

# THEMATIC REPORT

## THE RIGHTS OF TAMARIKI MĀORI IN AOTEAROA NEW ZEALAND

New Zealand's Sixth Periodic Review under the UN Convention on the Rights of the Child

AUGUST 2022

Te Puna Rangahau o te Wai Ariki | Aotearoa New Zealand Centre for Indigenous Peoples and the Law



UNIVERSITY OF  
**AUCKLAND**  
Waipapa Taumata Rau  
NEW ZEALAND

**AUCKLAND  
LAW SCHOOL**

### 1. INTRODUCTION

1

This thematic report is submitted by Te Puna Rangahau o te Wai Ariki | Aotearoa New Zealand Centre for Indigenous Peoples and the Law.<sup>1</sup>

The primary focus of this report is the rights of tamariki Māori (Māori children), the tangata whenua (people of the land or first peoples) and Indigenous children of Aotearoa New Zealand.

The purpose of this report is to:

- outline the unique position of tamariki Māori within Māori society and how they are understood within te ao Māori (the Māori world view);
- succinctly set out the rights of tamariki Māori and explain how those rights are unique, and additional, to the human rights of all children of Aotearoa New Zealand; and
- present a starter list of questions that can be used to help assess whether State led action is consistent with the rights of tamariki Māori.

Through this report, we wish to outline for the Committee on the Rights of the Child (CRC Committee):

Firstly:

- tamariki Māori hold unique rights and protections that are are especial to tamariki Māori as:
  - o the tangata whenua of Aotearoa New Zealand in accordance with te ao Māori, including, in particular, tikanga Māori (Māori laws and customs);
  - o partners to te Tiriti o Waitangi (Te Tiriti), the Māori language version of the Treaty of Waitangi signed between representatives of Māori and the British Crown in 1840;<sup>2</sup> and
  - o Indigenous children, to whom all rights as Indigenous peoples under international law, including the UN Declaration on the Rights of Indigenous Peoples (the Indigenous Declaration), attach; and
- the New Zealand Government has specific duties and obligations to tamariki Māori due to these unique rights and protections that are additional to the duties and obligations the Government owes to all children of Aotearoa New Zealand.

<sup>1</sup> The Centre is situated at Auckland Law School, University of Auckland and is led by Māori legal academics who specialise in Māori, Tiriti and Indigenous rights. This report was prepared by the Centre's co-Directors, Dr Claire Charters (Ngāti Whakaeue, Tūwharetoa, Ngā Puhi, Tainui) and Dr Fleur Te Aho (Ngāti Mutunga), and the Centre's Research Fellow, Claire Mason. We also wish to acknowledge and warmly thank the people who provided feedback on earlier drafts of this report, including Te Rōpū Māori within the Office of the Children's Commissioner. The Centre takes full responsibility for any errors and omissions.

<sup>2</sup> Te Tiriti is considered to be Aotearoa New Zealand's founding document and a key source of Crown obligations towards Māori. Te Tiriti has two texts: one text is in te reo Māori (the Māori language) and the other is in English. Neither text is a direct translation of the other. When we refer to te Tiriti in this report, we are referring to te reo Māori text. For more information on the two texts and interpretation principles, please see: <https://waitangitribunal.govt.nz/treaty-of-waitangi/meaning-of-the-treaty/>. For more detailed background on te Tiriti, please see page 6 of this report.

Secondly:

- the rights of tamariki Māori are sourced first and foremost in te ao Māori, including tikanga Māori, and te Tiriti. These sources should always be the first point of reference when making determinations about the well-being of tamariki Māori, what is in their best interests and whether the New Zealand Government is meeting its obligations to them; and
- once it is accepted that te ao Māori, including tikanga Māori, and te Tiriti are the starting point, key international instruments, like the Indigenous Declaration and the UN Convention on the

Rights of the Child (the CRC), can then be drawn on to further strengthen and develop the rights of tamariki Māori and identify the extensive duties and obligations that the New Zealand Government owes to them.

Thirdly:

- the New Zealand Government has failed to recognise the unique rights of tamariki Māori or the specific duties it owes to them. Both in the past and the present, the rights of tamariki Māori as tangata whenua, Tiriti partners and Indigenous children have been systematically overlooked and unfulfilled;<sup>3</sup> and
- the New Zealand Government is obliged to do more than simply improve the situation for tamariki Māori so they are on equal footing with non-Māori children in Aotearoa New Zealand. Instead, the New Zealand Government must ensure that, in addition to realising the rights of tamariki Māori as children under the CRC, their unique rights as te Tiriti partner and Indigenous children, and the guarantees made to Māori under te Tiriti, including to tino rangatiratanga (self-determination, authority), and the Indigenous Declaration, including to self-determination, are realised.

We hope that the analysis and starter list of questions that we provide in this report assists the CRC Committee, and others, to better assess the specific rights of tamariki Māori across all CRC clusters and interrogate whether the New Zealand Government is meeting their specific duties to tamariki Māori, both for this review period and beyond.

