

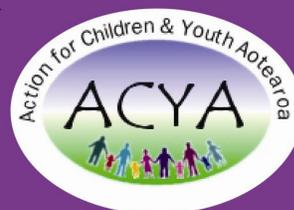
# Children and Youth in Aotearoa 2010

New Zealand Non-Governmental Organisations  
Alternative Periodic Report  
to the United Nations Committee on the Rights of the Child

June 2010



Action for Children and Youth Aotearoa Incorporated  
[www.acya.org.nz](http://www.acya.org.nz)



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## INTRODUCTION

### Mihi

Tēnā rā koe i raro i ngā manaakitanga o te Ātua. Ānei rā tā mātau ripoata, *Children and Youth in Aotearoa 2010: Non-Governmental Organisations Alternative Periodic Report to the United Nations Committee on the Rights of the Child*, o Niu Tirini te Totara wāhinga i waenganui o te pō raua ko te Awatea ko te ripoata e whai ake nei ko te hua o tō whakahautanga i a mātau kia whakatakotoria ki mua i to aroaro o ngā ahuatanga i kitea e mātau e tukino nei i ngā rōpū kaiāwhi ngā tamariki i raro i ngā tikanga a te kawenatanga toko i te ora. Ko te mea nui ko te whakatutuki i te whakaaro a ngā rōpū kāore te Kawana e ki nei “Nāu te rourou, naku te rourou ka ora te iwi.” Kua oho rātau, ko ia tēnei ko:- *Children and Youth in Aotearoa 2010* o Niu Tirini, ko tāu e te komiti (United Nations Committee for the Rights of the Child) he whakahangai i ngā kaupapa kei roto i te ripoata. Tēnā ra koe e te komiti te kai whakatakopōkai i te ao hou a tō tamariki ki te tau rua mano tekau ma rima, ā, ki tua atu.<sup>1</sup>

### About ACYA

- i. Action for Children and Youth Aotearoa Incorporated (ACYA) is a coalition of Non-Governmental Organizations, families and individuals. ACYA’s purpose is to promote the well-being of children and young people in Aotearoa New Zealand through:
  - education and advocacy on the rights of children and young people;
  - encouraging the government to act on the recommendations of the United Nations Committee on the Rights of the Child; and
  - promoting opportunities for the voice and participation of children and young people.
- ii. In 2003 ACYA produced and published *Children and Youth in Aotearoa 2003*, the New Zealand NGO Report on New Zealand’s implementation of the United Nations Convention on the Rights of the Child (UNCROC). ACYA supported children to develop a video called *Whakarongo Mai / Listen Up* which collated and presented the views of New Zealand children. The report and video were presented to the UN Committee on the Rights of the Child in Geneva in June 2003.
- iii. ACYA has since made reports on New Zealand’s compliance with other human rights treaties.<sup>2</sup> ACYA is represented on the UNCROC Advisory Group to the Ministry of Social Development, which advises on Government progress in implementing the 2003 recommendations of the UN Committee on the Rights of the Child on New Zealand (see Paragraph 1.23).
- iv. All the work of ACYA is done by volunteers. ACYA receives no government funding.

### Preparation of this Report

- v. This report is one of three key reports for the UN Committee on the Rights of the Child. The others are *Tamariki Māori*, an ACYA working paper on Māori children and young people (summarised below) and a report from children and young people themselves facilitated by Save the Children. ACYA will also be sending the UN Committee a set of ACYA working papers.
- vi. This report has been developed from consultation at four national annual workshops, the input of Cluster Groups which looked at each theme of the report; the findings of peer reviewed ACYA working papers, and other ACYA documents.<sup>3</sup> Two drafts were circulated for comment and peer review and made available for public comment on the ACYA website, before review and development of draft recommendations at the annual ACYA workshop in April 2010 which was attended by leading children’s advocates. A final draft was then circulated for review, improvements and endorsement. The views expressed in this report may not be the views of every member of ACYA.

