signalled the end of Māori aspirations for a true honouring of Te Tiriti. Adaptation has never meant acquiescence.

The Working Group recognises that there is a historical progression from He Whakaputanga to Te Tiriti and even the various rights that are now recognised in international instruments such as the Declaration on the Rights of Indigenous Peoples. They all enshrine the desire of peoples to determine their own destiny.

They are all underpinned in their own way too by tikanga, the understanding of what is right in the relationships humans have, or should have, among themselves and with the world. The whole discourse of human rights after all is really about a longing for people to be free, to govern themselves, and to relate to each other in a way that is right and just.

When Te Tiriti offered kāwanatanga to the Crown it was predicated on the immediate and pressing need for some authority to be exercised over the unruly Pākehā who were arriving here, particularly in the north. But it was also predicated on the belief that just as each Iwi and Hapū was free to exercise its own authority provided it did not impinge upon the territory or rights of others, so Pākehā should be free to do the same. That remarkable offer was the very basis of the hoped-for treaty relationship.

It was also a reflection of tikanga and what may be called the whakapapa ethic. That is, the expectation that people will manage their affairs in a way that is consistent with certain agreed norms that foster the good relationships that are essential in any whakapapa. In a relationship between political entities such as the Crown and Iwi or Hapū, especially one agreed to in a treaty, that ethic is, or should be, the base of a constitutional relationship.

The Working Group was heartened to find that understanding of tikanga and interrelationships in all of the discussions on this part of our Brief. Even when the kōrero was about the dominant and contrary Crown narrative on Te Tiriti or the recognised difficulties in seeking change the sense that any constitution should have some kind of values or normative foundation was always evident.

And in each case people identified some of that foundation in the ideas and ideals of tikanga, He Whakaputanga, and Te Tiriti. Many also found further evidence in a number of the international human rights instruments.

Tikanga -

In its consideration of tikanga as one of the bases for an inclusive constitution the Working Group was aware that there are constant debates about what tikanga actually means, and sometimes about the difference between tikanga, kawa, and kaupapa. However the debates occur because it is such a fundamental construct in Māori life and so we took considerable advice from kaumātua and kuia about its nature, its meaning, and its particular relevance to the constitutional issues we were asked to address.

Because of its centrality we felt it was appropriate to outline in this Report some of the advice we received and some of the definitions we uncovered in an extensive review of written and oral archival records. Those definitions clarified how a constitution could or should be based on tikanga and led us to accept the general view that tikanga may be defined as both a law and a discrete set of values. As a practical law it influenced everything from the political organisation of Iwi and Hapū to the social interactions of individuals. As a set of values it summed up what was important in the Māori world view – it is the "ought to be" of Māori existence.

The two parts of tikanga were naturally interrelated and mutually reinforced each other. While it is difficult to separate the law from the values we believed it would be useful to do so in the context of the Brief we have been given. In this Section we therefore discuss tikanga as law and in Part Three of the Report we consider tikanga as a set of values.

Professor Hirini Moko Mead has discussed the different facets of tikanga in his work "Tikanga Māori – Living by Māori Values" -

> *"There are several ways of looking at tikanga…An obvious way is to consider (it) as a means of social control. Looked at from this point of view, tikanga Māori controls interpersonal relationships, provides ways for groups to meet and interact, and even determines how individuals identify themselves. It is difficult to imagine any social situation where tikanga Māori has no place".*

The former Chair of the Waitangi Tribunal Sir Edward Taihakurei Durie regards tikanga as Māori law and suggests that the question is not whether it has Pākehā-type rules but –

> *"Whether there were values to which the community generally subscribed. Whether those values were regularly upheld is not the point but whether they had regular influence. Māori operated not by finite rules (but) by reference to principles, goals, and values…Tikanga derived from 'tika' or that which is right or just. Tikanga may be seen as*

Māori principles for determining justice…(It) was pragmatic and open-ended…flexible and subject to reinterpretation according to circumstances…The principles of tikanga provided the base for the Māori jural order".

A Contributing Member of the Working Group and a Kaihautū at Te Wānanga o Raukawa, Ani Mikaere, has described tikanga as being so fundamental it was

"The first law of Aotearoa, a law that served the needs of tangata whenua for a thousand years before the arrival of tauiwi".

If rangatiratanga was a jural construct and "people-bestowed" it was also "tikanga dependent". The relationship between tikanga and mana, between the constitution and the authority to make political decisions, was both symbiotic and essential to the maintenance of "law and order". It ensured the smooth functioning of every polity and provided the stability needed to promote harmonious relationships or to restore them when they were disrupted by conflict.

It was a constitutional imperative that could not be divorced from the practicalities of political power -

"Mana was always about political power or personal status but it was always about protecting the whakapapa and the whenua too…that was its tikanga, the whole idea of relationships and making sure they were in sync".

"I think we've got trapped in the last few years to only see rangatiratanga as a right or some sort of power...and sometimes we think it's just about making money. But it was always a legal authority more than anything else…just like sovereignty is except it rests on tikanga and how we should see the world".

"If we look at what or how mana was exercised it was always dependent on tikanga…kind of like nothing could be done unless it was done in the name of the law…so the first point is that tikanga was like a precondition for mana and secondly there is no doubt that mana or rangatiratanga was always meant to be exercised in a tika way".

"Saying you can have a Māori constitution without tikanga is like Pākehā saying they can have their constitution without the Magna Carta. It doesn't make sense…and maybe all we have to do is find out how in a treaty constitution we can get Pākehā to live by Magna Carta and we live by tikanga to find a common ground".

"One of the things that makes this kaupapa so hard is that for a long time Pākehā said we didn't have real law and now they just say their law should prevail…their law should be the one law for all…getting them to agree to us having some sort of jurisdiction is going to be hard…the other reason is that tikanga is also about doing the right or tika thing…but politics is usually just about scoring points or following some economic ideology….or at least that's the politics we've got now, even in some Iwi. But to me mana was always about finding how we can legally protect what's important to us and what's the right way to do it. That's what we have to try to get back".

"I can't see how you can have a constitution without tikanga, even one that's going to have to bring kāwanatanga and rangatiratanga together…how to do it in a society where the majority of people either don't know or care very much about tikanga would be hard".

"My answer to the question about what tikanga should underpin a constitution is that tikanga is just like a constitution…it's like a law about how rangatira should make their decisions or how mana and rangatiratanga should be exercised…I think a…modern day constitution should do the same and provide a legal framework for good political decisions…that are tika and in line with the values in tikanga".

"The only way a constitution can survive and people can be governed properly or even democratically is if it's tikanga-based and recognises the jurisdiction of Iwi and Hapū and has some kind of values at its core. If it's just based on self-interest or economic priorities then the potential in the treaty… is not being properly acknowledged".

"The trick will always be articulating the tikanga in constitutional terms and then finding ways to ensure that any constitution and any governing body abides by them. Tikanga was created because our old people knew humans were prone to make mistakes or act in a non-tikanga way…we knew we would make mistakes…and I think we are even more likely to do that now especially since everything seems to be about me and there is talk but less real interest in the collective…but it's where we need to start".

The fact that so many people took the time to discuss tikanga indicates its importance as a concept and as a baseline for any effective constitutional transformation – that rangatiratanga without tikanga as law is a contradiction in terms. The far-reaching constitutional ramifications of that acceptance in terms of defining law in the rangatiratanga and kāwanatanga spheres of influence or how any conflicts of law might be resolved in any relational sphere are covered briefly in Parts Three and Four of this Report.

He Whakaputanga -

The Working Group accepted that any consideration of He Whakaputanga or the Declaration of Independence as the second baseline for an inclusive constitution would involve understanding both its unique origins and the practical limitations of its political reach after 1835 due to the pressures of colonisation. People's knowledge and understanding of it have inevitably been effected by those pressures.

Indeed in our engagement process He Whakaputanga was discussed at great length in Te Tai Tokerau where it was drafted and signed but mentioned only briefly in Tainui where people knew that one of the later signatories was Te Wherowhero who would subsequently become the first King. In other rohe where it was not a direct part of their history it was only mentioned in passing or not at all.

Yet the ideals it expressed were acknowledged and respected wherever we went because it was a novel and bravely inventive articulation of an old concept and site of power. It was an adjustment to changing circumstances that was consistent with traditional legal, philosophical and even religious thought.

Essentially it proposed that a collective of Iwi and Hapū should regularly come together in a Whakaminenga or assembly to make joint decisions on matters of common concern while respecting the mana of each participating polity. It was a constitutional transformation in which Iwi and Hapū would exercise an interdependent authority while retaining their own independence. That joint decision making power is defined in Article Two as a "Kīngitanga" where "all sovereign power and authority" is

> *"…declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes…who also declared they will not permit any legislative authority separate from themselves"*.

Because of its core ideals and the fact that it was a clear expression of an accepted constitutional authority the Working Group was clear that He Whakaputanga is a necessary as well as an apt and aspirational base for a new constitutional discussion. This view was reinforced throughout the engagement process, especially when some participants in our discussions and some of the kaumātua we consulted had only recently participated in the Waitangi Tribunal hearings on He Whakaputanga and Te Tiriti.

At those hearings the kaumātua Nuki Aldridge, stated that

"Te Wakaminenga was the gathering together of the rangatira in response to the changes that the rangatira had seen occurring…The purpose of Te Wakaminenga was for Māori to control their own changes in the 'new world'…about how Māori were able to think and put themselves into the future".

In the same hearings Professor Patu Hohepa looked at the language and history of He Whakaputanga and described it simply as

"a declaration of our independence and sovereignty as a nation of independent rangatira".

In the hearings Professor Dame Anne Salmond also stated that under He Whakaputanga

"the rangatira declared their rangatiratanga or independence and asserted their Kīngitanga and mana, their sovereign power and authority. They also foreshadowed the possibility that they might delegate kāwanatanga or function of government to someone whom they themselves had appointed. In such an arrangement however, they would retain intact their rangatiratanga or independence and their mana and Kīngitanga or sovereign authority and power. The Declaration is unambiguous and the relationship between these key terms is clear".

Similar views were expressed at every hui the Working Group held in Te Tai Tokerau. At Waiomio for example we were told -

"In my view every discussion of this nature has to begin with tikanga and He Wakaputanga. They define our independence and predate Te Tiriti…Te Tiriti actually makes no sense unless you understand that…He Wakaputanga says rangatiratanga is independence and that makes it like our preamble to Te Tiriti…a statement of intent that every rangatira would have understood no matter where they lived or whether they signed He Wakaputanga or not…and it would be nice if it could be the preamble to this kōrero as well ".

"We have lived and breathed He Wakaputanga… we have seen the Crown reject it, laugh about it…we have read historians saying it doesn't mean anything but we know our tūpuna thought about it and solemnly put their marks to it because they wanted the world and the King in England to know we were independent…we know that, we hold to that".

At Awanui -

"He Wakaputanga was seen by our old people as a form of protection because they could see what was coming and wanted to make it known that we had mana and were sovereign. We knew all those things from our own history and from the travelling that many of the old people were doing at that time to England and elsewhere. So in some ways it was kind of new but it was also a really old tradition…like an evolution to meet challenging times, just like we have to do today".

"Just the fact that our tūpuna were smart enough to think about such things is important. They weren't afraid to talk about their power because they had it and in Wakaputanga they told everyone what it meant…when we look at it like that it was our first written constitution and it is still relevant today".

In Kaikohe –

"The Wakaminenga that is in He Wakaputanga is a body unique to us. It met and was in existence years before 1835 and provided a model for all Hapū to work together and make joint independent decisions. Our people have never lost sight of it and neither have we forgotten what it promised".

"It (He Wakaputanga) has been such an important part of my life and the life of my whānau. Our tupuna was there in 1835 and we grew up hearing stories about all he wakaminenga and the hui with (James) Busby…I think it's important because of all that history and what it says about us…important politically as well as historically".

At Whatuwhiwhi –

"I know not many Iwi outside the north signed He Wakaputanga but its kaupapa is something everyone can understand. It's the same kaupapa about our mana that the old people took to Waitangi five years after He Wakaputanga was signed and it's still our kaupapa today".

Although He Whakaputanga was not discussed as often elsewhere it was apparent to the Working Group that others acknowledged the importance of its kaupapa of different polities working together. In fact in many hui and written submissions it was defined as the only tika way that our people could establish the kind of constitutional relationship with the Crown that is contemplated in Te Tiriti.

In that sense He Whakaputanga was the prelude to a longer debate about kotahitanga which was often frank about the difficulties that need to be overcome if any form of unity is to be

achieved in a constitutional sense. Many participants were particularly clear about the way traditional interrelationships had been so often undermined by the Crown in the course of colonisation but nevertheless believed that it could be overcome with the institutionalisation of some form of unity similar to that contemplated in He Whakaputanga.

"We never signed He Whakaputanga but what it talked about are the same things that we have always talked about, especially our people finding a way to come together. It seems appropriate then for (the) Working Group to keep He Whakaputanga in mind. It is certainly what we would want".

"Everything that He Whakaputanga tells us about making decisions together…what they now call unity in action, was a warning really that with all these new people coming there would be threats to our way of life and our rangatiratanga…and that's exactly what happened".

"Our tīpuna Te Hapuku signed He Whakaputanga and it has always been part of our understanding that rangatiratanga is not about being beholden to anyone else…not something dependent on the Crown like the Crown seems to think".

"Te Wherowhero signed He Whakaputanga and then later became the first king so I have always imagined that the aspirations of the two are the same. They wanted…expected their authority and yes their independence to be acknowledged and respected. That's got to be the base of any constitution for our people then we can try and get some sort of kotahitanga with the Crown".

"I find it really inspiring that our old people could have foresight like that and build upon ideas they already had about politics to evolve something different in He Whakaputanga. It must have been a big ask in those days and I'd only hope we can still do that if we look at a new constitution".

"Our rōpū *thinks that the idea (in He Whakaputanga) that different Iwi or Hapū can come together is a really good one. It was an attempt at Kotahitanga that would be really crucial in any new constitution today".*

"There were some practical difficulties with He Whakaputanga like the infrequent assemblies but that was the circumstances of those times…the ideas were amazing. Our old people were visionaries and that's what we need now".

"We see Kīngitanga as our idea of unity bringing together our marae in allegiance as well as in practice…and He Whakaputanga has that same idea so the values are there but we have to work out how to translate that into something workable for our people today because unity can be so hard to achieve".

"The key part of He Whakaputanga…is where it says that we will recognise no other legislative authority but our own. That's the only basis upon which a new constitution should be developed…recognising our self determination as well as the kāwanatanga that gives Pākehā the right to the same thing…then we have to work out the boundaries between them and make rules about how that would work in practice".

"(He Whakaputanga) guarantees that Hapū representation is guaranteed and that's what a constitution should do…things are different now but if constitutions are about first principles then that should surely be the first…while also allowing Māori the right to debate what the representation might look like and whether it might include other roopu".

"We sometimes forget that it was all about Hapū back in the day…He Whakaputanga is all about Hapū and working out how we manage that now is going to be a real challenge".

"Both the Declaration and treaty talk about Hapū but that's always been too hard for the Crown to deal with but we have to be honest with ourselves and find our own ways to rebuild those relationships among ourselves".

As noted earlier the Waitangi Tribunal released the First Part of the Paparahi o te Raki Report while the Working Group was holding its hui. In its report the Tribunal considered both the relationship between He Whakaputanga and Te Tiriti as well as the language and terminology that best gives effect to it. It reaffirmed both the views that were consistently put to us and the long-held general Māori understanding that He Whakaputanga was

"a declaration that Māori authority would endure…When rangatira asserted their mana i te whenua there can be no doubt that they intended this as an expression of the highest authority within their territories. They furthermore asserted their rangatiratanga – their rights as leaders subordinate to no-one else within their territories. And they asserted their Kīngitanga…that there could be no leaders above them. Taken together these assertions of mana, rangatiratanga and Kīngitanga undoubtedly amounted to an assertion of their authority to make and enforce law and therefore of their sovereignty".

The Tribunal further stated

> *"Its principal significance was as a written assertion of the mana, rangatiratanga, and independence of those who signed…and to ensure that no foreign law or government could be imposed on them…It was also important as a renewed declaration of friendship with Britain and its King based on mutual benefit through trade, mutual commitments of protection, and British recognition of rangatiratanga and mana i te whenua".*

In our view the Tribunal conclusions underscore why He Whakaputanga was seen as such an important part of the constitutional transformation we were tasked with exploring. Like tikanga it was regarded as a necessary and appropriate starting point for considering a different constitutional system.

It does need to be noted that there was some debate in rohe outside Te Tai Tokerau about the relevance or country-wide applicability of He Whakaputanga. In some Iwi there was concern about preserving the particular structures that they had developed while others were keen to explore ways that could properly involve groups such as Urban Māori Authorities that do not function and are not constituted as the Hapū envisaged in He Whakaputanga.

