

OFFICIAL

Wai 3300, #B24(a)

# TE RITO

foundation

## Wai 2945 Te Rito Foundation

Wai 2945 Claimant Presentation to Wai 3300  
Tomokia nga tatau o Matangireia  
Constitutional Inquiry

RECEIVED

Waitangi Tribunal

27 Jan 26

Ministry of Justice  
WELLINGTON

Te Tii Marae, Waitangi , Te Taitokerau

Rāpa te 3 o Hakihea 2025

# Pao

## “Tarererera”

“I tārerarera mai i tōku tinana  
I tārerarera mai i taku taha  
I mātāngohi mai i taku wahinetanga  
Toku mana nui, toku honore, toku hākoako.

I tahaetia o tōku ngākau

I tahaetia o tōku hinengaro

Aku tamariki, aku tama

Aku mea katoa

I whakakāhore taku whaeatanga

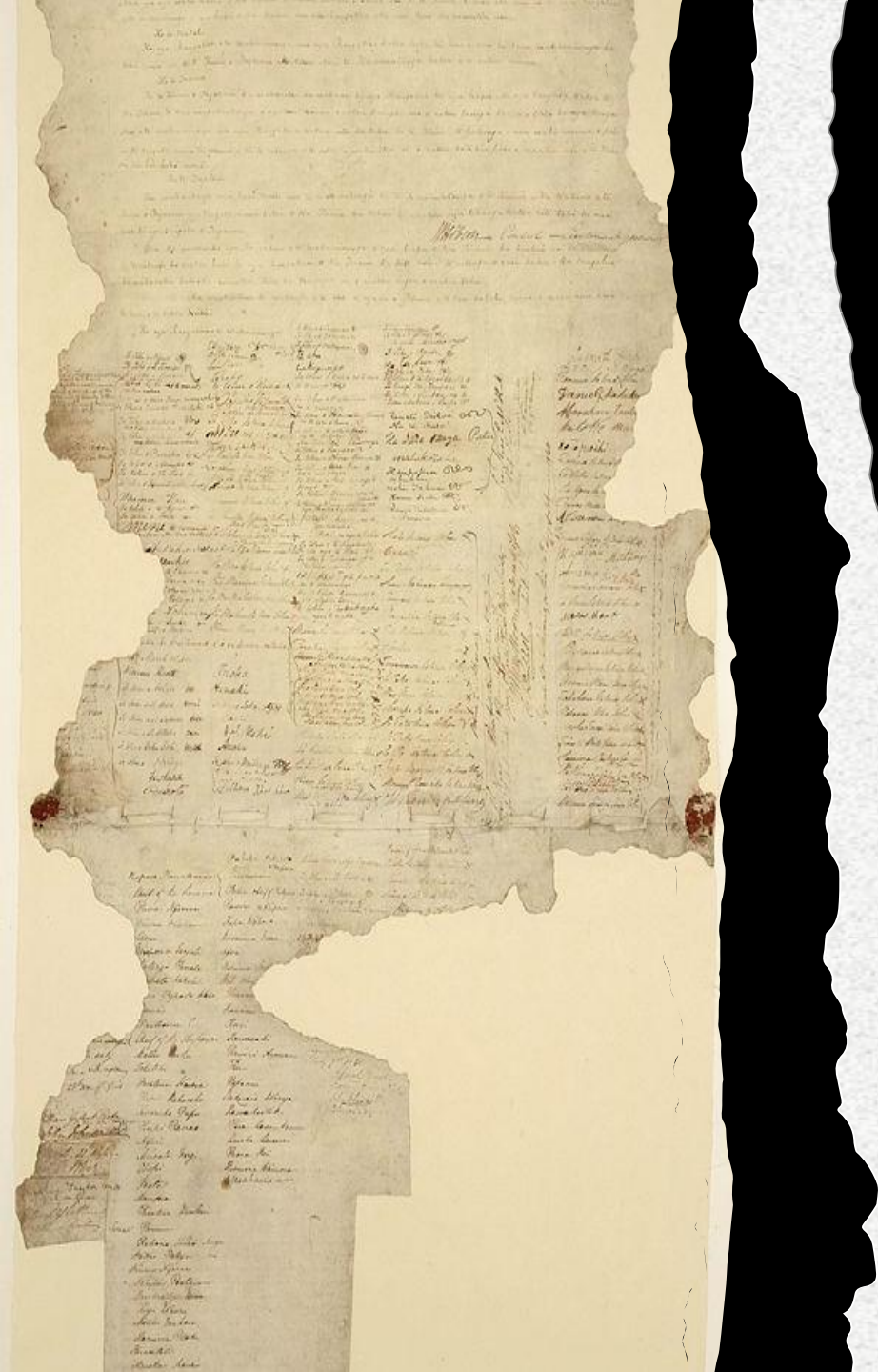
I kiki e te Pakeha

I kiki e te tangata

I wahanguhia e te ngakau kino matamau;

Kaore rātou i te Māori

Ehara rātou i a au.”<sup>1</sup>





# Mihi

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Hutia te rito o te harakeke

Kei hea te komako e ko?

