

## Wai 2945 – Speaking notes of Raewyn Kapa

I tārerarera mai i tōku tinana,

I tārerarera mai i taku taha,

I mātāngohi mai i taku wahinetanga.

Tōku mana nui, tōku honore, tōku hākoakoa;

I tāhaetia ō tōku ngākau,

I tāhaetia ō tōku hinengaro,

Aku tamariki, aku tama, aku taonga;

I whakakāhore taku whaeatanga;

I kīki e te Pākehā,

I kīki e te tangata,

I wāhanguhia e te ngākau kino mātamou;

**Hutia te rito o te harakeke**

Kei hea te komako e ko?

Kī mai koe ki ahau,

He aha te mea nui o Te Ao?

Māku e kī atu,

He tāngata, he tāngata, he tāngata.

**Ko Pūtahi te maunga.**

Ko Wairoro te awa.

Ko Ngātokimatawhāroa te waka.

Ko Ngāpuhi me Te Aupōuri ngā iwi.

**Ko Raewyn Kapa tōku ingoa.**

**Ko te Kaiwhakahaere ahau o Te Rito Foundation.**

**Te kaupapa o tēnei wāhanga, i tēnei wā, he tuku kōrero ki mua i a koutou.**

**Nō reira, tēnei te mihi nui ki a koutou o te Taraipiunara, me te whare nei e huihui mai nei; tena koutou katoa.**

**Ko Te Aupōuri te iwi o taku taha matua, o Te Kapa whanau mai i Te Kao.**

Ko Ngāpuhi me ōna hapū te iwi i poipoi ai au e ōku karani ma e rua me ōku karani papa o Kaikohe.

Na reira, nā rātou au i whakatupu, i whakamahana, i whakaū ki tēnei whenua.

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Waitangi Tribunal

27 Jan 26

Ministry of Justice  
WELLINGTON

Ko tēnei whakapapa te kākano o taku mahi. Koia te pūtake o Te Rito Foundation.

I tapaina ai te ingoa nei mō te kaupapa o te whānau, nga tamariki, mokopuna “te rito” o te whanau.

I ahu mai tēnei ingoa i tētahi whakataukī nō Te Tai Tokerau.

Ahakoā e whakamahia whānuitia ana taua whakataukī e te tokomaha,

ko tāku e tū tika ana i tōku ake whakapapa o Te Aupōuri.

**Nō reira, he mea tika, he mea rangatira hoki**

**kia wānangahia ēnei kaupapa nui mō te hanganga ture ki konei tonu, ki Te Tai Tokerau —**

**i te kāinga o te rito,**

**mā Te Tai Tokerau, ki Te Tai Tokerau, mō Te Tai Tokerau.**

**E te Taraipiunara,**

For the Tribunal’s clarity, my korero has two parts.

**Part One addresses Constitutional matters:**

**Part Two addresses the kaupapa of Te Rito Foundation:**

**I will end with a closing summary and time for pātai.**

### **Sovereignty & Electoral Defects**

- Sovereignty in Aotearoa was asserted by the Crown, rather than transferred with Māori consent.
- The Tribunal’s 2023 Report on Stage 2 of the Te Paparahi o Te Raki Inquiry found that Māori rangatira who signed te Tiriti o Waitangi in 1840 did not cede sovereignty.
- Instead, they agreed to share authority: the Governor would control British subjects and protect Māori interests, but Māori retained their authority to govern themselves and their lands.
- The historical exclusion of Māori as equal constitutional partners—where Māori authority was confined within Crown-set limits and overshadowed by Pākehā institutions and priorities—continues to shape how participation and representation work in Aotearoa.
- Today, Māori voices and authority are still filtered through the same structures, meaning true partnership and genuine Māori representation remain restricted by design.
- These longstanding flaws directly impact how Māori are included, heard, and able to exercise authority in the nation’s political and constitutional systems.

### **International Law and Waitangi Tribunal Limitations**

- Internationally, UNDRIP affirms Indigenous peoples’ rights to self-determination and governance, and EMRIP requires states to align their laws accordingly.