## 2. THE RIGHTS OF TAMARIKI MĀORI AS TANGATA WHENUA, TE TIRITI PARTNERS, INDIGENOUS PEOPLES, AND CHILDREN

We outline the rights that tamariki Māori hold domestically, as tangata whenua and Tiriti partners, and internationally, both as children and Indigenous peoples.

As abovementioned, the rights of tamariki Māori are sourced foremost in their status as tangata whenua and Tiriti partners. Their rights are derived from whakapapa (genealogical lineage, ancestry) and are realised through the implementation of tikanga Māori and the honouring of te Tiriti.<sup>4</sup> To assist the CRC Committee, we explain the place of tamariki Māori in te ao Māori and the role that wider Māori kinship structures play in the care, protection and empowerment of tamariki Māori (section 2.1). We outline how te Tiriti guaranteed that Māori could continue in our way of life and that we retained the authority to determine what is in the best interests of ourselves and our tamariki (section 2.2). We then discuss how the rights of tamariki Māori are recognised under international human rights

<sup>3</sup> For further background, please refer to the reports submitted by the Children's Rights Alliance Aotearoa, the Office of the Children's Commissioner and the Human Rights Commission. Please also see the tamariki and rangatahi voices report submitted by the Iwi Chairs Forum Rangatahi Group. <sup>4</sup> King, P., Cormack, D. & Kōpua, M. (2018). [Oranga mokopuna: A tāngata whenua rights-based approach to health and wellbeing](#).

instruments, including the Indigenous Declaration and CRC, and how these further strengthen the rights of tamariki Māori as tangata whenua and Tiriti partners (section 2.3).

### 2.1 The place of tamariki Māori in te ao Māori

In this section, we wish to provide the CRC Committee with an understanding of the place of tamariki Māori in Māori culture and the role of Māori kinship structures in their care, protection and empowerment. A profound misunderstanding and disrespect of these concepts are key reasons why tamariki Māori face discrimination and disparity in Aotearoa New Zealand and their rights are not fully realised and protected.<sup>5</sup> By providing this context, we hope to provide the right starting point from which to identify the rights of tamariki Māori and the culturally appropriate standards to apply to ascertain whether their rights are being met and their mana (supernatural force in a person, place or

object) is being protected.

We warmly encourage the Committee to also seek further guidance from tohunga (experts) in te ao Māori and tikanga Māori when it considers whether the New Zealand Government is meeting its obligations towards tamariki Māori.

According to Māori creation narratives, humans are direct descendants of Papatūānuku (Earth Mother) and Ranginui (Sky Father).<sup>6</sup> Māori tribal traditions identify and connect the whakapapa of Māori people back to Papatūānuku, Ranginui and the beginnings of the universe.<sup>7</sup> The strong sense of identity and belonging within te ao Māori stems from the recognition of kinship to the land, the environment and all things in creation. It also links the social construction of the Māori child to the dawn of creation and the ātua (spiritual beings).

### Tamariki

As is the same for other Indigenous peoples, tamariki Māori are central to the cycle and continuation of life, and embody the survival of Māori culture and community.<sup>8</sup> Their standing is reflected in the word 'tamariki': 'Tama' is derived from Tama-te-rā (the central sun, the divine spark) while 'ariki' means 'chief' and therefore refers to their chiefly status.<sup>9</sup>

This is why Māori believe "he tamaiti, he taonga" – that every child is precious, every child is a taonga (treasure) of their entire whānau (family), hapū (sub-tribe), and iwi (tribe) and as such tamariki Māori are the responsibility of all Māori.<sup>10</sup> This centrality of tamariki Māori to Māori culture is often explained using the visual metaphor of the harakeke (flax bush), as described in Appendix B.

### Mana/Tapu

The fundamental principle for raising children was the underlying belief that children were favoured as gifts from the atua (spiritual beings), from the tipuna

<sup>5</sup> Māori Perspective Advisory Committee. (1988). [Pūao-Te-Ata-Tū \(Day break\): the Report of the Ministerial Advisory Committee on a Māori Perspective for the Department Of Social Welfare](#). <sup>6</sup> For more information on the Māori creation story, please see: [Maori Creation Story in Sand Art - YouTube](#)

<sup>7</sup> King, P., Cormack, D. & Kōpua, M. (2018). [Oranga mokopuna: A tāngata whenua rights-based approach to health and wellbeing](#).

<sup>8</sup> United Nations Sub-Group on Indigenous Children and Young People. (2006). [Indigenous Children: Rights and Reality – a Report on Indigenous Children and the U.N. Convention on the Rights of the Child](#).

<sup>9</sup> As said by Dr Rose Pere and cited in: King, P., Cormack, D. & Kōpua, M. (2018). [Oranga mokopuna: A tāngata whenua rights-based approach to health and wellbeing](#).

