

# **NEW ZEALANDS 6<sup>TH</sup> PERIODIC REVIEW UNDER THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD**

## **Reporting Stage: List of Issues Prior to Reporting Submission of Ngā Rangatahi-ā-Iwi Pou Tikanga**

1. Ngā Rangatahi-ā-Iwi would like to acknowledge the Committee for the Rights of the Child in their current and ongoing work to recognise the rights of the Child, by virtue of the United Nations Convention on the Rights of the Child, and further thanks the committee for the opportunity to represent the views of Indigenous children and young people in the submission of this report.

### **INTRODUCTION**

2. In 2005 the first Iwi (Tribal Nation) Chairs Forum was convened at Takahanga Marae (cultural house) in Kaikōura, New Zealand. Since that time the Forum has been meeting regularly to discuss and enable Māori (Indigenous) aspirations in the spheres of cultural, social, economic, environmental and political development.
3. The Forum is a platform for sharing knowledge and information between the Tangata Whenua (first Nations) of Aotearoa (New Zealand). The primary focus is for participants to educate one another about what they are doing, how they are doing it and how they can best support one another. The Forum regularly invites Crown representatives, Members of Parliament and stakeholder and community groups to present at hui on projects and issues that concern iwi.
4. In 2015, as a response to strong advocacy for the voice of children and young people to be included in the conversations of national aspirations of Indigenous peoples, Ngā Rangatahi-ā-Iwi (meaning young people of all nations) was established as a subsidiary coalition to the Iwi Chairs Forum. Ngā Rangatahi-ā-Iwi is a collective of rangatahi (Youth) representatives that work within the Iwi Chairs' Forum to discuss issues of importance for Māori young people.
5. Ngā Rangatahi-ā-Iwi (NRAI) was initially established to align rangatahi perspectives, activities and work within mutual interest areas. The aim is to develop a strategic and collaborative approach to rangatahi initiatives; strengthen rangatahi engagement; involvement; and commit to iwi development and

succession. The NRAI Pou Tikanga (Pillar of Law) Working Group sits as a technical group within NRAI, tasked with all issues affecting Children and Young People across the constructs of both Western Law and Indigenous lore in New Zealand.

6. The Iwi Chairs Forum have, since its inception, advocated strongly for the needs, rights and aspirations of children, with particular reference to the ratification of the New Zealand's Children's Covenant (written by the Henwood Trust's Judge Carolyn Henwood) resolved at the 2016 Iwi Chairs Forum.
7. By virtue of our position within the Iwi Chairs Forum, and equally by the weight of our members contributions to work either as young people, or alongside children and young people within their own tribal nations, Ngā Rangatahi-ā-Iwi are best positioned to advocate for the rights of Indigenous children.
8. New Zealand received its last monitoring report on its efforts to implement and uphold the United Nations Conventions on the Rights of the Child in October 2016, with an upcoming review in mid-2021. Whilst significant effort has been made to address the raft of child-rights issues in New Zealand, the inequities across all determinants of health and wellbeing continue to be perpetuated within Indigenous communities.
9. Considering this context, Ngā Rangatahi-ā-Iwi Pou tikanga makes the following written inputs to the List of issues prior to reporting for the upcoming observations of New Zealand's state government in its efforts to mobilise towards recognizing children's rights here in New Zealand.

## **GENERAL MEASURES OF IMPLEMENTATION**

### **Protection against discrimination**

10. In reference to the previous observational report<sup>1</sup>, we ask that the committee seek an update on the States' work in strengthening its measures to combat negative attitudes among the public and other preventive activities against discrimination and, if necessary, taking affirmative action for the benefit of children in vulnerable situations, such as Māori and Pasifika children, children belonging to ethnic minorities, refugee children, migrant children, children with disabilities, lesbian, bisexual, gay, transgender and intersex children and children living with persons from those groups;

### **Cultural Competency**

11. The committee should inquire as to the measures taken by the state to independently assess the cultural competence and standards of care applied by "competent authorities", and further, the outcomes of any judicial reviews in regards to complaints against competent authorities failing to make decisions in the best interest of the child.

