16th November 2012

NGATI HUARERE KI WHANGAPOUA TRUST

Complaint to the Human Rights Commission

of

Discrimination

against

Te Whānau o Hamiora Mangakahia
(Ngati Huarere ki Whangapoua)

by the

New Zealand Government and the Hauraki Collective

and others

May it please the Commission:

Complaint

1. The purpose of this communication is to lodge a formal complaint with the Human Rights Commission, in which the Ngati Huarere ki Whangapoua Trust allege that the New Zealand Government and the Hauraki Collective are implementing a Treaty settlement process in a manner that has the aim or effect of violating the rights of Te Whānau o Hamiora Mangakahia (the Whānau) under section 19(1) and 27(1) of the Bill of Rights Act 1990.

2. We allege the Crown's actions will: (1) deprive the Whānau of their integrity as a distinct people, their cultural values, ethnic identity and mana; and (2) subject the Whānau to action that will dispossess the Whānau of their traditional lands, territories and resources; or (3) force the Whānau to assimilate or integrate with other peoples with whom they do not identify and in doing so place the control of the Whānau's lands, territories and resources into the hands of their traditional enemies and thereby deny the Whānau the right to Self Determination; and (4) cause the Whānau to suffer irreversible prejudice when the Hauraki settlement is passed into law; and (5) result in the "cultural genocide" of those Hauraki tribes which have been excluded from the Hauraki Collective.

Human Rights Commission Mandate

3. The Human Rights Commission (HRC) is established under The Human Rights Act 1993. This Act empowers the Commission to inquire into infringements of human rights [5(2)(h)] and facilitate the resolution of disputes [76(1)(b)].

The Trust

4. The Ngati Huarere ki Whangapoua Trust (the Trust) is an organisation that was duly established and mandated in 1998 by the Ngati Huarere ki Whangapoua iwi (NHkW) to act on the iwi's behalf in respect of all aspects pertaining to the tribe. This includes the settlement of its historical Waitangi Treaty grievances with the New Zealand Government (the Crown). The Ngati Huarere ki Whangapoua iwi is comprised exclusively of the descendents of Hamiora Mangakahia who is of Ngati Huarere descent. Therefore the Ngati Huarere ki Whangapoua iwi (NHkW) and Te Whānau o Hamiora Mangakahia are the exact same group of people.

5. The premises that underpin the Ngati Huarere ki Whangapoua Treaty of Waitangi claims are: (1) that Ngati Huarere ki Whangapoua have inhabited the Whangapoua basin of the Coromandel Peninsula since earliest Maori inhabitation; and (2) that

Ngati Huarere ki Whangapoua has its own whakapapa (genealogy), history, and mana (authority) over its rohe (territory); and (3) that Ngati Huarere ki Whangapoua lost much of its ancestral land through dubious practices by both the Crown and early settlers.

Background

6. The Whānau (NHkW) lodged its Waitangi Treaty claim WAI475 to seek redress for the loss of the ancestral lands of the Whānau (NHkW). This included significant shareholding in the Whangapoua forest. As the claim is specific to the lands of the Whānau's (NHkW) Great Grandfather, Hamiora Mangakahia, it was lodged under the name "Te Whānau o Hamiora Mangakahia" to differentiate the claimant group from the wider Ngati Huarere iwi, to which many in the Hauraki region may whakapapa. This was to prevent the wider Huarere descendents claiming a share of an inheritance to which they were not entitled. In 1892 Hamiora was the Premier of Kotahitanga (Maori Parliament), which demonstrates his high standing among the Maori people. The decision by Ngati Huarere ki Whangapoua iwi to lodge the claim under "Te Whānau o Hamiora Mangakahia" was made years prior to the Crown initiating a "collective" settlement process. The Crown is now using the WAI 475 claim "title" to categorize and treat the Whānau's (NHkW) claim as a family claim and not an iwi claim.

7. In no small measure, a popular misconception (like that which the Crown promotes) has been given currency, namely that the term 'Whānau' as in Whānau Mangakahia simply denotes nothing more than a traditional, i.e. extended family, conception or, in other words, the Whānau is neither iwi nor hapu. Yet, it is well known that hapu and iwi have the term 'Whānau' either as an iwi name, as in Whānau-a-Apanui (an iwi), and hapu of the East Coast area as in Whānau a Tapaeururangi, Whānau a Te Aotaki, Whānau a Tuwhakairiora, Whānau a Rakaimataura Whānau a Hinerupe and more than a dozen other hapu prefixed with 'Whānau'. [The Whānau Mangakahia falls into the category of a hapu with the prefix Whānau]

8. The Waitangi Tribunal hearing for WAI475 was held over four days in March of 2000 and the Tribunal determined the claim to be "well founded". In 2009 the Crown began the Waitangi Treaty Settlement process in the Hauraki region via a "collective" process, which involves grouping claimants from a region to negotiate their settlements collectively. The collective process facilitates the settlement of overlapping claims and is purported to be timelier and more cost efficient, however it is vulnerable to abuse.