However in all of the discussions He Whakaputanga was seen as a precedent for how relationships among ourselves might be better organised. It cannot be stressed enough that there is a quite considerable degree of frustration and in some cases anger with the dominance that the Crown is seen to have accorded Iwi in recent years. Many people in fact felt that the policy has disadvantaged Hapū in ways that are contrary to tikanga, He Whakaputanga and Te Tiriti.

It was equally important to many participants that He Whakaputanga in particular provided a precedent about how the relationships between different Iwi and Hapū might be improved and given constitutional form. The genuineness of those particular discussions and the continuing desire for unity which they encapsulated may be the greatest legacy that He Whakaputanga has left for our people.

It was also felt that He Whakaputanga also provided a precedent for institutionalising the relationship with the Crown in the relational sphere. As He Whakaputanga suggested, the sphere could in fact be understood be a new site of power where Māori and the Crown could make joint decisions while respecting the mana of each participating polity. That seemed a worthy and practical precedent to everyone involved, whether their Iwi had signed He Whakaputanga or not.

Te Tiriti o Waitangi -

Throughout all of this process our people were passionate and committed to Te Tiriti. There was a broad historical sensibility about the circumstances of its signing and its meaning for Māori as well as an awareness of a differing Crown perspective.

There was also a consensus that it involved a special set of rights and obligations which had not yet been completely honoured. While everyone was appreciative of the treaty-based changes that had been made in recent years they were also agreed that the treaty relationship involved more than the kind of "partnership" that has been the dominant view in the recent Crown Treaty policies and jurisprudence.

In fact it was noticeable how often people used the term "treaty relationship" rather than "treaty partnership" in their representations to us. It was also noticeable how often it was remarked that the "partnership" was never equal in the way that it was implemented in practice by the Crown.

The inevitable awareness of and debate about the Treaty settlements policy was shaped by those experiences. Even when we spoke with people who were proud of their involvement in settlement negotiations there was an often forcefully expressed sense that until the power imbalance in the treaty "partnership" is addressed there cannot be completely full and final settlements.

In that context there was agreement that in a very important Māori sense Te Tiriti flows from tikanga and the understanding of mana as a distinct concept of power. There was also an understanding that it signified the same wish for an independent yet interdependent political relationships that is evident in He Whakaputanga. Like everything else in the Māori world it was seen as having a whakapapa and a history.

The Working Group do not believe it is necessary in this Report to detail that history. However we do feel it is important to briefly summarise four facts about the political understanding of Māori in 1840 that seem especially relevant.

(1) All Iwi and Hapū continued to know and exercise their mana as culturally unique and independent polities, and those who had signed He Whakaputanga had just recently reaffirmed that fact, some only a few months before the 6th of February.

(2) Every Iwi had a long history of treaty-making. In Ngāti Kahungunu for example it was a part of the diplomatic lexicon and was known as mahi tūhono, the work which brings

people together. It was an expression of mana and every Iwi and Hapū has examples of treating with others both before and after 1840. Treaty-making did not fall out of the sky on an unsuspecting people in 1840.

(3) In areas like the north where the greatest concentration of Pākehā had arrived the rangatira had been concerned for some time about their behaviour but their increasing presence did not alter the fundamental legal and political perceptions which Iwi and Hapū had about their own authority and their place in the world. The Pākehā presence was just a mere blip in time and our people perceived them according to a view of the world determined by tikanga and the absolute certainty of mana as a concept of power.

(4) Iwi and Hapū wished to formalise some relationship with the British Crown for a number of different political and even economic reasons but were clear on the tikanga as well as the political criteria which that relationship had to meet if it was to be legitimate in Māori terms.

In fact it is obvious that in 1840 they could only act according to tikanga and commit the people to a relationship with the Crown that was tika in Māori constitutional and cultural terms. Logic and common sense, let alone the simple realities of the time, make such a conclusion inevitable.

The nexus of that reality may be likened to the kawa or tikanga of the marae. Just as a marae would expect the rangatira of any manuhiri to monitor the behaviour of his or her rōpū and ensure it accepted the jurisdiction of the marae they were on so the Iwi and Hapū were keen to treat with the Crown so that it would bring order to the Pākehā manuhiri who came onto the "marae" that is Aotearoa. Like any manuhiri the Crown's authority, its "mana", would be acknowledged when it entered the marae but it would ultimately be subject to the kawa or tikanga which prevailed there.

Another analogy may further illustrate the nexus. If the Crown ever entered France say it would be expected to abide by French jurisdiction. The same convention was expected here except that Te Tiriti also allowed the Crown something that would never have been granted willingly in France – the authority to continue governing its own citizens who lived in this country.

That substantive offer was never accepted by the Crown of course but it is absolutely consistent with the Māori reality where the important question was not whether Māori understood sovereignty so much as whether they understood mana and the obligations that manuhiri were expected to honour. The evidence from all of the *kōrero* in the reo before and

at the time of the signing is that rangatira were absolutely mindful of their responsibility to preserve and even enhance the mana they were entrusted with while ensuring that manuhiri reciprocated. They were clear about what they could or could not do.

In that sense Te Tiriti is derivative of Māori law and mana and could only have been discussed and understood by rangatira in that historical and constitutional context. They could only have made decisions in the reality that they made and lived and it was that context which most permeated the discussions heard by the Working Group. Sometimes it was directly articulated, at other times it was implied, but it was the most common starting point for any kōrero about a constitution.

In one of the first written submissions received by the Working Group in 2011 Erima Henare referred to the historical context in quite specific terms –

> *"From our perspective there is only Te Tiriti…that is what was signed (at Waitangi)…The other texts I beg to offer is just the English version. It is not the same as Te Tiriti o Waitangi and has no mana. It is an English language version that meant nothing to our tūpuna, nothing. They signed only what they understood, Te Tiriti i te reo Māori…(and) because our tūpuna protected the foreigners who lived here at that time…the Māori way of life and the cultural nature of our sovereignty were acknowledged as truths and axiomatic to Te Tiriti…Any other interpretation that would have us ceding our sovereignty or our mana is a denial of historic reality. It is a manipulation of the past to make it fit what exists now…Had ceding sovereignty been suggested at that time, that is that the rangatira gathered at Waitangi should surrender their mana to all the foreigners all hell would have broken loose".*

The Working Group also received a copy of the submission that another rangatira, Rima Edwards, had made to the Waitangi Tribunal in the Paparahi o te Raki hearing. He began in similarly direct terms by noting that He Whakaputanga is a "Kāwenata tapu" and

> *"a declaration of independent authority and an introduction to understanding Te Tiriti".*

He then stated that Te Tiriti is also a "kāwenata tapu" and that its terms are equally clear -

> *"I te tuatahi horekau i tukua e ngā rangatira o ngā Hapū tō rātou mana ki a Kuini Wikitoria.*
> *Te tuarua horekau i tukua e ngā rangatira o ngā Hapū tō rātou mana whakahaere o to rātou whenua ki a Kuini Wikitoria.*

Te tuatoru i whakae ngā Rangatira o ngā Hapū kia whakatungia he hononga tapu waenganui i nga mana o Aotearoa me Ingarangi".

("In the first instance the rangatira of the Hapū did not cede their sovereignty to Queen Victoria.
Secondly the rangatira of the Hapū did not cede their mana in relation to the land to Queen Victoria.
Thirdly, the rangatira of the Hapū did agree to create a sacred relationship between two sovereign nations, that is Aotearoa and England").

Similar views were consistently expressed directly to the Working Group –

"Knowing what our old people have told us it just seems logical that we would never have ceded anything to the Crown. But the old people also said that we offered Pākehā a place to stand and that seems logical as well because it's about manaaki…it's not about them trampling on our manaaki and us not trampling on their right to be here which Te Tiriti gave them…that was the bargain really only it's never worked out the way that the rangatira intended…and probably not the way some Pākehā might have wanted at the time either".

"If we accept that we gave away our mana then we have no right to be talking about constitutions. But if we didn't, and we definitely didn't, then Tiriti not only gives us a guide about what we might do but what sort of place the Crown should really have in a treaty relationship…and it's a guide about the tikanga that was meant to be in place…the rules that were there when we gave them kāwanatanga".

"When Te Tiriti is seen as maintaining our mana rather than giving it away it is easy to see it like two lots of different mana coming together, us and Pākehā, and all of us having to work out a proper relationship where one doesn't boss the other around".

"Te Tiriti has everything a constitution needs – the recognition of each community's mana, the preservation of each community's decision-making authority, and the recognition that there are things everyone has to come together to make a decision about, like finance or foreign affairs for example".

"Understanding Te Tiriti means understanding two things – that our old people only talked about and signed the words in the reo because that was it at that time…and secondly that we didn't give away our mana to be in charge of ourselves but kept it and

asked Pākehā to look after themselves too according to certain tikanga…is that a constitutional relationship?"

"It is important that if you are to write about a constitution based on Te Tiriti that you stay focussed on what our tūpuna said and not what generations of Crown officials and lawyers have told us…that is the only way that you will be able to do what's in your Terms of Reference".

"I don't see how you can have a constitution unless it's built upon Te Tiriti".

"A constitution based on Te Tiriti will have to have some sort of values base because the treaty is about values…one of those will have to be the kawa or the tikanga to work out what to do if there is disagreement between the Crown and us…how will that get sorted out?"

"Te Tiriti as the base (for a constitution) is a no-brainer…it will finally settle the past and provide a good…blueprint for the future but as always the devil will be in the detail".

"I have always believed that Te Tiriti is a constitutional agreement. It said that we were to carry on making law for ourselves while the Crown was to organise Pākehā. That's what a treaty-based constitution means".

When the Waitangi Tribunal addressed Te Tiriti in the Paparahi o te Raki claim it concluded that the words in te reo in Te Tiriti, rather than those in English, were the most relevant in determining how Iwi and Hapū understood the agreement they were making in 1840. The text in the reo was also determinative for Māori about the arrangements with the Crown that would follow any signing.

The Tribunal was quite clear about what those arrangements were –

"The rangatira who signed Te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and Hobson were to be equal – equal while having different roles and different spheres of influence".

The Tribunal further stated

> *"Erima Henare put it that the enduring notion of Māori ceding their sovereignty 'is a manipulation of the past'. He added*
>
> *'There is an inherent institutional bias against our case. The bias comes with the myths that explain and justify the new Zealand State and the idea of undivided Parliamentary sovereignty. The history invoked is not the Māori history. The Treaty invoked is the English version, not the Māori version'".*

The hasty and peremptory dismissal of the Tribunal Report by the Crown was consistent with all of its previous rejections of any notion that Iwi and Hapū might have a comparable and legitimate constitutional status. In that regard its rejection of the Report's findings was typical but also inappropriate and unhelpful.

It was also a stark illustration of the difficulties which led to the establishment of this Working Group. Indeed the presumption behind the Crown rejection of the Report as unrealistic or of no real relevance today because it was "in charge" anyway was also the catalyst for some of the most intense debates about the need for change.

The Crown response therefore did not alter the focus of the Working Group to seek input on some form of constitutional transformation. For in effect the inclusion of Te Tiriti in our Terms of Reference presupposed the existence of "different spheres of influence". As a result the contributions we received were concerned with why they were necessary and what values might govern them.

Neither did the Crown rejection of the Report deter participants from discussing what Te Tiriti meant to them. Rather it reinforced the views of those who spoke with us before the release of the Tribunal decision and gave credence and confidence to those who met with us after it. It did not remove the realistic appraisal that any change would be difficult but it did illustrate for many people why change was necessary -

> *"It's not a valid argument against constitutional change just to say that it won't happen because the Crown's in charge…it's not any sort of argument and doesn't detract from what Te Tiriti says".*
>
> *"I was really disappointed but not surprised when the Crown just rejected the (Tribunal) Report…that was really arrogant and flies so much in the face of all the evidence let alone what is right that I wonder how long it can be sustained. I hope that this mahi*

might help us all move away from those sorts of arguments and accept that Te Tiriti gave us the foundations for a different and better constitution…a better way of doing things".

"Our (discussion) group was convinced that a country can't keep on manipulating the past and that at some stage we have to realise we can't go on the way we are…and if that means constitutional change then that's what we have to look to the treaty for".

"Politicians and lawyers have really confused things by talking about Treaty principles and the different meanings in Te Tiriti and the Treaty, but if everyone…just remembered that at Waitangi and nearly everywhere else the rangatira only talked about and signed Te Tiriti there shouldn't be any confusion…sometimes it seems like the Crown has deliberately created that confusion first of all be saying we ceded sovereignty and then by all of its arguments about what it means…but it's not confusing at all and what I like about the (Tribunal) Report is that it clears up the confusion by really listening to what our people have been saying ever since 1840".

Everyone acknowledged how difficult it would be to effect change but were nevertheless keen to explore what a Tiriti-based constitution might mean. In a quite inspiring way they imagined solutions -

"Normally I don't use words like 'constitution' but I talk about Te Tiriti…and I think that in that relationship between us and the Crown there was never any intention that the Crown would be our sovereign…and without the Crown assuming it's in charge we have the seeds of a much different constitution".

"I am confident that the only real constitutional solution lies in what Te Tiriti guaranteed, a place for everyone and an absolute place for mana and rangatiratanga…but how to do that in light of our history since 1840 I can only hazard a guess although for my mokopuna's sake I hope we will try".

"Our group agreed that this will be really hard because there will be all kinds of practical problems like voting and setting out the different areas of responsibility but the biggest one will be getting the Crown to accept that it needs to be done…that it's what the treaty requires…and we agreed that with time and good will we will get there".

"It will be difficult to change things but it won't be impossible because Te Tiriti shows us the way…to a different political order where we actually find a better relationship and a

way of making law that benefits everyone. It's an exciting challenge really and the next step in getting the treaty honoured".

"Our people have always had hope in Te Tiriti. I remember when we had our Tribunal hearing my aunties and uncles all talked about the treaty being the only hope they had whenever they had to fight for something. They were disappointed lots of times and had their hopes dashed because the treaty was never seen like this sort of constitution would see it…like the foundation of everything. I wish my old people would still be alive if we get there, when we get there, because that would give them hope".

"We protested at Waitangi because Te Tiriti was not being honoured. It still isn't but that doesn't mean its real promises no longer exist".

The Working Group heard similar views throughout the country. Whether our kōrero was with kaumātua or rangatahi, or with those living in cities or rural areas, there was always an acceptance that Te Tiriti was the only possible starting point for any discussion about a new constitution. If a constitution without tikanga was seen as not being tika, then a constitution that did not derive from Te Tiriti was similarly seen as contrary to both tikanga and any broader sense of justice. It was in a very real sense a breach of Te Tiriti.

It was equally clear in the discussions that basing a constitution on Te Tiriti was indeed quite different from incorporating it into the existing constitutional system. Its reaffirmation of tino rangatiratanga and a non-cession of mana was constantly referred to as a simple statement of fact which precluded its incorporation into any other system.

Equally importantly its entrenchment of a place for Pākehā was also seen as a statement of cultural reality in 1840 – that as tangata whenua Māori would have been obligated to allow manuhiri certain entitlements as well as the authority to govern themselves, just as that authority was acknowledged amongst Iwi and Hapū. Reaffirming that place and determining the tikanga which justified it was also seen as a necessary basis for any treaty-based constitutional relationship.

International Precedents -

The Working Group was initially unsure how much discussion would occur on the final part of our Terms of Reference to do with other indigenous human rights instruments. However the kōrero was often enthusiastic and interested which was perhaps due to the increasing involvement of Māori in international indigenous affairs over the last several decades.

The United Nations Declaration on the Rights of Indigenous Peoples was the subject of most discussion. However references were also made to a number of other Declarations and Statements that have been drafted by Indigenous Peoples in recent years as well as various indigenous governing structures in North America and the recently enacted Constitution of Bolivia.

There were two commonly cited Indigenous Declarations. The first was the Kari-Oca Declaration which was drafted at the World Conference of Indigenous Peoples on Territory, Environment and Development in 1992. The Conference was held in Rio de Janeiro at the same time as the United Nations Conference on Sustainable Development (Rio+20).

The second was the Mataatua Declaration drafted at an international Indigenous Conference that was hosted by the Iwi of Mataatua in 1993. It was the first International Indigenous Conference on cultural and intellectual property and is still regarded as a seminal statement about the rights and obligations of Indigenous Peoples to protect and preserve taonga and mātauranga.

