The concept of partnership and *The Treaty of Waitangi*: Three case studies

Sandy Morrison
Te Pua Wānanga ki te Ao (School of Māori and Pacific Development)
Te Whare Wānanga o Waikato (University of Waikato)
Private Bag 3105, Hamilton, New Zealand
[samorr@waikato.ac.nz]

Abstract
There has been, and continues to be, considerable debate about the meaning and intent of different versions of the *Treaty of Waitangi* and about the extent of its relevance to contemporary New Zealand. It is in this context that a number of organisations and institutions in New Zealand, anxious to demonstrate their positive support for the creation of a just society, have attempted to restructure in ways that allow for a 'partnership' between Māori and Pākehā. With reference to three different case studies, I argue here that such restructuring, although generally very well intentioned and very welcome, should not be seen – as it frequently is – as an expression of the fulfilment of partnership obligations arising out of the *Treaty of Waitangi*. To treat organisational restructuring in this way, particularly where it does not provide both 'partners' with an equal right to determine the operational parameters and future direction of the organisation, is to misrepresent (often wholly unintentionally) the nature of the *Treaty*. Nevertheless, one way of resolving some of the debates concerning the meaning and intent of the *Treaty of Waitangi* might be to establish a principle of equal partnership in the governance and management of state institutions.

Introduction
In many public institutions in New Zealand, whether they be Crown agencies or community agencies, the *Treaty of Waitangi* has been written into mission statements, charters, constitutions, policy, philosophy statements, guidelines and other regulations. In a number of cases, three of which will be discussed here, organisations have sought to restructure in ways that are intended to signal a positive approach to what are seen as society's obligations under the terms of the *Treaty*. I shall argue here, however, that welcome as many of these restructuring initiatives are, they cannot – and should not – be interpreted as representing an adequate response to the *Treaty*. Indeed, there is a danger that such restructuring, even where it does not involve any genuine sharing of power and control, will eventually be seen as somehow representing the fulfilment of the Crown's *Treaty* obligations. In such circumstances, those Māori who insist that more, and different, measures are required may be seen as ungracious, as attempting to undermine the efforts of those very people who are most anxious to support them. It is important, therefore, to support and endorse the actions of those who aim to secure a more just society at the same time as insisting that these actions should not necessarily be interpreted as representing a direct response to the *Treaty of Waitangi*.

Background to the *Treaty of Waitangi*
By the time Captain Cook arrived in NZ in 1769, Māori society had evolved to the extent that it was firmly established with its own systems of political units being the hapū and its own systems of laws. Interaction with other hapū as well as interaction with the small number of settlers depended upon mutual understandings and agreements. The early settlers were, in the main, traders while the missionaries

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arrived a little later. Māori chiefs enjoyed access to technology and new trade route opportunities brought by the settlers. Many chiefs were already well skilled in bartering and exchange and were always on the lookout for new trading partners. By the late 1820s, settler numbers were increasing to the extent that they were adversely impacting upon the Māori way of life. The introduction and use of firearms resulted in Māori chiefs asking the missionaries to act as mediators for peace between tribes, and between Māori and Pākehā. Estimates of the Māori population in the 1800s were 100,000 to 200,000, the settler population being around 2,000 (Walker, 1990). There was no denying that through their chiefly systems, the Māori chiefs were in control; socially, politically, economically and culturally.

On October 28, 1835, 34 Northern chiefs and the British Crown (through the Crown representative, governor James Busby) signed *The Declaration of Independence* (*He Whakaputanga o te Rangatiratanga o Nu Tireni*). This document was transported around the country and was eventually signed by a total of 52 chiefs. There are two texts – an English text and a Māori text (translated from the English version by James Busby and Henry Williams). The Declaration consists of four articles. In the English version, *Articles 1* and *2* read as follows:

> We the hereditary chiefs and heads of the tribes (tino rangatira) of the northern parts of New Zealand . . . declare the independence (rangatiratanga) of our country, which is hereby constituted and declared to be an independent state (wenua rangatira) under the designation of the United Tribes of New Zealand.
>
> All sovereign power (kīngitanga) and authority (mana) within the territories of the United tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes (tino rangatira) in their collective capacity, who also declare that they will not permit any legislative authority to exist, nor any function of government (kawanatanga) to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled.