9. In 2009 the Hauraki Māori Trust Board (HMTB) and the Marutūāhu Working Group (MWG) both claimed a mandate to represent Hauraki iwi in Treaty settlement

negotiations. The Crown claimed it was not possible to mandate either the HMTB or MWG to represent all Māori affiliating to Hauraki iwi. So the Hauraki Collective (Collective) was formed for the purpose of grouping Hauraki claimants under one entity. Interestingly, despite the Crown's assertion that neither the HMTB nor MWG could represent all Hauraki Maori, the Collective is comprised of the identical twelve iwi as the HMTB. These twelve iwi were simply transposed from the HMTB to the Collective. Therefore it is important to note that by the Crowns own reasoning the Collective cannot and does not represent all Hauraki claimants.

10. Since mid 2010 Whānau Mangakahia (NHkW) and other legitimate Hauraki claimants have requested membership of the Collective. The Collective has repeatedly refused these claimants membership and has suggested the Whānau (NHkW) could participate by assimilating under one of the twelve tribes of the Collective. The Crown, which has the final say in Collective membership, simply advises these excluded claimants, including the Whānau (NHkW), to continue to engage with the Collective. Despite repeated requests the Collective has not given any rationale for its refusal of the membership requests by the Whānau (NHkW) or other claimants. The Collective will not put their refusal in writing.

11. At its meeting of the 10th October 2012, the Kaumatua Kaunihera of Hauraki resolved to reaffirm Ngati Huarere as an iwi of Hauraki, and also to send an affirmation letter to the Chairman and CEO of the Hauraki Maori Trust Board advising that the Kaumatua Kaunihera of Hauraki support the inclusion of iwi representation for Ngati Huarere on the Board. The Ngati Huarere ki Whangapoua Trust is the only Huarere organisation in Hauraki.

Particulars

12. In 1990 the New Zealand Bill of Rights Act 1990 came into law and inter alia: (1) affirmed, by virtue of its section 19 provisions, the rights of persons to freedom from discrimination; and (2) affirmed, by virtue of its section 27(1) provisions, the rights of persons to the observance of the principles of natural justice by any Tribunal or other public authority that has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognized by law.

13. Ngati Huarere ki Whangapoua Trust on behalf of Waitangi Treaty claimants Te Whānau o Hamiora Mangakahia, is lodging this formal complaint against the New Zealand Government and the Hauraki Collective, as it believes their conduct in the Waitangi Treaty Settlement process is discriminatory and unjust and will result in "irreversible prejudice" to the Whānau (NHkW). In this complaint we allege that: (1) the Crown is contravening section 19(1) of the New Zealand Bill of Rights Act 1990 by treating some Treaty claimants significantly less favourably than other claimants in

substantially the same circumstances and; (2) the Crown is contravening section 27(1) of the Bill of Rights Act 1990 by the Office of Treaty Settlements and Te Puni Kokiri ignoring the Laws of Natural Justice in the Hauraki Treaty settlement process.

14. We also allege the Crown is violating its obligations under Article 1, 2, 5 and 6 of the United Nations Convention on the Elimination of all forms of Racial Discrimination and its obligations under Articles 1, 2, 3, 4, 8, 18, 19, 26, 27, 28, 33, 37, 38, 39 and 40 the United Nations Declaration on the Rights of Indigenous Peoples. While these two international human rights instruments may fall outside the HRC mandate, we refer to them here because the Crown's failure to fulfil its obligations under these instruments, especially as it can easily fulfil its obligations, contextually defines the extent of the Crown's disregard for human rights. *Note; The alleged breaches of the UN Declarations referred to in this paragraph do not form part of this complaint however a copy of our complaint to the United Nations on these breaches is available from the NHkW Trust.*

Section (1) Discrimination

15. Section 19(1) of the New Zealand Bill of Rights 1990 affords every person in New Zealand the right to freedom from discrimination;

19 Freedom from discrimination

- *(1) Everyone has the right to freedom from discrimination on the grounds of discrimination in the human Rights Act.*

16. For the Treaty settlement process to be devoid of discrimination, all claimants must be treated in substantially the same manner. It is alleged the Crown is ignoring this underlying principle to the point where some claimants are being treated significantly less favourably than others and are even being subjugated by other claimants.