Kī mai koe ki ahau,

He aha te mea nui o Te Aow?

Māku e kī atu,

He tāngata, he tāngata, he tāngata.



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## Te Kai Kereme

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- ‘Te Rito’ name derives from Te Tai Tokerau proverb
- The whakatauki “Hutia te rito” is a proverb widely used, and holds iwi significance of Te Aupōuri whakapapa
- Te Rito was chosen to authentically reflect whānau, tamariki, mokopuna — the “rito” (heart) of the whanau.



# Tirohanga

## Part One: Constitutional Matters

- Sovereignty & Electoral Defects
- International Law & Waitangi Tribunal Limitations
- Comparative Models & Constitutional Solutions
- Tribunals Mandate & Constitutional Reform Imperative
- Summary Part One

## Part Two: Te Rito Foundation Kaupapa

- Te Rito Constitutional Vision
- Māori Child Welfare as a Constitutional Matter
- Structural Context for Recognizing Māori Authority
- Closing Summary & Q&A

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## PART ONE: Sovereignty & Electoral Defects

- **Sovereignty Asserted by the Crown:** The Crown claimed sovereignty in Aotearoa without full Māori consent.
- **Te Tiriti Findings:** The 2023 Tribunal Report confirms Māori did not cede sovereignty in 1840; instead, they agreed to share authority.
- **Shared Governance Intent:** Māori leaders expected the Governor to oversee British subjects and protect Māori interests, while Māori would retain self-governance.
- **Historical Exclusion:** Māori have been excluded as equal constitutional partners, with authority limited by Crown-established boundaries and Pākehā institutions.
- **Ongoing Restrictions:** Current systems continue to filter Māori representation and authority through these same structures.
- **Impact on Participation:** These constitutional flaws restrict genuine Māori partnership, representation, and the ability to exercise authority in Aotearoa's political system.

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## International Law & Waitangi Tribunal Limitations

- UNDRIP affirms Indigenous peoples' rights to self-determination and governance; EMRIP calls for states to align national laws accordingly.
- Aotearoa endorsed UNDRIP in 2010, but key rights and protections for Māori remain unmet—there is a gap between international standards and local implementation.
- The Waitangi Tribunal currently lacks binding authority, so it cannot enforce Māori constitutional partnership; outcomes depend on political will.
- Fulfilling international obligations and Māori rights requires a constitutionally empowered body with binding decision-making powers.

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## Comparative Models & Constitutional Solutions

- **US tribal sovereignty:** constitutionally recognized; tribal councils have enforceable authority (e.g., Indian Child Welfare Act upheld by US Supreme Court).
- **Aotearoa iwi/hapū:** similar structures to US tribal councils but lack constitutional protection and enforceable authority.
- **Māori partnership status:** restricted authority compared to international standards for Indigenous rights.
- **Waitangi Tribunal:** needs constitutional empowerment as a Waitangi Court to give binding authority and enforce te Tiriti.

# Wai 2945 Te Rito Foundation

## Tribunals Mandate & Constitutional Reform Imperative

- **Electoral Act** lacks Te Tiriti o Waitangi obligations.
- **No legal duty** for parties to honor Te Tiriti or tikanga Māori.
- **Māori protections** and representation are weak.
- **Parties use Māori concepts** without iwi/hapu authority or accountability.
- **Te Tiriti often reduced to rhetoric**, not real partnership.
- **Recent events show system** allows Treaty obligations to be ignored.
- **Western rules often override whakapapa** and Māori endorsement.
- **Policies sometimes erode Māori partnership rights.**
- **Māori wards in local government** are vulnerable.
- **Systemic problem—lacks Treaty-based oversight.**
- **Māori voters face disenfranchisement.**
- **Urgent constitutional reform** is needed.
- **All parties must be required to honor Māori authority and representation.**
- **Robust protections** needed for true partnership.




# Wai 2945

## Te Rito

### Foundation

#### Part One Summary

- 
- Māori are not recognized as equal constitutional partners.
  - Te Tiriti principles are often misused or ignored in politics.
  - Māori representation is vulnerable to political decisions and Western rules.
  - Examples include weak protection under the Electoral Act and unstable Māori wards.
  - Indigenous authority could be stronger with constitutional protections.
  - Constitutional entrenchment of Māori rights is needed for true partnership.