<sup>10</sup> As submitted by Waihoroi Shortland and cited in: Waitangi Tribunal. (2021). [He Pāharakeke, he Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry](#).

4

(ancestors) and preceded those unborn, which meant that they were tapu (under special rules and restrictions).<sup>11</sup>

For tamariki Māori, their mana was understood to be endowed upon them from their whakapapa, from the ātua and from their tīpuna. Some accounts record how this afforded tamariki Māori a temporal status of extreme tapu (sacredness) which lasted until they came of age. It was therefore not possible to diminish the mana of tamariki, but it was possible to takahia (trample) on it.

Any transgressions against tamariki Māori were therefore understood as an offence against both the child and the ātua/tīpuna whose protection they were under. This served to grant tamariki Māori a spiritual rather than social status within Māori society, in contrast with Western notions of children and childhood.

### Whakapapa

Whakapapa is akin to genealogy or lineage and is central to Māori life. Through whakapapa Māori can

identify our connection to all living things, including our tīpuna, and to which kin groups we belong. The main Māori kin groups are iwi, hapū and whānau. According to tikanga Māori, whakapapa is the glue that binds whānau, hapū and iwi together.<sup>12</sup> It also recognises birth as a sacred manifestation which binds the seen and unseen worlds together. Tamariki Māori are very important in the context of whakapapa as they are the “binding rope that ties people together over time”<sup>13</sup> and the genealogical link that enhances whanaungatanga (defined below). To Māori, children are a living connection to the family – past, present and future – a living embodiment of ancestors, and a link in descent lines stretching from the beginning of time into the future.<sup>14</sup>

A grandchild is very precious, a fountain for ancestral knowledge and an everlasting reflection of those who have gone before. We are all grandchildren as are our ancestors.<sup>15</sup>

Through whakapapa, tamariki Māori are also gifted with attributes fundamental to their cultural, physical, and spiritual well-being such as mana, tapu, wairua (spirit), and mauri (life force). A critical part of the well-being of tamariki Māori is maintaining a balance across these dynamics. Each aspect of their being and world must be acknowledged and enhanced, and therefore, anyone who contributes to the raising of tamariki Māori is responsible for nurturing both their physical and spiritual traits.<sup>16</sup> This collective nurturing of tamariki Māori to build and strengthen their individual well-being and identity, and in turn the collective's, is considered to be central to tino rangatiratanga.

### Whanaungatanga

For Māori, whanaungatanga is about forming and maintaining relationships, kinship and a sense of connection both to other whānau, hapū and iwi members and to the world around us. It is created through shared experiences and working together and provides people

<sup>11</sup> Jenkins, K., Harte, H. M. & Ririki, T.M. (2011). [Traditional Maori parenting: An Historical Review of Literature of Traditional Maori Child Rearing Practices in Pre-European Times](#). <sup>12</sup> Mikaere, A. (2002) Māori Concepts of Guardianship, Custody and Access: A Literature Review in [Guardianship, Custody and Access: Māori Perspectives and Experience](#).

<sup>13</sup> Rameka, L. (2016). [Kia whakatōmuri te haere whakamua: 'I walk backwards into the future with my eyes fixed on the my past](#).

<sup>14</sup> Ibid.

<sup>15</sup> As said by Dr Rose Pere and cited in: Iwi Leaders Group on Whānau Ora and Justice. (2017). [Submission on the Children, Young Persons, and Their Families \(Oranga Tamariki\) Legislation Bill](#). <sup>16</sup> As submitted by Waihoroi Shortland and cited in: Waitangi Tribunal. (2021). [He Pāharakeke, he Rito Whakakīinga Whāruarua: Oranga Tamariki Urgent Inquiry](#).

5

with a sense of belonging. It comes with rights and obligations, which serve to strengthen each member of that whānau or group.

As this section demonstrates, tamariki Māori hold a central and important place in the Māori world and protecting their well-being and best interests is a paramount objective. It also makes clear that the rights of tamariki Māori, and the ability to fulfil them, are deeply connected to the collective and for tamariki Māori to be cared for, developed and empowered within that collective.

Rights of tamariki Māori that flow from te ao Māori:

In sum, core rights that flow to tamariki Māori from te ao Māori include: 1. Tamariki

Māori must have their mana protected.

2. Tamariki Māori have a right to know their whakapapa.

3. Tamariki Māori have a right to grow and develop within their collective and according to their culture.

4. Tamariki Māori have a right to experience and exercise whanaungatanga towards their collective, as does their collective towards them.
5. The taonga status of tamariki Māori to their whānau, hapū, and iwi and the rights and responsibilities of Māori to bring up tamariki Māori as a collective must be respected.

## 2.2 Tamariki Māori under te Tiriti o Waitangi

The importance of tamariki Māori, their rights, and the rights and responsibilities of Māori to care for and protect tamariki Māori are also recognised and guaranteed in Aotearoa New Zealand's founding document, te Tiriti.