Although both Declarations were drafted on quite specific issues they also frame them within the right of self determination and its corresponding constitutional implications. Thus the Preamble of the Kari-Oca Declaration begins with the following statements

> *"We the Indigenous Peoples walk to the future in the footprints of our ancestors.*
> *We the Indigenous Peoples maintain our inherent right to self determination.*
> *We have always had the right to decide our own forms of government, to use our own laws…to our own cultural identity.*
> *We maintain our inalienable rights to our lands and territories…we assert our ongoing responsibility to pass these on to future generations".*

The Mataatua Declaration similarly begins by declaring that

> *"Indigenous Peoples of the world have the right to self determination and in exercising that right must be recognised as the exclusive owners of their cultural and intellectual property".*

It also states that Indigenous Peoples

> *"define for themselves their own intellectual and cultural property".*

These reaffirmations of self determination and the right to define were regarded as key attributes of indigeneity in general and of any specific discourse about the right of Indigenous Peoples to engage in constitutional matters. They were international exemplars of what the exercise of rangatiratanga could mean in theory and practice –

> *"The importance of all of the (international) mahi is that it shows we are not alone…and that even a topic like this has precedents overseas…Kari-Oca was about the environment and climate change and all of those things but dealing with it was all about self determination".*

> *"The Mataatua Declaration was important in the Wai 262 claim and it is still important today because of what it says about rangatiratanga as well as intellectual property. It means we are not starting something new in this kōrero".*

> *"The fact that Mataatua talks about defining for ourselves what our intellectual property is just reinforces what self determination is…doing it for ourselves…and that's all that I think a constitution does".*

The recognition of self determination and the values associated was raised in all of the discussions on international precedents. Not surprisingly it was discussed most often in relation to the Declaration on the Rights of Indigenous Peoples.

The United Nations Declaration on the Rights of Indigenous Peoples -

The Declaration was discussed at every hui and referred to in most of the written submissions. Although the Crown has attempted to downplay its importance (after initially declining to recognise it at all) it continues to have resonance for many Māori people.

A number of Māori of course contributed to the drafting of the United Nations Declaration which has meant that many of our people understand its relevance here as well as overseas. It is perhaps the most well-known of all international human rights instruments and the work of those who were involved in the drafting was often referred to in our discussions.

The respected kuia Erihapeti Murchie was one of those who was actively involved along with others in the early drafting stages. At a crucial point in the process in 1992 she stated –

> *"As Ngāi Tahu and as a Māori I see the Declaration as an international expression of the rights we have through whakapapa and the treaty. As an indigenous woman I see it as the first ever international statement about the minimum human rights standards that apply to Indigenous Peoples, including indigenous women and children. From both points of view the Declaration will enable us to claim back the right of self determination and give our people international reassurance that tino rangatiratanga has a political as well as a cultural meaning".*

For several years one of the rangatira who accompanied the Māori delegation to drafting sessions of the Declaration was Sir Archie Taiaroa. He also saw the links between the Declaration and Te Tiriti as well as its particular relevance to the constitutional change hui which were being held at Hīrangi during the same period

> *"I am reminded of the times when our old people travelled to London and even to what was then called the League of Nations in Geneva to get pressure put on the Crown to honour the treaty. Well we are back here now but in different circumstances and this time we are drafting something, this Declaration, which is unique because it involves so many Indigenous Peoples. It's also unique because it seems to have so much in common with Te Tiriti. It seems that at last the work of all those people who travelled to Europe might be bearing fruit. If it does then the Declaration could sit alongside the treaty and maybe the discussions at Hīrangi might lead to further kōrero in the future".*

The Working Group similarly saw the relevance of the Declaration to its deliberations as an international expression of what tino rangatiratanga means in political and constitutional terms. We also concur with the view of the Native American jurist John Mohawk –

> *"The efforts by hundreds of Indigenous Peoples to draft the UN Declaration is another attempt to express in human rights law the basic tenets of being indigenous – a love for and authority with the land, a resolve to enhance and protect the right to be the people of a land, the power to have sovereignty and to be self determining, and the ancestral obligation to find a good way of relating with others…Because of our history it also means helping us recover from centuries of dispossession by stating to the world who we are and what we are entitled to…by declaring the human rights, the humanity, that colonisation has for too long denied us".*

In the course of our discussions a number of Articles in the Declaration were referred to including the Preambular Statement

> *"Recognising the urgent need to respect and promote the…rights of Indigenous Peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources…"*

The particular Articles which people felt were most relevant were

> *"Article 3 – 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.*
>
> *Article 36 - Indigenous Peoples have the right to recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements or other constructive arrangements".*

For many participants the Article 3 definition of self determination was also an apt description of rangatiratanga. In their view it therefore had real relevance in the development of a tikanga and treaty-based constitution –

> *"Really rangatiratanga is just us determining our own destiny which Article 3 talks about. I'm not fussed whether there are all sorts of legal arguments about whether the Crown will let the Declaration be used…or even when self determination really applies*

because I just see it as another statement about our rights and in a way that's what all this kōrero is about".

"When our tūpuna went overseas in the early 19th century and came back with all sorts of new ideas about farming and reading and so on they also came back with new political ideas about how Hapū might organise themselves to meet the new times they were in…we've never been afraid of claiming international precedents and that's all the Declaration is – another way of helping see our rights and our tino rangatiratanga at an international level as well as here at home".

"The Declaration probably isn't perfect but like Te Tiriti it's there for us to use…and if we can use it like Te Tiriti by holding on to what it says about our rangatiratanga or self determination and then trying to give voice to it that will be of real value in this mahi".

Article 36 was considered particularly important because of the Crown's ongoing use of Te Tiriti as a treaty of cession –

"That Article 36 is really interesting when it talks about enforcement because the Crown thinks it's enforcing Te Tiriti but it only does that because it says we let them take our mana. That's not enforcing Te Tiriti it's enforcing what the Crown wanted it to be".

The Working Group accepts the relevance and importance of the Declaration in any discussion about constitutional transformation. Like other documents such as the Mataatua Declaration it provides an international benchmark against which the exercise of rangatiratanga may be defined and measured.

We do not accept the Crown's view that it is merely an "aspirational" document that has no real application. Rather we agree with John Mohawk that it is an expression "in human rights law (of) the basic tenets of being indigenous". The rights it espouses and particularly the right of self determination are living rights that inhere in humans as peoples not as subjects of some political order. In our view they are therefore an absolutely appropriate baseline to be considered in the development of a new and inclusive constitution.

We agree too with the view of Erihapeti Murchie that the Declaration "will give our people international reassurance that tino rangatiratanga has political as well as cultural meaning". It is an international mirror of rights and authority that Māori have always had and is thus an adjunct to Te Tiriti and what it should mean in terms of self determination as both a human right and a capacity to once again make our own decisions.

Most of all the Working Group acknowledges the mana that our people are prepared to accord the Declaration -

> *"We are now trying to use the UN Declaration whenever we can. I remember when James Anaya (the Former UN Special Rapporteur on the Rights of Indigenous Peoples) was here he said something like 'It's your rights, it's your Declaration, make it work for you' and it does recognise all those things we talk about in the treaty".*

> *"We wanted it (the Declaration) in our Deed of Settlement but the Crown refused but we still see it as a kind of supplement to Te Tiriti and He Whakaputanga…it's an international statement of the things our people have been saying since 1835 and can be another benchmark for what we are talking about now".*

Although the Declaration is concerned with existing relationships with States that are quite different to those that are contemplated in this constitutional process it is nevertheless relevant because it is the sum of what literally thousands of Indigenous Peoples have regarded as a minimum international set of human rights. Symbolically it is also important because the inclusion of the right to self determination was only achieved after years of struggle by Indigenous Peoples against governments (including the government of New Zealand) that sought to deny it. Perhaps the success of that struggle can give hope and reassure people that the difficulties involved in constitutional transformation can also be overcome.

Indigenous Constitutions In Practice -

Members of the Working Group researched other models of indigenous governance as possible exemplars for discussion. A number of participants at the hui also tabled information they had about indigenous government institutions they had visited or were familiar with.

Everyone recognised the different circumstances of those initiatives, as well as their limitations. However they did provide helpful starting points about how constitutionalism is understood by other tangata whenua and how it can be given effect. The hui found three examples of particular interest –

1. The Sami Parliament –

The Sami Parliament or Samediggi was established in Norway in 1989. It has an elected plenary body of thirty nine representatives and deals with political initiatives relevant to the Sami people.

Although its current practical powers are only modest it does recognise in a sense the idea of different "spheres of influence" that the Waitangi Tribunal referred to in the Paparahi o te Raki claim. A member of the Sami Council, Leif Dunfjeld has commented that its importance at this stage is the practical recognition it represents for the Sami people and their rights –

> *"What has always been vital to us is being able to give some institutional and constitutional form to our right of self determination. Moving it from a right just talked about or an ideal just argued over with the Norwegian government to what is now a functioning practice has been a reclaiming of who we are and what we can become…we are in a different constitutional relationship with the State now which is based on our political authority and we haven't had a mechanism to exercise that for centuries".*

Some contributors at the hui had met or hosted Sami delegations and were aware of the restrictions under which the Samediggi currently operates. However they also regarded the constitutional and institutional recognition of it by the Norwegian government as an important precedent for Māori and other Indigenous Peoples –

> *"The situations are really different but having some place where their rangatiratanga is exercised is much better than the kind of ad hoc process we have here where the Crown doesn't even acknowledge a constitutional role for us unless its on their terms and in their system. At least they have a Parliament where they can come together as a people in a constitutional framework rather than just the hui we have to have whenever we need to react to something the Crown is doing".*

> *"When they were here last year they talked about the hara they used to have deciding mandates and who would represent who and all of the other issues that most of our Iwi Authorities are plagued with. But now that they are in a formal constitutional relationship with the Norwegian government and have their own institutions and governing body a lot of those problems seem to have disappeared…they just know what a difference it has made".*

2. The Constitution of the State of Bolivia –

Some features of the Bolivian constitution were known to a number of participants in the Working Group process. Some had actually spent time in Bolivia and many others also knew something of the process involved in its drafting. Many also knew that the current President of Bolivia, Evo Morales, is indigenous.

However what attracted interest was not the detailed provisions of the constitution but the indigenous values which underpin it. Indeed many participants saw parallels with Māori perspectives on a number of issues, especially the importance of the environment and the relationships people have with it and with each other.

The Preamble for example begins with the value of "belonging" and the interrelationships between the land and the people –

> *"In ancient times mountains arose, rivers formed and lakes were formed…We populated this earth with different faces and since that time have understood the plurality that exists in all things".*

It also recognises the primacy of Pachamama or the Mother Earth

> *"We found Bolivia anew, fulfilling the mandate of the people and the strength of our Pachamama…"*

The recognition of the relationships with the earth is in effect the Prime Law of the Constitution from which everything else flows, including certain tikanga or basic values

> *"Everyone has the right to a healthy, protected and balanced environment…and to suma qamara (live well) and nandereko (live harmoniously)".*

A number of written submissions referred directly to the Bolivian constitution

> *"There seem to be numerous parallels with our world view, especially the idea of kaitiakitanga and the responsibility everyone should have towards Papatūānuku…but enshrining them in a constitution gives them a meaning and force that is currently missing here. They give a model for what is possible".*

> *"When I was in Bolivia last year I was struck by the similarities as well as the differences but I was impressed most of all by the fact that they could draft an indigenous constitution that allows for modern governance while drawing on such a rich tikanga…It displays a real confidence in the people's ability to meet new challenges both domestically and internationally and also shows how colonisers and Indigenous Peoples can work together within a shared constitutional framework. It also shows what could happen here if the guarantees in Te Tiriti are ever met".*

3. Native American Governments:

The Tribal Governments operating on many Native American reservations were perhaps the most commonly known examples of how Indigenous Peoples exercised governance. Some participants had visited or worked on reservations and shared their experiences with us. Members of the Working Group were also familiar with them.

In practice they are quite confined by Federal law and often merely mimic Federal or State structures. However as with the Sami Parliament the fact of having a government was simply accepted as part of who they are. It was an institutional expression of their rangatiratanga and thus their constitutional right to govern themselves.

A participant who had worked on the Navajo Reservation in Arizona noted –

> *"What always impressed me was not that they had their own government or their own courts or their own Police Force and schools so much as the way that everyone simply believed that it was all completely natural…no-one argued about whether they had a right to it or whether it was separatist, they just did it…they knew it didn't always work perfectly but they knew it was their absolute right to have it and that they would eventually fix its flaws because it was theirs. The idea that they shouldn't have it or might have ever given it away was simply foreign to them…it was the practical expression of their sovereignty and everyone believed in it from the elders to the mokopuna."*

Others commented on the importance of having some similar institutional recognition of rangatiratanga –

> *"If self determination means anything then it has to mean the same thing for everyone…Apache or Hawaiian or Ngāti Awa or Ngāti Te Ata or whoever…that's why what the Native Americans have managed to do is so important and why we need something like it here…it gives an actual real place to say this is our mana and this is what it means in practice".*

> *"Native Americans I know admit there are real issues in some Tribal Governments…like there are with any government, but it's theirs and they have the chance to decide what its priorities and values are in a much more effective and real way than we do…that's a real important difference and I can't help thinking they are much closer to their rangatiratanga than we are".*

"At least on the reservations people can point to their government or their courts and say 'That's our mana in action' and that's a real boost for them…here all we've got is the words or some Crown entity like a Trust Board or a PSGE and that's not the same because they are Crown entities not ours…they might control some putea but can you imagine the Crown allowing a Trust Board to set up its own court or charging rates?"

The Lakota Sioux jurist Vine DeLoria was often a critic of the policies of some Tribal Governments but also acknowledged their importance for the values and rights they represented –

"Whatever the shortcomings of these government structures they are for many tribes an honouring of ancient treaties and an even more ancient constitutional tradition and authority…and because of the genius of our people, and the genius of all Indigenous Peoples I know, they are a vehicle through which we can exercise our sovereignty and find some way to maintain our law and our rights…better to have that than have some White man exercising it for us".

After the discussions on this part of the Working Group's brief we have concluded that there is value in studying the principles and practices that other Indigenous Peoples have used to give constitutional form to their equivalent of mana and rangatiratanga. Although often limited in their jurisdiction and funding they provide working examples of how a different form of governance can function and work alongside other governing systems.

More importantly they are expressions of the right to govern. They give effect to the same constitutional ideals our people acted upon for centuries and which Te Tiriti guaranteed we should continue to do.

PART THREE -

CONSTITUTIONAL VALUES.

The third task the Working Group set for itself arose from the common thread in the kōrero that any constitution and any constitutional model or models had to be based on certain values. We have therefore collated the main constitutional values which people identified.

Sometimes the "values talk" was quite explicit while on other occasions it was implied in the way people discussed tikanga or the nature of the relationships that a constitution should guarantee. At a number of hui the kind of equal constitutionalism provided for in Te Tiriti was itself seen as a value.

Other values ranged from the importance of the land to respect for all living things. This included the prime relationship with the natural world and an understanding that the well-being of humans depended upon the well-being of Papatūānuku as a living entity rather than a resource.

Another value that was frequently referred to was the equality of men and women and the preservation of good relationships between people in general. There was also a belief that a constitution should enhance the sense of belonging that Te Tiriti reaffirmed for Māori and offered to others.

Some of the values that were identified were more structural and related to constitutional conventions such as transparency and fair representation. They included a requirement that a constitution should have specific provisions to promote equality and intergenerational fairness as well as specific mechanisms to ensure that the rights and obligations of Māori were not subordinated to those of the majority.

It is our considered view that the identification of such values, and the serious and lengthy consideration people gave to them, indicates a very real desire for a more responsive and open constitutionalism. It also indicated in our view a hope that a constitution based on Te Tiriti would allow for what we describe as a conciliatory and consensual democracy rather than an adversarial and majoritarian one.

The values are all inter-related although different people attached greater or lesser degrees of significance to different ones. However all of the "values talk" was contextualised within Te Tiriti and its guarantee to maintain the independent constitutional authority of Māori.

In thematic terms Te Tiriti represented the values of political and social inclusiveness. It was the values base from which other broader ideals were discussed and from which some quite specific ideas about constitutional models eventually emerged.

The values which have been identified are also sourced in or stress the importance of relationships, whether they are environmental values or those that give meaning to the structure of a constitution. They may be defined as whakapapa values which overlap and influence each other just as the relationships in a whakapapa always do. They may be conceptualised under the following broad headings –

1. *The value of tikanga* – that is the need for a constitution to relate to or incorporate the core ideals and the "ought to be" of living in Aotearoa.
2. *The value of community* – that is the need for a constitution to facilitate the fair representation and good relationships between all peoples.
3. *The value of belonging* – that is the need for a constitution to foster a sense of belonging for everyone in the community.
4. *The value of place* – that is the need for a constitution to promote relationships with, and ensure the protection of Papatūānuku.
5. *The value of balance* – that is the need for a constitution to ensure respect for the authority of rangatiratanga and kāwanatanga within the different and relational spheres of influence.
6. *The value of conciliation* – that is the need for a constitution to have an underlying jurisdictional base and a means of resolution to guarantee a conciliatory and consensual democracy.
7. *The value of structure* – that is the need for a constitution to have structural conventions that promote basic democratic ideals of fair representation, openness and transparency.