### **Legislative compliance**

12. In response to the newly ratified Oranga Tamariki Act (1989), NRAI request that the committee seek information on whether changes to the Act were formed in compliance with the convention and; whether the terms laid out in the Principles of the Act (s 5 (1) (c) (iv) and s 5 (1) (c) (v)) have been applied in law, in alignment with the Convention.
13. Given the overwhelming representation of Māori Children within all spheres of poor outcomes across health, education, justice, poverty, NRAI believes that there are many children across New Zealand who are not civically engaged. New Zealand has no formal civics education, and thus, we recommend that the Committee seek information on any action taken to address the low-level of knowledge and awareness of the convention by children and their whānau.
14. As a matter of interest, NRAI supports the LOIPR of the Netherlands, and similarly seeks that the Committee request that the state make information available as to how the right of the child to have

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<sup>1</sup> Committee on the rights of the Child, Concluding observations on the fifth periodic report of New Zealand Adopted by the Committee at its seventy-third session (13-30 September 2016).

his or her best interests taken as a primary consideration is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and decisions, and takes into account the opinion of the child with the assistance of competent professionals where necessary.

15. We also seek that the committee recommends that information be provided on the development and dissemination to all relevant professionals of policies, procedures and guidance for determining and consistently applying the best interests of the child as a primary consideration in all proceedings concerning children, in particular regarding education, youth support, custody, alternative care, child justice and asylum, and child victims of crime.

## GENERAL PRINCIPLES – INCLUDING NON-DISCRIMINATION

### **Non-discrimination on the basis of unknown father**

16. In New Zealand, there are several layers of unconscious bias. Gray<sup>2</sup>, argued that identifying as Māori or Pasifika can have consequences in relation to accessing welfare entitlements and that ethnicity may negatively influence interactions within welfare offices in Aotearoa New Zealand.
  
17. Policies implemented in recent years have seen mothers of children having welfare support withheld unless mother's name the father on the birth certificate. Placing this into the context of the multiple complexities of domestic violence and the legal rights of partners when names on birth certificates, it can be ascertained that this practice is punitive, archaic and not in the best interest of the child. NRAI therefore recommends that an inquiry be made as to:
  - a) the evidence supporting this action (withholding welfare support), and
  - b) whether empirical evidence informed this policy action and
  - c) whether the best interest of the child was taken into account in this matter
  
18. Furthermore, we recommend that the committee seek an update on measures taken to address discrimination against children belonging to ethnic and religious minority groups (including those of African descent), Muslims and Jews, refugee, asylum-seeking, migrant and undocumented children, children with disabilities, chronically ill children and lesbian, gay, bisexual, transgender and intersex children, for any of these statuses could be the next terror attack if gone unchecked.

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<sup>2</sup> GRAY, Claire. "You look a little bit dark for my liking": Māori and Pasifika women's experiences of welfare receipt in Aotearoa New Zealand. **Aotearoa New Zealand Social Work**, [S.l.], v. 31, n. 1, p. 5-16, apr. 2019. ISSN 2463-4131.

## CIVIL RIGHTS AND FREEDOMS INCLUDING THE RIGHT TO IDENTITY

### Language, Identity and legislative tools

19. The Native Schools Act has had far reaching implications on Māori identity and Māori relationships with their own language and knowledge systems. Our survey of almost 300 Indigenous young people found that more than half of those surveyed had a tension in their relationship with their language and their identity. In the context of this, and with regards also to the above mentioned new Oranga Tamariki Act, NRAI urges the Committee to request and update on;
- a) Whether Māori communities were consulted widely on the use of Oranga Tamariki as the name to replace “Children, Young Persons and their Families” and;
  - b) Whether there was a mechanism for review of the name of the Act where the purposes of the name and the actions of the Agency do not align and;
  - c) Any action taken to measure the impacts of naming Oranga Tamariki as so, have impacted on the relationship of Maori Children with their language, and therefore, their identity.
20. Once again, we give rise to the issue of children being separated against their will, and even where competent authorities have made a determination, NRAI believes that the child must still have their voice taken into consideration, as the child will be acutely aware of what is in their best interest in most cases. NRAI recommends that the committee seek information as to what measures have been implemented by the state to ensure that a child is not unwillingly separated from their parents, and in the event that it is determined as necessary, that a child is communicated with and informed respectfully and that their view is taken into account.
21. Given that other countries have processes which priorities babies, children and young people being placed within their own whakapapa, NRAI seeks that the Committee prioritise an inquiry into the efforts of the state to ensure that every child and young person in New Zealand grows up with a strong sense of individual and cultural identity.
22. Similarly, we recommend that the Committee seek an update on any policy/legislative actions taken by the state to minimise the impact of another stolen generation (Legal tools to ensure that children are first and foremost placed with whānau and then with whānau Māori, and non-Māori as a last resort.