Te Tiriti was an agreement, signed in 1840, between representatives of the British Crown and Māori rangatira (chiefs). Te Tiriti affirmed the rights Māori had prior to 1840 and gave the Crown a set of rights and responsibilities that enabled them to settle in Aotearoa. For Māori, the Māori language text of te Tiriti guaranteed that we would continue to exercise tino rangatiratanga in relation to our own peoples, whenua (lands), resources, kāinga (homes, villages) and taonga (including tamariki Māori) in accordance with tikanga Māori, which is the first law of Aotearoa New Zealand. We were also guaranteed equal rights as British citizens. While the Crown could make laws to enable it to regulate the conduct of settlers, Māori understood this power to always be subject to rangatiratanga and the Crown's laws to be subject to tikanga Māori. In the context of children and family, te Tiriti guaranteed Māori the right to live as Māori and care for and protect our tamariki in accordance with our tikanga; that is, our own laws, culture and customs.

As part of these protections, te Tiriti affirmed and guaranteed tamariki Māori the right to be raised within their culture and by their own people in accordance with tikanga Māori. Te Tiriti also guaranteed them the same rights and privileges as British citizens. We note that whether tamariki Māori are able to enjoy their rights and guarantees under te Tiriti is inextricably linked to the right of their whānau, hapū and iwi to tino rangatiratanga being recognised and given effect.

With the rights guaranteed to Māori under te Tiriti come distinct duties and obligations on the Crown. These have been refined over time by the Waitangi Tribunal, which has the

6

exclusive authority to determine the meaning and effect of the two texts of te Tiriti. Some key examples of the Crown's duties and obligations under te Tiriti include:<sup>17</sup>

- The Crown is under a duty to recognise and actively protect Māori tino rangatiratanga over our own affairs, whenua, resources, kāinga and taonga. As already noted, the Crown must protect the exclusive right of Māori to determine what is in the best interests of tamariki Māori.
- The Crown is also under a duty to ensure Māori tino rangatiratanga over our land and resources is protected, and in relation to other taonga, including te reo Māori (the Māori language) and mātauranga Māori (Māori knowledge). For tamariki Māori, this means, for example, that they have the right to learn, develop and access services in an environment that supports te reo Māori, reflects tikanga Māori, mātauranga Māori and te ao Māori.
- The Crown's duty in relation to Māori tino rangatiratanga is heightened if Māori rights or interests are under threat or when there are adverse disparities between Māori and non-Māori that are persistent and marked. For tamariki Māori, this means the Crown is under a duty to act if the rights of tamariki Māori and their whānau under te Tiriti are not being respected or they experience greater disparity compared to non-Māori. The disproportionate removal of tamariki Māori into state care is a key example, as are other key areas where tamariki Māori face significant disparity (e.g. health, poverty).<sup>18</sup> The Waitangi Tribunal has been clear that the

Crown's duty in these circumstances is not to simply reduce inequalities between Māori and non-Māori but rather to achieve equity by ensuring the rights and guarantees to Māori under te Tiriti are given effect.

- In the spirit of the partnership between the Crown and Māori envisioned under te Tiriti, the Crown is also under a duty to act reasonably and in good faith towards Māori. This means that the Crown should involve Māori in decision-making on matters that affect their rights and interests. Depending on the issue, te Tiriti dictates that the Crown and Māori should either co-govern or Māori should lead. The Crown's duty extends to tamariki Māori and it should involve tamariki Māori in decision-making processes on issues that affect their rights and interests. For example, tamariki Māori should be involved in decision-making related to issues such as changes to the care and protection system or climate change policy.

The guarantees made to Māori, including tamariki Māori, under te Tiriti have been largely dishonoured by the New Zealand Government and it has failed to discharge its duties in line with te Tiriti. Significantly, the Government has undermined the exercise of Māori tino rangatiratanga and this has had devastating flow-on effects for the well-being of tamariki Māori and the fulfilment of their rights.

Rights of tamariki Māori that flow from te Tiriti:

In sum, core rights that flow to tamariki Māori from te Tiriti include:

1. Tamariki Māori have the right to be raised within their own culture and by their own peoples in accordance with te ao Māori and tikanga Māori. To ensure these rights are realised, the Tiriti guarantee that Māori exercise tino rangatiratanga over

<sup>17</sup> Waitangi Tribunal. (2019). [Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry](#); Waitangi Tribunal. (2021). [He Pāharakeke, he Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry](#).

<sup>18</sup> For more information please refer to the reports listed in footnote 3.

7

our own affairs, lands, resources and taonga, must also be recognised and respected.