Article 3 allows for a meeting to be held in the autumn of every year in order to make laws for justice, peace and trade. *Article 4* thanks the King for recognising the national flag and entreats him to continue to be the parent of their infant state and to protect them from any attempts upon their independence (translated as *rangatiratanga).*

The Declaration of Independence (which clearly affirms the retention of *rangatiratanga* by Māori) provides considerable insight into the *Treaty* itself. For discussion of the *Declaration*, see, for example, Durie, 1998; Moon, 2002; Orange, 1989.

A brief discussion of *The Treaty of Waitangi* and its interpretation

Much has been written about the issues that have created difficulties in relation to the *Treaty of Waitangi* (which is provided in the English and Māori versions in *Appendix 1*). It is not my intention to go into detail here about these issues, issues which are likely to be very familiar to many readers. However, for the benefit of those who *are* unfamiliar with the issues, it is important to note that there are two main versions of

the *Treaty* – an English version and a Māori version – and that the perceived differences between these versions have created considerable tension (see, for example, Brookfield, 1999; Cleave, 1989; Durie, 1998; Kelsey, 1990; Moon, 2002; Orange, 1989; Ross, 1958; Walker, 1990 & 1996). About the right of Māori to retain their land and possessions, there is, however, no informed disagreement. This right is clearly specified in the *Treaty*. Dispute in this area relates to the fact that this right has been violated. So far as *interpretation* of the *Treaty* is concerned, a significant area of dispute relates to the words *rangatiratanga* and *kawanatanga*, the first generally interpreted as referring to sovereignty, the second generally interpreted as referring to governance. Although the Māori version of the *Treaty* makes reference to *kawanatanga,* the English version uses the word 'sovereignty'. At the time of the signing of the *Treaty* (1840), the vast majority of the population was Māori, a primary task of the representative of the British queen (the governor) being to maintain order among those who had migrated from Britain. Even those who argue that *rangatiratanga* (sovereignty) *was* ceded would find it very difficult to find any justification for arguing that this also implied a loss of the right to *kawanatanga* (governance) by Māori in relation to those matters that directly affect Māori.

The Treaty of Waitangi and the concept of partnership

Although Māori and Pākehā can be said to have been partners in relation to the *Treaty* itself, there is nothing in the *Treaty* that supports the notion that partnership between Māori and Pākehā (particularly an unequal form of 'partnership' in which Pākehā retained overall control) was to replace control by Māori of matters pertaining directly to Māori. In fact, Durie (1998) notes that the word 'partnership' in relation to the *Treaty of Waitangi* was introduced in 1975 by the Anglican church when it established a Māori Bishopric of Aotearoa to operate 'in partnership' with the general section. The concept of partnership was subsequently referred to in the Waitangi tribunal reports (Manukau, 1985, § 8.3 and Te Reo Māori, 1986, § 4.2.8). In 1986, Cabinet issued a minute directing all government departments to assess the impact of the *Treaty* on their future policies. They responded in various ways, many referring to 'partnership', a concept that was then built into a number of government policies. In particular, the *Treaty of Waitangi Act 1988* states that in making appointments to the *Waitangi Tribunal*, the Minister shall have due regard to the partnership between the two parties to the *Treaty*. However, although in 1988 the *Royal Social Commission* referred to partnership as one of its key principles, it also observed the need to define who the partners were, how the relationship between them was to be conceived, and what the arrangements for the conduct of the partnership were to be. During the discussions that members of the Commission had with communities, it became clear that Māori and representatives of the Crown had a different understanding of the concept of partnership. For Māori, partnership meant sharing power and control; for representatives of the Crown, partnership was a rather vague notion that need not involve any real power-sharing. Even so, the word 'partnership' is frequently found in Crown policies that refer to the *Treaty* and is frequently used by officials with reference to the *Treaty* although many Māori (see, for example, Henare, 1990) have pointed out that this is not a concept that arises directly from the *Treaty* and that it is, furthermore, a concept that is open to a wide range of very different interpretations. It may be useful, therefore, to explore the ways in which this concept has been interpreted in different organisations.

