

28 MARCH 2012

REQUEST

TO THE

UNITED NATIONS

UNDER ARTICLES 41 AND 42

OF THE

**DECLARATION OF THE RIGHTS OF
INDIGENOUS PEOPLES**

BY

TE WHANAU O HAMIORA MANGAKAHIA

ET AL

May it please the United Nations

1.0 Our Request.

This is a formal request under article 41 & 42 of the Declaration of the Rights of Indigenous People by Te Whanau O Hamiora Mangakahia (here after called the Mangakahia Whanau), to the United Nations to intervene in the Waitangi Treaty settlement process between the claimants, the Mangakahia Whanau, and the defendants, the New Zealand Government (hereafter called “the Crown”). This request is made under urgency as the Crown is intending to sign a Waitangi Treaty settlement in June 2012 that would result in irreversible prejudice to the Mangakahia Whanau.

- 1.1 We also request an inquiry into the Crown’s policy (including unwritten policy/philosophy) and procedures in its Waitangi Treaty settlement processes to ascertain if it is fulfilling its obligations as listed in the Declaration. If required, we request this inquiry form the basis of a case to the International Court of Justice. The Mangakahia Whanau also request financial and technical assistance under Article 39 and 41 of the Declaration, to pursue a just settlement of our WAI475 claim.**

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2.0 Purpose

We allege in this request that the Crown is in default of its obligations under Articles 1, 2, 3, 4, 8, 18, 19, 26, 27, 28, 33, 37, 38, 39 and 40 of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration). We also allege these breaches are both deliberate and calculated. These breaches will result in the Mangakahia Whanau and other iwi (tribes) being dispossessed of their ancestral land, resources, taonga (treasure), mana (authority, integrity), tikanga (Maori custom) and most importantly their identity.

3.0 Executive summary/background.

Ancestors of the Mangakahia Whanau have lived in the Whangapoua basin of the Coromandel peninsula since the earliest Maori inhabitation, when the Te Arawa waka landed in New Zealand. The Mangakahia Whanau are direct descendents of Tamatekapua, captain/chief of the Te Arawa waka. They number more than a thousand and are also known as Ngati Huarere ki Whangapoua, deriving their name from Huarere, the grandson of Tamatekapua. They have lost much of their ancestral land, culture, and customs as a result of injustices allowed under the governance of the Crown.

Now, in 2012 the Mangakahia Whanau is facing the denial of redress for these injustices through an unjust process driven by the Crown.

- 3.1 In the mid 1990's Te Whanau O Hamiora Mangakahia made a claim for its ancestral lands as part of the Waitangi Treaty settlement process, this claim is known as WAI475. The Waitangi tribunal has heard the grievances under claim WAI475 and have stated the claim is "well founded". In recent times the Crown moved from settling historical grievances with individual iwi, to bundling claims and settling these collectively.
- 3.2 The Crown is pursuing the Collective path for Treaty settlements under the pretense of expediting settlements and cost efficiencies. We purport here that this is a fallacy, as further injustices that are being allowed and supported under this process, will be contested for generations to come at huge financial and emotional cost. It will create more disputes, not only between Maori and the Crown, but also Maori against Maori.
- 3.3 In the Hauraki region, which encompasses Whangapoua, the Crown has chosen to deal exclusively with the Hauraki Collective (here after called the Collective). The collective was formed in conjunction with the Hauraki Maori Trust Board (HMTB), which represents twelve of the Hauraki iwi. Those same twelve iwi were simply transposed onto the Collective. There has been no open invitation, selection or qualification process. The Collective appears to automatically exclude any other legitimate claimant from joining the Collective unless that claimant assimilates under one of the twelve iwi.
- 3.4 The Crown has stated it will only negotiate with the Collective. The Collective does not represent all the claims in the region yet the Crown has provided no other mechanism for settling other claims. It is the Collective that determines whom it will represent. It has chosen to exclude a number of legitimate claimants who have no other course for redress. It appears these exclusions are based on the prejudice and agenda of the Collective members.
- 3.5 Since early 2010 the Mangakahia Whanau has made requests to the HMTB, the Collective and the Crown for inclusion, but these have been declined. The Mangakahia Whanau has never given the Collective or anyone else a mandate to negotiate a settlement for its WAI475 claim. The Collective is constituted by an agreement between the twelve iwi and the Crown, it is not established under legislation and does not appear to displace existing rights in any existing claimant.
- 3.6 The Collective is now claiming the land and compensation otherwise due to these excluded iwi as part of its own settlement. The Collective have a clear conflict of interest in this procedure and a pecuniary incentive to exclude other iwi. Because the Crown will only negotiate with the Collective, the Collective membership should only be determined by an independent authority to ensure all legitimate claimants are included. There appears to be an orchestrated and systematic attempt to delete any recognition of these excluded iwi with an apparent goal of destroying their existence in the eyes of the Collective, the Crown and New Zealanders in general.