## VIOLENCE AGAINST CHILDREN

### **Royal Commission of Inquiry**

23. In 2018, the New Zealand Government established The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions. The purpose of the inquiry is to investigate what happened to children, young people and vulnerable adults in care between 1950 and 1999. On the matter of this inquiry, the government is seeking:
- a) Why people were taken into care
  - b) What abuse happened and why
  - c) The effects of the abuse
24. By virtue of the fact that there is an inquiry, this affirms that the government intrinsically acknowledges that children have been subjected to abuse and neglect whilst in State Care, which is to say, whilst children were in the custody of the state. NRAI makes the following points as issues to be considered by the committee as priorities:
- a) Why are rates of Māori children being displaced from their whānau (family system) so high, when rates of Māori Children abused in state care are equally as high?
  - b) In the above point 25 (b), if the state has admitted that children were abused in state and faith-based care, what is the validity in asking “what abuse happened and why?”. Understanding that it is important to understand what abuse happened, but it is critically detrimental to any individual to subject them to the process of inquiry, to then have the justifiability of the reason up for debate.
  - c) Whether any measures have been taken by the State to address the intergenerational harm caused by those who have been affected by in the inquiry into state abuse.

### **Christchurch Terror attacks**

25. On the 15<sup>th</sup> of March 2019, after bolstering from his community of white supremacists, a gunman descended on two Christchurch mosques and fired using a semi-automatic rifle. The attack at Masjid Al-Noor and the Linwood Islamic Centre on 15 March killed 51 Muslims and left dozens more injured. This attack came after express concerns from leaders of the Muslim community as to the stirring of racism towards Muslim people.

26. The effects of this terrorist attack have been profound and heart breaking. For Muslim Children in New Zealand, this is a trauma they have to grow up with in New Zealand. For Māori Children in New Zealand, this attack is a constant reminder that racism is alive and well. Furthermore, it stirs a deep and entrenched trauma that has transcended generations.
27. The support from the New Zealand community proclaiming, “This isn’t us”, provided overwhelming support in the week following the attacks. However, the silence in the past 11 months and failure to champion against discrimination has been a missed opportunity.
28. In this regards we ask that the committee makes it a priority to include issues relating to what has been done to redress the impacts that the March 15<sup>th</sup> attacks has had on Children across New Zealand.

#### **Police Arms squad pilot**

29. One of the eventuation’s in policy of the Christchurch Terror attacks was the implementation of a pilot program whereby Police division armed offenders’ squads would move to having firearms on their person. Whilst this may have been fathomed as a necessary response to the terror attacks, it is gravely concerning that these “pilots” were not located in areas where white supremacy was thriving, but rather, were located in high-deprivation communities where Indigenous and Pasifika people are the majority population within these areas (Christchurch as well as Hamilton and South Auckland).
30. For children of families living in high-deprivation, high crime areas with constant police presence this can be somewhat disconcerting, but to have children having to bare witness to the treat and use of firearms within their communities can be traumatic and horrifying.
31. We therefore recommend that the Committee seeks information from the State as to whether the best interest of Children is taken into consideration when Police are deciding to storm an address or to approach private dwellings with ammunition.
32. We further ask for information of how many children have been present at arrests of their parents and family members, and how many children now suffer consequentially due to those experiences.