- Although Aotearoa endorsed UNDRIP in 2010, key articles remain unrealized, creating a gap between international standards and local practice.
  - Locally, the Waitangi Tribunal itself lacks binding authority, limiting its ability to enforce Māori constitutional partnership and leaving remedies reliant on political will.
  - To meet international obligations and truly uphold Māori rights, a constitutionally empowered body with binding decision-making powers is needed.
  - **Article 3:** Affirms Indigenous peoples' right to self-determination, including the freedom to determine their political status and pursue their own economic, social, and cultural development.
  - **Article 4:** Recognizes Indigenous peoples' right to autonomy or self-government in matters relating to their internal and local affairs, along with means for financing such autonomy.
  - **Article 5:** Guarantees the right of Indigenous peoples to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while also participating fully in the life of the State.
  - **Article 18:** Ensures Indigenous peoples have the right to participate in decision-making in matters affecting their rights, through representatives chosen by themselves, and to maintain their own decision-making institutions.
  - **Article 19:** Requires States to consult and cooperate in good faith with Indigenous peoples to obtain their free, prior, and informed consent before adopting laws or policies that may affect them; and
  - **Article 34:** Upholds the right of Indigenous peoples to promote, develop, and maintain their distinctive customs, traditions, and legal systems or institutions, in accordance with international human rights standards.
- In the United States, tribal sovereignty is constitutionally recognized, granting tribal councils enforceable jurisdiction over child welfare matters by the Indian Child Welfare Act.
  - The Act is federal United States law recently affirmed by the US Supreme Court in 2024 in the case of *Haaland v Braacken*.
  - In comparison, Aotearoa's iwi and hapū have structures similar to tribal councils but lack constitutional protection and entrenched enforceable authority, which limits the realization of true Māori self-governance.
  - Currently, Māori hold partnership status rather than full jurisdiction, meaning their authority is restricted when measured against international standards for Indigenous rights.

- Transforming the Waitangi Tribunal into a constitutionally empowered Waitangi Court would entrench Māori authority, make enforcement of te Tiriti possible, and align Aotearoa with global best practices for Indigenous constitutional recognition.

The Electoral Act contains a core constitutional flaw: it does not require political parties to uphold Te Tiriti o Waitangi or tikanga Māori, leaving Māori voters without guaranteed protection.

- This gap enables parties to use Māori language, imagery, or concepts without iwi mandate, whakapapa authority, or Treaty accountability.
- Recent behaviour—such as Te Pāti Māori’s electorate decisions and ACT’s push to weaken Treaty references—shows how easily parties can act against tikanga-based governance under the current framework.
- These are not isolated incidents but symptoms of a Crown-designed system with no constitutional checks or Treaty-based oversight.
- The absence of enforceable protections leaves Māori voters vulnerable to disenfranchisement.
- **The Tribunal must identify this defect and support urgent constitutional reform to embed binding Te Tiriti obligations into electoral law, ensuring parties uphold tikanga-based authority and protect Māori representation.**

### **Part 1 Conclusion: Toward Genuine Māori Partnership**

- Aotearoa’s constitutional settings still exclude Māori as equal partners, and the ongoing misuse of Te Tiriti principles exposes deep structural and electoral weaknesses across government systems.
- The United States shows what entrenched indigenous authority can look like.
- The ICWA, upheld by the Supreme Court, protects tribal jurisdiction in ways Māori iwi and hapū are not currently afforded.
- Without constitutional protection, Māori representation is left exposed to party politics, Western legal frameworks, and shifting rules—seen in Māori ward debates, the Electoral Act limits, and the treatment of Māori MPs.
- Aotearoa has strong iwi and hapū structures; what it lacks is constitutional entrenchment. Embedding Te Tiriti obligations is the necessary pathway to secure Māori authority and ensure genuine partnership.