- 3.7 The collective process 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 result in an ethnic cleansing of the Hauraki region of all iwi that stand outside the twelve iwi represented on the HMTB and the Collective. We believe the end result will be the “cultural genocide” of the Mangakahia whanau and others through the destruction of their identity and the dispossession of their mana. We allege the Crown is facilitating this questionable process through selective funding and assistance. Therefore one could argue that the Crown is allegedly sponsoring the ethnic cleansing of the Hauraki region.
- 3.8 This new method of settlement has conveniently satisfied the Crown and the Collective, who is better resourced via specifically allocated Crown support mechanisms. It is our view that these contemporary breaches of the Treaty of Waitangi have brought us to the point where any reasonable mind would consider the collective process unjust and discriminatory.
- 3.9 The Mangakahia Whanau is a recognized Iwi of the region and we believe it has a legitimate right to a seat on the Hauraki Collective due to its higher status (tuakana) in Maori customary law (tikanga Maori) than most Collective members. However the Collective members have chosen to exclude it from obtaining a seat.
- 3.10 The Mangakahia Whanau now have no redress for claim WAI 475, which covers significant areas of the Whangapoua basin that was in the ownership of two brothers, Mohi and Hamiora Mangakahia, when the injustices occurred that lead to the dispossession of their ancestral lands. Hamiora was an assessor in the Native Land Court, and went on to be elected Premier of the Kotahitanga parliament in June 1882. The Mangakahia Whanau, tuturu tangata whenua (true people of the land) for this area. This fact is recognised by both the Regional and District territorial authorities.
- 3.11 The Mangakahia Whanau, who are the direct descendants of Mohi and Hamiora Mangakahia, entered into a process with the Crown in good faith, to seek redress for the injustices suffered by Mohi and Hamiora and their descendants under the rule of the Crown. The Mangakahia Whanau is simply claiming their lawful inheritance. The consequence of Mangakahia Whanau’s exclusion from the Collective process is that the Crown will not enter negotiation for compensation due under WAI 475 claim.
- 3.12 The Collective have seized this opportunity and are now subsuming the ancestral land of the Mangakahia Whanau as part of its own settlement. The Collective are not descendents of Mohi and Hamiora Mangakahia and were never in succession to receive their lands, so accordingly have no lawful or moral right to the land or any compensation or apology for the injustices suffered by Mohi and Hamiora.

- 3.13 This plight is not unique to the Mangakahia Whanau. Here is an excerpt 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.....

- 3.14 We allege the Crown is not only ignoring its obligations as set out in the United Nations Declaration on the Rights of Indigenous Peoples but is also proactive in its contravention of both the obligations and the intent of the Declaration.

- 3.15 The relief being petitioned through this request is for the United Nations to bring pressure to bear on the Crown to enter negotiations directly with the Mangakahia Whanau for the settlement of the WAI475 claim. The Crown should also suspend negotiations with the Collective for any Land or compensation that is subject to WAI475. We also request the United Nations cause the Crown to give effect to its obligations under the Declaration. The Mangakahia Whanau also request financial and technical assistance under Article 39 and 41 of the Declaration, to pursue a just settlement of WAI475 claim.

4.0 **Grievance.**

Our concerns include, but are not limited to, Articles 1, 2, 3, 4, 8, 18, 19, 26, 27, 28, 33, 37, 38, 39 and 40 of the United Nations Declaration on the Rights of Indigenous Peoples. For the sake of clarity we have stated the Article of the Declaration and then our rationale for alleging the Article has been breached.