2. Tamariki Māori also have the same rights as non-Māori children in Aotearoa New Zealand. These rights are in addition to the specific rights they hold under te Tiriti. The Crown must actively protect all their rights and whenever tamariki Māori are not enjoying these rights to the fullest extent possible, the Crown must take action to remediate the issue.
3. Tamariki Māori have a right to be involved in decision-making that affects their rights under te Tiriti. Equally, they have a right to expect that their wider collective will be involved in decision-making processes that affect Māori rights and guarantees under te Tiriti and that Māori will lead on initiatives of significance to Māori, especially those which involve or impact on the rights of tamariki Māori.

### 2.3 The rights of tamariki Māori under the Indigenous Declaration and the CRC

The starting point for determining the rights of tamariki Māori must be grounded in te ao Māori, including tikanga Māori, and te Tiriti. Key international rights instruments, like the Indigenous Declaration and the CRC, can then be drawn on to further enhance our understanding of tamariki Māori rights and, importantly, the extensive duties and obligations that the New Zealand Government owes to them.

The Indigenous Declaration

The Indigenous Declaration, which the New Zealand Government endorsed in 2010, is the most comprehensive and authoritative international instrument detailing Indigenous peoples' rights,

including our rights to self-determination, to participate in state governance, to lands, territories and resources, to culture, and to equality. Many of the Indigenous Declaration's provisions also closely align with and affirm the guarantees and rights of Māori, including tamariki Māori, under te Tiriti.

Indigenous rights are unique to Indigenous peoples – they are held by Indigenous peoples because of their position as first peoples and the historical denial of their sovereignty – and they are held in addition to the human rights of all, including of all children, under universal human rights law.

The Indigenous Declaration identifies Indigenous children as a particular group requiring special attention in its implementation<sup>19</sup> and contains multiple references to Indigenous children's rights throughout.<sup>20</sup> Many of the Indigenous Declaration's key provisions also recognise similar guarantees and rights as under te Tiriti, as they relate to tamariki Māori. For example:

- **Right to self-determination**: the Indigenous Declaration recognises the right of Indigenous peoples to decide what is best for their children, consistent with the rights of the child, and to carry out these decisions according to their own culture and laws.<sup>21</sup> The right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child, is also recognised in the Indigenous Declaration's Preamble. These rights closely correspond to the Tiriti guarantee of

<sup>19</sup> Article 22.

<sup>20</sup> For a more detailed analysis please refer to: Expert Mechanism on the Rights of Indigenous Peoples. (2021). [Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples](#).

<sup>21</sup> Articles 3 and 4.

Māori tino rangatiratanga over our own affairs, lands, resources and taonga, including tamariki Māori.

- **Respect for and protection of culture**: the Indigenous Declaration recognises the rights of Indigenous children to culture and to belong to Indigenous communities or nations. For example, it provides that Indigenous children have the right to: access, practise and develop in their culture; learn about their culture from their ancestors, who have a right to transmit to future generations their histories, languages and oral traditions; access an education in their own culture and language; and, for the education system, public information and media to accurately reflect their culture and histories. The Indigenous Declaration also recognises the rights of Indigenous children not to be assimilated into another culture, for their cultures not to be destroyed and for their peoples' traditional lands, resources, cultural knowledge and intellectual property not to be appropriated.<sup>22</sup> States have a duty to recognise and protect these rights. These rights closely correspond to the Tiriti guarantee that Māori would continue to live in accordance with our culture and laws and that the Crown would protect our lands, resources and taonga, which includes our culture, language and traditional knowledge.
- **Rights to non-discrimination and equality**: the Indigenous Declaration recognises the right of Indigenous children to have equal enjoyment of all rights including both Indigenous rights and human rights and freedoms, to be free and equal to all other children, and to be free from any kind of discrimination.<sup>23</sup> These rights closely correspond to the Tiriti guarantees that Māori would continue to exercise authority over our affairs while also having the same rights and privileges as British citizens. The Crown is under a duty to protect all these rights and act when Māori, including tamariki Māori, experience disparity and are unable to fully enjoy them.
- **Rights to participation in decision-making and free, prior and informed consent**: the Indigenous Declaration recognises the right of Indigenous peoples, including children, to be involved in State decision-making that affects them and for Indigenous peoples to develop their own Indigenous decision-making institutions. The free, prior and informed consent of Indigenous peoples must also be obtained where their rights are likely to especially impacted.<sup>24</sup> These

rights closely correspond to the Tiriti guarantee of tino rangatiratanga and the right of Māori to be involved in the Crown's exercise of kawanatanga (state governance, decision making) when it affects their rights.

When considering the rights situation of Indigenous children in a given context, it is also important to consider the extent to which the State recognises the rights of Indigenous peoples. The capacity of Indigenous peoples to provide for their children's needs (and whether their rights are fulfilled) is directly linked to whether they are able to exercise these rights, particularly the right to self-determination and key rights to land and resources.<sup>25</sup>

<sup>22</sup> Articles 7-9, 11-16; Part 6.

<sup>23</sup> Articles 1, 2, 21 and 22.

<sup>24</sup> Articles 18 and 19.