17. On the 28th October of 2009 the Crown invited each Hauraki iwi represented by both the HMTB and the MWG to enter a formal process to elect negotiators to represent each of their iwi in the Hauraki Treaty settlements. This process firstly involved interim mandates and then full mandates and was completed in June of 2011. The Hauraki Collective was formed to group these negotiators into one entity. The Collective membership is identical to that of the Hauraki Maori Trust Board, which was established by the Crown to facilitate a comprehensive Treaty settlement for all Hauraki claimants, and so is essentially an agent of the Crown. It has twelve members who are often referred to as "The twelve iwi of Hauraki". *It is important to note that this label is misleading, as there are more than 12 iwi in Hauraki and the HMTB do not incorporate or represent all Hauraki iwi and the Hauraki Collective does not incorporate or represent all Hauraki Waitangi Treaty claimants.*

18. On July 12th 2011 Te Puni Kokiri (TPK) sent letters to claimants whose claims were not represented by any of the Collective members to inform them that the mandating process was now complete and that the Crown had observed their claims were not listed with the Collective, but that the Collective would now negotiate their claims on their behalf. These claimants had no input in to the mandating process and the decision to hand the negotiation of their redress to the Collective mandated negotiators was made without the free, prior and informed consent of these claimants.

19. The Trust never received this notification from TPK as it was sent to the Trusts former legal counsel who had not represented the Trust for 14 years. TPK was made aware of this by that recipient and subsequently acknowledged this mistake but apparently never resent the letter to the Trust. The Trust has only recently discovered these events via an Official Information Act request.

20. The Collective is constituted by an agreement between the twelve iwi of the HMTB and the Crown. It is not established under legislation and does not appear to displace existing rights in any existing claimant. The Crown will only negotiate with, fund and recognize Hauraki iwi who are members of the Collective. Although the Collective does not represent all Treaty claimants in the Hauraki region, there has been no open invitation, selection or qualification process for other claimants to gain membership of the Collective. It is essentially a "closed shop"

21. In January of 2010 the Whānau (NHkW) engaged with the Crown for a seat on the Collective. However the Whānau (NHkW) were informed by the Crown that it was not their intention to negotiate at the Whānau level and that the Whānau (NHkW) should approach its iwi or hapu to have them negotiate on behalf of the Whānau (NHkW). The Whānau's (NHkW) legal counsel demonstrated to the Crown that the Trust is the appropriate entity to negotiate WAI475 as there is no higher authority that Ngati Huarere ki Whangapoua affiliates to. However the Crown seems intent on disregarding the fact that the Whānau is Ngati Huarere ki Whangapoua and as stated earlier its claim was lodged under Te Whānau o Hamiora Mangakahia due to the necessity to target the recipients of its redress. Hamiora Mangakahia is a direct descendent of Huarere and claimed the lands subject to WAI475 as Huarere. The Whānau (NHkW) are possibly the last remnant of the great Huarere tribe that covered the Hauraki region and large areas of Tamaki Makaurau. The Trust is the only Huarere organisation in Hauraki therefore it is the appropriate entity to negotiate WAI475,

22. No Collective member has ever held tangata whenua, mana whenua, and mana moana or mana tangata over the Whangapoua basin and therefore cannot represent the Whānau's (NHkW) interests. The Whānau (NHkW) and its ancestors have

maintained ahi kaa roa since the earliest Maori inhabitation of Hauraki. No other Iwi have knowledge of its claim, an affinity or association with its whenua and moana and no emotional attachment to its land or detailed knowledge of its rohe and therefore could not negotiate with the same passion or determination.

23. It would be necessary for the negotiator of WAI475 to have knowledge of the Whānau's (NHkW) wahi tapu (sacred sites). The location of these are held in the strictest confidence by the Whānau (NHkW), which does not wish to reveal these sites to others, particularly as some of the Collective members the Crown is insisting can represent the Whānau (NHkW) are the Whānau's (NHkW) traditional adversaries.

24. The Crown has informed the Whānau (NHkW) that in the Crowns view the Whānau (NHkW) does not constitute a "large natural grouping" and therefore does not qualify for a seat on the Collective, nor will the Crown negotiate with it directly. However the Crown considers some of the Collective iwi, with fewer members than the Whānau (NHkW), do constitute a large natural group. The letter from TPK to the excluded claimants states;

    "The Crown is satisfied that each of the 12 Hauraki iwi represents a large natural grouping".

25. In the 2006 census, one of the 12 iwi (Te Patukirikiri) had 62 members another (Nga Rahiri Tumutumu) having 195 and another (Ngai Tai ki Tamaki) has 339 members. The Whānau (NHkW) has significantly more members than these iwi. We believe the Crown has no criteria to define a large natural group and so cannot determine whether or not a claimant actually constitutes a large natural group. However in our view it is discriminatory for the Crown to claim the Whānau (NHkW) does not constitute a large natural group while it recognises iwi with fewer members as large natural groups.