### **Executive Summary of *Tamariki Māori***

- vii. *Tamariki Maori* is an ACYA working paper on the rights of indigenous children and is being sent separately.
- viii. In the main, the rights of the indigenous children are respected and improvements have been made on giving effect to these rights. Inequalities and disadvantage still characterise the situation of a disproportionate number of indigenous children in New Zealand, tamariki Māori. A major hurdle was surmounted with the repeal of section 59 of the Crimes Act in 2007 (please see Paragraphs 1.51 - 1.54). Exposed to greater levels of health problems (please see Paragraphs 3.2 - 3.4 and 6.3) crime,<sup>4 5</sup> violence (see Paragraphs 5.8 – 5.17, and poverty (please see Paragraphs 6.32 – 6.52), the status of the rights of tamariki Māori show much potential for improvement.
- ix. The Tamariki Māori report presents an assessment of the status of the rights of tamariki Māori as an identifiable and discrete population (please see Paragraphs 1.29 -1.34) by testing the level of support (recognition of a right, changes made to address deficits and the addressing of inequalities) by the measures taken and the situations where rights are given effect.
- x. The application of these tests to date demonstrates that the rights of tamariki Māori show improvement in the sharing of their culture with their community, practice of religion and use of their own language. While most of the improvements in these areas have happened in schools, there has been some improvement in the mass media and to some degree in legal proceedings. However more needs to be done with regard to care and protection of children separated from the parents, family and community.
- xi. The second stage of this assessment considers the capacity of the Government to give effect to the status of te reo Māori as a taught language, access to Convention related literature in te reo Māori, the legal protection of te reo me ona tikanga (language and culture), public anti-racism campaigns and the voice of children in assessing whether the measures taken are appropriate or sufficient. While the Government has made advances in some areas such as language revitalization, it still struggles with providing adequate recognition of rights of Māori as Indigenous people. Although New Zealand has now endorsed the Declaration on the Rights of Indigenous people (please see Paragraphs 1.12 – 1.15), the Government continues to minimise its importance.

### ***Hear Our Voices, We Entreat: Save the Children New Zealand Child Participation Report to the United Nations Committee of the Rights of the Child***

- xii. Save the Children New Zealand facilitated a report that includes the voices of a variety of children and young people. During 2009 and 2010, digital storytelling focus groups were held around New Zealand with young people under the age of 18. These groups had an opportunity to learn about the Convention and give their perspectives about how their rights were being met. The stories feature in a digital report as well as on a moderated ning social-networking site (“Article 12 Aotearoa”) aimed at providing information and stimulating on-going discussion.<sup>6</sup>
- xiii. *Hear Our Voices, We Entreat* is being sent separately.

### **The change of Government in 2008**

- xiv. Since the New Zealand Government wrote its 3<sup>rd</sup> and 4<sup>th</sup> Periodic Report for the UN Committee on the Rights of the Child, a new coalition Government has formed. Various legislative initiatives and policies referred to in the 3<sup>rd</sup> and 4<sup>th</sup> Periodic Report have been changed.

**1. GENERAL MEASURES OF IMPLEMENTATION.** (Articles 4, 42 and 44(6))

**New Zealand Government Reservations**

General Reservation – Children Unlawfully in New Zealand

- 1.1 New Zealand's General Reservation to the Convention has not been withdrawn.
- 1.2 The Immigration Act 2009, which is due to commence later in 2010, will exempt providers of compulsory education (primary and secondary schools) from prosecution if they provide educational services to children aged under 16 years who are unlawfully in New Zealand.<sup>7</sup>
- 1.3 However, the Immigration Act 2009 does not extend to all children unlawfully in New Zealand any positive entitlement or right of access and enjoyment to health care, welfare, housing and other services available to permanent resident children, and so does not ensure compliance with the Convention.<sup>8</sup>
- 1.4 The Act provides for recognition for refugees under the Refugee Convention and protected persons under the International Covenant on Civil and Political Rights and the UN Convention Against Torture.<sup>9</sup> However, it makes no mention of the special protection measures provided under the UN Convention on the Rights of the Child. Please also see Paragraphs 8.25 - 8.26.

Article 32.2 – Minimum Age for Children in Employment

- 1.5 New Zealand's Reservation on Article 32.2 of the Convention has not been withdrawn.
- 1.6 No substantive progress has been made towards removing this Reservation since the UN Committee issued its 2003 report on New Zealand. The Government has stated that it has examined the issue and has assessed its position regarding ratification of ILO Convention 138, but there is no evidence to suggest that there is any likelihood of either ratification of ILO 138 or any legislative initiative that would lead to removal of the Reservation on Article 32.2.
- 1.7 Please also see Paragraphs 8.29 - 8.34 about child employment.