4.1 **The Declaration.**

Please note the following; International human rights law lays down obligations which States are bound to respect. The Declaration assumes in good faith the fulfillment of the obligations by the signatory States in accordance with the Charter. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

- 4.2 **The rights recognized in the Declaration constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world. The provisions set forth in the Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith. Also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind.**

4.3 **The Declaration recognizes the urgent need to respect and promote the inherent rights of indigenous peoples, especially their rights to their lands, territories and resources, and the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States.**

4.4 **Article 1**

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

4.5 One of the most basic of human rights is the “right to justice”. The Crown is required to provide equal and effective access to justice. This is affirmed by section 27(1) of the New Zealand Bill of Rights Act 1990:

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.*

4.6 The Mangakahia Whanau has a legitimate expectation to receive the same right to justice as the Collective members. Its exclusion from the Collective is denying them just redress for the dispossession of their lands, resources and toanga. If allowed to continue it will also result in the elimination of their identity. For example: the Crown funds Te K hui M ngai, which is a directory of iwi. It is limited to registering iwi that are identified in the M ori Fisheries Act 2004, and those iwi/hap that have begun the process of negotiating settlement of their historical Treaty of Waitangi claims. As the Crown will not enter negotiations with the Mangakahia Whanau, Te K hui M ngai cannot record it as an iwi. As result, the eradication of the Mangakahia Whanau’s identity is progressed.

4.7 Equality and fairness are not just about having laws and processes that appear to treat everyone equally or in the same way. Equality and fairness are also about what happens in practice in everyday life. The goal of the rule of law and the right to justice is fair outcomes for everyone. Therefore, the decision-maker simply cannot walk away from making a fair and proper decision which affects the rights, interests and legitimate expectations of affected people.

4.8 The Universal Declaration of Human Rights states in Article 8:

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The Mangakahia Whanau is clearly being denied this right as the Crown is ignoring its legitimate “well founded” claim.

4.9 **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity

- 4.10 Despite repeated requests by excluded iwi, the Collective has failed to give an explanation for their decision of exclusion. As the request for membership by the excluded iwi were all whakapapa (genealogy) based, we are assuming, for the purpose of this request to the United Nations that the Collectives refusal to accept other iwi is based on descent. We are of the opinion therefore that the Mangakahia Whanau is suffering racial discrimination based on their genealogy. This discrimination is obstructing their right to justice. The International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) defines racial discrimination as;

“any distinction, exclusion, restriction or preference based on race, colour, descent, 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.”

- 4.11 The Convention requires that the Crown undertake not to engage in any act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation. There is also an obligation that the Crown undertakes not to sponsor, defend or support racial discrimination by any persons or organizations. It also requires the Crown to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.
- 4.12 We believe the Mangakahia Whanau is being excluded from the Collective due to its ancestral lineage. If an excluded iwi has a legitimate claim, their non-membership is not grounds for denying them the same justice as Collective members. Their situation is substantially the same as iwi represented on the Collective yet they are receiving entirely different treatment. In our view this fits comfortably within the definition of racial discrimination. The Crown must therefore take immediate action to withdraw all support and sponsorship from the Collective and bring an end to any racial discrimination by itself and the Collective.
- 4.13 Article 2 (a) of the Convention gives the Mangakahia Whanau the right to equal treatment before the tribunals and all other organs administering justice. We believe the Office of Treaty Settlements (OTS) fits this category, as it is responsible to ensure justice is administered through the negotiation of redress

for Waitangi Treaty settlements. The OTS therefore has the responsibility to treat the Mangakahia Whanau as equals to the Collective. The Crown is required to ensure it fulfils this responsibility. We also hold the view that the Crown and Collective are contravening the New Zealand Human Rights Act 1993.

4.14 **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.

4.15 If the Mangakahia Whanau were to assimilate under another iwi on the Collective, they would surrender their sovereignty to both that iwi and the Collective and therefore their right to self-determination. The Crown's decision to not negotiate outside the Collective means that if the Mangakahia Whanau choose to remain independent, they will forfeit the redress due them, which would seriously impinge on their ability to further their economic development. This would create a huge inequity between the Mangakahia Whanau and Collective iwi. This injustice is even more reprehensible when one understands that because the Collective is claiming the Mangakahia Whanau's inheritance as part of its own settlement, the Collective's economic growth will be funded in part by the Mangakahia Whanau.