The concept of '*Treaty*-based partnership': Three case studies

In this section, the concept of *Treaty*-based partnership as expressed in three different organisational contexts – *Literacy Aotearoa*, the Anglican Church and the University of Waikato – is explored.

Literacy Aotearoa

Literacy Aotearoa (Yates, 1996) was previously known as the *Adult Reading and Learning Assistance Federation* (ARLA) and was established in 1982. Its mission is to develop accessible quality literacy services that ensure the people of New Zealand are critically literate. Trained tutors (mainly volunteers) provide adult literacy services throughout the country.

In the early years of the organisation, questions were raised about the equity of provision. Although Māori made up the majority of those with literacy problems, they were not accessing the services offered. In 1988, a remit was passed for the organisation to address issues of biculturalism and multiculturalism. The National Committee attended a Project Waitangi course. From that point on, they became committed to undergoing a process of structural change aimed at the creation of an equitable and representative educational model for delivery and service. They began by coopting Māori onto their National Committee and employing more Māori staff to work with Māori communities. A Māori Development Committee was established, its primary function being to actively identify ways of addressing the representation and participation by Māori in the organisation. A decision was made to write the Māori text of the *Treaty of Waitangi* into the goals and principles of the organisation. Māori structures and processes were thus validated and began to become visible within the organisation. Currently, there is equal representation of Māori and tauiwi at national committee and management levels and the organisation now has a dual structure in relation to both governance and management. Governance matters are the responsibility of a group (Te Koruru) which comprises three Māori and three tauiwi members. So far as management is concerned, there are two Chief Executive Officers, one Māori and one Pākehā. The organisation works actively to recognise and implement Māori as well as tauiwi practises and tuition is provided in both English and Māori (as required/ requested) using flexible methods of delivery.

The Anglican Church

The Anglican Church has its beginnings in New Zealand in 1814 with the arrival of Reverend Samuel Marsden (Melbourne, 1999). Missionary activity then rapidly spread throughout the country. The Anglican Church had 584,793 adherents in 2001 according to the 2001 government census. It is a constitutionally autonomous member of the worldwide Anglican Commission and has an ordained ministry of bishops, priests and deacons. The Constitution of 1857 was amended in 1992 to provide for equal partnership and effective participation in decision-making by the three tikanga – Māori, Pākehā and Pasifika. The revised Constitution describes the mission of the church as including the proclamation of the Gospel, the teaching, baptising and nurturing of believers within eucharistic communities of faith, responding to human needs in love and service, seeking to transform unjust structures of society, and caring for God's creation and establishing the values of the Kingdom. It fulfils its mission through diverse agencies and activities and through the participation of its members in the life of the community.

In 1984, the Māori section of the Anglican Church proposed a motion to the General Synod asking that the Church examine the implications of the *Treaty of Waitangi* for the church. As a result, a bicultural commission comprising three Māori and three Pākehā was established, the aims of that commission being:

- to study the *Treaty of Waitangi* and to consider whether any principles of partnership and bicultural development are implied and the nature of any such principles that may serve as indicators for future growth and development;

- to consult with Māori and non-Māori people thereon at such marae and other venues as may be appropriate;

- to advise General Synod on any ways and means to embody the principles of the *Treaty* in the legislation, institutions and general life of the Church of the Province of New Zealand.

A comprehensive discussion document was prepared. It examined the *Treaty* texts and the status and nature of the *Treaty* in international law, exploring its potential status as a source of rights and obligations in New Zealand law. It also discussed the principle of partnership and bicultural development and suggested possible options for the church. Many meetings and hui were held throughout the country and a total of 264 oral and 91 written submissions were received by the Commission.