Article 37(c) – Age mixing in prisons

- 1.8 New Zealand's Reservation on Article 37(c) of the Convention has not been withdrawn.
- 1.9 Limited progress has been made in addressing this Reservation. The Department of Corrections has developed a policy and 'test of best interests' to be applied in individual cases for young male prisoners. The policy and the Corrections Regulations allow the mixing of child prisoners under 18 years with young adult prisoners aged 18 and 19 years where mixing is deemed to be in the interests of individuals in either group. The result is that children are mixed with young adult prisoners. At 1 April 2009 there were 68 male prisoners under 18 years in Youth Units in prisons mixed with 24 young adult prisoners aged 18 or 19 years, and a further 23 prisoners aged under 18 years in adult units in prisons. At 1 April 2010 there were 58 prisoners aged under 18 years in Youth Units in prisons mixed with 20 young adults aged 18 or 19, and a further 18 prisoners aged under 18 years held in adult units in prisons. In both 2009 and 2010 there were 5 female prisoners aged under 18 all of whom were held in adult prisons.
- 1.10 In 2007, the murder of a 17 year-old prisoner by a 25 year-old prisoner while in a prison van in transit from the Court to prison led to an investigation by the Chief Ombudsman and a Ministerial directive prohibiting the age-mixing of under 18 year-olds with adult prisoners in transit. Please also see Paragraphs 8.19 – 8.20.
- 1.11 The detention of children in police cells for ongoing periods still happens as a last resort option.<sup>10</sup> This does not involve mixing children and young people with adults in individual police cells, but police cell facilities are designed to hold adult detainees on remand and are not suitable environments for children. Children are regularly mixed with adults in court cells where child defendants are sent to adult courts for trial or sentence. In addition, 17 year olds are dealt with in the adult courts and are routinely

mixed with adults in court cells, police transport vehicles and custodial remand facilities. Please also see Paragraphs 4.15 - 4.20.

### **The Declaration on the Rights of Indigenous Peoples**

- 1.12 New Zealand was one of only four United Nations member states to vote against the Declaration on the Rights of Indigenous Peoples in 2007. In its 2009 report on the Universal Periodic Review of New Zealand, the United Nations Human Rights Council recommended that the New Zealand Government review its position and support the Declaration.<sup>11</sup>
- 1.13 The New Zealand Government responded to the United Nations Human Rights Council recommendations by indicating that it would like to move to support the Declaration provided that *“New Zealand can protect the unique and advanced domestic framework that has been developed for the resolution of issues related to indigenous rights”*.<sup>12</sup>
- 1.14 The New Zealand Government formally supported the Declaration in April 2010 when the Minister of Māori Affairs, Hon. Pita Sharples, announced New Zealand's support of the declaration at a speech to the United Nations Permanent Forum on Indigenous Issues, saying *“in keeping with our strong commitment to human rights, and indigenous rights in particular, New Zealand now adds its support to the Declaration both as an affirmation of fundamental rights and in its expression of new and widely supported aspirations”*.<sup>13</sup>
- 1.15 Recognition of the rights of indigenous peoples is essential to the rights of the child in New Zealand. In 2006 24 percent of all New Zealand children aged under 15 years are Māori (compared to 15 percent for the overall population)<sup>14</sup> and 35 percent of the total Māori population are aged under 15.<sup>15</sup> It is projected that by 2020, 29 percent of New Zealand children aged under 15 will be of Māori ethnicity.<sup>16</sup>

### **Review of Legislation Affecting Children**

- 1.16 In its 1997 and 2003 reports on New Zealand, the UN Committee on the Rights of the Child expressed its concerns regarding New Zealand legislation that is inconsistent with the Convention and recommended that New Zealand undertake a comprehensive review of all legislation that affects children.<sup>17</sup>
- 1.17 The Government is yet to undertake such a review. However, the Office of the Children’s Commissioner (an independent Crown entity) undertook, of its own accord, a review of New Zealand legislation in terms of its consistency with the Convention. This review has not been publically released.

### **National Plan of Action for Children – the Agenda for Children**

- 1.18 In 2002 the Government produced the *Agenda for Children* a core policy framework against which future Government policy initiatives affecting children were to be based. However, whilst the Agenda contained seven “Action Areas”, it did not detail any specific actions needed to attain the goals set out in those areas, did not set timelines and did not allocate responsibilities for the action needed. In effect, the Agenda was merely a statement of general principles and its lack of implementation by government agencies reflects this.
- 1.19 It disappeared from Government policies soon after its introduction. A review by ACYA found no evidence that the Agenda had been implemented by the Government in any sustained, systematic way in formulating policy or making decisions. The *Agenda for Children* has been made obsolete through lack of implementation. The Government has not replaced the *Agenda for Children* with any other National Plan of Action regarding children.
- 1.20 The Human Rights Commission’s 2005 *New Zealand Action Plan for Human Rights* identifies the human rights of children and young people as a particular area of focus.<sup>18</sup> However the Cabinet is yet to formally

endorse the Action Plan and instead has referred it back to Government agencies for consideration. The Human Rights Commission's 2008 *Mid-term Review of the Action Plan* indicates that its implementation has been patchy, slow and in some areas has not occurred.<sup>19</sup>