## FAMILY ENVIRONMENT AND ALTERNATIVE CARE

### State Uplifts of Children

33. Given that Māori children are uplifted by the state at a disproportionate rate, with 45 children taken at birth, more than half of whom were Māori (3 Māori babies per week), it is important that the actions of the state are congruent with the Convention, particularly with the right for the child to have decisions made in their best interest.
34. Strong advocates for the rights of whānau have noted that Oranga Tamariki prioritises the removal of children from the whānau unit without sufficient investigation, and also fails to form any meaningful partnership with whānau, hapū or iwi.
35. Chairperson for Te Pou Matakana (Whānau Ora Commissioning agency) “Oranga Tamariki manages our most vulnerable and has failed 14 reviews in 22 years - and still not one iwi group has been statutorily accepted to look after our own tamariki. When this agency fails, it gets another budget boost”.
36. We suggest that the committee seek an update on whether the new legislation of the Oranga tamariki Act 1989 – that is, the accountabilities, roles and responsibilities of the CEO of Oranga Tamariki – has seen the state implement mechanisms to measure and evaluate progress.
37. We further recommend that the Committee seek information on:
  - a) Whether it is reasonable to withhold Iwi affiliations (genealogical connection on the basis of tribal nation) in an Official Information Act request on the basis of Privacy, where the Oranga Tamariki Act (1989) equally prioritises connecting children to their identity and;
  - b) Whether declining a request to have children identified by genealogical links contravenes the Act itself and/or the rights of the Child under the convention and;
  - c) Whether “without notice applications to the family court” effectively consider the best interest of the child within the context of their family.
  - d) Any actions, commitments, programs or documentation which evidences a commitment from Oranga Tamariki to work with Iwi (Tribal Nations) to repatriate children to their family systems and identity.
  - e) Any legislative, regulatory or process driven responses to prioritise (in every first instance), the placement of Māori children within their own tribal peoples, and then within Māori families.

## Tamaiti Whāngai

38. Traditional Māori systems of wellbeing recognise the collective role of the family system and wider community in raising children.
39. Whāngai is a Māori customary practice where a child is raised by someone other than their birth parents – usually a relation. Whāngai has been practiced by Māori from time immemorial to the present, and the practice has been embedded within our stories of old, with Māui being the most famous whāngai child.
40. The practice is similar to both adoption and fostering, as a whāngai placement may be permanent or temporary, though its status within the legal system has varied over time. Whilst whāngai has relative clarity across issues such as land law, the notion of whāngai has been so strongly assimilated to western notions of fostering and adoption that the lore essence of whāngai is somewhat lost.
41. Given that NRAI operates from the standpoint that whāngai has benefits in both sustaining culture and in the provision of alternative care, we recommend that questions surrounding whāngai form a key line of information gathering to ascertain what measures have been implemented to adequately recognise the integral importance of whāngai.

## **DISABILITY, HEALTH AND WELFARE**

### **Morbidity and Mortality**

42. Given the persistent inequities for Indigenous children in New Zealand, NRAI seeks that the Committee request information on child mortality and morbidity within and between populations (namely Indigenous populations).

### **Alarming Poverty Rates**

43. One in four New Zealand children are living in poverty, and actions have been taken by the state - including the development of 9 measures of poverty – to redress the harms of child poverty for many New Zealander’s, it is of great concern that Māori children are over-represented across all statistical measures for poverty. Given this, we recommend that the committee seek information on measures taken to reduce child poverty in New Zealand, and particularly, actions taken to address each of the 9 measures of Child-poverty.

44. NRAI recommends that the committee seek update from the state on intensifying its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including services to parents who need counselling in child-rearing, services for the treatment of alcohol or drug-related problems and, in the case of Maori and Pasifika populations, culturally appropriate services to enable them to fulfil their parental role.

45. We further recommend that the committee seek information on New Zealand’s efforts to take urgent measures to address disparities in access to education, health services and a minimum standard of living by Maori and Pasifika children and their families.

### **Findings of the Waitangi Tribunal**

46. In alignment with a “Te Tiriti based Foundation” for the governance of Wellbeing, NRAI supports the interim findings of the Waitangi Tribunal in the Health Services and Outcomes Kaupapa Inquiry (WAI 2575), and advocates for the establishment of an Independent Māori Health Authority to take leadership of Māori Health and Wellbeing.

47. This Authority would be responsible for setting, resourcing and monitoring Māori Health aspirations and outcomes. Furthermore, this entity will be mandated to ensure robust auditing of all health organisation, PHOs and Govt subsidiaries are upholding their Treaty obligations at a Governance, operational and visionary level. They will also determine academic pathways and research agendas
48. NRAI recommends that the committee ask for information on measures taken to address the findings of the WAI 2575 report from the Waitangi Tribunal (recognising that the Waitangi Tribunal is a non-binding judicial body), with specific recommendations for request for updates on the following:
- a) Action taken to establish an independent Māori Health Authority
  - b) What necessary measures have been implemented to ensure adequate access to health services to all children, including age-appropriate mental health services, with particular attention to Maori children.

## **EDUCATION, LEISURE AND CULTURE**

### **Te Reo Māori in the Education system**

49. According to 2019 data<sup>3</sup> there were 21,489 students enrolled in Māori medium education, representing 2.6% of the total school population; a 0.1 percentage point increase on 2018.

