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Submission to the Draft Outcome Report to the UPR of New Zealand

Introduction

The Ngati Huarere ki Whangapoua Trust welcomes the opportunity to submit to the Draft Outcome Report to New Zealand's second Universal Periodic Review. This submission has been prepared by the Ngati Huarere ki Whangapoua Trust (the Trust) for the purpose of informing the New Zealand Government's response to recommendations received from States during the Universal Periodic Review of New Zealand.

The Trust is an organisation that was duly established and mandated in 1998 by the Ngati Huarere people to act on behalf of the tribe in all matters pertaining to it. This includes the settlement of its historical and contemporary Treaty of Waitangi grievances with the New Zealand Government.

The Trust appreciated the opportunity to present to the UPR our experiences as Treaty claimants. These include our exclusion from the negotiation of our Treaty claim, forced assimilation with other tribes who will receive and control our redress, territory and waters and the loss of our identity as a distinct people should the Hauraki settlement progress on its current path.

The Trust will submit on only those State recommendations that are relevant to its submission to the UPR. Therefore this submission will address those recommendations by State parties that relate to the Treaty of Waitangi settlement process. The Trust generally supports all the recommendations by State parties in this UPR process, as they all have merit.

Context/Background

Ngati Huarere ki Whangapoua has had involvement in New Zealand human rights dating back to the 1800's through both Hamiora and Meri Te Tai Mangakahia. Hamiora was the first Premier of the Kotahitanga (Māori Parliament). The focus of the parliament was legal validation from the New Zealand Parliament and retention of Māori land. Hamiora spent much of his time fighting the confiscation of much of his own land and also assisting other Māori in their Land issues.

Along with Kate Sheppard, Hamiora's wife, Meri Te Tai Mangakahia was one of the five suffragettes who achieved the right for women to vote in New Zealand general elections. On 18 May 1893 Meri placed a motion before the Kotahitanga requesting that women be given the right to participate in the selection of members. Later that day she addressed the parliament – the first woman recorded to have done so. She requested not only that Māori women be given the vote, but also that they be eligible to sit in the Māori parliament, thus going a step further

than the contemporary aims of the European suffrage movement. She argued on the grounds that many Māori women owned and administered their own lands, either because they had no male relatives or because the women were more competent.

It seems ironic that Hamiora and Meri Mangakahia's descendants, the Whanau Mangakahia who are also known as Ngati Huarere ki Whangapoua and are represented by the Trust, are still advocating for human rights because of the conflict over the confiscation of their land. In this instance it is the New Zealand Government awarding the Whanau's Treaty claim redress to settle other tribes Treaty claims. The New Zealand Government is doing this by insisting that the members of Ngati Huarere ki Whangapoua must register as members of these other tribes to gain access to their redress. Most of these tribes migrated into Hauraki some 350 years after Ngati Huarere.

This "forced assimilation" will result in the cultural genocide of Ngati Huarere ki Whangapoua by two means; (1) the members of Ngati Huarere ki Whangapoua will become members of other tribes thereby losing their independence and identity and (2) those choosing to retain their identity by remaining autonomous will be significantly disadvantaged as they will receive none of the benefits of the Hauraki Treaty settlement and will become a subclass of Māori.

Submission

General comments

A. Presentation by the State under review

Paragraph

9 It should be noted that the New Zealand government's support for the Declaration on the Rights of Indigenous Peoples is constrained by New Zealand's legal and constitutional framework, consequently there was little point in New Zealand's statement of support for the Declaration. While it is encouraging to have the Special Rapporteur in Indigenous Issues visit New Zealand, the Government has largely ignored Mr Anaya's recommendations. If the government were sincere in its endeavours to improve its indigenous peoples rights environment it would both welcome and implement the recommendations from the Special Rapporteur.

B. Interactive dialogue and responses by the State under review

48 With the development of the New Zealand constitution there has been conjecture that the Treaty of Waitangi may be disposed of. It is crucial that both parties agree on any proposal to terminate the Treaty. One party cannot be allowed to terminate the Treaty without the others approval.