- 1.21 In June 2010, the Public Health Advisory Committee, which provides the Minister of Health with independent advice on public health issues, released its report "The Best Start in Life: Achieving effective action on child health and wellbeing."<sup>20</sup> The Committee explored why there was a lack of progress in improving child health and New Zealand's low OECD ranking in child health outcomes. It found that there had been no consistent Government leadership for action to improve child health and wellbeing, planning tends to be sector-based, and investment has been low and sporadic.
- 1.22 The Public Health Advisory Committee's recommendations to the Minister of Health included strengthening central government leadership through overarching legislation and the establishment of a senior Cabinet position specifically for children, supported by an office for children; development of a whole-of-government approach; establishment of an integrated approach to service delivery for children; and monitoring of child health and wellbeing using an agreed set of indicators. To date, the Minister has not met with the Public Health Advisory Committee since the election. The UN Committee may like to enquire into this further.
- 1.23 The Ministry of Youth Development, whose official role relates to young people aged between 12 and 24, produced the *UNCROC Five-Year Work Programme 2004-2008* in response to the 2003 UN recommendations. The Ministry, which is a small, advisory agency, also co-ordinated the establishment of an UNCROC Advisory Group on the Convention which included representatives from the Office of the Children's Commissioner, Human Rights Commission and NGO nominees from UNICEF New Zealand, Save the Children New Zealand and ACYA. The Advisory Group, however, does not have any formal powers, functions or legal status. A further five year work programme for 2009 to 2013 has not been developed. Responsibility for reporting on the Convention and co-ordinating the Advisory Group has been shifted to the Ministry of Social Development. The Advisory Group has not met since this change.
- 1.24 The New Zealand Government has not established a permanent mechanism to co-ordinate the implementation of the Convention or the *Agenda for Children*, as was recommended by the UN Committee in 2003.<sup>21</sup>
- 1.25 The enactment of the Children's Commissioner Act 2003 was, however, a significant legislative development in that it provided the Children's Commissioner with specific functions to monitor the Convention and raising public awareness of its principles (please also see Paragraph 1.44).

#### **Article 4 - Budgetary Allocations**

- 1.26 Following the election of a new Government in 2008, the economic impact of the global recession has reduced the Government's tax take and given further impetus to reduction in Government expenditure.
- 1.27 There are rapid changes being made to the economy and the state. There is widespread concern that services that benefit children are being reduced in many places but it is difficult to get an accurate picture of what is happening at this stage. The New Zealand experience of reforms of the economy and the state in the mid-1980s to mid-1990s was that children – especially Māori and Pacific children and children living in one-parent families bore the brunt, and that the Government did not start to monitor what was happening until too late.<sup>22</sup>
- 1.28 New Zealand Government Budgets do not describe children as a specific target group for budgetary allocations. Instead, any initiatives directed towards children are spread across the areas of Health, Education, Justice and so on. The Budgets of 2007 and 2008 did include a section entitled "Families – Young and Old". This section was not used in the 2009 or the 2010 Budgets. Although allocations for specific services or initiatives regarding children are noted, there is no collation of these allocations under one heading. It is therefore difficult to accurately measure the extent to which the New Zealand

Government is meeting its Article 4 obligations. There has been additional investment in some sectors of direct relevance to children. There has been no specific reference in Government Budgets to the requirements of Article 4 of the Convention to ensure that specific priority has been given to budgetary allocations for implementation of the economic, social and cultural rights of children, in particular those belonging to economically disadvantaged groups, as was recommended by the UN Committee in 2003.<sup>23</sup>