26. We believe the Crown has allowed the Hauraki Collective, through the Hauraki Treaty Settlement process, to take advantage of tangata whenua groups by allowing the twelve iwi of the Collective to divide up legitimately separate tangata whenua interests amongst themselves. The notion that tangata whenua groups (such as the Whānau [NHkW]) could simply affiliate and take out eventually, after a settlement, what would be such groups' legitimate interests, is illusory. Tangata whenua groups such as the Whānau (NHkW) could have been allowed by the Crown to attach themselves as independents to the Hauraki Collective and in that sense those tangata whenua groups would easily have qualified as being part of a large natural grouping, namely the Collective (the Whānau (NHkW) asserts that it would in any event constitute a large natural grouping).

27. The Collective membership is clearly discriminatory and inconsistent. For example: one Collective member, Ngati Porou, is a landowner on the Coromandel peninsula only because they were gifted the land in the 1850's as a stopover on their journey up the East Coast to trade in Auckland. They have a seat at the negotiation table while the Whānau (NHkW) with a larger claim and who is one of the original iwi of Hauraki do not. Another example is; Ngati Hei, another Collective member, is the teina (junior) line to Ngati Huarere ki Whangapoua and settled on the Coromandel at the same time as Ngati Huarere; they have a seat at the negotiation table while the Whānau (NHkW) do not.

28. The Trust is not suggesting these iwi should not have a seat at the negotiating table. We are simply raising these matters as examples of the inconsistencies that result from a discriminatory process. We assert that it is inequitable that these iwi are able to negotiate their claims while the Whānau (NHkW) is being told it must assimilate with another tribe and have that tribe negotiate the settlement of WAI475 for the Whānau (NHkW) to receive any redress. The Whānau's (NHkW) claim is one of the larger claims in Hauraki as Hamiora had interests over much of the region. WAI475 is not a small claim that can simply be tagged onto another claim or be negotiated as an extra. The requirement that the Whānau (NHkW) must assimilate with another iwi to receive justice is offensive to the Whānau (NHkW).

29. The Crown has stated it considers Ngati Hei, Ngati Whanaunga, Ngati Maru or Ngati Tamatera can represent the Whānau (NHkW) in settlement negotiations. The Trust has requested under the Official Information Act, the rationale used by the Crown to reach this conclusion. The Crown has not provided any substantive reasoning that would lead it to this conclusion, nor does the Trust believe it can. The Trust does not accept the Crowns position but there appears to be no process to challenge it.

30. Huarere is one of the three original tribes of Hauraki and inhabited the area many generations prior to the migration of Ngati Whanaunga, Maru or Tamatera into Hauraki; therefore the Whānau (NHkW) cannot be a part of these iwi and they should not represent Whānau's (NHkW) claim. If the Collective did in fact believe it represented the Whānau (NHkW), then claim WAI475 would have been listed with the Collective. It was not. As mentioned above, it would be inappropriate for Ngati Hei, another original iwi of Hauraki, to represent Ngati Huarere, as they are the teina (junior) line to Huarere. Ngati Hei will not represent the Whānau (NHkW) as they agree that Ngati Huarere ki Whangapoua are a distinct people. Interestingly the Crown is not claiming that Ngati Whanaunga, Maru or Tamatera can represent Ngati Hei although Hei is descended from the same bloodline as Huarere. Neither is the Crown saying that Ngati Maru, Whanaunga or Tamatera can represent each other even though they all descend directly from Marutuahu and their relationship is much

closer than that of Huarere and Hei. It is obvious the Crown is being selective in its application of certain principles to engineer its desired outcome.

31. Ngati Huarere is specifically excluded as a beneficiary of the HMTB. This exclusion acknowledges the Whānau (NHkW) is a separate entity to the twelve iwi represented on the HMTB and the Collective. This point alone dispels the Crown's argument that some Collective members are able to represent the Whānau (NHkW). It appears that when there is money to pay out, the twelve tribes of the HMTB and the Collective want nothing to do with the Whānau (NHkW), but when there are assets to be gained some of those same tribes claim to represent the Whānau's (NHkW) interests.

32. The Trust administered the Whānau's (NHkW) Treaty settlement process, including the Waitangi Tribunal hearing in Whangapoua for WAI475. If another iwi represented the Whānau (NHkW) then it is reasonable to expect that they would have also represented the Whānau (NHkW) during the hearing. None of the twelve iwi raised any concern that the Trust was not the appropriate entity to oversee its claim.

33. The Collective has a rule that requires a unanimous vote for it to make a decision. *(Note; during the mandating process voters were told that Collective decisions would be by consensus).* This allows even one dissenting vote to block other iwi from obtaining membership. There are no minutes kept of the Collective meetings and only decisions are recorded. The Trust alleges this veil of secrecy is intentional. We see no justification for it and it should be of considerable concern to anyone who has an interest in the matters under negotiation and future generations who may wish to understand how decisions were arrived at. The Whānau's (NHkW) claim overlaps with some Collective members claims but we have no way of knowing what is being decided in respect to our interest in these matters. For example, the Trust has heard that a neighboring iwi is trying to extend their claim into the Trusts traditional rohe, but the Trust cannot find out what is being discussed and is not involved in negotiations so it cannot contest this dishonesty.