After consideration of the submissions, the Commission resolved that the *Treaty* did clearly establish the principle of partnership and also implied the principle of bicultural development. It then defined both these terms. *Bicultural development* was defined as "the process whereby two cultures grow and develop within one nation in a spirit of mutual respect and responsibility". *Partnership* was said to "[involve] cooperation and interdependence between distinct cultural or ethnic groups within one nation" (Anglican Provincial Bicultural Education Unit, 1990). The Commission also noted that the *Treaty* is a fact, and therefore relevant for all the people of New Zealand and further argued that its principles are consistent with the Gospel of Jesus Christ. Eighteen recommendations followed from this determination. These included:

- revising the Constitution so that the principles of partnership and bicultural development are expressed and entrenched ;

- establishing a permanent bicultural commission charged with the responsibility of devising programmes within the Church for a better understanding of the meaning and practice of partnership and bicultural development.

Other recommendations included a requirement that priests should minister to the Māori people in their own language and culture and participate in marae experiences. In fact, the Report went so far as to say that a person who was not able to minister to the Māori people in their own language and culture was not equipped to be a bishop in the Church. It was recommended that services be available in both languages. There was also a strong statement that another Commission should be established to examine and report on the size of the problem relating to the acquisition of Māori

land, particularly where such land had been disposed of or was not being used by the Church.

In 1992, the General Synod (also known as Te Hinota Whanui) adopted a revised constitution which provided an opportunity for three partners to be equal in the decision-making processes of the General Synod. The three partners (or three cultural streams) are known as 'tikanga' and are made up of Māori, Pākehā and Pasifika peoples. The inclusion of a Pasifika partner is an acknowledgment of the fact that islands of the South Pacific are included in the Church of the Province of New Zealand (with branches being largely based in Fiji, Tonga, Samoa and the Cook Islands). No decision can be ratified without the agreement of all three partners. If a matter is contentious, the preferred course is to caucus in tikanga groups and to negotiate mutually acceptable outcomes. The Constitution was amended to include the statement that each partner accepts responsibility for its own approach to Church matters and manages its own budget whilst having an implicit obligation to the other partners.

Jenny Te Paa, Dean (*Ahorangi*) of Te Rau Kahikatea, the Māori theological College in Auckland is quoted (Melbourne, 1995, p. 167) as saying:

> The new [Anglican church] structure has made Pākehā aware of their treaty obligations and more open to examining issues of historical injustice and so on. For Māori it is like being set free! It's almost beyond belief. We rejoice in our ability to control events.

There are, however, problems. As Murray Mills, Bishop of Waiapu, observed (*Sunday Star Times*, Sept 2, 2001):

> We've gone forward on grounds we think are consistent with the gospel and consistent with the Treaty of Waitangi, but that doesn't mean to say we carried all our people with us. . . . [There's] a strong backlash on the fringes of the church anyway. There's a backlash to us using Māori language and being too cooperative. And why can't we go back to all being one.

The 1984 Discussion Paper circulated by the Bicultural Commission contains substantial debate on the meaning of the Treaty and, in particular, on the kawanatanga/ rangatiratanga issue. The paper contends (on the basis of Article 1 of the English text) that the Crown did secure sovereignty, but that Parliament is obliged to legislate in a way that recognises the special position of Māori in a way that is not subject to majority vote. The conclusion is that the Treaty "its context, words, structure and spirit – recognised and established the principle of partnership", the recommendation being that partnership be defined as involving cooperation and interdependence between distinct cultural or ethnic groups within one nation (Anglican Provincial Bicultural Education Unit, 1990). Also recommended is what is referred to as 'bicultural development'.

Māori make up 10% of the membership of the Church. They now control their own affairs and can make decisions which are in their own interests so long as they do not impact in a negative way on the other two 'tikanga' (Pākehā and Pasifika).