### **Data Collection**

- 1.29 Statistics New Zealand's collection of data concerning children is not disaggregated in a way that is compatible with the Convention's age parameters. The last report by Statistics New Zealand on children was its 1998 report, "New Zealand Now: Children"<sup>24</sup> which dealt with ages 0 to 14 years. Statistics New Zealand's 2007 "Demographic Trends" report continued to disaggregate its demographic information on children using the 0 to 14 and 15 to 19 years age group parameters.
- 1.30 The recommendations of the UN Committee that New Zealand disaggregate its data collection on children in order to cover all areas of the Convention<sup>25</sup> and to gather disaggregated budgetary allocations on children<sup>26</sup> therefore appear not to have been implemented.
- 1.31 The Ministry of Social Development's 2008 report "Children and Young People: Indicators of well being in New Zealand",<sup>27</sup> a comprehensive survey of indicators in the areas of Health, Care and Support, Education, Economic Security, Civil Rights, Justice, Cultural Identity and Social Connectedness, indicated that it had attempted to present disaggregated data consistent with the Convention where possible, but was unable to do so in many areas. The report did not measure budget allocations across the various areas it covered.
- 1.32 The Paediatric Society of New Zealand with support from the Ministry of Health and other statutory agencies, established the New Zealand Child and Youth Epidemiology Service (NZCYES). NZCYES has developed extensive indicators for monitoring the wellbeing of children and youth, including some which are for those under the age of 18 years, and published regional and national information.<sup>28</sup> In addition, The Youth 2007 national health and wellbeing survey of secondary school students is also collating and analysing useful information on youth wellbeing.
- 1.33 Efforts to authoritatively account for the wellbeing of immigrant children are hampered by a lack of relevant and accessible data on migrant children and country of birth. The majority of the substantial growth within the population categorised as being of 'Asian' ethnicity is as a result of recent immigration trends, but information about country of birth is often not routinely gathered and thus not available for analysis<sup>29</sup>.
- 1.34 Although several Government and non-government organisations track child health and wellbeing, there is a lack of a co-ordinated and sustained cross-agency approach.<sup>30</sup>

### **Articles 42 and 44 (6) - Awareness of the Convention**

- 1.35 Since 2003, there have been some initiatives by Government aimed at promoting the Convention. The 2006 UNCROC Forum was arranged by the Ministry of Youth Development and brought together members of the state and non-government sector with the aim of increasing awareness of the Convention within the state sector. There is also information on the Convention available on the Ministry's website.
- 1.36 The Office of the Children's Commissioner and YouthLaw Inc., a community law service for children and young people,<sup>31</sup> produced a booklet on the Convention aimed at young people entitled "Know Your Rights", which set out and explained each of the Articles of the Convention.<sup>32</sup> However, neither the UNCROC Forum nor the "Know Your Rights" booklet received public promotion or any coverage in the mass media.

- 1.37 The 2010 School Curriculum makes mention of 'human rights' under its Values section.<sup>33</sup> There is no specific mention of the Convention or children's rights being included as part of this. There is, however, considerable work being done by Human Rights in Education, a national non-governmental organisation, towards promoting and implementing human rights based education methods in schools.<sup>34</sup>
- 1.38 There is no evidence that the Government has carried out any form of systemic education or training programmes on the Convention for state and municipal sector professionals who work with children and young people as was recommended by the UN Committee in 2003.<sup>35</sup>

#### **Application of the Convention to local government authorities**

- 1.39 We are concerned at the stance the Government has taken regarding the application of the Convention to local government authorities. Local government authorities in New Zealand, such as city, district or regional councils, have their authority and their powers delegated to them by central government under the Local Government Act 2002.<sup>36</sup> The Act does not expressly exclude the application of international treaties, ratified by central government, to local government authorities.
- 1.40 However, the Government has indicated that it does not consider it necessary to apply the Convention to the functions of local government authorities. In April 2008, the Minister of Local Government stated *"While central government takes its UNCROC commitments seriously, it does not issue directives to local bodies or develop specific procedures for their compliance with the convention."*<sup>37</sup>
- 1.41 ACYA is concerned at the implications of the Government's position. The Local Government Act gives significant authority and autonomy to local government bodies, including many areas which have considerable impact on the lives of children. Local authorities are for example, responsible for the provision of water and sanitation services, public transport, libraries, local and regional parks, and some social services,<sup>38</sup> and have the power to make a wide range of by-laws.<sup>39</sup>
- 1.42 ACYA considers that the Convention clearly applies to local government authorities and that when central government delegates authority to other organisations it has a duty to inform and support those organisations to implement the principles and provisions of the Convention and other human rights treaties. ACYA notes that the UN Committee's reporting guidelines includes a requirement that State Parties provide information on the participation rights of children and young people in decision-making processes in local councils.<sup>40</sup>
- 1.43 In addition, UNICEF New Zealand has recently released a paper which finds that local government authorities have an obligation not to derogate from the obligations under which central government is bound, including the principles of the Convention.<sup>41</sup>