# Wai 2945 Te Rito Foundation

## PART TWO: Te Rito Constitutional Vision

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- **Te Rito's foundation: Tamariki (children) are our rangatira**—the center ("rito") of the flax bush, symbolizing future leadership and continuity.
- **Responsibility for whakapapa (genealogical continuity) lies with parents, grandparents, and the wider whānau.**
- **Undermining these familial roles jeopardizes Māori constitutional integrity.**
- **A robust Māori constitutional framework must include:**
  - Recognition of dual authority: kawanatanga (governance) and tino rangatiratanga (self-determination)
  - Entrenchment of Māori rights (ture/law)
  - Māori-led jurisdiction based on tikanga (customary law)
  - Governance grounded in whakapapa and kawa (protocols)

# Wai 2945 Te Rito Foundation

## Māori Child Welfare as a Constitutional Matter

- Māori child welfare needs stronger constitutional protection.
- US case (*Haaland v. Bracken*) shows tribal jurisdiction can override state law in child placements.
- In NZ, Māori only have partnership, not full legal authority, over child welfare.
- Current protections (e.g. Section 7AA) are easily changed or removed by the government.
- If Te Tiriti o Waitangi had constitutional status, Māori could have full jurisdiction over tamariki and prevent placements outside whanau.
- A structural solution (like a Waitangi Court) would provide enduring, binding Māori authority, following international examples.

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# Wai 2945 Te Rito Foundation

## The Structural Context for Recognizing Māori Authority

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- Aotearoa needs a robust, lasting mechanism for Māori jurisdiction that is protected from shifting political decisions.
- The U.S. demonstrates a practical model, with tribal courts operating alongside federal courts and holding binding authority.
- A viable pathway in New Zealand is to evolve the Waitangi Tribunal into a Waitangi Court—a constitutional body empowered to:
  - Make binding decisions
  - Enforce Māori authority
  - Override laws that conflict with Te Tiriti o Waitangi
  - Recognize iwi and hapū jurisdiction, especially in areas like child welfare
- This approach aligns with international indigenous law and honors the relational guarantees of Te Tiriti o Waitangi.

# INDIGENOUS CHILD WELFARE & INTERNATIONAL LAW |

## *Indian Childs Welfare Act 1978*



**NICWA**  
National Indian Child Welfare Association

25 U.S.C. §§ 1901-63

### § 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds--

- (1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power \*\*\* To regulate Commerce \*\*\* with Indian tribes," and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
- (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
- (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
- (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. (Pub. L. 95-608, § 2, Nov. 8, 1978, 92 Stat. 3069.) Short Title Section 1 of Pub. L. 95-608 provided: "That this Act [enacting this chapter] may be cited as the "Indian Child Welfare Act of 1978."

### § 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and

## The Indian Child Welfare Act of 1978

### § 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term--

- (1) "child custody proceeding" shall mean and include--
  - (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
  - (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
  - (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
  - (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
- (2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
- (3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

- (2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
- (3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in

## Tribal Heritage

- “ *This harmed not only Indian parents and children, but also Indian tribes...there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children. Culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their People.*”
- *Haaland v. Brackeen 599 US (2023)*



6878. OBTOSAWAY, AN OJIBWA CHIEF. COPYRIGHT



## Tribal Sovereignty

*Congress found that many of these children were being “placed in non-Indian foster and adoptive homes and institutions,” and that the States had contributed to the problem by failing to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.”*

- *Haaland v. Brackeen 599 US (2023)*

Legal  
Commentary on  
Indian Tribal  
Sovereignty &  
Indian Child  
Welfare: *Haaland  
v Braakcen*  
Judgement  
Professor Greg  
Ablavsky of  
Stanford  
University

- *'... there are so many things at the heart of this decision....I think the case reflects both a very longstanding attack and critique of tribal sovereignty, what some scholars have called the anti-sovereignty movement, coupled with the culmination of a certain kind of conservative colorblindness that views anything that they deem to be a racial classification as an anathema...'*



**Paragraph 32 of the *EMRIP Advisory Note* -**

*Presently, Ngāti Kahungunu Iwi Incorporated and Oranga Tamariki have a partnership that involves decision-making from the outset when families require intervention and support*

*In the United States, Indian Child Welfare Act (1978), provides tribal governments with jurisdiction over child custody matters and encourages transfer of court proceedings to Tribal Courts...*

*the Supreme Court of Canada explicitly cited the Declaration... which provides a framework for Indigenous governments to assume direct control over child and family services, including passing their own child welfare laws.*



## **United Nations Expert Mechanism on the Rights of Indigenous Peoples**

Dr Valmaine Toki, University of Waikato

SUBMISSION EXCERPTS OPPOSING REPEAL  
OF S7AA, TE RITO FOUNDATION, AUGUST  
2024.