Many of these values were discussed in some detail at various rangatahi wānanga and they are referenced separately at the conclusion of this Part of the Report.

1. The Value of Tikanga -

There was a widely held presumption that a Tiriti-based constitution logically had to be derived from tikanga as a set of whakapapa values as well as a law. It was the philosophical template for any constitution, the guidelines that might determine how it could be given practical effect, and even the code of conduct for those who might be chosen to govern. It was the value from which all of the others arose.

In the history of every Iwi and Hapū tikanga provided the law framework that sanctioned mana as a concept of power but it was also the source of values which underpinned its good and legitimate exercise. For just as the tīpuna were neither law-less nor power-less they were also never values-less. The values were often tested in the machinations of politics or the normal excesses of human fallibility but every Iwi and Hapū was nevertheless committed to a set of relational obligations and entitlements that derived from whakapapa and the links people had with each other and the land.

That knowledge perhaps underlined the clear consensus in the kōrero to the Working Group that something as important as a constitution needed to identify and build upon certain key ideals because a constitution without a set of values would in itself not be tika. The positioning of tikanga in this way appeared to be shaped by two interrelated concerns.

The first was the sense that the obligation to govern was so important it could only be "mana enhancing" for everyone if it grew out of clearly articulated values and expectations –

> *"the only constitutions I know something about, like the Westminster one, all talk about process or rights more than they do about what the process should be for or what makes the rights worthwhile…that's all back to front because it should start with some basic values or tikanga then you can work out how to manage and protect the relationships involved".*

> *"a constitution has to be practical, like a driver's license to govern, but it should be based on some understanding of what people want governments to do because they are important…in the ways people want to be treated (and) in the tikanga that sums up what might be best…manaaki more than whawhai".*

> *"Everyone talks about honouring the treaty but the reason I think it hasn't been honoured is because honouring means a certain way of conducting yourself and respecting others and the Crown has never shown that…if there's going to be a treaty-*

based constitution…it's got to be an honouring and that comes directly from an appreciation of what is tika".

To a lesser but still important extent the emphasis on tikanga and the identification of constitutional values was also shaped by dissatisfaction with the way that the current Westminster system operates. Its inherently adversarial nature encourages an oppositional politics which many people felt too easily degenerated into petty points-scoring and even arrogance.

Indeed some of the most exasperated discussions were centred on the way politics was conducted in the Westminster system. Many people even struggled to identify its core values beyond the idea of "opposition" and what was seen as a privileging of economics over other goals.

"We went along when my whanaunga gave his Maiden Speech in Parliament and had to sit through question time which was boorish and childish…one of my aunties leaned across and whispered 'There must be a better way to govern a country' and I had to agree – there was no tikanga there, none at all".

"We've got so used to Parliament and everything about it it's the only way we understand political power…but I struggle to see what its values are except that right now democracy and economic development seem to have become the same thing…there's not much tikanga there".

"I know that system has its own traditions and I guess any treaty-derived constitution has to let it have its place if that's what Pākehā want for themselves but I don't think we should just copy it…we should try to develop something different that has our own tikanga and then state what the values are".

Contest and debate were regarded as essential to good decision-making but there was concern that unless it was based upon some tikanga about how conflict or differences could be managed then any rangatiratanga and kāwanatanga spheres of influence would have difficulty working together.

"If Te Tiriti is about a relationship between the Crown and us then a constitution has to work out the tikanga to manage difference and find areas of shared or different influence…to find what the treaty relationship means. There will still be arguments but if the whole thing is based around that it will work".

"Tikanga doesn't mean you never have an argument…I've seen huge arguments on our marae…but what it means is you always remember who you are arguing with, and they're usually whanaunga, and who you are arguing for, and that's our mokopuna…it's about whakapapa and tikanga and the relationships that we have".

"Isn't the treaty a kind of tikanga? It gives us the chance to do what's right in how we look after Aotearoa and even how we look after each other…and I think that's all tikanga is".

"I don't think something like a constitution, whether it's written or not, will be any good unless there are some ideas about what is important about Te Tiriti and the kind of relationships…the kind of society that might have been imagined in 1840…in other words what would be needed to make sure Pākehā and Iwi respected each other…Kotahi aroha…arohanui ki ngā tāngata katoa…that's a tikanga in itself".

"Part of the tikanga must be to focus more on the collective and not so much on this selfie stuff…what is the whakapapa that holds us together whether we are Pākehā or Iwi or whatever…to me that's tikanga".

"Pākehā have to find their tikanga for kāwanatanga and we need to be clear on ours whenever we talk about mana or rangatiratanga…and find what we can share when we come together".

"Everything has to begin with manaaki the people and the whenua. You can't have anything without that".

"I think it has to have all the 'tangas' like manaakitanga, kaitiakitanga etc".

"If the constitution guarantees rangatiratanga and is based on the treaty relationship that's the main value you need for us and then hopefully Pākehā will come up with their own".

"Maybe there has to be an Appendix to any new constitution that states the values as well as the rights of everyone. Sort of like the Declaration on Indigenous Rights except it would be a Constitutional Declaration of Tikanga Values…(that) recognises things like manaaki but also talks about gender equality and respect for everyone whether they're young or old or disabled or whatever…that's all tikanga to me ".

"It would be good to have something like a Bill of Rights like they do in America but maybe call it a Bill of Tikanga…then everything could be measured against it like Parliament is now supposed to measure everything against the Bill of Rights Act except that part of the tikanga would be that it shouldn't be ignored like Parliament does".

Respondents of course recognised that all cultures have their own value systems and that a treaty relationship would mean finding the common ground between them –

"The biggest challenge might be finding ways to reconcile tikanga Māori with Tikanga Pākehā and Tikanga Pasifika and all the other tikanga…we have struggled with that at times in the Anglican Church but that's what Te Tiriti requires…and of course tikanga itself is about how people should get on with each other so if you create a constitution based upon it then you have a framework that makes resolution possible".

"Every nation's constitution has some reason for being and some idea of a governing purpose that has grown from its own culture and history…you can't talk about the treaty and a constitution in that sense unless you first talk about tikanga because that's what has grown up here…but having a constitution based on tikanga and the treaty doesn't exclude other values because the treaty means identifying the things people share as much as protecting the distinctiveness of everyone involved".

Identifying tikanga was never seen as an exercise to define a set of rigid or moralising proscriptions. Neither was it seen as some pointless attempt at values relativity. Rather it was an acknowledgement that Te Tiriti is itself based on certain values or tikanga about relationships and that good government carries a certain ethical responsibility to respect all the different relationships that people have. To be entrusted with the right to exercise any concept of power in fact implies a tikanga obligation to value the relationships as well as the power to make the decisions that affect them - "te mahi a te rangatira, he whakatira te iwi*".*

2. The Value of Community –

Many participants were involved in various Tribunal claims or court cases and knew something of the judicial definitions of Te Tiriti. They understood the legal parameters that had been set. Others had been directly involved in Treaty settlements or other direct discussions with the Crown and knew the political boundaries that currently determined its meaning and potential.

However most of their discussions about Te Tiriti and the idea of a constitution were framed in terms of the social value in mutually respectful relationships. They understood that any treaty is a negotiation between peoples and that the references in Te Tiriti to kāwanatanga and rangatiratanga were not just a recognition of particular sites of power but of the human values and relationships they represented.

In a very real way they saw in Te Tiriti the same values about relationships that is expressed in the well-known whakataukī "He aha te mea nui, he tangata, he tangata, he tangata". They were acutely aware of the frailty of relationships, especially when political or economic interests collide, but they also trusted that both tikanga and Te Tiriti were grounded in the belief that personal and collective relationships were "te mea nui".

For that reason they believed that a constitution could only be tikanga and Tiriti-based if it incorporated respect for the variety of human relationships as one of its most important values. Te Tiriti didn't discriminate but was meant for everyone and a constitution needed to value the same openness.

> *"If it's not about all the mokopuna it doesn't mean anything".*
>
> *"The two most important values for me are equality between our men and women and the protection and safety of our tamariki…I wish we didn't have to say that but we do…and we won't get any other relationship right until we sort out why we have fix up all the history and the other stuff that's tied up with it".*
>
> *"I like the way that the Bolivian constitution refers to everyone and makes it obvious that it's the people and the land that matters…doesn't matter who they are they are part of the constitution. It's like a whakapapa value".*
>
> *"We only get asked our views if someone wants to talk about the gay lifestyle or AIDS or gay marriage…and I think we don't get asked about kaupapa like this because we don't seem important or our relationships don't count except when someone wants my*

vote…but we're as interested in the treaty as anyone else and everything about it should be for us as well…my tupuna signed it and I think he did it for me and my partner as much as he did it for all of his other moko and that's a really important value to hang on to".

"We've never had great race relations…colonisation was always racist, but over the years we have all developed really close relationships with Pākehā at a personal level or through sports and other things…and in a little way that shows what Te Tiriti could do…it can be a model or a way of improving relationships".

Many participants raised the relationship between Māori and Tangata Pasifica as a special case because of their shared traditions and whakapapa. While those cultural and historic links were readily acknowledged as the reason why all peoples in the Pacific are expected to interact with each other in certain ways they also epitomised the whakapapa values that Te Tiriti represents. In a way the treaty was seen as creating its own special kind of whakapapa relationship –

"My Dad is Samoan and Mum's Nga Puhi… my Samoan side knows my Māori side is tangata whenua and my Māori side knows there are whakapapa in Samoa that joined us together a long time before 1840. Wouldn't it be great if Te Tiriti could be seen as a way for Pālangi to get that same understanding…or if a constitution could find some way to say that you and your whānau are part of this …not because you're better or there's more of you or you've got more money but because it's what the treaty says and what a whakapapa here in the Pacific means".

"We got taught like Pākehā that Pacific Islanders were the 'other' but we're all from the Pacific and it's that whakapapa which I think a constitution could represent".

There was also some discussion about whether Te Tiriti is limited to some closed binary relationship between those who are generally recognised as Māori and Pākehā or a more open construct that embraces those who have recently come here as well. The constitutional debate became an immigration one.

As with any concept of power mana or rangatiratanga always included the right to determine who could live or pass through one's jurisdiction. It implied an authority to control the flow and conduct of immigrants, just as the kawa of the marae still determines the flow and conduct of people on the marae.

To many people Te Tiriti extended that authority to immigrants from overseas. It clearly required the Crown to regulate the conduct of its citizens but did not cede the authority of rangatira to determine the overall flow of immigration. Of course the Crown usurped that authority but it has not diminished the sense that all immigrants still come here because of Te Tiriti and therefore have a Tiriti relationship with Māori. Te Tiriti is their immigration visa.

Everyone was naturally mindful of the recent increase in immigration and although some unfortunately shared the common misapprehensions about Asian immigration in particular the essential view that Te Tiriti applied to all people and therefore had immigration connotations remained the same. Where the immigrants came from or when they arrived was less important than the relationship with all new arrivals that the tīpuna hoped for in Te Tiriti.

> *"It seems to me that if we talk about values in a constitution we have to talk about our relationships with every immigrant whether they came here in 1850 or 2015…and if they came from China or South Africa they are part of the treaty…they might be here because of some Crown policy but some might want to be part of us and that's fine because the treaty is still with us".*
>
> *"When I talk about the treaty relationship with other people I like using tangata whenua and tangata Tiriti because it puts everything in perspective about how this thing might work…it values everyone on a whakapapa or relationship kaupapa rather than just a Crown one".*
>
> *"One of the difficulties in the whole treaty debate has been that it's always seen as just a Māori problem as if it's just about our rights but it gave everyone else the really basic right to be here…doesn't matter when they arrive…there's a treaty relationship for everyone".*
>
> *"I'm not that fussed about using the word biculturalism because it's sometimes just a co-option of our tikanga…like dial-a-kaumātua or dial-a-pōwhiri or rolling out a wero for every old Pop Star who comes here…but where it does have some use is reinforcing the treaty relationship at a much more personal level with everyone who has come here to stay and is now tangata Tiriti".*
>
> *"When we say 'he aha te mea nui' we don't just mean us or the Pākehā who've been here for generations. It's everyone and that's what Te Tiriti allows for…that we now have this multicultural place but it all began in the treaty and the relationship that's meant to exist between us and the Crown".*

"It's just tikanga to recognise the relationship with Tangata Tiriti even if they haven't always recognised us…that's a really important value but it needs the same manaaki that our people tried to show to the first Pākehā".

The discussions about how Te Tiriti valued and embraced everyone in the community were also about the need to ensure that all peoples could fully participate in political affairs. That is, the need to guarantee fair representation for everyone in both their different spheres of influence and in the relational sphere.

A people's trust in a constitution, and their willingness to be part of it, always depends to some extent upon the mechanisms it has to ensure participation in a fair and equitable way between all of those whom it is designed to serve. It also depends upon the good faith choices people might wish to make about how they are represented and by whom.

Every participant wanted an effective voice in how the country was governed. As Māori they wanted their voice to be heard in a Tiriti-based constitution which had fair and appropriate representation in the rangatiratanga sphere of influence and a reassurance that it would not be subordinated in the relational sphere.

The discussion focussed mainly on who would qualify to participate or be represented in each sphere of influence and how the often vexed question of identity might be reconciled with any general value statement about participation. People often asked in fact who would decide who was Māori (or Pākehā) and who could thus participate in a particular sphere.

Questions of identification are common in Māori discourse mainly because colonisation has so co-opted and distorted the definition of who is a "real" Māori. There is truth in the old adage that "the namer of names is the father of all things" and redefining who we are has been a constant form of colonising control. Indeed since 1840 there have been numerous different legislative definitions of Māori, many of them in statutes about land and the taking of land.

However the right to define oneself is an essential part of rangatiratanga and the right to self determination. It would therefore seem logical and obvious that each party to Te Tiriti would decide its own grounds for participation and representation in its own sphere. Māori and Pākehā would naturally then also choose their own representation in any relational sphere.

"Our whakapapa tells us who we are and it doesn't matter if we've got Pākehā in there as well…what matters is how we live our whakapapa and where we put our effort…we then make a choice in this process where we want to stand".

"It's not a complicated issue…it was colonisation that started saying there were only half Māori or quarter Māori and that was just to control us…a constitution would have to get rid of all that…it doesn't mean giving up what else is in our whakapapa…my Nan's from Australia…but I'm not a half anything I'm a Nāti".

"However we define who we are, or how Pākehā decide who they are, the main thing is that we find a robust way of making sure everyone has a say…to make sure we would always have our say through our own tikanga".

"The change we are talking about is the next step past merely biculturalising the Crown to finding something that's not assimilative or integrationist or a British clone transplanted here…something unique where we make political decisions here in a way that represents or conveys what being here means".

The emphasis that was placed on the value of good social relations in both treaty and constitutional terms indicated a genuine generosity of spirit. It was a reminder that when constitutions set out the rules about how people should govern themselves they are not just setting out a legal or political document but establishing relationship guidelines.

3. The Value of Belonging –

The discussions about what we have characterised as the value of belonging were obviously linked to those about the value of community although they were more focussed on how the inclusivity of the treaty relationship could foster the sense that every immigrant could be tangata Tiriti. The kōrero on this topic was also marked by a generous spirit towards others but it was also an expression of the fact that most participants were generally secure in their own identity and sense of belonging as Māori and wanted others to have the same security.

Many believed that their whakapapa gave them their sense of belonging by affirming their status as tangata whenua. However they also felt that Te Tiriti was an important extrinsic affirmation of what that meant and suggested that a constitution could usefully begin by similarly reaffirming their place as tangata whenua –

> *"Because the treaty's about us and the Crown a constitution could start with a Preamble stating that we are tangata whenua and everything the Crown wants to do has to depend on that…like the (UN) Declaration it could be a statement to the world about who we are and what we value…and what value other people should give to that".*

> *"A constitution should be about who we are and having something about our whakapapa to this place would be a good way to do that…and something about us and not Pākehā deciding who's a Māori would be good as well".*

> *"When we were in Washington we went to see their Constitution and Declaration of Independence and there was this long line of Americans queueing up to see it…like it was sacred and really important… it seemed to tell them who they were and where they belonged…the treaty doesn't do that for most Kiwis at the moment because it's been caught up in all sorts of controversies but if there was a kōrero in a constitution that talked about it and said we were tangata whenua it would help our people….and if it said something about Te Tiriti and Pākehā as well people could feel part of it and that might help them feel they belong in the same way".*

They also recognised that because of colonisation many Māori are actually unsure about their sense of self and that a properly drafted constitution could help provide some symbolic as well as a very real reassurance for them too –

> *"If you're not sure who you are or if people keep asking if you're a real Māori or 'you don't look like a Māori' or you only see negative things about us on TV, then how can our mokopuna really know who they are? We should give them all the help we can.*

Someone in our group suggested putting something in the constitution and I like that idea…a constitution should help people feel they are part of things and know who they are".