#### **Maintaining the Functions of the Office of the Commissioner for Children (OCC)**

- 1.44 The enactment of the Children's Commissioner Act 2003 was a significant development, which provided the OCC with a distinctive legislative mandate and expanded set of functions, including specific functions regarding raising public awareness and understanding of the Convention and monitoring its implementation.<sup>42</sup>
- 1.45 The current Children's Commissioner, Dr John Angus, is appointed on an interim basis until December 2010. The OCC's offices and administrative functions are now shared with the Families Commission in order to make cost savings.
- 1.46 ACYA considers that the size of the OCC's statutory role requires more funding from the Government than it currently receives and that its independence would be strengthened by reporting directly to Parliament rather than the Minister of Social Development.

## Climate Change

1.47 Climate change is likely to have a substantive impact on the lives of children in New Zealand and Tokelau, Cook Islands and Niue, other islands in the Pacific, and beyond. In particular, the projected impact of climate change on Tokelau may affect the standard of living and the physical, social and economic security of its inhabitants, which would necessarily have implications in respect of the ambit of the Convention and other human rights treaties.

## Legislative developments

1.48 There have been some significant legislative developments of direct relevance to New Zealand's implementation of the Convention. These include:

### The Care of Children Act 2004

1.49 The Care of Children Act 2004 updated New Zealand's custody and guardianship laws and, in doing so, lowered the age at which guardianship expires from 20 to 18 years and thus brought the law more closely into line with the Convention. The Act also provides a stronger statutory basis for the views of the child or young person to be heard through a lawyer appointed for them in Family Court day-to-day care, contact or guardianship proceedings.

1.50 Since the enactment of the Care of Children Act, much of New Zealand's legislation has been amended or updated to reflect the expiry of guardianship at the age of 18. Please see Paragraphs 2.1 - 2.4 below for more information.

### The Crimes (Substituted section 59) Amendment Act 2007

1.51 The Crimes (Substituted Section 59) Amendment Act 2007 repealed the defence, available to parents, guardians and caregivers under section 59 of the Crimes Act 1961, of reasonable force against a child for the purposes of correction. The Act was passed with an overwhelming majority in Parliament, with 113 members voting in favour and only eight members against.

1.52 This important development followed the UN Committee's 2003 Concluding Observations which recommended legislative change in order to prohibit corporal punishment in the home,<sup>43</sup> and considerable work by non-governmental organisations, leaders in the children's movement and the Children's Commissioner.

1.53 The legislation, however, has generated a considerable amount of public debate and protest. It was commonly referred to in the media as the "anti-smacking law". In reaction to the Bill's enactment, some lobby groups generated a petition seeking to overturn the law. The petition collected the requisite 300,000 votes necessary to invoke a non-binding Citizens Initiated Referendum, which was held between 31 July and 21 August 2009. The Referendum asked voters the question "*Should a smack as part of good parental correction be a criminal offence in New Zealand?*" While a minority of eligible voters chose to vote in the referendum, 87 percent of those that did voted 'No' in response to the question.

1.54 Since the referendum, the Government has indicated that it does not intend to amend the law as it currently stands. The Government established a Review Panel which reported to the Prime Minister in December 2009. In addition, a private members Bill<sup>44</sup> seeking to repeal the law was introduced to Parliament on 26 August 2009. However, despite considerable pressure from the lobbyists behind the petition, most Government and Opposition Members of Parliament do not wish to overturn the law and at this stage it appears that the private members bill is unlikely to proceed past its first reading. Public attitudes to physical punishment of children appear to be changing and it appears that fewer parents hit their children.<sup>45</sup>

### Children Young Persons, and their Families Amendment Bill (No. 6)

- 1.55 This Bill followed a comprehensive governmental review of the Children, Young Persons, and their Families Act 1989, which establishes the legal framework of New Zealand's child protection and youth justice systems. The Bill sought to make comprehensive amendments, including raising the age threshold for the special protection measures under the child protection and youth justice systems to include 17 year olds. If enacted, this amendment would have the effect of bringing the legislation into line with the coverage of the Convention per the 2003 recommendation of the UN Committee on the Rights of the Child.<sup>46</sup> Please see paragraphs 2.5, 5.25, 5.27 and 8.6.
- 1.56 However, the Bill has not been progressed by the current Government to its second reading. The current Government has not indicated whether it intends to support the Bill.