34. The Trust alleges that the Crown is allowing the Collective to determine a hierarchy of local tribes that is in conflict with history and this is creating an underclass of Maori. We believe this will eventually result in an ethnic cleansing of the Hauraki region of all iwi that stand outside the twelve iwi represented on both the HMTB and the Collective. This is because those tribes that are not members of the Collective will have to assimilate or integrate with a Collective member to access any redress, thereby surrendering their identity, sovereignty and control of their assets.

35. This underclass is occurring as the Collectives ability to exclude legitimate claimants from the settlement process also determines those claimants ability to obtain recognition and funding. For example: the Thames Coromandel District Council is

currently holding District Plan meetings with "Crown recognized" iwi. Despite Huarere being listed as tangata whenua in the Council's District Plan the Whānau's (NHkW) requests to attend have been declined. Hence the discrimination initiated by the Crown and the Collective is now flowing into other organisations.

36. The Whānau (NHkW) are heirs to a significant shareholding of the Whangapoua forest and this constitutes a large portion of its claim. The Collective members are funded from the retained rental of this forest yet the Whānau (NHkW) cannot obtain any funding from this source, as it is not a party to the settlement negotiations due to its exclusion by the Collective. So in effect the income from our shareholding in the forest is being used to fund the Collective, which intends to take our forest from us while we are unable to access that income to mount a serious challenge to prevent it.

37. The Crown appears to partner with better-marketed iwi. The Whānau (NHkW) are at a disadvantage in this regard due to the isolation of Whangapoua. There is little employment to hold Whānau (NHkW) members in the area so there is a disproportionate number that migrate out of the area when compared to iwi located near large towns. This leaves iwi from isolated areas vulnerable to exploitation by better-resourced tribes. The Crown should not treat the Whānau (NHkW) less favorably due to this situation.

38. In support of this phenomenon (and also paragraph 34 above) here is an excerpt from page 12 of the Waitangi Tribunal's Tamaki Makaurau Report that demonstrates how groups are marginalized within settlements:

> *"Winners tend to be groups who, relative to other Maori groups, have already had successes. They are led by outstanding people like Sir Hugh Kawharu, they have good infrastructure (communication capability, sound accounting practices and good legal structures), and stable, committed membership. Arguably, though, those most in need of settlements – who may often be the very groups whose Treaty rights were least respected in the process of colonisation – are those who do not fulfil a 'success' profile. On the 'picking winners' basis, those groups will be last in the settlement queue. When the Crown targets for settlement the most high profile, effective group in a district, and leaves out the other tangata whenua groups, it reinforces the view that they matter less. When the Crown keeps doing it (in Auckland, Ngati Whatua o Orakei has now been chosen four times), that implication is even stronger. When the winners are picked out, they feel and act more like winners. This can leave the other tangata whenua groups in the district feeling like losers. They can feel that they have been relegated to a class of alsorans. Suspicion and resentment are the natural result. What will the Crown do to settle with all*

the smaller, more diffuse groups that, in the end, will be left over? There is no apparent strategy. If there is, those groups do not know of it. They feel as if their claims are in limbo, and destined to remain there."

39. The Minister of Treaty Settlements has refused to meet with the Whānau (NHkW) to discuss the Whānau's (NHkW) grievances. Because the Crown is only listening to the Collective it has a distorted perception of the relationship between Hauraki iwi. For example, in our situation the Crown is intending to hand the negotiation of our redress to Ngati Maru, our traditional enemies, who in the past have attempted to lay claim to our rohe. The Judge dismissed their argument. *(Opitonui Case 25 January 1870 Coromandel Minute Book 1:260).*

40. The Chairperson of the Collective, who is from Ngati Maru, recently recommended to the Thames Coromandel District Council that the Council delete our iwi and also Ngati Tamatepo, another excluded iwi, from the list of tangata whenua in the Council's District Plan, thereby demonstrating his prejudice against the Whānau (NHkW). Despite repeated requests he has yet to acknowledge in writing the Collective's refusal of our membership or the reasons for that refusal. On the 28th August 2012 the CEO of the Collective, also from Ngati Maru, told the District Plan Committee that in his view the Whānau (NHkW) does not exist. It would be abhorrent to the Whānau (NHkW) to have people who hold such views oversee the negotiation of its settlement.