"If (a constitution) says tangata whenua are important and it is designed around that idea then maybe all the politics and attitudes would change over time and all our mokopuna would feel important as well".

Many felt that a constitution derived from Te Tiriti could also be used in a similar way to encourage recent immigrants to feel that they belonged here –

"I don't think there's much in Pākehā society that would make me feel welcome if I was Indian or Chinese but Te Tiriti could open up a constitution so everyone feels they have a stake here…that's an important value for me".

"Te Tiriti was about everyone belonging and having a place here that was equal…to me that has always been the most important thing about it…that we are all in this together".

In a way such sentiments are intangible as values often are too, but they were also a very tangible recognition of Te Tiriti as a statement about relationships. The Working Group therefore accepts that helping people feel they belong would be a good way for a constitution to build upon Te Tiriti.

4. The Value of Place –

The "values talk" was always enlightening and lively but it was perhaps most animated whenever the issues of land and the relationship with Papatūānuku were raised. Stories were told about continuing struggles for the whenua in different rohe and concerns were always raised about issues such as mining, fracking, and the over-exploitation of resources.

After some hui we were taken to places of special significance to the local people where we sometimes saw innovative conservation initiatives and sometimes a sad and wilful destruction. Where damage had occurred it was seen as more than just environmental degradation – it really was an attack on Papatūānuku, an assault on the Mother and one's whakapapa.

For the ties to the whenua continue to be an especially significant whakapapa value. Being tangata whenua still implies a very real attachment to and concern for the land. The whenua remains part of one's whakapapa. For that reason there was a real frustration that the authority to give practical effect to that concern, to be real kaitiaki, was still largely denied by the Crown within the constraints of the Resource Management Act and general environmental policy.

Yet caring for the land was fundamental to the exercise and responsibility of rangatiratanga and it was unanimously agreed that any tikanga and Tiriti-based constitution needed to incorporate the values which that responsibility implied -

> *"Rangatiratanga was always about looking after Papatūānuku and mana whenua meant responsibilities to the earth…because rangatiratanga is in Te Tiriti it means that Papatūānuku is part of the treaty too…the two are inseparable and that would just be such a good place to start in any constitution too"*

> *"Before 1840 kaitiakitanga was the obligation to care for Papatūānuku but it was only ever effective because it had the rangatiratanga or mana of the Hapū to back it up. Today it has to be backed up by the District Council or the Crown which changes its whole purpose. It is no longer one way that rangatiratanga was exercised and controlled by the Hapū but something done if the Crown says we can. If kaitiakitanga was put into a constitution as something that went with rangatiratanga it would help remedy that situation".*

"So much damage has been done to the land that the only way to protect it properly might be to have it as the tikanga starting point for a constitution…to make our dependence on it more explicit like a fundamental relationship".

"We talk a lot about Papatūānuku but the ideals get trashed in practice whether it's global warming or the risks in something like oil drilling…a constitution that specifically set out the relationship with Papatūānuku would give greater protection and hold everyone accountable for the environment".

"The most important value of all is love for the land…everything else depends on it. Unless we get the relationship with Papatūānuku back in balance and maybe have it in a constitution then there'll be no other relationships at all…no politics, no economics, no anything".

"It's not a green or conservation issue or whether the Resource Management Act is any good or not …it's about the much more basic relationship in whakapapa between ourselves and Papatūānuku, between the whenua we bury when we are born and the whenua that is our land…I can't think of a value that's any more basic than that".

"In our settlement we had a real struggle but we managed to get our awa recognised as an entity in itself…part of our whakapapa and who we are as a people. It would be nice if there was a constitutional recognition of that sort rather than it being at the whim of the Crown… that would really make things treaty-based (and) more in tune with our thinking…it would mean that we could really be kaitiaki again just like the awa is kaitiaki for us".

"If the Bolivian constitution has the rights of Papatūānuku as the Prime Law we could adapt that idea and everything else will follow…tikanga is our Prime Law and it all depends on the earth and the environment".

The kōrero about the value of the whenua also frequently included a discussion about economic policy. Many participants, including a number of rangatahi, were especially concerned about the effects on land retention and protection of the pervasive influence of neo-liberal ideologies and what they perceived as the shift from a market economy serving society to a society now serving the market. The re-naming of the land as a resource and even the idea of sustainable development were seen as precedents that undermined both the well-being of Papat*ū*ānuku and of people –

"I think that Papatūānuku should be in the constitution for survival reasons if nothing else. There's all the tikanga of course but if we don't look after Papatūānuku there'll be no tikanga left…a constitution by itself won't do it but it would certainly help".

"Rangatiratanga was never just about money and I know for sure that kaitiakitanga wasn't either – it was about looking after each other and the whenua…but with all this New Right stuff even the whenua gets talked about by some of our people like it's just a resource…I'd like to see a constitution get back to rights and looking after Papatūānuku and maybe that would help get some economic balance as well".

Whenever people spoke with the Working Group they invariably began by naming their mountains and rivers and Iwi, as we always do. They linked themselves to Papatūānuku and in that simple poetic identification they also stressed the importance of the whenua and their relationship to it. Through their whakapapa they actually illustrated why the whenua value was so fundamental to this constitutional kōrero.

They also indicated in their kōrero that the value of place was something which others were entitled to and which many Pākehā have developed over time. It does not make them tangata whenua as the term is defined by Māori through a discrete and unique whakapapa relationship and it does not make them indigenous as defined internationally. However it does give a special meaning to being tangata Tiriti and therefore belonging to this land. The constitutional recognition of that shared value would reaffirm that fact.

5. The Value of Balance –

The generosity of spirit exhibited in the above discussions was also evident in the kōrero about the importance of political relationships. For despite the frustrations and discontents of colonisation there was an ongoing acceptance that Te Tiriti was signed by the tīpuna in the good faith expectation that it established an honourable political relationship with the Crown. It was one of the values which Te Tiriti presupposed.

That did not mean any lessening of the adamant view that Te Tiriti enshrined the right of Māori to make Māori decisions but rather indicated that if it was to be given practical constitutional effect there needed to be equal and equitable political relationships between Māori and the Crown. Indeed it was accepted that without such relationships Te Tiriti could not be honoured and a stable and respectful way of governing according to Te Tiriti would be impossible to achieve.

That quest for balance derives from Te Tiriti itself because the act of treating is always based upon an acceptance of the legitimacy and worth of each Parties' authority. Treaties can only be concluded between two or more polities with the same capacity to treat, and when polities enter into a treaty in times of peace the relationship they establish is determined by the equality of that capacity and not by any differences that may exist between them in terms of their respective size or wealth or power.

In the history of treaties in colonisation that convention was regularly subverted by the colonising power assuming that it somehow possessed or had been given a superior power. This happened with Te Tiriti of course but it was always meant to be about that balance and the respect and recognition that would be accorded to both rangatiratanga and kāwanatanga. It was therefore accepted in the kōrero that any constitution which was derived from tikanga and Te Tiriti as the source of both its legitimation and its whakapapa values would require structures that guaranteed balance between both concepts of power.

Questions were raised though about how to constitutionally remedy over 170 years of Crown legislative dominance and the even greater length of time that it has relied on the idea of its sovereignty as a supreme and unchallengeable authority. Its continuing rejection of any proposition of meaningful political balance made the questions especially pertinent. As experience has shown even its notion of "treaty partnership" assumes that it will remain the dominant partner.

> *"The hardest part in our Settlement negotiations was trying to get any real change in the power relationship between us and the Crown…a constitutional change I guess…but*

all we could get is where we can meet with Ministers every year…that might be a change but it's pretty ad hoc and they still make all the final decisions which is a funny sort of partnership…changing that situation and getting a different relationship is the real issue".

"Our discussion group felt really strongly that you can't have a treaty relationship of any sort until the power dynamics are sorted out…at a personal level people can be friends and we've all got Pākehā friends and whānau but that's not the same…we agreed that you have to have a constitution that clarifies the power dynamic in a more equal way by looking at a different set of political values".

"We've done a good job in shifting lots of things since the Nga Tamatoa days but there's still a long way to go…there's still no real entrenchment of a constitutional understanding between us and Pākehā that recognises our right to be the decision-makers on our own issues…that's what we meant when we used to say the Treaty was a fraud because it's been used against us by the Crown until it makes all the decisions for everyone".

"All that Tiriti meant was that we had to negotiate and value the relationship just like sovereigns always do…that seems pretty basic".

It was accepted that there would be difficulties in reaching that point but the assumed dominance was simply seen as another Crown breach of Te Tiriti. A constitution which enshrined a more balanced and nuanced understanding of rangatiratanga and kāwanatanga would be a long overdue honouring of the political and diplomatic conventions which made treating possible in 1840.

"We would never have gone into a treaty thinking that the Crown was better or more powerful...hell there were hardly any Pākehā here… we knew it was different because Pākehā were different and what our people have been saying to them ever since is just accept the difference…go with the equalness".

"Every treaty is about reciprocity just like human rights are about recognising that people are equal and no person is better or more entitled than another…What we have to do is get to a point where a constitution can say that…this is what you do, this is what we do, and you don't make the final decisions just because you've been doing that for so long".

"If tikanga and manaaki…and democracy is going to mean anything there has to be a way of having kāwanatanga and rangatiratanga in some kind of balance…we need to get away from the idea that rangatiratanga is just a resource management right or something that the Crown has delegated to Iwi…or a co-governance thing where the Crown nearly always ends up having the final say".

"No-one has done this before which is what makes the treaty special…whatever we come up with will be one way of showing that different sovereignties can live together which is what the treaty was always about…and they can live together by respecting what they are each entitled to do".

Crucial to any notion of balance was the idea that within their own sphere of influence Māori and the Crown should have what may be called jurisdictional choice. That is the right for them to exercise their rangatiratanga and kāwanatanga in different ways subject only to their respective tikanga and laws and the need to honour the authority of the other.

The right to be self determining has always meant that people are free to chart their destiny in their own way and it has always and inevitably taken different forms in different cultures. The very difference in form is also the very ideal of democracy.

The Westminster form of democracy for example is as culture-bound as was the original Greek "demos" from which it traces its history. In Ancient Greece the rules about who could participate in political decision-making were distinctively shaped by the culture of the time and never allowed for the inclusion of women or the lower classes known as "the mob," or those non-Athenians who were regarded as "natural born slaves".

When John Rangihau described rangatiratanga as being "people-bestowed" he accentuated something very democratic – that legitimate power was always from and for the people and that it was for the people to determine how and when it would be exercised. The reasons why the power was exercised and the site and concept of power that facilitated it were different to those in Athens and Westminster because they grew from our culture and our understanding of our relationships with each other and with Papatūānuku. But its legitimacy, like theirs, lay in its cultural distinctiveness.

In a Tiriti-based constitution that kind of difference would allow Māori and the Crown for example to make law within their own spheres by following their own processes or to determine who their representatives would be. It would also include the right to decide how those who are entrusted with constitutional authority should be selected or the comparative weight that might be given to individual and collective rights and obligations. The actual

method of selection or weighting would be of less importance than respect for the cultural integrity it is based upon and the assurance that it provides for fair and transparent outcomes.

> *"The idea of doing things our way is crucial otherwise it's not mana we're talking about…it will probably lead to arguments about what our way is but that's part of who we are…we always do things differently anyway…it's what the kawa on the marae is all about…it's what being Ngāti Porou or Apanui is all about…it's not new".*

> *"I know that in the Māori Parliament they decided to have voting which was not our way but they also worked on a consensus and used other kawa that was quite different…I don't see why that can't be done now if it's tika and I don't see why we couldn't figure out how we'd work together either".*

> *"If we can agree that we will do things differently to the Crown…that's all we'd have to know when we're in our whare or whatever and the Crown's in theirs…trust each other to do what's right…and then meet regularly with the Crown to negotiate what we need to do together".*

Those who participated in this kōrero accepted that respect for such difference and the structures to expedite it would only come about through the give and take that will certainly occur in the deliberative and ongoing constitutional discussions that they agreed should follow this Report. But without it a constitution could not even claim to be Tiriti-based.

It should be noted that besides the discussions about the political relationship with the Crown there was also considerable kōrero about the relationships between Iwi or among Māori in general. On many occasions it was quite forcefully stated that the strength of the treaty relationship depended upon the strength and viability of the relationships our people have with each other. It was often felt for example that more time was spent trying to cement a relationship with the Crown than there was trying to strengthen the ties between Iwi or between Iwi and organisations such as Urban Māori Authorities -

> *"Our whakapapa are about our interrelationships but that was always attacked by the colonisers…they knew their own whakataukī about strength in unity but were always more interested in their other one 'divide and rule'…He Whakaputanga is a reminder that in dealing with changing situations our individual mana depends on how well we can use it to work with others when we need to".*

"One of the strengths we have is that on the marae we are still welcomed according to our relationships with the hau kāinga…it is the whakapapa that brings us together and that should be an important value in the way we work with each other on political issues as well".

"It was a worry in our group that we forget our whakapapa to each other and make political decisions or worse we make investment choices in other rohe that ignore or even takahi the rangatiratanga of other Iwi…we have to be more tika in those things if we hope to get the relationship with the Crown right".

The Working Group shares that concern and acknowledges how the Crown has continually selected which Māori it will choose or not choose to engage with. It is our view that tikanga never privileges one group of Māori over another and whakapapa never excludes someone because of where they live or how they choose to organise themselves.

The indicative models which we have drawn from all of the kōrero and which we discuss later in this Report try to acknowledge the value of equitable relationships with others, and especially among ourselves.

6. The Value of Conciliation -

The fifth whakapapa value which can be deduced from the kōrero may be described as the value of relational conciliation. That is the need for a constitution to have an appropriate tikanga base which recognises the value of place and of Māori. It also implies the need for a resolution framework which recognises tikanga for those occasions when Māori and the Crown might be unable to find consensus or make a joint decision in the relational sphere.

In many ways these matters were perhaps the most difficult for the participants to engage with because they required some detailed consideration about what a tikanga and Tiriti-based constitution might require in specific practical as well as general philosophical terms. It was the point where debate about the "ought to be" of constitutionalism had to find ways of sustaining the integrity of rangatiratanga and kāwanatanga while setting a values-based structure for any relational sphere and indeed the constitution as a whole.

Some discussion groups admitted the difficulty but also presented feedback with very clear conclusions -

> *"This kaupapa caused the most debate in our group by far…but we think that while Te Tiriti included the rights of Pākehā to have kāwanatanga and us to keep rangatiratanga…it also meant that because we were tangata whenua our tikanga should be what everything else rests on".*
>
> *"It's not about setting up some sort of dominance but simply saying that this constitution has got to belong to this whenua or it's not tika…it's just like everyone knows that sovereignty in England rests on English tikanga because that's the place it belongs to…well tangata whenua and Te Tiriti belong here".*
>
> *"This will probably be the hardest thing for others to get their head around but every marae has its own kawa and when we go onto another marae we accept that…and this wouldn't be any different".*
>
> *"We spent nearly all our time talking about what tikanga would apply in this constitution or if there were times when Iwi and the Crown couldn't agree but that's the kōrero we have to have if any new constitution is really going to give effect to the treaty…it's all got to start there with tikanga".*

Because the grant of kāwanatanga in Te Tiriti recognised the authority that the Crown could have on the "marae" of Aotearoa there was an expectation that it would be exercised in

balance with rangatiratanga and according to the kawa and tikanga of the "marae". In a sense that is where "it's all got to start," and as is the case with any rōpū entering a marae its status would be recognised but it never diminished or detracted from the mana of the marae itself. In fact its right to be on the "marae" would ultimately rest on the prevailing kawa and tikanga.

Those jurisdictional parameters which were commonplace in 1840 are therefore those which a tikanga and Tiriti-based constitution would necessarily replicate when determining the joint issues that would be pursued in the relational sphere. They would govern the "rituals of encounter" between Māori and the Crown while recognising and respecting the integrity of both rangatiratanga and kāwanatanga. Without diminishing or detracting from the authority of the Crown in its own sphere of influence it would mark a return to tikanga as the first law and values-base of this land in regard to the implementation of the Tiriti relationship.

That jurisdiction would also be the base for any resolution should Māori and the Crown need to seek re-conciliation when they are unable to agree on a matter of common interest. In a constitution which involves two distinct concepts and sites of power there will inevitably be tensions. No matter how sincere each sphere of influence might be in its good faith commitment to work in a Tiriti-based way there will be disagreements when the two come together in the relational sphere.

The incorporation of all of the whakapapa values would hopefully minimise the potential for conflict but they would not remove the need for entrenching the value of re-conciliation. If treaties are "mahi tūhono" as Ngāti Kahungunu have long described them a Tiriti-based constitution would need to ensure that even in times of difference the different polities can be brought together.