The Children Young Persons and the Families (Youth Court Orders and Jurisdiction) Amendment Act 2010

- 1.57 This Act was introduced in 2009 and extends the scope of the Youth Court's jurisdiction and sentencing orders. It does not seek to extend the Youth Court's jurisdiction to include 17 year olds but instead lowers the age threshold for criminal prosecution from 14 years to 12 years in respect of serious offences. The Bill was passed into law in late February 2010 and will come into force in October 2010. Please see Paragraphs 2.9 - 2.10, 5.20 and 8.6 - 8.8 below for more information.

Employment Relations (Breaks, Infant feeding, and Other Matters) Amendment Act 2008

- 1.58 This Act allows for breastfeeding breaks and facilities in workplaces where it is reasonable and practicable to do so. However, it does not allow for paid breastfeeding breaks as recommended by the International Labour Organisation's (ILO) Maternity Protection Convention No. 183.

Corrections (Mothers with Babies) Amendment Act 2008

- 1.59 This Act was passed into law on 25 September 2008. The Act takes into account the best interests of the child by enabling young children of female prisoners to be placed with their mothers in prison until they turn 24 months. However, the Act has not yet come into force.

**2. DEFINITION OF THE CHILD (Article 1)**

- 2.1 As noted in Paragraphs 1.49 - 1.50, the enactment of the Care of Children Act 2004, which provides for the discharge of parental guardianship once a person reaches the age of 18, has catalysed a number of statutory changes which have set the age of 18 as the age of full adult capacity. There is now greater legislative consistency with Article 1 than there was at the time of the 2<sup>nd</sup> periodic report following the enactment of the Care of Children Act and other consequential statutory changes which establish 18 as the age of full adult legal capacity. For example, since 2004 the age of 18 has been established as the age of full capacity for marriage or civil union, standing in contractual arrangements and civil court proceedings and directorship of a limited liability company.
- 2.2 Other anomalies and inconsistencies still remain. The Age of Majority Act 1970, which establishes the legal age of majority at 20, has remained in place but has largely become a legal anachronism as a result of the developments since the Care of Children Act 2004 came into force. However, it is notable that an order placing a child in the guardianship of the Chief Executive of the Ministry of Social Development for care and protection purposes does not discharge until the child turns 20.<sup>47</sup>
- 2.3 A fragmented approach still remains in some areas. In certain cases, age thresholds that are lower than 18 are not inconsistent with the overarching purposes and principles of the Convention. For example, at the age of 16 a young person who is a victim of domestic violence can apply to the Family Court in their own name for a protection order, without the Court needing to appoint a *guardian ad litem*. 16 and 17 year olds may consent to medical and dental treatment, or younger when they meet the common law standard of competency.<sup>48</sup>

- 2.4 New Zealand's criminal justice and care and protection systems vested under the Children, Young Persons and their Families Act 1989 remain inconsistent with the Article 1 requirements of the Convention. In 2003 the UN Committee recommended that the age of criminal responsibility be raised to "an internationally acceptable level" for all criminal offences<sup>49</sup> and that the Children, Young Persons, and Their Families Act be amended in order to cover all persons aged under 18.<sup>50</sup>
- 2.5 As noted above in Paragraph 1.55 above, the Children, Young Persons, and Their Families Amendment Bill (No. 6) sought to extend the special protection measures of the care and protection and youth justice systems to all unmarried persons aged under 18. This would have resulted in almost full compliance with the Convention and implementation of the Committee's recommendation. The Bill remains on the Order Paper, but it is ACYA's understanding that the Government will not move to introduce it.
- 2.6 A recent amendment to the Sentencing Act 2002 enacting a "three strikes and maximum prison sentence" sentencing regime applies to persons aged 18 years or older.<sup>51</sup> Currently, those aged under 15 years who are subject to a term of imprisonment may be held in a youth justice residence rather than a prison. Under-18 year olds can only be sentenced to a term of imprisonment for a purely indictable offence.
- 2.7 The age of criminal responsibility under the Crimes Act 1961 has not changed since the UN Committee released its 2003 Concluding Observations. The minimum age for prosecution is currently set at 10 years for murder, manslaughter and non-imprisonable traffic offences and at 14 years for all other offences.
- 2.8 In 2006 a private members Bill, the Young Offenders (Serious Crimes) Bill sought to reduce the minimum age for criminal prosecution to 10 and remove the jurisdiction of the Youth Court for all offences with a maximum imprisonment tariff of 3 months or more, including summary offences, and for any repeat offence. The Law and Order Select Committee, however, recommended that the Bill not be passed.
- 2.9 As noted in Paragraph 1.57, the Government has enacted the Children, Young Persons, and The Families (Youth Court Orders and Jurisdiction) Amendment Act since it presented its 3<sup>rd</sup> and 4<sup>th</sup> Periodic Report. This will come into effect from October 2010 and lowers the age of criminal prosecution in the Youth Court to 12 years when they are alleged to have committed serious offences.
- 2.10 ACYA is concerned that this legislation is directly contrary to the Convention, the 2007 General Comment on Juvenile Justice and the UN Committee on the Rights of the Child's recommendations in its 2003 report that "New Zealand raise the minimum age of criminal responsibility to an internationally acceptable level and ensure that it applies to all criminal offences."<sup>52</sup> Notably, 49 of the 51 public submissions made on the Bill opposed the lowering of the age threshold to 12 years.