<sup>25</sup> Expert Mechanism on the Rights of Indigenous Peoples. (2021). [Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples](#).

Rights of tamariki Māori that flow from the Indigenous Declaration:

In sum, the core rights of tamariki Māori under the Indigenous Declaration, as Indigenous peoples, include:

1. Tamariki Māori have the right to belong to an Indigenous community and for that community to decide what is in their best interests, consistent with their rights.
2. Tamariki Māori have the right to be brought up by their own people and in their own cultures and traditions.
3. Tamariki Māori have the right to equal enjoyment of all rights including both Indigenous rights and human rights and freedoms, to be free and equal to all other children, and to be free from any kind of discrimination.
4. Tamariki Māori have the right to access Indigenous-led services and institutions and for their communities to be involved in the design and implementation of laws and policies that affect them.
5. Tamariki Māori have the right to participate in decision-making that affects them and for their free, prior and informed consent to be obtained if their rights will be especially impacted.

The CRC

The rights of tamariki Māori, as Indigenous children, are also specifically recognised in the CRC, which was the first core human rights treaty to take this significant step.

Indigenous children are guaranteed the same rights as all children under the CRC. In addition to these rights, the CRC also recognises Indigenous children's specific rights in its Preamble and Articles 17, 29 and 30. Article 30, in particular, provides that State parties must not deny Indigenous children their right to enjoy their culture, religion or language in community with other members of their group.

The rights of Indigenous children are not limited to these provisions, however; all the CRC's provisions should be viewed through an Indigenous lens when applied to the situation of Indigenous children. The CRC Committee has made this clear in its General Comment on Indigenous children's rights.<sup>26</sup>

For example, the CRC Committee in its General Comment has stressed that States are obliged to

protect the rights of Indigenous children and consider their rights in the context of their culture and their place in a collective in the following ways:<sup>27</sup>

- **Right to non-discrimination:** States are obliged to actively identify individual children and groups of children who experience discrimination and implement special measures,<sup>28</sup> to eliminate conditions that cause discrimination and ensure Indigenous children enjoy their rights on an equal level with other children.
- **Rights to life, survival and development:** Considering the significant disparity Indigenous children face, States are obliged to implement special measures to realise Indigenous children's rights to life, survival and development. The CRC Committee also noted the link between an Indigenous child's right to culture and

<sup>26</sup> UN Committee on the Rights of Child. (2009). [General comment No. 11 \(2009\): Indigenous children and their rights under the Convention \[on the Rights of the Child\]](#).

<sup>27</sup> This list is illustrative only. Please refer to the CRC Committee's General Comment for full description.

<sup>28</sup> Please see the note below relating to special measures.

10

their development and that States should closely consider the cultural significance of traditional lands and the quality of the natural environment while ensuring Indigenous children's right to life, survival and development to the maximum extent possible.

- **Best interests of the child:** the best interests of the Indigenous child must be conceived both as a collective and individual right. This means that when States seek to assess the best interests of an Indigenous child, they should consider the cultural rights of the Indigenous child and his or her need to exercise such rights collectively with members of their group. The CRC Committee placed particular emphasis on States' obligations in this respect when it comes to an Indigenous child's rights in relation to their family environment or alternative care. It stated that:
  - o States should ensure effective measures are implemented to safeguard the integrity of Indigenous families and communities by assisting them in their child-rearing responsibilities.
  - o Maintaining the best interests of the child and the integrity of Indigenous families and communities should be primary considerations in development, social services, health and education programmes affecting Indigenous children.
  - o Furthermore, States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of Indigenous children and in accordance with Article 20(3) of the CRC pay due regard to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background.
  - o Where Indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with Indigenous communities in order to reduce the number of Indigenous children in alternative care and prevent the loss of their cultural identity. If an Indigenous child is placed in care outside their community, the State party should also take special measures to ensure that the child can maintain his or her cultural identity.
- **Rights to participation:** Indigenous children have the right to be heard both as individuals and as a collective. This right includes the right to representation and culturally appropriate interpretation. When the right is applied to Indigenous children as a group, States are obliged to promote their effective participation and ensure that they are consulted on all matters affecting them.

In numerous instances, the CRC Committee also recognises in its General Comment that services and policies affecting Indigenous children should be designed and implemented in collaboration with Indigenous peoples (e.g. care and protection services and juvenile justice mechanisms) or led by Indigenous peoples (e.g. education). The CRC Committee also urges States parties to adopt a rights-based approach to Indigenous children based on the CRC and other relevant international standards, including the Indigenous Declaration.