> *"Every time I've heard my Minister Uncle talk about the kind of tikanga houses they have in the (Anglican) church I ask whose tikanga is used if there's an argument or whose tikanga guides the whole thing…and that's the issue here except it's across the whole country…on what basis are those other whare even here?"*
>
> *"It's just human nature to disagree and even when all the arguing is done about whether the change we're talking about is going to happen there will be other arguments about what to do if there's conflict with the Crown…and if the Crown ever gets serious it will acknowledge tikanga because it's the right thing to do".*

Perhaps the consensus is summed up by a rangatira and a rangatahi –

In an interview Api Mahuika stated simply

> *"It is very clear to me that if you entered Ngāti Porou then you were under the mantle and the mana of Ngāti Porou. There would have been no ifs and buts in that equation…and I see no reason why that would not be the case if we proceed down this constitutional path…the mantle would be Māori".*

One written response from a rangatahi referred to

> *"a governing system based on kaupapa, tikanga, whakaaro Māori…what I mean by kaupapa, tikanga, whakaaro Māori as opposed to a focus strictly on our laws and protocols but more an emphasis on the value-thinking behind those things…Kāwanatanga was the right for the presence of a British governance system to be administered over the few Britons present (i.e. several laws had already been passed in Britain where Britons abroad were meant to be following British law wherever they went, so we have simply just allowed them to enforce that law on our lands) but that doesn't mean Britons weren't also meant to follow Māori law – of course they were, and of course the promise of rangatiratanga suggests exactly that".*

Thus while conciliation is necessary in a Tiriti-based constitution in terms of its underlying tikanga foundations for a balanced relationship between rangatiratanga and kāwanatanga, re-conciliation is necessary if the constitution is to uphold the ideals of a conciliatory and consensual democracy rather than an adversarial or majoritarian one. The actual processes for both could be developed as part of the ongoing constitutional kōrero that lies ahead and with consensus they could draw upon the other whakapapa values and even respect the wisdom and experience that both treating Parties might bring to the kōrero.

7. The Value of Structure –

The final value which was apparent in all of the kōrero was that of openness and the need for agreed structural values and conventions that would guarantee such democratic ideals as the need for transparency in any governing process and the removal of any real or perceived conflicts of interest that representatives might have.

In a tikanga and Tiriti-based constitution they are the specific institutional ideals upon which Māori and the Crown might build a conciliatory and consensual democracy. They determine the framework in which the different spheres of influence would function as discrete expressions of rangatiratanga and kāwanatanga while also working together in a viable Tiriti relationship.

A number of key structural values were quite easily agreed upon but as our people tend to do the participants also looked to the past to find examples of the many ways Māori have tried to deal with these questions in the past. There was some discussion for example about how the Kīngitanga originally understood its vision of the King and the Crown being joined together with only God above? What structural values were in place for those visions and what relevance do they now have for the wider relationship between rangatiratanga and kāwanatanga?

In Kahungunu there was also kōrero about how the Māori Parliament attempted to address similar issues and how it tried to resolve the tensions between the sovereignty asserted by the Crown and the mana retained by Iwi and Hapū. How did it define its role and balance out the issues of representation between Iwi and Hapū? Why was it unable to achieve its aims and what lessons may be learned from the structural values it tried to build upon by adapting a Parliamentary framework?

The questions prompted an often lengthy and searching debate about history and culture and the very meaning of democracy and government. They also naturally led to specific discussions about when, why, and how the spheres of influence might co-operate according to the treaty relationship and how it would remain transparent and open.

> *"We've had trouble here with our so-called mandated authority just going off and doing their own thing…investing our money then consulting us afterwards just like the Crown does. I've never thought that was tikanga and I'd worry if there wasn't a way we could have better accountability…I'm sure that those rangatira who signed Te Tiriti were accountable".*

"In the final analysis government has to function and that relies on the same things. How do we hold the representatives accountable, how do we stop the system or the people being corrupted by whatever power they have, what checks and balances need to be in place…those things are like a universal tikanga if you like".

The most commonly identified attributes of a structural value fell under four broad headings.

Firstly, the need for a Tiriti-based constitution to have entrenched guarantees of equality and provisions to enforce it. There was considerable support for example for mandating equal male-female representation in both the different and relational spheres. There was also some support for mandated rangatahi and kaumātua/kuia representation.

The second identified attribute was that representation should be based on both individual and collective interests. Participants were keen to preserve their right to participate as individuals but also wanted guarantees that the collective voice of Iwi and Hapū would not be lost. Ensuring the representation of that collective voice was in fact seen as crucial if the constitution was to be tikanga and Tiriti-based.

Thirdly there was unanimous support for the idea of equity and the need to protect all minorities in order to enable everyone to benefit from the Tiriti relationship.

The fourth attribute consisted of such things as transparency from the open system of choosing who the representatives might be to the need for set and finite terms of office. On this topic there was also general agreement that Māori and Pākehā could set their own guidelines about how their representatives should be chosen.

Interestingly there was a consensus that there should be no political Parties within the rangatiratanga sphere because of a concern that they might filter or override the voice of the people. Rather there was a view that Māori should debate some other more tikanga-centred method of representation.

The Rangatahi Values –

All of the seventy wānanga organised by the rōpū rangatahi devoted a great deal of time to kōrero about values and relationship. It reinforced the view of many participants that if the values were right then it would be easier to progress the long discussions needed for constitutional transformation to occur.

One of the exercises in the rangatahi wānanga which elicited discussion about values involved participants identifying what tikanga were in operation in selected activities and then discussing how they might be applied in a constitutional setting

> *"I would just do that because it seems right and hadn't really thought about it as some sort of tikanga…but that's good cos then you're just living it…it's just natural…and maybe all we need to do in this kind of mahi is make it more obvious and try and say what tikanga are important".*

> *"If you look at it like this tikanga is everywhere like it is at the Kura. It's part of what we're expected to do and our whānau had to sign up to it when we started…Whaea said that made it our constitution".*

> *"I think that everything a government does should be based on tikanga. Otherwise they might make bad decisions and pollute Papatūānuku or something".*

From these and similar exercises the rangatahi defined some general values which they believed should be provided for in a constitution including manaakitanga (nurturing the mana of others), kaitiakitanga (guardianship), kotahitanga (unity), mana (ultimate power, prestige and authority), muru (redress), utu (restoration of balance), and hohou rongo (establishing peace).

They also identified five core values which would be the base for all of the others.

1. The health and wellbeing of Ranginui and Papatūānuku -

Rangatahi were concerned about the environment and asked that any new constitution include the recognition and protection of Ranginui and Papatūānuku to ensure they are adequately cared for.

They considered that treating our whenua, lakes, rivers and other water bodies with respect should be an underlying constitutional principle and also called for constitutional recognition and protection of traditional knowledges and the associated kawa and tikanga –

> *"Without the whenua we are not tangata whenua so we have got to look after it. Everything in this (constitutional) mahi should start with that".*

> *"The land is everything…and it includes all the tikanga that goes with it".*

> *"We need to look after our kāpata kai for future generations to come and look after it just because it's what our tīpuna left for us".*

The rangatahi also recognised that constitutional recognition of Papatūānuku depended upon the effective exercise of rangatiratanga –

> *"Threaded through all of these desires was the aspiration and need to reclaim and uphold our mana whenua and our mana moana, so that we have the right, ability and power to make decisions and uphold this as whānau, hapū and iwi".*

2. The mana motuhake of tangata whenua -

Rangatahi shared many of the concerns about the current political environment that were voiced by other participants. They especially noted that the current Westminster political system does not work or support many of our whānau, nor does it provide a space for mana motuhake.

> *"It's designed for sovereignty not mana motuhake so of course we never get any real power in it…it's not about the treaty".*

> *"I guess if it's called the Westminster system that says it all really…it's not the Kahungunu system or the Tūhoe system that's for sure…and it's not a treaty system".*

Besides the concern that the current system was not treaty-based the wānanga also raised a number of specific questions about inconsistencies in its current form and practice –

> *"Who is it that actually controls our country? Is it really Pākehā or the Crown? Or is it actually foreign businesses? Why is that we can only have a political say when we are 18? We can hold a driver's license and gun license at 16; be conscripted to go to war at*

16, and consent to sex at 16; but we can't politically participate? Current system does not work and our rangatahi know it – why are changes not being made?"

In making those changes they also emphasised the need to recognise and protect our diversity as hapū – not just iwi – and our right and ability to self-govern according to kawa and tikanga, He Whakaputanga, Te Tiriti o Waitangi and the UN Declaration on the Rights of Indigenous Peoples.

3. Traditional knowledges and institutions -

The traditional knowledges, systems and institutions of Iwi and Hapū were defined as another important value because they were fundamental to the cultural integrity and survival of Māori.

"Just knowing mātauranga and te reo is a value in itself…if it's part of a constitution it gets protected but gives the constitution mana as well".

"I think we have to put education in a constitution because it's really important but we need to put in our education as well so that our mātauranga can be protected".

"If this is in a constitution then it becomes part of our rangatiratanga and we can make the policies about it and not the Crown".

Rangatahi especially emphasised the need to acknowledge and celebrate the differences between each hapū and iwi, including the kawa and tikanga of each hapū, te reo Māori and its different mita (dialects). They also understood that traditional knowledges, systems and institutions were a complex part of the broader Māori intellectual tradition which also needed to be constitutionally protected in some way.

It was their view that recognising our knowledges as a value in itself and then protecting the tradition in a constitution would make it easier to restore, reclaim and re-practice our tikanga and kawa as well as facilitating the learning, teaching and transmission of Te Reo Māori. It would also ensure that Iwi and Hapū could retell their own histories in their own ways and most importantly reclaim the proper roles of men and women and tuakana and teina.

4. Peace and Mutual Respect – Kotahi Aroha -

Another kaupapa arising from the rangatahi kōrero was the idea that a constitution based on tikanga in particular should entrench the value of kotahi aroha. This was an all-encompassing

theme that includes the way that people treat one another and the need to respect all peoples. It was often cited as one way of reducing domestic and other violence but also as an example of manaakitanga and human rights -

> *"If we are going to respect Papatūānuku and have that in a constitution then we have to have something about respecting each other…manaaki tangata…and that might get rid of the violence as well…this is a really violent country just like every other colonising country".*

> *"To me it's about a constitution guaranteeing basic human rights…that should be a main value if only because colonisation was about not respecting our rights or even respecting that we were even fully human".*

Special emphasis was also again given to the balancing of male and female roles and responsibilities –

> *"I think it would be a good idea for a constitution to say that there should be an equal number of male and female representatives…put down gender equality as a core value then put procedures…to make it happen".*

While respecting Māori as tangata whenua tikanga also required that all tangata Tiriti should be able to maintain their culture and to learn and continue the ways of their tīpuna.

> *"There's a real problem when Pākehā just think they can co-opt taonga without any real respect but other cultures need respect too…ask them what they would want in a constitution…that would be a way of them seeing a tikanga constitution would be different".*

5. Education, Health and Well-being -

Whether the rangatahi took part in the wānanga at university or in a prison or on a marae they regarded education as a prime social value that should be recognised and protected in a constitution. They linked education to health and wellbeing and defined it include te reo and Māori ways of learning as well as Māori institutions such as wānanga.

> *"Education is a tikanga because it's not just going to school. It's what you learn. It's our way of seeing the world and not just being taught what Pākehā think is important…and if I've got this kaupapa right it's about a constitution based on tikanga and Te Tiriti which means giving mātauranga the same importance as everything else".*

"I reckon most of the bros wouldn't be here (in prison) if we had known more tikanga and what happened to us during the wars and all that…this constitution mahi is a bit out there for me but if it's rangatiratanga…if it's about learning about mana and what the treaty's all about then everyone here would get it".

Rangatahi nationwide hoped that a new constitution would reflect and provide for constitutional recognition of a right of free access to quality education and health services. Indeed many rangatahi felt that the two were closely linked –

"If you're well-educated and know who you are as a Māori you're more likely to be healthy…research shows that…put them both down as constitutional values or priorities and it will make it easier to get proper policies in place".

PART FOUR -

THE CONSTITUTIONAL VISION.

In this final Part of the Report the Working Group draws some conclusions and attempts to translate the kōrero about the nature, foundations and values of a constitution into a vision for constitutional transformation. The main arguments we heard for a tikanga and Tiriti-based transformation are summarised, some indicative constitutional models are suggested, and recommendations are made for progressing the discussion.

Throughout this final part of the process the injunction we were often given, especially by pākeke to "get the kaupapa right first" has proved both timely and apt. The steps that we outline in this Part of the Report are drawn from the concern in all of the kōrero about the values base for any transformation.

The notion of a constitutional model or models featuring discrete rangatiratanga and kāwanatanga spheres of influence along with a relational site of joint decision-making flowed obviously and early from discussions about the relationship in Te Tiriti and the manaaki in tikanga. Similar ideas have been trialled before of course but the kōrero we have had offered substantial and substantive refinements. Perhaps the most important of those is the positioning of the relational sphere and the overarching constitution itself upon the jurisdictional base of tikanga Māori while recognising the integrity of both rangatiratanga and kāwanatanga.

Because of the value our people placed on good relationships there is also some discussion about how the rangatiratanga and relational spheres of influence might give effect to them. The kāwanatanga sphere naturally relies on good relationships too, but how others express them there, if indeed they wish to do so, is up to them.

What is available to both Māori and the Crown from the kōrero of this process is its generosity of spirit and the belief that the many practical and social obstacles to transformation can be overcome and a new constitution established. It would be fair to say that throughout the last four years of discussion people did not see that as some pious hope but as a legitimate treaty expectation.

By its very nature the idea of constitutional transformation seeks a profound change in the existing political order. Any proposal of that kind therefore needs to address a number of questions about the grounds for change as well as the ways in which it might be implemented and be of benefit to everyone involved.

One of those questions often arises in the perceived need to justify or give reasons for any proposed change. While the need for reason was acknowledged in this process the need for justification was often only grudgingly recognised because for over 170 years Māori have had to it seems justify everything we believed was right in the context of a self-justifying dispossession. Indeed it was stated more than once at hui that the Crown should have to justify the constitutional regime which it established in colonisation.

Nevertheless the last four years of quiet discussion have attempted to address those questions and to lay out the reasons for constitutional transformation. In every submission or hui participants have grappled with them in their own way. Whether it was the old and young people together writing their hopes for change on a three metre long banner in Masterton, or a group of kaumātua and kuia reminiscing history and mana in Tolaga Bay, or hundreds of university students talking the future in Dunedin they sought and provided their own answers as to why the issue is such an important one.

The first issue addressed in all of those discussions, and in this Report, was simply to state what should be obvious but has been denied and distorted for too long – that Māori, like all peoples, always assumed and gave effect to the right of self determination. Within the territorial jurisdiction and sometimes the changing fortunes of Iwi and Hapū the people were self-governing.

Prior to 1840 there was in fact a vibrant political order that like all human polities was sometimes discordant and disputatious but always grounded in the importance of whakapapa. It allowed people in every Iwi and Hapū to make their own decisions and was derived from mana and rangatiratanga as its concept of power. Its constitution was coded in tikanga and provided the framework within which those entrusted with power could function.

In 1835 a number of rangatira refined that framework within He Whakaputanga and created a new site of power and a more collective way of exercising mana. It was an adaptation to new circumstances that illustrated the strength and potential of the constitutional order. The fact that such an adaptive and independent constitutionalism once existed is in itself a valid reason for an ongoing kōrero about how it might function once again.

The history of how that constitutional order was dismissed and suppressed by the Crown throughout colonisation created an injustice which remains as the core grievance that is not yet addressed or even contemplated in any Treaty Settlement. The need to properly remedy that wrong is another general justification for advocating constitutional transformation.

As noted earlier it can be tiresome justifying something as basic as the right to self determination and most of the discussions undertaken by the Working Group concentrated on the core imperatives and values of constitutionalism. Thus it was accepted for example that Te Tiriti o Waitangi provided for the continuation of the Māori constitutional order. It created a new constitutional configuration with the grant of kāwanatanga for the Crown to exercise authority over its people while providing for a joint site of power where Māori and the Crown could work together in a Tiriti-based relationship.

This has never come to pass of course and the failure to honour that promise in word and deed remains the most egregious of all of the Crown's breaches of Te Tiriti. Addressing that breach and finally honouring Te Tiriti is perhaps the most important reason for seeking constitutional transformation. It was certainly one of the main motivations for the establishment of the Working Group.

All of the discussions the Working Group has been part of have accepted those reasons as givens and devoted most of their time to considering why and how a different constitution might in fact be based on tikanga, He Whakaputanga, Te Tiriti and international indigenous rights Conventions. The extensive kōrero about the values that should underpin the constitution was in itself an illustration of the difference and has led to a particular constitutional vision of governance and democracy that we have described as conciliatory and consensual.