50. In recognising the breadth of the journey that has been taken since the inception of the Native Schools Act, and the aggressive efforts of education activists to revitalise Te Reo Māori, NRAI seeks to understand what mechanisms are being implemented to ensure the vitality of Te Reo Māori as a grounding educational mechanism within New Zealand. Whilst Te Reo has continued to grow organically over the past decade, there continues to be structural disablers which limit the ability of Te Reo to grow and thrive.

51. We therefore ask the committee to seek information on specific measures taken within the education system to address the stagnation of Te Reo Māori, across both mainstream and semi-immersion institutions.

### **Recognising and teaching NZ's Te Tiriti origins**

49. New Zealand has a long and fraught history with its Indigenous people, a lot of which informs the current systemic issues, such as racism and discrimination, as well as inequitable access to health, social and educational services in modern New Zealand.

50. The New Zealand Land Wars saw Indigenous people slaughtered on their own lands at the hand of their treaty partner – the British Crown. Equally, legislative tools such as the Native Schools Act (1867), the West Coast Peace preservation Act (1882) and the Tohunga suppression Act (1907) have been harmful to our Indigenous systems of education, harmful to or expression of culture and harmful to our way of life. Many Indigenous children today continue to be affected by the impacts of what happened within New Zealand's history, with the trauma of colonisation entrenching itself into the cellular memory of today's generation of New Zealander's. In not teaching New Zealand's history, New Zealand fails to reconcile with its own history and therefore fails to provide all children an equal platform upon which to understand the multiple complexities of institutional inequities

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<sup>3</sup> <https://www.educationcounts.govt.nz/statistics/maori-education>

51. The impacts of a colonial controlled narrative of New Zealand's history are severe when it comes to Indigenous children. It affects current statistics, and reinforces stereotypes which in turn affect identity, and affects the ability of these children to grow into active and contributing citizens. Equally, non-Indigenous children are not provided the opportunity to encounter any such critical learnings which may assist in better understanding race-relations in New Zealand.
52. Given the above context, NRAI implores that the Committee inquire into actions taken by the state to recognise Te Reo Māori and the history of New Zealand (according to the indigenous people of New Zealand within the education system).
53. We equally recommend that information be sought on New Zealand's intentions to embed a comprehensive civic education curriculum across all Primary and Secondary Schools in New Zealand, to go hand in hand with the learning of the History of New Zealand.

#### **Access to Early Childhood Education**

54. Whilst the quality of Early Childhood education is of quality here in New Zealand, it is somewhat unaffordable, placing a double burden on low-income families. To quote one mother who interacts with Early Education services "ECE is really pretty much set up around the sort of white Pākehā well-off life. It still costs money, quite a lot of money to send your kids to ECE. Despite the number of subsidies in place, those subsidies are quite difficult to navigate your way through and get access to all of them."
55. With regards to Early Childhood education, NRAI recommends that the Committee continue to pursue its line of inquiry as to what measures have been taken by the State to to eliminate disparities in access to early childhood services.
56. We further recommend that information be sought on actions taken to further invest in the availability and quality of early childhood care and education ensuring that, at a minimum, is free for children from low socioeconomic backgrounds, and that care personnel is adequately trained, including on Maori and Pasifika cultures.

## SPECIAL PROTECTION MEASURES - INCLUDING INDIGENOUS CHILDREN

57. In referencing the Committee's general comment No. 11 (2009) on Indigenous children and their rights under the Convention, we seek that the State continues to address the line of inquiry into the progress of the State party to develop a comprehensive, cross-sectorial strategy for the full enjoyment of the rights of Maori and Pasifika children, in close cooperation with them and their communities.

## CONCLUSION

58. Ngā Rangatahi-ā-Iwi Pou Tikanga Roopu would like to thank the Committee for considering the points in this submission as lists of Issues prior to reporting.

59. We include as an appendix to this submission the report of Ngā Rangatahi-ā-Iwi Pou Tikanga which sought to understand Rangatahi views on Implementing the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa and ultimately informed our position in the majority for this submission.

60. We look forward to future engagement on this issue as New Zealand progresses towards its next periodic review under the UN Convention on the Rights of the Child.

Kind Regards,

Ngā Rangatahi-ā-Iwi Pou Tikanga.