41. The Whānau (NHkW) entered the settlement process in good faith and with a fair and reasonable expectation that the process would be equitable for all claimants and that all claimants would be treated in substantially the same manner. However the Crown appears to have a totally irrational sense of justice. The Trust has an email dated 02/02/12 by the Crown which states the Crowns policy on treaty negotiations is; *"that the Crown negotiate as far as possible with large natural groups, that Hauraki iwi and Collective together have the mandate to settle the Hauraki claims and that it is not necessary for every person with a WAI claim to agree to that mandate or agree that their claim is settled for it to be settled."*

42. This policy essentially allows for the 'kidnapping' of a claim by another claimant with the help of the Crown. A claimant who has had no say in who is to negotiate their claim also has no power to reject the settlement offer. This philosophy is preposterous, contravenes the right to self-determination and allows one claimant to determine the outcome for another. If one claimant has the right to reject a settlement offer then all claimants should have that right, particularly when a claimant has been excluded from the negotiation of that offer. Regardless of how the Crown packages it, this process is clearly unjust, discriminatory, ripe for abuse and is

designed to make settlement cheaper and easier for the Crown with no consideration of the significant cost to excluded claimants which is much more than simply money and land and may result in tribal ethnocide.

43. This plight is not unique to the Whānau (NHkW). Here are two excerpts from the NZ Herald 5th February 2011 on the collective process that demonstrates this issue is far wider spread than the Hauraki region.

> *"The minister (Chris Finlayson) was responding to concerns by a number of iwi that the fast-track process is having disastrous consequences - mainly because, in its haste to settle, the Government is signing deals with iwi groupings to the exclusion of legitimate tribes and hapu. Iwi expressing misgivings are spread far and wide - from Ngati Kahu in the far north to Te Atiawa at the top of the South Island……..."*
>
> *"But while the new fast-track, regional approach is working for some, elsewhere there are signs the Crown is reverting to its old ways - accepting artificial groupings and arbitrarily excluding iwi or forcing them to join groups to which they don't belong."*

44. If the Collective were to negotiate the Whānau's (NHkW) redress the Trust have little doubt that it would never realise any compensation. An example of how Ngati Huarere is treated by the Collective iwi is in respect to fisheries assets. Ngati Huarere is implicitly <u>included</u> as a beneficiary of both the Pare Hauraki Fishing Trust and the Hauraki Marine Development Trust. The income from these trusts is distributed by the HMTB. However Ngati Huarere is explicitly <u>excluded</u> as a beneficiary of the HMTB. Therefore the Whanau (NHkW) does not receive any of its fisheries income as it is paid out to the HMTB members.

45. Recent history therefore tells us that should the Whānau (NHkW) relinquish the negotiation of WAI 475 it is reasonable to expect that the Whānau (NHkW) would never receive the benefit of its redress. The Trust has tried for the last 14 years to attain membership of the HMTB without success and has never been given a reason for this refusal. The Trust is in substantially the same circumstances as the twelve members of the HMTB and sees no legitimate reason for the refusal of its membership requests other than prejudice held by some members of the HMTB. As the Collective membership is identical to that of the HMTB the Trusts exclusion from the Collective is no surprise. The Kaumatua of Hauraki have now advised the HMTB that it should have representation from Huarere.

46. The Collective have informed the excluded claimants that the Collective will retain the control of the excluded claimants redress once settlement is reached with the Crown.

The excluded claimants wish to control their own assets as a means to self-determination so the current process will prevent those excluded claimants from fulfilling this right.

47. It is vital to the Whānau (NHkW) that it negotiate its own claim so that it can defend its ancestral lands and identity from claimants that are allegedly attempting to steal its lands and redefine its identity through this unjust process. What is even more disturbing is that the Crown is insisting those same claimants should negotiate the Whānau's (NHkW) claim.

48. In summary, the basis of our allegation of discrimination is that; (1) the Crown has excluded legitimate claimants from the negotiator mandating process and then placed their claims with those negotiators without the claimants knowledge or free, prior and informed consent and; (2) there has been no open invitation for Hauraki Treaty claimants to become members of the Collective and the Collective refuses to accept other legitimate claimants as members and; (3) the Crown will only negotiate with, recognise and fund those claimants who are members of the Collective so consequently claimants who are not Collective members are treated significantly less favourably; and (4) the Crown is inconsistent in its determination of which claimants constitute a large natural group to the detriment of those claimants who the Crown claim do not constitute large natural groups; and (5) the Crown is allowing the majority of Treaty claimants to negotiate the redress for their own claims while at the same time placing the negotiation of the claims of other claimants, in similar circumstances, in the hands of iwi with whom these claimants do not affiliate and without their free prior and informed consent; and (6) the Crown is allowing some claimants (the Collective) to determine the outcome for other claimants and; (7) the lack of transparency of the Collective's discussions is placing excluded claimants with an interest in the matters being discussed at a disadvantage and; (8) the current process will result in some claimants (the Collective) retaining control of other claimants redress thereby denying those claimants the right to self determination.