4.16 **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

4.17 The Mangakahia Whanau could not self-govern if it assimilated with a Collective iwi.

4.18 The Mangakahia Whanau wishes to maintain the autonomy it has enjoyed for hundreds of years. This autonomy will come at an unacceptable and unique cost to the Mangakahia Whanau. This is a cost the Collective is not required to pay. While it may be inconvenient for the Crown to have an arrangement with more than one entity, this "inconvenience" does not justify its refusal to accept and negotiate with other legitimate iwi, nor does it extinguish its responsibility to do so. The collective, through their settlement redress will be well resourced to finance their autonomous functions. The Mangakahia Whanau, on the other hand, will be denied any resources as a result of the Crown's refusal to negotiate a settlement for WAI475.

4.19 **Article 8.1** *Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.*

4.20 The Mangakahia Whanau regard themselves as distinct people. The Crown's actions will force dissimilar groups to involuntarily assimilate in their pursuit to obtain justice. The Collective has suggested the Mangakahia Whanau assimilate or integrate with another iwi to pursue its redress. This proposed

and vexatious solution would cause the Mangakahia Whanau to share its compensation and inheritance and destroy its mana and identity. It would also result in them relinquishing control of its compensation and inheritance to a foreign entity. While this situation may have appeal to the recipient iwi because of the significant assets subject to claim WAI475, it is abhorrent to the Mangakahia Whanau.

- 4.21 Here is an excerpt from the NZ Herald 5th February 2011 on the collective process illustrating the Mangakahia Whanau's situation is not an isolated case.

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.

- 4.22 The Mangakahia Whanau have been given a choice; do they surrender their identity and mana by assimilating with another iwi to secure at least a part share of their legitimate inheritance, or do they retain their identity and forfeit their inheritance and compensation? Article 8.2 gives some insight into what the United Nations view as "assimilation". It also places an obligation on the Crown to prevent and redress this:

- 4.23 ***8.2 States shall provide effective mechanisms for prevention of, and redress for:***

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
(d) Any form of forced assimilation or integration;
(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

- 4.24 Clauses 8.2 (a), (b), and (d) are relevant to this situation. The word "shall" in clause 8.2 do not give the Crown discretion, yet the Crown appears to be actively supporting the suggestion by the Collective for the Mangakahia Whanau to assimilate or integrate with another iwi. Mangakahia Whanau are direct descendents of Tamatekapua, captain of the Te Arawa waka, and also Tamatepo the eldest son Marutuahu. They are therefore the most senior of Hauraki tribal bloodlines. None of the Iwi represented on the Collective can lay claim to this unique status. The Mangakahia Whanau is the only open advocate of the Ariki bloodline of Huarere today. In congruence the Tamatepo hapu (another closely related tribe) are also of the senior bloodline, and are also paradoxically excluded by the Collective.

- 4.25 While it may be difficult to believe the Collective would use its position to dispossess the Mangakahia Whanau of its ancestral land and compensation, recent history would prove otherwise. The structure of Hauraki fisheries assets places the revenue from the Mangakahia Whanau fisheries with the

HMTB to be allocated to HMTB beneficiaries, yet the Mangakahia Whanau iwi are excluded as beneficiaries of the HMTB. This is yet another incredulous paradox. The fact is; the Collective have excluded the Mangakahia Whanau from the settlement process and is now claiming the Mangakahia Whanau's inheritance under its own settlement package. The Crown is aware of this and allowing it to occur.

4.26 Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

4.27 The Crown is denying the Mangakahia Whanau the ability to participate in decision-making that will affect their rights. In fact, we assert the Crown is treating them with contempt. Part of the Hauraki settlement process is to set up "Co-governance" entities between the Collective and the Territorial Authorities for the management of rivers, coasts, harbours and the Hauraki Gulf. The exclusion of the Mangakahia Whanau from the Collective will result in them being eliminated from the management of their traditional fisheries, the Whangapoua harbour, its tributaries and the Whangapoua basin coastline.

4.28 As the Collective representatives have already been selected, if the Mangakahia Whanau now chose to assimilate or integrate with another iwi they would have had no input into who their representative would be. This representative may have loyalty to their own iwi and could not be trusted to negotiate the best outcome for the Mangakahia Whanau. Negotiations for redress between the Crown and the Collective are to be completed around June. This redress will award specific rights to the Collective, such as the right to purchase specific property. The Mangakahia Whanau will not have these rights as they have been involuntarily excluded from the decision-making process.