92 While the New Zealand government is seeking to negotiate settlements for historical Treaty grievances that are timely, fair and durable and aimed to reach agreements with all willing and able claimant groups, it is falling short of this objective as a result of a rushed and often discriminatory process. The result is that there are a number of contemporary Treaty claims being lodged that challenge the Government's settlement process. The Government is in fact creating contemporary grievances while attempting to settle historic grievances. It is the Trusts view that these contemporary grievances could largely be avoided through the implementation of the

recommendations from the UN Special Rapporteur in his 2011 report titled “The situation of Maori People in New Zealand”

- 99 The Australian Governments support for the review to consider the place of the Treaty of Waitangi in constitutional arrangements should be of concern to all Māori. Australia has a poor track record on indigenous peoples rights and should be viewed as an example of what not to do. As stated above the Treaty should only be terminated with the agreement of both parties. If a constitutional arrangement can accommodate the rights of Māori as currently afforded by the Treaty of Waitangi then Māori may consider the change appropriate. The Treaty is the founding agreement and must be protected, not replaced by a constitution. To remove the Treaty is to remove the basis on which Māori and others co-exist in New Zealand.

The Trusts comments on the “conclusions and/or recommendations” section

- 128.8 **The Trust supports the recommendation from Montenegro for the New Zealand Government becoming a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.** *Rationale: The New Zealand Government will afford the people of New Zealand greater protection from current and future erosion of human rights by becoming a party to the Optional Protocol.*
- 128.10 **The Trust supports the recommendation from Tunisia for the New Zealand Government becoming a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.** *Rationale: The New Zealand Government becoming a party to the Optional Protocol will afford the people of New Zealand greater protection from current and future erosion of human rights.*
- 128.11 **The Trust supports the recommendation from Portugal for the New Zealand Government becoming a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.** *Rationale: The New Zealand Government becoming a party to the Optional Protocol will afford the people of New Zealand greater protection from current and future erosion of human rights.*
- 128.31. **The Trust strongly supports the recommendation from Nicaragua that the New Zealand Government, within the context of its legislative review process, fully incorporate international human rights instruments, to which it is party, in its domestic legal framework.** *Rationale: The New Zealand Governments current domestic law and policy do not always align with international human rights instruments. For example the NZG has limited its support for UNDRIP to New Zealand’s existing legal and constitutional framework. The question must be asked; what is the point of giving support to the Declaration if that support is limited to what is already occurring in New Zealand? The answer must surely be that it is simply a public relations exercise. The Government of New Zealand must demonstrate integrity as a State member by accepting the recommendation from Nicaragua or risk the loss of credibility among its peers.*
- 128.35. **The Trust supports the recommendation from Spain that the New Zealand Government proceeds to the review of the Bill of Rights Act of 1990, in order to incorporate ratified international agreements on economic, social and cultural rights.** *Rational: The Trust view is that all domestic law should align with international human rights instruments. For example; The Bill of Rights Act currently does not prohibit discrimination within a race due to the definition of discrimination in the*

Human Rights Act 1993 [section 21(1)(f)] not aligning with the International Convention of All Forms of Racial Discrimination definition of racial discrimination. A review of the Bill of Rights Act should be done in conjunction with a review of the Human Rights Act to ensure consistency.