Section (2) Denial of natural justice

49. Section 27 of the New Zealand Bill of Rights Act 1990 affords every person in New Zealand the right to the observance of the principles of natural justice;

27 Right to justice

- *(1) Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.*

50. The rules of natural justice apply whenever the rights, property or legitimate expectations of an individual are affected by a decision. The fact these Treaty settlement negotiations affect the rights and interests of the Whānau Mangakahia (NHkW) is sufficient to subject the process to the procedures required by natural justice. For the Treaty settlement negotiations to conform to the rules of natural justice anyone making a decision that affects the rights of a claimant or the outcome of their settlement must be impartial, base their decisions on solid evidence and each claimant should have their case heard and have it carefully considered.

51. The Trust alleges the Office of Treaty Settlements (OTS) is causing irreversible harm to the Whānau (NHkW) as it is failing in its duty to act fairly as its actions are inconsistent with the "principles of natural justice". When the Hauraki settlement process is completed the settlement will become law, which will then remove any right the Whānau (NHkW) may have to challenge any settlement. The OTS comes under the mantel of the Ministry of Justice and is therefore a Public Authority. The OTS also takes advice from Te Puni Kōkiri, another Ministry of the Crown. The Trust asserts the laws of natural justice are being violated in the following manner:

52. *Impartiality:* The laws of natural justice require that the deciding authority must not have an interest in the matter under consideration. Clearly the Collective should not be making decisions on Collective membership, particularly when Collective members are competing for the redress of non-members. The Collective has a clear conflict and pecuniary interest when determining membership because it is claiming the redress due to the excluded claimants in its own settlement package.

53. The Trust alleges the Collectives motivation to exclude other claimants has the aim or effect of; (1) gaining control of all Maori assets in Hauraki; and (2) altering the historical hierarchy of local tribes to suit its own agenda; and (3) where possible eliminating those tribes in Hauraki that have higher status than the Collective iwi in tikanga Maori. The Crown's process is in fact facilitating the Collective conquering with the pen those tribes it failed to conquer historically with the spear. We believe the Crown is in effect allowing the Collective to largely determine its own case by allowing the Collective to eliminate those competing for its redress or subjugate them via forced assimilation.

54. Currently the ultimate decision on membership of the Collective sits with the Crown. When the excluded claimants request that the Crown make a determination on membership the Crown simply advises them to keep engaging with the Collective. When the excluded claimants engage with the Collective it simply says "no" to their request for a seat at the negotiation table. The Collective has declined to give any rationale for its refusal of the Whānau's (NHkW) requests for membership and simply advises the Whānau (NHkW) to assimilate with a Collective member and have them

negotiate the Whānau's (NHkW) redress. The Whānau (NHkW) has a legitimate expectation to negotiate its own redress for WAI475 as there is no higher iwi that it affiliates to and its claim was not listed with the Collective iwi and nor should it be.

55. The Trust asserts that the Crown also has an interest in the Collective membership and therefore should also not be involved in membership decisions. The Crown intends to give the Whangapoua forest to the Collective as commercial redress. The Whānau (NHkW) has claim to a significant shareholding in this forest so the Crown will in fact be confiscating the Whānau's (NHkW) shareholding if it gives the forest as redress to settle another party's claim. The Trust alleges that avoiding this scenario is the underlying motivation for the Crown insisting the Collective represents the Whānau's (NHkW) interests. The Crown would have to find some other means to satisfy the Collective's commercial redress if the Whānau (NHkW) recovers its rightful shareholding in the forest. It is therefore advantageous for the Crown to manipulate the Collective membership to attain a cheaper, faster and easier settlement. The Crown policy on Treaty negotiations reflects this and the Crown believes it can basically do as it pleases (see paragraph 41 above).

56. *Evidence:* As stated earlier the Crown has been unable to provide any substantive reasoning for insisting some Collective members represent the Whānau (NHkW). The Trust strongly refutes the Crowns position on this matter for the reasons given in paragraphs 29 to 32 in the previous section on discrimination. Neither the Crown nor the Collective have produced any credible evidence to support their pretentious claims. Both the Crown and the Collective appear to be reaching back in time, prior to the Treaty of Waitangi, to find what little rationale they have to support their views. The Trust believes these views are based historical tribal conflicts that occurred prior to the Treaty of Waitangi so are not relevant to Treaty settlement and should have no bearing on the outcome of any settlement.

57. It is inappropriate for the Crown to attempt to tell the Whānau (NHkW) who it is. The Crown is obligated under the Declaration on the Rights of Indigenous Peoples to recognize the Whānau's (NHkW) right to determine its own identity. The United Nations High Commissioner for Human Rights and her office have informed the Trust directly that *"they attach great importance to the Declaration of the Rights of Indigenous Peoples including the right to self determination and to determine their own identity".* We allege the Crown is attempting to rewrite the Whānau's (NHkW) heritage to suit its own political agenda. Our whakapapa (genealogy) is very clear that we are a distinct people from those of the Collective.