Section 7AA puts the indigenous  
Treaty rights of tamariki Maori at  
the forefront of their needs;  
assuring that their cultural selves  
are protected .... The Maori  
differential protection Section 7AA  
(2)(b) ensures...

Displacement from whanau is caused by the by-products of  
colonization – individualistic based autonomy and economic  
values of ‘betterness and more’ ... many tamariki Maori  
don’t experience because of living dual oriented, removed,  
disconnected and disenfranchised of their identity, culture  
and whanau.

Whanaungatanga is connection that feeds the roots of what  
make tamariki thrive ...connectedness is what develops and  
grows our tamariki brightly with the best resources they could  
want of their natural Maori whanau; aroha, whanau, mana and  
tiaki – care - relationships of nurture, protection.

*“...when the child is an Indian, a federal statute—the Indian Child Welfare Act—governs. Among other things, this law requires a state court to place an Indian child with an Indian caretaker, if one is available”. ... Congress enacted the Indian Child Welfare Act (ICWA) out of concern that “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies.”*



## Justified Placement Preferences

# Wai 2945

## Te Rito Foundation

### Part Two Summary

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- Sovereignty and current electoral systems limit full Māori authority.
- The Waitangi Tribunal's existing framework does not resolve all constitutional challenges.
- U.S. examples like ICWA and *Haaland v. Brackeen* demonstrate models for entrenched indigenous jurisdiction.
- Te Rito proposes a Māori-led constitutional approach focused on tamariki and whakapapa.
- Establishing a Waitangi Court could offer binding Treaty protection and legal recognition of Māori authority.
- This constitutional pathway is practical, achievable, and aligns with Te Tiriti o Waitangi.



# Kupu Whakapi

Patai

# NGA PUNA | Sources

## Translation

1. *Trans. Torn from my body, torn from my side; taken from my womanhood; my prestige, my honor, my pride. Stolen of my heart, stolen of my mind, my children, my sons, my everything's, my motherhood denied. Silenced by the Pakeha, silenced by the Man, silenced by the cold mean spirited; they are not Maori; they are not me – A 'Pao' a poignant 'striking' song of calling conveying themes, ideas, & histories o te hunga Maori. The kupu are often intended to unite communities and to express emotions and sharing cultural narratives that can be in waita (song) or haka (war dance).; Written by Raewyn Kapa, August 2024*

## Sources

[The Oranga Tamariki \(Section 7AA\) Urgent Inquiry Report — Pre-publication Version \(justice.govt.nz\)](#)

[He Pāharakeke, he Rito Whakakīkinga Whāruarua \(justice.govt.nz\)](#)

[Submission To Oranga Tamariki \(Repeal of Section 7AA\) Amendment Bill \(www.parliament.nz\)](#)

[Oral Submission August 7 2024 Social Services and Communities Select Committee](#)

[EMRI-Technical-advisory-note-April-2024.pdf](#)

[Haaland v. Brackeen :: 599 U.S. \(2023\) :: Justia US Supreme Court Center](#)

[Stanford's Greg Ablavsky on the Brackeen Indian Child Welfare Act Decision - Legal Aggregate - Stanford Law School](#)

[Section 7AA report 2023 \(orangatamariki.govt.nz\)](#)

[Oranga Tamariki Act 1989 \(nzlii.org\)](#)

[Wai2915TeRitoFoundationSoC19Dec2019.pdf](#)

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**Raewyn L. Kapa** is the Director of Te Rito Foundation, the First Whanau Foundation for *whanau* (families) of Oranga Tamariki; New Zealand's Ministry of Children child welfare ministry of care and protection. **Te Rito Foundation** is a 'First Nations' initiative *for Maori by Maori* premised on the Pa Harakeke 'Flaxbush' metaphor for *whanau tamariki Maori* supporting the parents of children removed to solutions of having them returned. Raewyn holds a Bachelor of Arts degree in Social Anthropology and Māori Studies from the University of Auckland; business management, project management and business administration certifications from Te Wananga o Aotearoa & former Best Pacific Institute. Raewyn will be conferred with her Bachelor of Laws degree from the University of Waikato in April 2026 and her practicing certificate by February of the same year.