- 128.40. **The Trust strongly supports the recommendation from Slovenia that the New Zealand Government explore and develop, in consultation with the Māori, means of addressing Māori concerns regarding the Treaty settlement negotiation process.** *Rationale: The New Zealand government has stated it seeks a fair and durable settlement. It is in the best interest of all New Zealanders that this is achieved but the current New Zealand Government settlement process is clearly discriminatory and therefore neither fair nor durable. Currently there are a number of contemporary Treaty claims being lodged by tribes who believe they have been prejudiced by the treaty settlement process. In Hauraki alone there are now ten contemporary claims against the New Zealand Government's policies and practices employed in the Hauraki settlement. This could take another generation to resolve. The New Zealand Government could avoid significant conflict simply by adhering to the principles of natural justice and implementing the recommendations from the UN Special Rapporteur in his 2011 report titled "The situation of Maori People in New Zealand". It is submitted here that it is far better for all concerned to resolve areas of conflict through dialogue than through litigation.*
- 128.41. **The Trust strongly supports the recommendation from Angola that the New Zealand Government continue strengthening the partnership between the Government and the Māori to reach a just, fair and sustainable settlement to historical claims made in the framework of the Treaty of Waitangi.** *Rationale: The New Zealand government is dividing Māori by discriminately selecting whom it will negotiate with for Treaty settlements. One means of strengthening the Government/Māori relationship is for the Government to implement the recommendations from the UN Special Rapporteur in his 2011 report titled "The situation of Maori People in New Zealand". The New Zealand Government often takes an adversarial approach to tribes who believe they are being marginalized through the Government's settlement policy and practices. Simply talking through the issues with these tribes would go a long way towards achieving better settlement outcomes. The Trust has requested a half hour meeting with the Minister of Treaty Settlements three times. He has refused these invitations. After 173 years of injustice the Trust believes a thirty-minute meeting to explain the discrimination being suffered by the Ngati Huarere people is not unreasonable.*
- 128.86. **The Trust supports the recommendation from Iran (Islamic Republic of) that the New Zealand Government commit fully to protecting and promoting indigenous rights through appropriate measure in law, policy and practice.** *Rationale: It is a reasonable expectation that countries purporting to be leaders in human rights, such as New Zealand, should ensure their law, policy and practice align with international human rights instruments. The New Zealand Government however restricts the implementation of international human rights instruments domestically through its laws, policies and practices. It's limited support for UNDRIP is an example of this restriction. This situation should be reversed as a priority as international human rights instruments should guide New Zealand law, policy and practice not be restricted by them. An example of how the practice of the New Zealand Government is perverting the course of justice is this; attempts by tribes seeking a ruling from the Māori Land*

Court on representation under Section 30(1)(b) of the Te Ture Whenua Maori Act 1993 are being denied justice by the New Zealand Government refusing to accept the Courts decision because it is not binding on the Crown. As a result the Court dismisses the application, as it is deemed non-justiciable. By the Government not accepting the courts decision on these matters it is essentially saying, “we are not interested in what is right, we are only interested in what suits us”. The Government put this section 30 procedure in place but refuses to abide by it. Determinations such as this should be binding on the Crown. Hopefully the recommendation by Iran, if accepted, will help to achieve this.

- 128.87. **The Trust supports the recommendation from Ecuador that the New Zealand Government continue to promote measures to find a positive solution to the Māori population’s land claims and promote public policies to reduce the social and economic gap between the Māori people and the rest of the population of New Zealand.** *Rationale: While the New Zealand Government’s attempts to resolve historic Treaty claims are to be commended, they are little more than a token gesture. The average settlement is worth approximately 1.5% of what was taken from Māori. The total spend to date is less than the New Zealand Governments bail out of South Canterbury Finance for \$1.5 billion. This bail out was to avoid the “mum and dad” investor loosing their capitol base. On the other hand Māori lost their capitol base through the dubious actions of the New Zealand Government but they only receive a settlement of 1.5 cents in the dollar. Increasing this quantum would help reduce the social and economic gap between the Māori people and the rest of the population of New Zealand. The Trust believes that Treaty grievances and the current social deprivation of Māori are linked.*
- 128.88. **The Trust supports the recommendation from Mexico that the New Zealand Government ensures that the legislation includes a consultation process with indigenous peoples in all actions concerning them.** *Rationale: While it is not clear what legislation Mexico is referring to, as a general principle Māori, as with all New Zealanders, should be consulted on all legislation affecting them. Not consulting Māori on issues specific to them and their culture would be a breach of natural justice.*
- 128.89. **The Trust strongly supports the recommendation from Norway that the New Zealand Government takes concrete measures to ensure the implementation and promotion of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).** *Rationale: The New Zealand Government has limited its support for UNDRIP by the extent to which UNDRIP aligns with New Zealand law and Government policy. The only possible reason for this limitation is that the New Zealand Government does not wish to be restrained by the moral obligations imposed on States who support the Declaration. This attitude by the New Zealand Government should cause concern among other member nations and alert them to the New Zealand Governments facade of being a human rights promoter while reserving for itself the flexibility to make policy and laws that contravene recognised human rights minimum standards where it may be beneficial for itself to do so. The only way to establish credibility as a human rights advocate is for the New Zealand Government to offer unconditional support for the Declaration including any optional protocols.*

We are hopeful that these views will be taken into consideration in the preparation of the New Zealand governments response to the State recommendations.

Ngati Huarere ki Whangapoua Trust