58. *Right to be heard:* It is expected that when decisions are being made which affect the interests or rights of a party then those decisions must be made with the involvement

of that party or by an independent authority. There should also be an appeal process available to all parties involved.

59. Natural Justice requires that the Crown allow the Whānau (NHkW) the right to present its argument for inclusion on the Collective to an appropriate independent authority for a determination. The Crown has stated it takes advice on Collective membership from the Collective. We assert this advice is biased. Despite a number of requests, the Collective has not provided any reasoning for refusing the Trust membership. The Trust asserts that it is entitled to know the Collectives argument for denying the Trust membership and should also have the right to contest that argument before the Crown or preferably an independent tribunal. There seems to be no process to challenge the actions of the Crown or the Collective on their treatment of the Whānau (NHkW).

60. In summary; Any reasonable mind would consider both the Crown and the Collective are making decisions from a position of bias as they both have a pecuniary interest in the matters under consideration. In fact the entire Treaty settlement process is a farce as the Crown is the perpetrator of the crimes, the judge, determines and controls the judicial process and also decides the compensation to the victim. Therefore a completely independent entity from both the Crown and the Collective, such as the Waitangi Tribunal, should determine Collective membership.

61. We allege the Crown has failed to adhere to the principles of natural justice and is thereby denying the Whānau (NHkW) the rights afforded it under section 27 of the Bill of Rights Act by; (1) allowing the Collective to make decisions on matters in which it has a clear conflict of interest; and (2) making decisions itself on matters where it has a clear conflict of interest; and (3) not allowing excluded claimants to challenge those decisions; and (4) not including the Whānau (NHkW) in the negotiator mandating process and then placing the Whānau's (NHkW) claim with those same negotiators without the knowledge or express consent of the Whānau (NHkW); and (5) allowing a party with an interest in the matters under negotiation to determine the inclusion in those negotiations of other parties also with an interest in the matters under negotiation; and (6) accepting the advice of the Collective on representation which is causing harm to the Whānau (NHkW) without allowing the Whānau (NHkW) the opportunity to contest such advice; and (7) implementing a process that has no means of appeal to an impartial authority; and (8) allowing one group of claimants to determine the outcome for another group of claimants without the free, prior and informed consent of those claimants.

Redress sought

62. The Whānau (NHkW) are requesting the Human Rights Committee investigate the alleged violations of human rights in the Hauraki Treaty settlement process under section 5(2)(h) of the Human Rights Act 1993. If the Commission determines there is merit in these allegations then we request the Commission facilitate a resolution to this dispute under section 76(1)(b) of the Act to ensure all legitimate claimants receive the same treatment and opportunity to negotiate their Treaty claim settlements.

63. The Whānau (NHkW) request the Human Rights Commission report to the Prime Minister, under section 5(2)(k) of the Act, any issue it determines that in the Hauraki settlement process is affecting human rights, including the desirability of legislative, administrative, or other action to give better protection to the excluded claimants human rights and to ensure better compliance by the Crown with standards laid down in international human rights instruments.

64. Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) places an obligation on the Crown to;

> ***Article 2***
>
> *1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:*
>
> *(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to en sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*
>
> *(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;*
>
> *(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*
>
> *(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.*

65. Article 1 of ICERD states the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, **descent**, (emphasis added) or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

66. TheTrust requests the Human Rights Commission engage with the Crown to ensure these obligations are fulfilled. This is not an onerous obligation on the Crown as it can simply be attained by informing the Collective that the Trust and other excluded iwi must be given membership of the Collective along with all privileges and benefits enjoyed by other Collective members. If the Collective refuses then the Crown must cease to engage with or support the Collective. The Crown must also get its own "house in order" according to the obligations it has accepted under ICERD.

Naku noa, na

Deane Adams
Chairperson Ngati Huarere ki Whangapoua Trust

Footnote to the Human Rights Commission:

As much as possible we have tried to detach emotion from this complaint and present the facts as we see them, however we would like the Commission to know that this is a highly distressing experience for our people. The actions of the Crown and the Collective are conveying to us that we are people of lesser value. Our claim against the injustices committed against our people is very personal, to have that taken against our will and placed in the hands of those who treat us with disdain and have them negotiate the redress for these injustices is abhorrent to us. Then to have that redress placed in a Post Settlement Governance Entity controlled by others who are currently attempting to write us out of existence is unthinkable. We ask the Human Rights Commission when considering this complaint to place themselves in our position. Maori have a very strong emotional attachment to their lands and history. To lose this would strike at the very heart of who we are and we vow to fight this injustice forever.