We welcome the protections the CRC provides to Indigenous children's rights and the CRC Committee's strong directions through its General Comment. We also wish to emphasise that when applying either the CRC or the General Comment to the specific situation of tamariki Māori, the guarantees in te Tiriti and the Indigenous Declaration, as outlined

11

above, must also be overlaid. When this is done, the rights of tamariki Māori, and the obligations on the New Zealand Government, under the CRC are further heightened. For example, when it comes to the care, development and protection of tamariki Māori, the New Zealand Government needs to do more than ensure the integrity of Māori families are maintained or the best interests of tamariki are considered, as recommended by the CRC Committee above. Instead, it must go a step further and, in line with te Tiriti and the Indigenous Declaration, recognise that the authority to determine what is in the best interests of tamariki Māori should be vested in Māori and it is Māori who should lead on their care, development and protection and not the State.

#### [A note on special measures](#)

When it comes to the CRC Committee's directive that States must implement special measures to ensure that Indigenous children enjoy their rights on an equal level with non Indigenous children, we would like to flag to the CRC Committee that applying the concept of special measures is inappropriate in the context of Indigenous children. As clarified by the Committee on the Elimination of Racial Discrimination, the purpose of special measures is to attain equality for disadvantaged groups. This should not be confused with the specific rights of certain groups, such as Indigenous peoples, which are permanent rights and recognised as such in human rights instruments.<sup>29</sup> Therefore, any measures that seek to improve Indigenous children's enjoyment of their rights must go beyond the objective of simply achieving parity between all children; they must aim to fulfil the permanent rights of Indigenous children.

The Waitangi Tribunal considered a similar issue when it assessed what steps would be necessary to ensure equity for tamariki Māori in the State care context. It noted that, "consistency with te Tiriti/the Treaty and its principles will not be achieved simply by reducing disparities to a point where the number of tamariki Māori in State care is proportionate to the number of Māori in the wider New Zealand population"; rather any measures to address this issue must centre on the "restoration of rangatiratanga over kāinga, which in turn means strong, connected whānau looking after their own tamariki and thriving as Māori."<sup>30</sup>

Rights of tamariki Māori that flow from the CRC:

In sum, core rights of tamariki Māori under the CRC include:

1. Tamariki Māori, as children, enjoy all the rights guaranteed under the CRC in addition to their rights as Indigenous children.
2. Tamariki Māori, as Indigenous children, who experience inequality or discrimination, have the right to expect the State will take proactive measures to address these issues in a way that gives effect to their rights both as children and Indigenous peoples.
3. Tamariki Māori, as Indigenous children, have the right to enjoy their culture, religion or language in community with other members of their group. This right must be a primary consideration when determining what is in the best interests of Indigenous children and designing and

implementing social services, health and education programmes affecting Indigenous children.

<sup>29</sup> UN Committee on the Elimination of Racial Discrimination. (2009). [General Recommendation no. 32. The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination.](#)

<sup>30</sup> Waitangi Tribunal. (2021). [He Pāharakeke, he Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry.](#)

12

4. Tamariki Māori, as Indigenous children, have the right to be brought up and develop within their Indigenous community and for the integrity of their family unit to be safeguarded and maintained. If an Indigenous child is placed outside of their family environment, their right to maintain their cultural identity must be supported. At the same time, the State must take proactive measures to reduce the number of Indigenous children who are removed from their family environment.
5. Tamariki Māori, as Indigenous children, have the right to expect that their Indigenous communities will be involved in the design and delivery of services, policies and programmes that affect them.
6. Tamariki Māori, as Indigenous children, have the right to express their views and participate in decision-making processes that affect them. Their capacity to effectively participate in such processes as Indigenous children must be supported.

### 3. RIGHTS FRAMEWORK FOR ASSESSING WHETHER THE RIGHTS OF TAMARIKI MĀORI ARE PROTECTED

To bring together the discussion above and to assist the CRC Committee, and others, to assess whether a State-led action (e.g. decision, law, policy, programme, initiative, service) is consistent with the rights of tamariki Māori, we have developed a starter list of questions (see Appendix A). These questions are drawn from the rights and protections afforded tamariki Māori in te ao Māori, under te Tiriti and as Indigenous children under international law discussed above.

We note that when applying this starter list to a situation, advice from tohunga in te ao Māori and tikanga Māori should also be sought to fully understand and accurately describe the nature and extent of the rights of tamariki Māori, and the duties of the New Zealand Government, in relation to a given topic (e.g. health, education, welfare).

### 4. CONCLUSION AND RECOMMENDATIONS

Tamariki Māori have a distinct set of rights as tangata whenua, Tiriti partners, Indigenous peoples, and children, which require specific recognition and protection by the New Zealand Government.