There are many more steps that will need to be taken to achieve that goal. Certainly the objections and practical obstacles to constitutional transformation that will be present in the wider community, and which the participants so often referred to in their kōrero, are very real –

> *"Getting to where we are now has been a struggle but this one is different because a lot of the early stuff was about changing the hearts and minds of ordinary people as well as politicians about raupatu and other grievances that couldn't be denied…but this one effects the power that Pākehā have and so it'll be harder. All we can do is be firm about the relationship the treaty talked about and not get distracted into some expedient solution that will keep things the same instead of advancing the vision that the old people had (that) our jurisdiction would remain intact and we wouldn't stop being*

tangata whenua just because someone else was being given permission to live here…that's a values shift as much as anything else".

"It's like the forces of history are against us but all that our tīpuna did in the past was about holding onto our mana…it doesn't seem fashionable sometimes to talk much about justice but that's all that it's about really…that kōrero doesn't go away and we've just to make sure it doesn't go away in the future…keep reminding ourselves and the Crown that Te Tiriti sees rangatiratanga as the same sovereign power that's in He Whakaputanga…that means a different political relationship".

"There will be obstacles in this mahi including there are economic interests at stake and constitutional change challenges neoliberalism and globalisation as well as what we want to do here…interests like that will make the job even harder and I can just imagine people saying this won't ever happen, the markets will collapse, that it's just Māori nationalism whatever that is…but it's right and I remember one kaumātua saying that getting the Crown to change is like running up a steep mountain. It's hard but the summit is the treaty and our people keep on climbing".

"I know that some people see threats in any change but Dad is Kahungunu and Mum is English and the whole Parliamentary thing is part of her background but even she knows that the treaty was really finding a way for her background to sit alongside Dad's and not taking Dad's away because it belongs here".

"We're not so naïve to believe that all this constitutional mahi will happen quickly. But the treaty has always been about our people coming up with new ideas to make it happen…and this is the same and it has the same importance for our mokos. I think we should just reach out to others, not the government or the politicians to begin with, but the people we know, and start talking with them, both Māori and Pākehā…our friends and neighbours, our workmates, and like me our Pākehā in-laws, and say isn't there a better way of seeing the treaty…can't we just do better than this as people?"

Changing the hearts and minds will require a much broader discussion with all sections of the community than the Working Group has been able to conduct. It will also require ongoing engagement with Māori which might profitably include the many thousands who now live in Australia but retain close links to home.

The approach and kaupapa of that ongoing dialogue will also need to be quite different to that undertaken by the recent Crown Constitutional Advisory Panel and similar Crown-driven initiatives in the past. For the constitutional imperative is to work towards a new

constitutional order that is based on Te Tiriti rather than one which merely tries to assimilate it into the existing Westminster system.

There will also need to be ongoing discussion about the form any proposed new constitution should take. Considerable discussion would also need to occur on particular structural issues such as whether for example a constitution should be written or unwritten, how the franchise in the rangatiratanga sphere might recognise the individual and collective interests of Māori, and the consultative process that will determine the areas of jurisdiction for each sphere.

These may be strictly technical issues but as the Working Group process has shown they need not, indeed should not, be left just to lawyers and other "experts". Our people have obviously shown a willingness to engage on those matters and there is no doubt that with the right approach and support others will do the same.

The Indicative Constitutional Models -

Throughout the kōrero about "getting the kaupapa right" a number of different constitutional models emerged. As noted earlier the decision of the Waitangi Tribunal in the Paparahi o te Raki claim reflected or informed the majority of those models.

Some models were also influenced by the discussions about the structure of He Whakaputanga and by some of the more recent constitutional innovations that have been implemented in a number of different sectors such as the Anglican Church. However they were most of all shaped by a need to have the kind of shared foundational kaupapa that was identified as the conciliation value.

Thus while some similar models have been considered before it is clear from the kōrero we have heard that there should be a number of substantial and substantive refinements. Perhaps the most important of those is the positioning of the relational sphere and the overarching constitution itself upon values drawn from tikanga Māori. They recognise the integrity and independence of both rangatiratanga and kāwanatanga in their respective spheres but acknowledge tikanga as the source jurisdiction upon which they should function in their Tiriti relationship.

We describe the models as indicative because they indicate what models might best ensure the values involved in tikanga and the Tiriti relationship. We also call them indicative because they simply indicate the range of possibilities that are available for those who really want a good faith honouring of Te Tiriti.

It is hoped that the models might at least provide some options for the discussions which lie ahead. They would obviously need to be given detailed consideration, including the financial implications, before any final choice is made. The discussions may even produce an entirely different model.

Six different models for a new constitutional arrangement have been identified.

1. A tricameral or three sphere model consisting of an Iwi/Hapū assembly (the rangatiratanga sphere), the Crown in Parliament (the kāwanatanga sphere) and a joint deliberative body (the relational sphere).

2. A different three sphere model consisting of an assembly made up of Iwi, Hapū and other representation including Urban Māori Authorities (the rangatiratanga sphere), the Crown

in Parliament (the kāwanatanga sphere), and a joint deliberative body (the relational sphere).

3. A further three sphere model consisting of an Iwi/Hapū assembly (the rangatiratanga sphere), the Crown in Parliament (the kāwanatanga sphere), and regional assemblies made up of Iwi, Hapū and Crown representatives (the relational sphere).

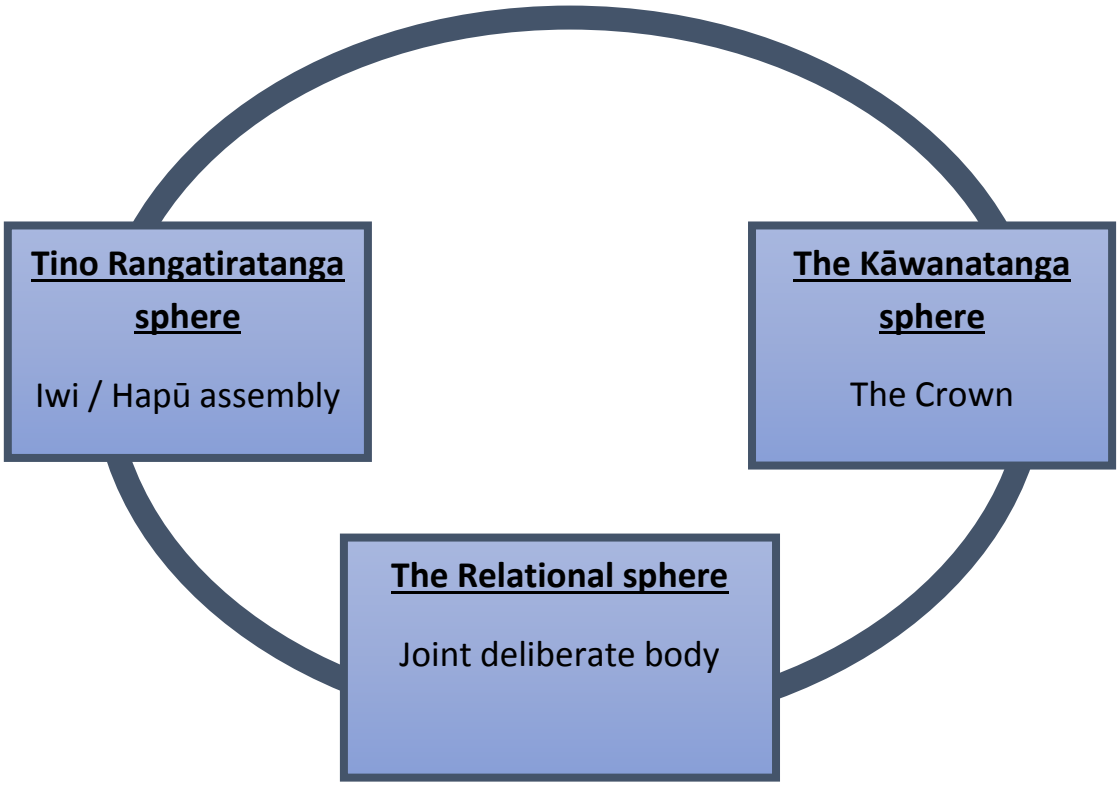
4. A multi-sphere model consisting of an assembly of Iwi/Hapū and other Māori representation (the rangatiratanga sphere) and the Crown in Parliament (the kāwanatanga sphere). It also includes a relational sphere which would have two parts – a constitutionally mandated set of direct Iwi/Hapū/Crown relationships to enable direct Iwi/Hapu-Crown decision-making plus a unitary perhaps annual assembly of broader Māori and Crown representation.

5. A unicameral or one sphere model consisting of Iwi/Hapū and the Crown making decisions together in a constitutionally mandated assembly. This model does not have rangatiratanga or kāwanatanga spheres. It only has the relational sphere.

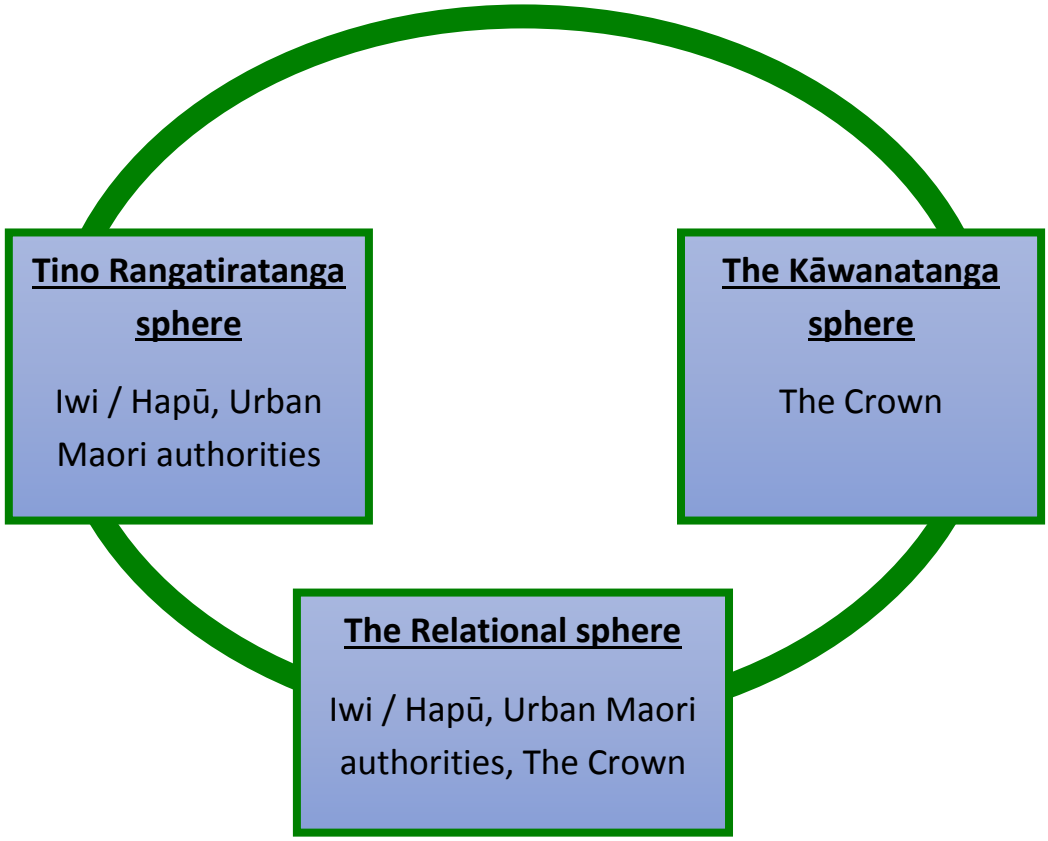
6. A Bicameral Model made up of an Iwi/Hapū assembly and the Crown in Parliament. This model has distinct rangatiratanga and kāwanatanga spheres but has no provision for a relational sphere.

The six models may be illustrated diagrammatically as follows -

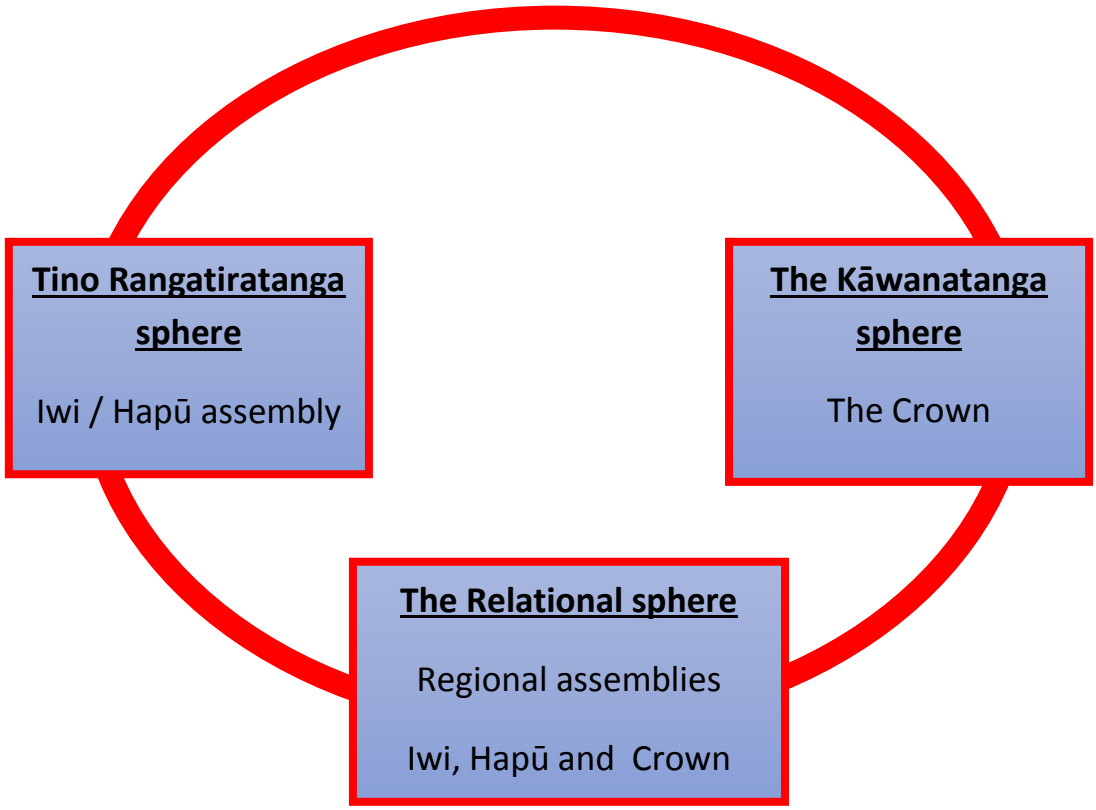
MODEL ONE –



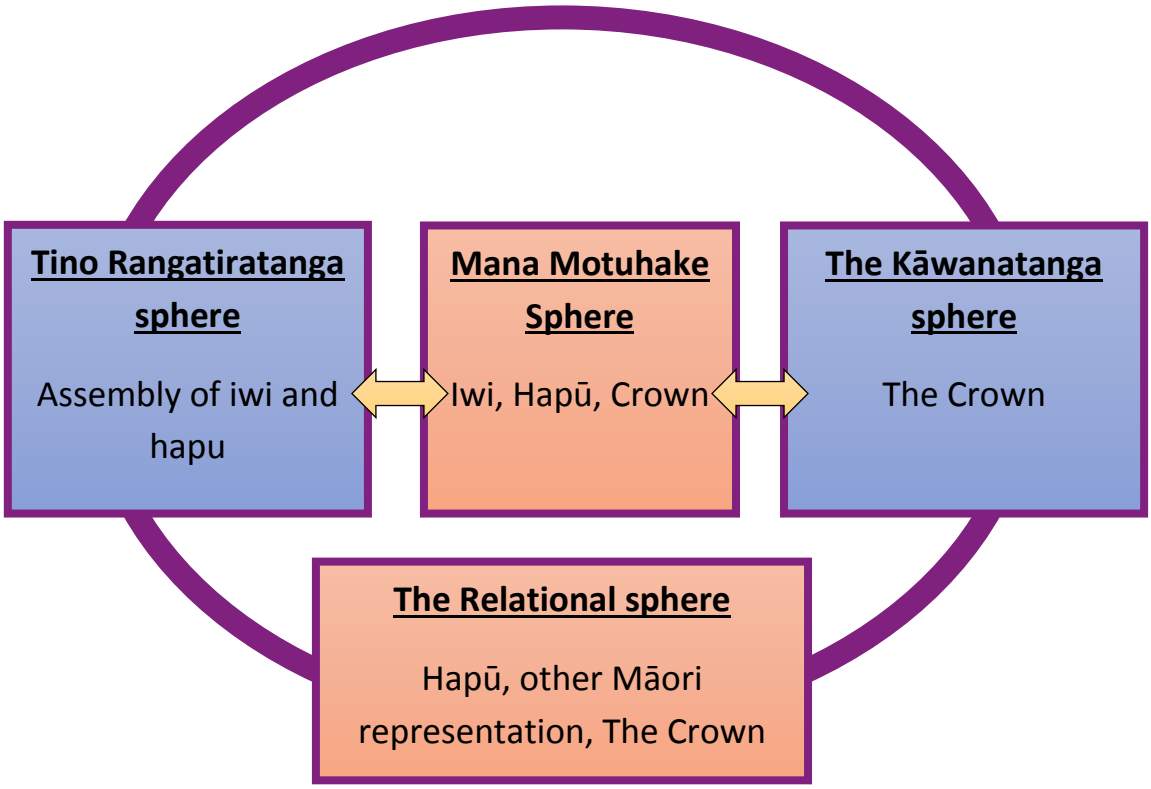
MODEL TWO –


Tino Rangatiratanga sphere
Iwi / Hapū, Urban Maori authorities
The Kāwanatanga sphere
The Crown
The Relational sphere
Iwi / Hapū, Urban Maori authorities, The Crown

MODEL THREE –


Tino Rangatiratanga sphere
Iwi / Hapū assembly
The Kāwanatanga sphere
The Crown
The Relational sphere
Regional assemblies
Iwi, Hapū and Crown

MODEL FOUR –


Tino Rangatiratanga sphere
Assembly of iwi and hapu
Mana Motuhake Sphere
Iwi, Hapū, Crown
The Kāwanatanga sphere
The Crown
The Relational sphere
Hapū, other Māori representation, The Crown

MODEL FIVE:

The Relational sphere

Iwi, Hapū, The Crown in Assembly

MODEL SIX –

The Rangatiratanga sphere	The Kāwanatanga sphere

While the models are of course crucially important the vision which prompted them is perhaps even more so. For it allowed kāwanatanga to be constitutionally reconceptualised in a unique and new way. In its own sphere of influence it would still source its power in its history of Westminster sovereignty but it would no longer need to be conceived as a dominating power that is arrogant in its indivisibility and unchallengeability. Rather it could find in its oft-professed good faith a more honourable power that prizes relationships more than conflict.