4.29 The Crown has also prejudiced itself against the Mangakahia Whanau. In mid 2009 the Principle Crown negotiator met with the Mangakahia Whanau's legal counsel, who requested the Crown include a Mangakahia Whanau representative at the Collective table. The Crown negotiator ignored further correspondence from the Mangakahia Whanau legal team and we understand he later denied any such request. If the Mangakahia Whanau were to assimilate, their claim would essentially be negotiated by a representative they did not choose, who has no emotional attachment to their lands and mana, with a Crown negotiator who has displayed a prejudice against them. This is an unacceptable situation for any meaningful negotiation.

4.30 There is little doubt in our mind that once the Collective has subsumed or eliminated all other Hauraki iwi, it will look internally at the weaker tribes and begin an internal assimilation programme with the ultimate goal of one Hauraki iwi.

- 4.31 **Article 19**
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
- 4.32 The State has initiated a process that has allowed the exclusion of the Mangakahia Whanau from settlement negotiations, thereby denying them the ability to exercise this right. The Crown hopes to complete negotiations of a settlement with the Collective by June 2012, and will then pass legislation that enshrines that settlement in law. This law will affect the ownership of the Mangakahia Whanau ancestral land, which will have disastrous effects on them as a people, yet they will have had no input into the process nor will the Crown have obtained their free, prior and informed consent before adopting and implementing any such legislation.
- 4.33 The Mangakahia Whanau has already entered a settlement process with the Crown in good faith. The Crown has reneged on this commitment and directed the whanau down another path that has a dead end. The Crown will have to revisit this process if it is to fulfil its obligations under Article 19.
- 4.34 **Article 25**
Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
- 4.35 The Mangakahia Whanau have traditionally owned and occupied the Whangapoua basin since the earliest Maori inhabitation. They will find it impossible to fulfill this right if the Crown gives this territory, water and coastal seas and other resources to another people. They cannot uphold their right to fulfill their responsibilities to their future generations if their traditionally owned lands, territories, waters and coastal seas and other resources have been unethically taken by, and given to, the Collective.
- 4.36 **Article 26.**
1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

- 4.37 Despite the vast majority of their ancestral land being taken from them, the Mangakahia Whanau has maintained a continuous presence in the Whangapoua basin. They are the only iwi to have done so. This ahi ka roa (rights of occupation or use of resources in an area) is an important consideration in customary Maori law.
- 4.38 The Mangakahia Whanau is only asking for its lawful inheritance from Mohi and Hamiora Mangakahia. If the Crown process maintains its current path, it will dispossess the Mangakahia Whanau of these lands and award them to a people not legally or morally entitled to them. This will deny the Mangakahia Whanau of its rights afforded by article 26. It is interesting to note that the Hauraki Collective Chairman had a key role in preventing similar injustices from occurring to his own iwi in Auckland, yet appears to be actively advancing those same injustices against other iwi in Hauraki.
- 4.39 **Article 27**
States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.
- 4.40 In the Mangakahia Whanau view the process the Crown has implemented to resolve these historic grievances is anything but fair, independent, impartial, open and transparent.
- 4.41 The Mangakahia Whanau believes it is discriminatively selective of Maori customary law, traditions, and land tenure systems and fails to recognize the rights of indigenous peoples pertaining to their lands, territories and resources, including those that were traditionally owned or otherwise occupied or used. It denies the Mangakahia Whanau the right to participate in this process unless they forfeit their ancestral land, which actually defeats the purpose of their participation.
- 4.42 The historic injustices and the resulting emotional grief experienced by Mangakahia Whanau, will not be resolved through the current process. These will simply be transferred to future generations, along with new injustices being created by the Crown defaulting on its obligations under the Declaration.
- 4.43 Not only has the Crown failed to fulfil its obligations under this Declaration, but it also appears to be proactively engaged in contravening them. It has allowed the Collective to dictate terms to suit the Collective's own agenda, which we allege is to either exclude or control the Mangakahia Whanau with a view of gaining ownership and control of the Mangakahia Whanau's customary land, compensation and resources.
- 4.44 **Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

4.45 The Mangakahia Whanau have a right to redress. This is endorsed by the Waitang Tribunals determination that claim WAI 475 is “well founded”. This right is being extinguished by the Crowns refusal to negotiate settlement of WAI 475 directly with them. The effect of the Crown refusing to have the collective process it initiated, conform to a just and fair procedure, is denying the Mangakahia Whanau its rights listed in Article 28. If Mangakahia Whanau chooses to assimilate they will become a minority shareholder in their rightful lands, compensation and will also lose their identity and mana. If they choose not to assimilate they will lose all their redress but will maintain their identity. The Crown is intending to give the Mangakahia Whanau’s rightful redress to another people.