We strongly recommend the CRC Committee:

1. Assesses the New Zealand Government's performance in respecting and upholding all rights of tamariki Māori, recognising tamariki Māori rights in te ao Māori, under te Tiriti o Waitangi, the Indigenous Declaration, and the CRC (e.g. using the rights framework put forward in this report).
2. Calls upon the New Zealand Government to develop mechanisms, like a monitoring body and/or the rights framework put forward in this report, in partnership with Māori, including tamariki Māori, to ensure that all the rights of tamariki Māori are recognised and provided for in government-led action going forward. These mechanisms will also provide a way to monitor whether the New Zealand Government is meeting its specific obligations to tamariki Māori.
3. Calls upon the New Zealand Government to recognise and protect Māori tino rangatiratanga, as guaranteed by te Tiriti and protected under the Indigenous Declaration, for tamariki Māori will not enjoy the full benefit of their rights unless Māori are able to fully exercise tino

## APPENDIX A

### ARE THE RIGHTS OF TAMARIKI MĀORI PROTECTED? Key

#### questions Source

Is the mana of tamariki Māori and their taonga status under te Tiriti, the Indigenous Declaration and the CRC, being protected?

Are Māori appropriately involved in decision-making processes related to tamariki Māori and taking the lead on designing and delivering initiatives that involve or affect tamariki Māori?

Te ao Māori

Te Tiriti

Are the rights of tamariki Māori to culture and cultural identity, and their ability to exercise these rights in community with their collective, being respected/provided for? This includes the right of tamariki Māori to learn, develop and access services in an environment that supports te reo Māori, reflects tikanga Māori, mātauranga Māori and te ao Māori.

Indigenous Declaration CRC

Te ao Māori

Te Tiriti

Indigenous Declaration CRC

Are the rights of tamariki Māori to be cared for by their whānau, hapū and iwi being respected/provided for? Is the rangatiratanga of Māori to care for and protect tamariki Māori, and to determine what is in their best interests, being respected/provided for?

Te ao Māori

Te Tiriti

Indigenous Declaration CRC

Is the right of tamariki Māori to enjoy the same rights as non Māori children being respected/provided for?

Te ao Māori

Te Tiriti

Indigenous Declaration CRC

Are tamariki Māori, as individuals and as a collective, supported to express their views and participate in decision-making processes that affect them, and in a way that is effective and meaningful for them as tangata whenua?

Indigenous Declaration

Te ao Māori

Te Tiriti

If the rights of tamariki Māori will be especially impacted by a law, policy or other action, has their free, prior and informed consent been obtained?

Indigenous Declaration CRC

If the rights or authority of Māori in relation to tamariki Māori will be impacted by a law, policy or other action, has the free, prior and informed consent of Māori been obtained?

Indigenous Declaration

14

## APPENDIX B

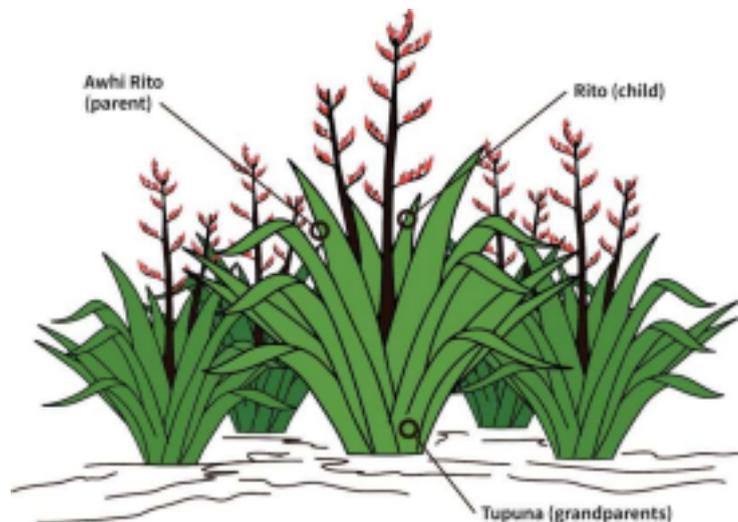
### Pā Harakeke as a Metaphor for the Connectedness of Whānau

The Pā Harakeke (a grouping of native flax plants, see image below) is used as a metaphor to exemplify the multigenerational and functional importance of the connectedness of whānau for the collective wellbeing of the whānau and its members, highlighted in the following whakataukī (proverb):

Hutia te rito o te harakeke, kei hea to komako e ko?  
Ki te uia mai koe, he aha te mea nui o te ao?  
Maku e ki atu, he tangata, he tangata, he tangata.

If you pull out the centre shoot of the flax plant, where will the bellbird sing? If you ask me, what is the most important thing in the world?

I will tell you, it is people, it is people, it is people.



The rito (centre) shoot represents the tamariki (children) and is surrounded by the awahi rito, representing the parents, and the outer leaves that represent the tupuna (grandparents). The harakeke roots (whānau) provide the foundation and enable it to grow and connect to the surrounding harakeke for support. It is the collective strength of the whānau that ensures its members are cared for and protected. As the whakataukī above indicates, plucking the centre shoot threatens the wellbeing and integrity of the whānau. The Pā Harakeke highlights the importance of connectedness and whānau in the wellbeing of those seeking healthcare.

Source (description and image): Wilson, D., et al. (2021). [Creating an Indigenous Māori centred model of relational health: A literature review of Māori models of health](#).