## **1 Te Rito Constitutional Vision**

- Te Rito’s position is grounded in a simple truth – Tamariki are our rangatira; the “rito” of the Pa Harakeke.
- Their parents, grandparents, and wider whanau carry responsibility for maintaining whakapapa continuity.
- When systems undermine this, they undermine Māori constitutional integrity.
- A credible Māori constitutional framework requires:
  1. recognition of dual authority; kawanatanga and tino rangatiratanga;
  2. entrenchment of Māori rights, ture;
  3. Māori led jurisdiction; tikanga; and
  4. governance grounded in whakapapa; kawa.
  
- **Earlier, I opened with a Pao; ‘Tārerarera’, written from a lived experience of uplifts.**
- It describes the tearing of whakapapa that occurs during the removal of child from parent from mother.
- The tear in identity, belonging and whanau connection that derives from an aspect of being silenced.
- Our current law allows the same tearing.
- Maori authority remains subject to policy, interpretation and political fluctuation.
- In the United States Supreme Court case of *Haaland v Brackeen* comparatively referred to in Part 1, interpreting the Indian Child Welfare Act (1978), provides Māori with a parallel constitutional pathway.
- There, an Indian child had been placed with a non-Indian family under state law.
- The ICWA required that the child be placed with tribal whanau.
- The Supreme Court ruled that ICWA overrides the State law; tribal jurisdiction prevailed and Indian children cannot be disconnected from their people through state preference.
- **The distinction for Aotearoa is this:**
  1. we currently have partnerships with Oranga Tamariki; not jurisdiction;
  2. we have sections that can be removed from legislation that give effect to Te Tiriti o Waitangi that are disposable and removable as was Section 7AA in 2024.
  3. Partnerships can be narrowed; placement principles can be overridden; and policy can change overnight.
- If Te Tiriti had constitutional status as ICWA does federally, we could legislate Maori jurisdiction in full, enabling Runanga to exercise authority over tamariki in whanau matters as of right.
- This is the pathway to prevent Maori children being placed outside of whanau.

- The ICWA 1978 is a federal law designed to protect the best interests of Native American children to promote the stability and security of federally recognized tribes by setting minimum standards for their removal and placement in welfare circumstances.
- The closest equivalent Māori have had to inferring similarly for tamariki Māori was s7AA of the same Act in 2017, repealed in 2024.

### **The Structural Context for Recognizing Māori Authority**

- Aotearoa requires a structural mechanism for Maori jurisdiction that is enduring, binding and insulated from political change.
- The United States provides a working model; tribal courts operating alongside federal courts with binding authority.
- A credible pathway here is to evolve the Waitangi Tribunal into a Waitangi Court;
- a constitutional body with jurisdiction to make binding determinations;
- enforce Maori authority; override laws inconsistent with Te Tiriti and recognize iwi and hapu jurisdiction in areas such as child welfare.
- **....and aligns with the relational guarantees of Te Tiriti o Waitangi.**
- **This is not radical....**
- **...it is consistent with international indigenous jurisprudence...**

### **To conclude.**

- Sovereignty and electoral defects continue to limit Maori authority.
- The Tribunals current framework can not fully address constitutional issues.
- Te Rito offers a Maori led constitutional vision for tamariki and whakapapa.
- A Waitangi Court could provide binding Treaty protection and Maori authority in law.
- This is a constitutional pathway forward; practical, achievable and consistent with Te Tiriti.
- No reira e te Taraipiunara, e te whare nei; ka tuku aku mihi maioha ki a koutou mō tō koutou kawenga nui ki te whai, ki te whakarongo, ki te whakawā i ēnei take i raro i te maru o Te Tiriti o Waitangi.
- He tohu tēnei o te whakamana i tō mātou tino rangatiratanga hei hoa rangapū mō te kāwanatanga i raro i Te Tiriti, i runga i ngā tikanga, i runga i te whakapapa, i runga i te mana o tēnei whenua.
- Ngā mihi nui ki a koutou mō tō koutou aro, mō tō koutou manawanui, mō te whakaae kia rangona mātou i tēnei kaupapa nui.
- Nga mihi nui