It could become a conciliatory authority which incorporated into its institutions the values which have now made its peoples see themselves as New Zealanders rather than once-were strangers from another place. How it would actually exercise that authority and what constraints might be placed upon it would be determined not so much by its origins but its sense of belonging in a treaty relationship that has been forged here.

Within that new constitutional framework rangatiratanga would once again be a site and concept of our constitutional uniqueness rather than merely a means of accessing or trying to limit Crown policy. It could be exercised as an absolute authority in our sphere of influence because it has always been absolutely our power to define, protect and decide what was in the best interests of our people. As a taonga handed down from the tīpuna it could flourish by being sensitive once more to all of the relationships and tikanga that have shaped it in this place.

It would be a conciliatory but independent authority no longer subject to the power of another, and the only constraints upon it would be those that tikanga has always imposed – that independence is only real when it depends upon the interdependence one has in relationships with others.

The ways in which rangatiratanga and kāwanatanga would then make joint decisions in the relational sphere would also have to take account of the same interdependence and sense of belonging. Te Tiriti never intended us to be “one people” as Governor Hobson proclaimed in 1840 but it did envisage a constitutional relationship where everyone could have a place in this land.

PART FIVE –

RECOMMENDATIONS.

The Working Group recommends

1. **That during the next five years Iwi, Hapū, and other lead Māori organisations promote ongoing formal and informal discussions among Māori about the need for and possibilities of constitutional transformation.**

2. **That such discussions also be included as an annual agenda item at national hui of lead Māori organisations such as the Waitangi hui of the Iwi Chairs' Forum.**

3. **That a Māori Constitutional Convention be called in 2021 to further the discussion and develop a comprehensive engagement strategy across the country.**

4. **That at an appropriate time during the next five years a further Working Group be appointed to begin consideration of relevant structural and procedural issues as they pertain to Māori.**

5. **That at an appropriate time during the next five years Iwi, Hapū, and lead Māori organisations initiate dialogue with other communities in their rohe about the need for and possibilities of constitutional transformation.**

6. **That at an appropriate time during the next five years Iwi, Hapū, and lead Māori organisations initiate formal dialogue with the Crown and local authorities about the need for and possibilities of constitutional transformation.**

7. **That in 2021 Iwi, Hapū, and lead Māori organisations initiate dialogue with the Crown to organise a Tiriti Convention to further discussions about the need for and possibilities of constitutional transformation.**

APPENDIX ONE:

Contributing Members of the Working Group.

The following were Contributing Members of the Working Group.

Jaroz Adams.
Dr. Maria Bargh.
Te Huia Bill Hamilton.
Dr. Carwyn Jones.
Apirana Mahuika (Kaumātua).
Professor Margaret Mutu.
Dr. Helen Potter.
Malcolm Mulholland.
George Riley.
Mike Smith (Video Production).
Dayle Takitimu.
Dr. Joseph Te Rito.
Kiri Toki.
Huirangi Waikerepuru. (Kaumātua).

Awanui Black.
Rikirangi Gage.
Moana Jackson.
Vapi Kupenga (Kuia).
Ani Mikaere.
Mereana Pitman
Willow-Jean Prime.
Tania Rangiheuea.
Hone Sadler. (Kaumātua).
Kingi Snelgar.
Veronica Tawhai.
Kukupa Tirikatene (Kaumātua).
Valmaine Toki.
Lily Wilcox (Kuia).

Catherine Murupaenga-Iken was Group Secretary 2010-11.
Kayleen Neho was Group Secretary 2011-2015.

Te Rōpū Rangatahi:

The rōpū rangatahi was convened by Veronica Tawhai.

The original design team responsible for the wānanga workshop was –

Tehani Buchanan.
Kelly Harrison.
Misty Harrison.
Jax Ihaia.
Puāwai Kake.
Kārena Karauria.
Talisa Kupenga.
Ngaarauuuira Puumanawawhiti.
Tira Ruru.

The Rangatahi Regional Co-ordinators were –

Te Tai Tokerau – Puāwai Kake and Pānia Newton.
Tāmakimakaurau – Puāwai Kake and Pānia Newton.
Waikato-Tainui – Ana Ngamoki.
Mātaatua – Ana Ngamoki and Kahotapu Black.
Tairawhiti – Ngarangi Collier and Jimi Hollis.
Tuwharetoa-Te Arawa – Michelle Hingston.
Kahungunu – Ngaarauuira Puumanawawhiti.
Rangitaane-Muaupoko – Hayden Turoa.
Whanganui-Rātana – Misty Harrison
Taranaki – Te Aorangi Dillon.
Whanganui-a-Tara – Kaye-Maree Dunn.
Te Tau Ihu – Janis de Thierry.
Ōtepoti – Suzanne Duncan.

Rangatahi representating their rōpū on the national level have been –

Pānia Newton.
Ihapera Bentson.
Jason Mareroa.
Kiriana Hakopa.
Ihipera Sweet.
Kahotapu Black.
Ana Ngamoki.
Hinekehu Collier.
George Haimona.
Ngaarauuira Puumanawhiti.
Kohukohurangi Isaac.
Leah Te Whata.
Dylan Matthews.
Kelly Harrison.
Soraya Kamau.
Talia Marama.
Kārena Karauria.

APPENDIX TWO:

WORKING GROUP WORK PLAN

The Working Group's Work Plan had ten priority areas –

1. The development and implementation of the hui-ā-kōrero process throughout every rohe beginning with direct contact with Iwi and other representative Māori organisations to facilitate the hui.
2. The preparation of resources for distribution before and during each hui including a Constitutional Primer, a survey, and questionnaires. Setting up of a Facebook page.
3. The development and ongoing use of a broader communications strategy involving Māori Television, Iwi radio and other media outlets.
4. Establishment of a Finance Committee to seek funding to augment Iwi support.
5. Memorandum of Understanding with Ngāti Kahungunu and then Ngāti Kahu to independently administer the Working Group's finances.
6. Commissioning of a Literature Review of international indigenous constitutions and separate presentations on earlier Māori constitutional initiatives.
7. Ongoing support for the rōpū rangatahi.
8. Establishment of a Working Group Secretariat.
9. Regular reporting back to Iwi Chairs' Forum and other lead Māori organisations.
10. Preparation of Final Report for presentation at Waitangi Day 2016.

APPENDIX THREE:

FINDINGS FROM MATIKE MAI AOTEAROA RANGATAHI.

CONSTITUTIONAL RECOGNITION AND PROTECTION OF:
1. The health and wellbeing of our natural environment, Ranginui and Papatūānuku.

A key concern for many of our rangatahi countrywide was the lack of protection for our natural environment here in Aotearoa New Zealand. Rangatahi regularly identified multiple instances where our natural resources have been depleted, compromised or put up for sale. As such, they strongly opposed harmful processes that compromised our natural environment, whenua, forests and waterways, like fracking and mining.

Rangatahi were more in support of retaining, maintaining and restoring our environment rather than selling them because as one rangatahi said: “They are called assets for a reason!”

Consequently rangatahi called for any new constitution that we may build to include the recognition and protection of our natural environment, ensuring that Ranginui and Papatūānuku are adequately cared for.

Moreover, rangatahi called for no pollution and to treat our whenua, lakes, rivers and other water bodies with respect.

Within this, rangatahi called for the reclaiming of our traditional knowledges and the associated kawa and tikanga so that we as tangata whenua are able to live off the land again; gather, preserve, hunt and fish for our own kai; ensure that our practices are sustainable and that our kāpata kai are preserved and protected for future generations to come.

Threaded through all of these desires was the aspiration and need to reclaim and uphold our mana whenua and our mana moana, so that we have the right, ability and power to make decisions and uphold this as whānau, hapū and iwi.

CONSTITUTIONAL RECOGNITION AND PROTECTION OF:
2. The mana motuhake of tangata whenua through kawa and tikanga, He Whakaputanga, Te Tiriti o Waitangi and the UN Declaration on the Rights of Indigenous Peoples.

Throughout many of our conversations, rangatahi shared their concerns about the current political environment. Rangatahi clearly identified that the current political system in place does not work or support many of our whānau, nor does it provide a space for mana motuhake. Moreover, they expressed alarm over a number of issues to do with power. Many asked critical questions like:

Who is it that actually controls our country? Is it really Pākehā or the Crown? Or is it actually foreign businesses? Why is that we can only have a political say when we are 18? We can hold a driver's license and gun license at 16; be conscripted to go to war at 16, and consent to sex at 16; but we can't politically participate? Current system does not work and our rangatahi know it – why are changes not being made?

Youth emphasised their potential as a driving force, "ko tātau ngā rangatira o apōpō – we are the leaders of tomorrow!"

As such rangatahi called for constitutional recognition and protection of our mana and political status as tangata whenua.

Within this rangatahi also called for the recognition and protection of our diversity as hapū – not just iwi – and our right and ability to self govern.

For rangatahi, any future constitution therefore needs to be underpinned by Māori whakaaro and philosophies, such as kawa and tikanga. For those that knew about them, this included He Whakaputanga o te Rangatiratanga o Niu Tireni, Te Tiriti o Waitangi, and other relevant documents like the United Nations Declaration on the Rights of Indigenous Peoples.

CONSTITUTIONAL RECOGNITION AND PROTECTION OF:
3. Maori knowledges, systems and institutions.

Another pressing issue that rangatahi raised was the need to reclaim and restore our traditional knowledges, systems and institutions. This covered a range of kaupapa, including:

- Recognising and acknowledging the kawa and tikanga of each marae, hapū and iwi;
- Restoring, reclaiming and re-practicing our tikanga and kawa;
- Learning, teaching and transmission of Te Reo Māori;
- Retelling our own histories in our own ways;
- Learning and understanding how our tipuna lived before us;
- Understanding the roles of men and women, tuakana and teina, and their importance in our societies;
- Ensuring that Te Ao Māori becomes a living reality for us as tangata whenua.

Rangatahi expressed the need to acknowledge and celebrate the differences between each hapū and iwi, including the kawa and tikanga of each hapū, te reo Māori and its different mita (dialects).

In addition to this rangatahi identified some fundamental values that they thought should be provided for and recognised in a constitution: manaakitanga (nurturing the mana of others), kaitiakitanga (guardianship), kotahitanga (unity), mana (ultimate power, prestige and authority), muru (redress), utu (restoration of balance), and hohou te rongo (establishing peace).

If these were recognised, provided for and protected within a constitution, rangatahi felt they themselves, their whānau and the wider Māori community would be enabled to confidently engage, connect and be actively involved in society.

CONSTITUTIONAL RECOGNITION AND PROTECTION OF:
4. The rights of all people to peace and mutual respect, 'kotahi aroha'.

Another kaupapa arising from rangatahi was the idea of kotahi aroha - one love. This was an all-encompassing theme that includes the way that we treat one another, the rights of and need to respect all peoples, and the balancing of male and female roles and responsibilities. Rangatahi felt that the need to change attitudes towards one another was integral to this.

Whilst respecting Māori as tangata whenua, rangatahi felt it important for all peoples to be ale to maintain their culture; to learn and continue the ways of their tīpuna and to maintain social connections through traditional ways, particularly for our collective health and wellbeing.

Rangatahi also identified other key values and aspirations such as; opportunities to make a living and for greater livelihood must increase; putea or money should never come before people; whānau should always come first, and; our economy should not necessarily be based on money alone.

Furthermore many rangatahi noted that diversity should be celebrated, and the oppressive harassment that continues from entities like the police of selected communities needs to stop.

Rangatahi went on to discuss alternative methods of monitoring or regulating misbehaviours. Instead of prisons, some rangatahi felt that justice should be returned to the communities. They noted that perhaps the inclusion of processes like hohou te rongo (to make peace) or muru (process of redress or rebalance) would be a better method to address misconduct as opposed to punishment or incarceration.

The rights of all people to peace and mutual respect rangatahi therefore believed should be a key part of any new constitution.

CONSTITUTIONAL RECOGNITION AND PROTECTION OF:
5. The rights of all to access education, health and well-being.

Rangatahi nationwide hoped that a new constitution would reflect and provide for constitutional recognition and protection of the rights of all to education, health and wellbeing. Threaded through this was the hope that this would afford them access to quality education, health services and to equitable health outcomes.

Quality education for rangatahi included; making te reo a core component, so it can be revived and embraced by everyone into a living language; political and civic education to raise awareness on all matters; education on coping mechanisms and emotions, stress management etc., especially for our men; learning off our pakeke as to how to look after whānau; recognition of whakapapa, history (our history), whakataukī, kīwaha and mātauranga-ā-iwi; education to be fun and free, where alternative models are accepted as "school's not for everyone, but it could be!;" marae-based education and maintenance of Māori arts; revive whare wānanga styles that cater for all aspects of life, balanced between traditional knowledge and what is offered in todays mainstream education – practical maori knowledge eg: mau rākau and sciences.

Rangatahi made note that they hoped to see a system that included rongoa Māori health techniques; no gang or family violence; the promotion of healthy lifestyles where whānau are aware of their diet and nutrition and are discouraged to smoke; where kai Māori, kaimoana and rongoa is available and accessible; where our people are not only caring for their bodies, but their hinengaro, their wairua and their communities too; where te ira tangata and te ira atua are reconnected; and, a system that works to re-engage and reconnect with those of our whānau who are disconnected from their taha Māori, whānau and whenua.

APPENDIX FOUR: A PICTORIAL RECORD.

First hui of the Independent Working Group on Constitutional Transformation, Waipapa marae, Auckland, January 2012.

An example of individual interviews held, Te Wānanga o Raukawa, Ōtaki and Victoria University, Wellington.

First rangatahi workshop design hui, Te Aroha Noa Centre, Palmerston North, March 2012.

National rangatahi training hui, Tapu te ranga marae, Wellington, May 2012.

Urban discussion group, Hoani Waititi marae, Auckland.

Te Whānau a Apanui hui, Te Kaha.

Hicks Bay hui, East Coast.

Some attendees, Ngāti Koata hui, Nelson.

EIT hui, Napier.

Muriwai marae hui, Gisborne.

Ngāti Kahungunu rohe rangatahi team

Rangatahi hui, Hato Hōhepa, Napier.

Wānanga hui, Gisborne.

Haititaimarangai marae hui, Northland.

Ngāpuhi hui, Kaihoke.

Kaumātua hui, AUT, Auckland.

Workshop, Hiruharama marae hui, Ruatōrea.

Ngāi Tahu staff hui, Christchurch.

Wairarapa rangatahi hui, Masterton.

Kaumātua hui, Tokomaru Bay, East Coast.

Ngāi Takoto hui Kaitaia.

Tū Tama Wahine hui, New Plymouth.

Waiomio hui, Waiomio.

Te Rōpū Waiora hui, Auckland.

Rangatahi findings summary hui, Taraika marae, Wellington.

Kohukohu hui, Northland.

Ngā Rauru hui, Whanganui.