4.46 The Crown insists it is negotiating with the appropriate people and those people are mandated to negotiate on behalf of excluded iwi. There has been no mandate given by the Mangakahia Whanau to anyone to negotiate claim WAI475. The Collective is not mandated by the Mangakahia Whanau to negotiate on its behalf nor is Claim WAI475 listed with the Collective. Therefore the Crown cannot be negotiating with the appropriate people in relation to WAI475. The Collective are attempting to subsume the assets subject to WAI475 under their own claim. This does not legitimize the Crowns opinion in this regard nor does extinguish WAI475.

4.47 **Article 33**

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

4.48 The Mangakahia Whanau is being denied the right to determine its own identity. It is in fact being determined by another entity that has created a non-traditional hierarchy to suit its own agenda. The Crown is not intervening to correct its process and ensure that it is fair, just, ethical or impartial.

4.49 No one has determined if there are any iwi on the Collective that are amenable to having another people assimilate with them. If the Mangakahia Whanau integrates at the Collective’s whim, the iwi they integrate with would also be denied this right if any assimilation was non-voluntary.

4.50 Article 37

1. Indigenous peoples have the right to the 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 and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

4.51 The Treaty of Waitangi gives the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their lands, estates, forests and 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.

4.52 It is the wish and desire of the Mangakahia Whanau to regain possession of its lands, estates, forests and fisheries and other properties, through the settlement of claim WAI475. Rather than returning these lands, estates, forests and fisheries and other properties to the Mangakahia Whanau the Crown's fixation on a cheap and speedy settlement, along with its disregard of its United Nations obligations, natural justice, and the Collectives alleged greed and discrimination, will result in the gifting of these assets to another people with no legal or moral claim to them.

4.53 The Waitangi Tribunal settlement process, which resulted in Claim WAI 475, can be considered to be an agreement and a constructive arrangement entered into in good faith by the Mangakahia Whanau with the Crown. It was concluded when the Tribunal heard the claim and determined it to be "well founded". The Crown, through its refusal to negotiate a settlement for WAI 475, has abandoned its responsibility to correct these "well founded" grievances. The Crown is now endeavoring to force the Mangakahia Whanau into a process that is manipulated by other parties at the expense of the Mangakahia Whanau. This process was instigated without consultation or agreement with the Mangakahia Whanau. The Crown is extinguishing the rights of the Mangakahia Whanau under Article 37, through its implementation and adherence of this unjust process.

4.54 Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

4.55 The word "shall" in this article does not give the Crown discretion. The Crown is taking few, if any, measures to achieve the ends of this Declaration. In fact, we assert the Crown is at best, ignoring its obligations as set out in the Declaration. As stated earlier, we allege the Crown is proactively contravening the articles of this Declaration. There has been no consultation

or cooperation by the Crown with the Mangakahia Whanau to achieve the ends of the declaration. The Crown simply refuses to address the situation the Mangakahia Whanau has been placed in as a result of both the Crowns and Collectives actions.

4.56 **Article 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

4.57 We allege that there is an orchestrated attempt by the Crown to suffocate any challenge to the Crowns agenda by withholding financial and technical assistance from Maori in general. We understand the Crown is eight months behind paying out on legal aid invoices for Iwi assistance. This is sending law firms that specialize in Treaty issues bankrupt. This is either gross financial negligence by the Crown or a deliberate move to incapacitate certain groups. We suspect it is the latter. Either way the Crown is in serious default of its obligations under this Article of the Declaration.

4.58 The Collective has no problem in obtaining financial and technical aid via specifically allocated Crown support mechanisms. The Mangakahia Whanau, on the other hand, is struggling to get financial support, as it is not part of the settlement process due to its exclusion by the Collective. We understand the Collective is receiving funding from the rental of the Whangapoua Forest. This rental should in fact be allocated to the Mangakahia Whanau, as they have legitimate claim to the forest while the Collective does not.

