WAITANGI TRIBUNAL

STATEMENT OF CLAIM (DRAFT)

In the matter of

The Treaty of Waitangi Act 1975

And

A claim concerning Crown failures in the criminal justice system that have resulted in systemic discrimination against Māori victims of serious violent crime

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CLAIMANT

Name: TeUraura Peter Nganeko
Iwi / Hapū: Taranaki, Ngaruahine, Ngati Ruanui
Status: Māori claimant; bereaved parent; member of the public
Standing: This claim is brought on behalf of Māori victims of serious violent crime and their whānau

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INTRODUCTION AND OVERVIEW

1. This claim concerns **systemic failures by the Crown** in the design, implementation, and maintenance of criminal justice laws and policies that have **failed to actively protect Māori from serious violent crime**, resulting in **disproportionate harm to Māori victims and whānau**.
2. While significant Crown attention has been directed toward reducing Māori incarceration and addressing perceived bias against Māori offenders, **insufficient attention has been paid to Māori victimisation**, particularly in cases of serious public and non-family violence.
3. The Crown has, through its laws, policies, and practices:
    - Prioritised offender outcomes and statistical equity over victim safety
    - Maintained sentencing frameworks that minimise death and catastrophic harm
    - Failed to ensure equal protection of the law for Māori victims
    - Normalised Māori suffering through social and cultural framing
4. These failures constitute breaches of the **principles of the Treaty of Waitangi**, particularly the duties of **active protection, equity, partnership, and good faith**.

JURISDICTION

5. This claim falls within the jurisdiction of the Waitangi Tribunal pursuant to section 6 of the Treaty of Waitangi Act 1975, as it concerns acts and omissions of the Crown that are inconsistent with the principles of the Treaty.

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6. The claim raises **contemporary systemic issues** and seeks findings and recommendations regarding Crown policy, legislation, and practice.

BACKGROUND CONTEXT

7. Māori are disproportionately victims of serious violent crime in Aotearoa New Zealand, including homicide, serious assault, and alcohol-fuelled public violence.
8. In many such cases, the offender is also Māori, and the victim and their whānau experience:
    - Permanent loss of life or catastrophic injury
    - Trauma compounded by justice processes that prioritise offender mitigation
    - Sentencing outcomes that fail to reflect the gravity of harm
    - Lack of confidence that the justice system will protect others from similar harm
9. Despite this reality, justice reform discourse has focused predominantly on:
    - Māori over-representation in prison
    - Rehabilitation and reintegration of offenders
    - Reducing incarceration rates
10. Māori victims of serious public and non-family violence have not been afforded equivalent visibility, advocacy, or protection.

CROWN ACTIONS AND OMISSIONS COMPLAINED OF

A. Failure of Active Protection (Article 2)

11. The Crown has a duty under the Treaty to **actively protect Māori interests**, including life, safety, and whānau wellbeing.
12. The Crown has breached this duty by:

- Maintaining sentencing laws that allow death and serious harm to be legally minimised
- Allowing cumulative mitigation to outweigh irreversible victim harm
- Failing to ensure that serious violent offending is met with adequate denunciation, deterrence, and incapacitation
- Prioritising incarceration reduction targets over Māori victim safety

13. These failures have foreseeably resulted in continued serious harm to Māori victims and whānau.

B. Breach of Equity and Equal Protection (Article 3)

14. Article 3 guarantees Māori the **same rights and protections** as all citizens.

15. In practice, Māori victims receive **unequal protection of the law** because:

- Māori deaths are absorbed into social-context explanations
- Māori offenders are more likely to receive extensive mitigation
- Māori victim harm is discounted in sentencing outcomes
- Policy settings favour offender outcomes over victim protection

16. This constitutes **structural discrimination by outcome**, regardless of intent.

C. Failure of Partnership and Good Faith

17. The Crown has a Treaty obligation to act in good faith and partnership with Māori.
18. In the justice sphere, the Crown has:

- Relied heavily on Māori leadership and advocacy focused on offender outcomes
- Adopted policies aimed at reducing Māori incarceration
- Failed to partner meaningfully with Māori victims and bereaved whānau

19. This selective engagement has distorted justice policy and entrenched inequitable outcomes.

D. Misapplication of Rangatiratanga

20. The Crown has treated certain Māori political and advocacy voices as representative of Māori interests generally.
21. By privileging offender-centred advocacy while marginalising Māori victims, the Crown has:

- Confused political representation with rangatiratanga
- Undermined whānau authority over safety and justice
- Silenced Māori victims within policy development

LEGISLATIVE AND POLICY FAILURES

22. The Crown has failed to ensure that key legislation, including the **Sentencing Act 2002**, adequately reflects:

- The primacy of harm where death or catastrophic injury occurs
- The need to protect communities from repeat violent offending
- The rights and dignity of victims and whānau

23. Crown policies encouraging diversion, early guilty pleas, and incarceration reduction have compounded these failures.

PREJUDICE TO MĀORI

24. As a result of these Crown breaches, Māori have suffered:

- Preventable loss of life
- Ongoing exposure to serious violence
- Loss of confidence in the justice system
- Intergenerational trauma and whānau dislocation

25. Māori victims and whānau experience a justice system that:

- Minimises their harm
- Centres offenders
- Normalises Māori suffering

RELIEF SOUGHT

The claimant seeks findings that:

26. The Crown has breached the principles of the Treaty of Waitangi by failing to actively protect Māori victims of serious violent crime.
27. The Crown has acted inconsistently with Article 3 by delivering unequal protection to Māori victims and whānau.
28. The Crown has failed to act in good faith and partnership by marginalising Māori victim voices.

The claimant seeks recommendations that the Crown:

29. Reform sentencing legislation to elevate death and catastrophic injury as dominant aggravating factors.
30. Rebalance justice policy to prioritise victim safety and community protection.
31. Establish mechanisms to ensure Māori victims and whānau are meaningfully involved in justice reform.
32. Review the impact of incarceration reduction policies on Māori victimisation.
33. Publicly acknowledge the harm caused to Māori victims by these systemic failures.

CONCLUSION

This claim is not an argument against Māori.
It is a claim **for Māori who are harmed, killed, and forgotten**.

A justice system that tolerates Māori victimisation in the name of equity is not Treaty-consistent. The Crown's failure to protect Māori victims is a breach of its most fundamental obligations.