Furthermore, they have been bequeathed a share of assets estimated at around $4 million. This is an excellent outcome in terms of any concept of social justice, and one with which the Church can be justifiably satisfied. Even so, it is important, I believe, to question the nature of the scholarship involved and the conclusions reached in some areas. For example, the conclusion that Māori ceded sovereignty appears to be based on a less than full analysis of the Treaty and its context. Furthermore, a tri-partite relationship model cannot logically be derived from a Treaty involving two groups. Strictly speaking, therefore, the new Constitution cannot be said to be Treaty-based notwithstanding the following extract from the Anglican Church Constitution:

> AND WHEREAS (6) by the Treaty of Waitangi signed in 1840, the basis for future government and settlement of New Zealand was agreed, which Treaty implies partnership between Maori and settlers and bicultural development within one nation.

The University of Waikato

The University of Waikato (UOW) was established under the *University of Waikato Act 1963*. The University's Charter (http://www.waikato.ac.nz/charter: visited 10 June 2005) includes the following statement:

> We are committed to meaningful partnerships under the Treaty of Waitangi and to providing leadership in research, scholarship and education relevant to the needs and aspirations of iwi and Māori communities. We value our relationship with Tainui as mana whenua, and we are committed to the iwi forum of Te Rōpū Manukura as a partner of the University. We are dedicated to supporting our Māori student and staff communities with a focus on leadership and academic excellence.

The *University of Waikato* is located on land that was returned to Tainui (the local Māori tribal confederation) by the Crown under the Tainui Raupatu Settlement process (a process involving a measure of restitution for past wrongs). In 2004, there were 14,023 students. Of these, 6,335 identified as European/Pākehā and 2,480 as New Zealand Māori. Thus, the proportion of Māori to Pākehā students was approximately 2:5 (the highest proportion of Māori to Pākehā students in any university in New Zealand). The University is recognized throughout New Zealand for its positive stance on Māori issues. It is, after all, the first University to have established a School – Te Pua Wānanga ki te Ao – that is largely run by Māori and that is largely made up of programmes designed to meet the needs and interests of Māori (although it also seeks to make a contribution to education and research relevant to the needs and interests of Pacific Islands peoples and attracts students – including international students – who identify as neither Māori nor Pacific Islanders). At a governance level, however, the commitment of the University to its Māori constituency is not much in evidence, except to the extent that there is a Pro-Vice Chancellor Māori position (one Pro-Vice Chancellor – currently only occupying a 0.2 position[1] – among several) and an *advisory* group (Te Rōpū Manukura) made up of representatives of Māori tribal bodies throughout the university's catchment area. In essence, therefore, the *University of Waikato* does not have any genuine power-sharing structures or processes in place.

Conclusion

Three different 'partnership models', all of which arise out of a stated commitment to honouring the *Treaty of Waitangi* and/or the principles of that *Treaty,* have been discussed. In each case, Māori have been accorded some measure of control in relation to matters of direct relevance to them. In two cases (*Literacy Aotearoa* and the Anglican Church), the institutions have been restructured in ways that provide Māori with the opportunity to have a real impact on institutional direction and decision-making. In one case only, however, (*Literacy Aotearoa*) has an attempt been made to link restructuring to the Māori version of the *Treaty of Waitangi* and to Māori perceptions of the implications of the *Treaty* for institutional relationships. Even so, it is important to stress that neither version of the *Treaty* makes any direct statement about partnership. Nevertheless, it could be argued that the fairest way of resolving disputes concerning *rangatiratanga* and *kawanatanga* in the *Treaty* is to establish a principle of equal partnership in the governance and management of state institutions. In such a context, *Literacy Aotearoa* would provide an excellent model.

Endnotes

1. This is, however, we have been assured, only temporary, the full Pro-Vice Chancellor Māori position being due for restoration.

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Appendix 1: Treaty of Waitangi – Māori and English versions

Māori Version

KO WIKITORIA te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira - hei kai wakarite ki nga Tangata maori o Nu Tirani - kia wakaaetia e nga Rangatira Maori te Kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu - na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei. Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana. Na kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei amua atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu - te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangitira ki nga hapu - ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o

English Version

Preamble

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families

ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua - ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

(signed)
William Hobson,
Consul and Lieutenant-Governor.

(signed)
William Hobson,
Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified.
Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.
Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.
Ko nga Rangatira o te wakaminenga.