4.59 The ownership of the forest is a significant part of the Mangakahia Whanau claim and they have received funding from this source in the past. However the criteria for eligibility changed when the Crown moved to the collective settlement regime. Now an applicant must represent a “cluster” of claimants. This has essentially eliminated the Mangakahia Whanau from obtaining financial support from the asset it is unquestionably a major shareholder in.

4.60 The absurd inequity of this situation is that the revenue from the forest is being used to fund the Collectives attempt to appropriate the forest from its rightful owner, yet the rightful owner is being denied any funding from the forest to defend this appropriation. This is the modern day equivalent of the Crown giving the Collective muskets and at the same time confiscating Mangakahia Whanau’s spears!

4.61 This may sound emotive but it is the reality of the situation. The Collective defend this injustice by informing the Mangakahia Whanau that they can assimilate or integrate with another iwi that is represented on the Collective. This however would result in the Mangakahia Whanau having to forfeit its lawful inheritance, renounce its identity and surrender its mana and taonga (treasures or property which is highly prized). As stated earlier, this is verging on ethnocide as the identity of the Mangakahia Whanau is being destroyed at the hands of a greedy few who have been empowered by an unprincipled system. Much of the Mangakahia Whanau’s identity was

destroyed through the Crowns actions during the 1800 and 1900's. The Crown is now supporting their identity's total eradication rather than protecting it.

4.62 **Article 40**

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

4.63 Any reasonable mind would concur that the Mangakahia Whanau and others are absolutely being denied this right. The process now initiated by the Crown is patently unjust. It ignores the principles of the Declaration, which are founded upon natural justice. The Mangakahia Whanau has the right to a resolution of its dispute with the Crown and the infringements occurring under the Declaration. We appreciate the Waitangi Tribunal has a huge task in resolving all the injustices committed against Maori, however the Crown has an obligation to be prompt, fair and just, and is therefore obliged to provide appropriate resources to achieve this.

4.64 The Mangakahia Whanau is seeking to obtain rightful ownership of its share of Whangapoua forest by way of a resumption order, which is another legal mechanism that has recently seen a very similar claim set precedent in case law through the Supreme Court. If the Mangakahia Whanau were to succeed in this matter it would jeopardize the Collective settlement process. It would be embarrassing and difficult for the Crown to explain how an iwi, which has been excluded from the settlement process, has regained ownership of one of the major assets under negotiation. This resumption has been delayed and stalled for frivolous reasons and we believe the process may have been deliberately interfered with to delay matters until after the Hauraki Settlement has been set in statute.

5.0 **Summary**

The Mangakahia Whanau is on the precipice of having the redress due it under Waitangi claim WAI475, given to an entity that has no rightful claim to it. Along with losing its ancestral lands, compensation, coastal seas and resources, it also stands to lose its mana and identity. This atrocity is being facilitated by the Crown through a patently unjust process, instigated and enforced under the guise of expediency and cost efficiencies. The Crown is defaulting in many of its obligations under the United Nations Declaration on the Rights of Indigenous Peoples. If the Crown adhered to its obligations as a signatory to the Declaration and applied natural justice to this situation, this injustice would be prevented. Therefore the Mangakahia Whanau is requesting the United Nations urgently intervene. We ask the United Nations note that this is not an isolated case, and even in Hauraki there are other iwi suffering identical injustices.

6.0 **Relief Sought**

The relief sought by the Mangakahia Whanau in this request is that the United Nations urgently invokes Articles 41 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples.

6.1 **Article 41**

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

6.2 The Mangakahia Whanau request the United Nations urgently bring pressure to bear on the New Zealand Government, by whatever means available, to achieve the full application of the provisions of the Declaration, to enter direct negotiations with the Mangakahia Whanau to settle claim WAI475, and suspend negotiations with the Hauraki Collective on any land, compensation, co-governance arrangements or apology subject to claim WAI475. The Mangakahia Whanau also request financial and technical assistance under Article 39 and 41 of the Declaration, to pursue a just settlement of WAI475 claim. We also request any other assistance the United Nations believes appropriate.

6.3 In addition, we request on behalf of the Maori people, a United Nations inquiry into the Crown's policy (including unwritten policy/philosophy) and procedures and funding of its Waitangi Treaty settlement processes to ascertain if the Crown is meeting its obligations listed in the Declaration. If required we request this inquiry form the basis of a case to the International Court of Justice.

Lucien Mangakahia

Chairman

Ngati Huarere ki Whangapoua Trust. (Mangakahia Whanau)