### **3. GENERAL PRINCIPLES OF THE CONVENTION (Articles 2, 3, 6 and 12)**

#### **Article 2 – Non Discrimination**

- 3.1 In 2003 the UN Committee recommended New Zealand develop a proactive and comprehensive strategy to address discrimination.<sup>53</sup> The New Zealand Action Plan for Human Rights could have provided the basis of this, but it has not been formally endorsed by the Government (please see Paragraph 1.20). The Committee also asked New Zealand report on progress against the Declaration and Programme of Action from the 2001 World Conference Against Racism.<sup>54</sup>

#### Inequities for Māori, Pacific and Asian children

- 3.2 In its 2003 Concluding Observations, the UN Committee on the Rights of the Child noted concern at discrimination and comparatively low indicators for Māori, Pacific and Asian children.<sup>55</sup>

- 3.3 Reports from Government agencies, non-governmental organisations and academic research repeatedly show that Māori and Pacific children experience higher rates of disadvantage as evidenced by child mortality rates, infant mortality rates, youth suicide rates, child injury rates, rates of low birth weight, immunisation rates, child smoking rates, child obesity rates, reduced participation in early childhood education, leaving school with no or low qualifications, school suspensions, children living in poor households and disadvantaged neighborhoods, household crowding, having a parent in prison, rates of teenage incarcerations, child victimisation, etc.<sup>56</sup> Please also see Paragraphs vii - xi.
- 3.4 The Ministry of Social Development's 2008 report *Children and Young People in New Zealand: Indicators of Wellbeing 2008* reported that whilst some indicators for Māori and Pacific children have improved marginally, overall they continue to suffer disproportionately detrimental outcomes compared to other groups of children and young people. While some gains have been made, economic, health and education indicators continue to compare unfavourably.
- 3.5 Conversely, *Children and Young People in New Zealand: Indicators of Wellbeing 2008* reports that Asian children have favourable health and education indicators compared to other ethnic groups. However the Asian ethnic grouping includes many different groups and does not disaggregate out the experiences of, for example, many refugee and new migrant children or particular ethnic and language groups who may be experiencing disadvantage.
- 3.6 Recent research<sup>57</sup> on the settlement experiences of immigrant youth in New Zealand supports the notion that these young people are frequently subjected to 'racism, discrimination and prejudice' on the basis of ethnic or national origin, which breaches their fundamental rights to non-discrimination.

#### Children with Disabilities

- 3.7 ACYA is concerned that children with disabilities and long term health issues experience significant inequalities in early childhood education, the primary and secondary school system, and in the transition to work. This is despite the Government's education policy focusing on the benefits of ensuring that all children with disabilities are able to participate fully at their local school alongside other children of the same age. Inclusive education is acknowledged within the New Zealand Disability Strategy as central to ensuring inclusive communities.<sup>58</sup> Further information is provided below at Paragraphs 6.28 - 6.31 and 7.11 – 7.16.

#### Inequities for other children living in difficult circumstances

- 3.8 Other groups of children living in difficult circumstances also experience inequity. For example, children in very low income families, children whose parents are receiving a benefit, and children of prisoners have poorer health status. Children living in isolated and rural communities may have considerable difficulties accessing services. Children living in New Zealand's least deprived neighbourhoods have the same infant mortality rates as children in Norway or Japan while children living in the most deprived neighbourhoods have infant mortality rates that are worse than all but two OECD countries.<sup>59</sup>

#### Economic disparities

- 3.9 Children continue to be inordinately affected by poverty and economic inequality – please see Paragraphs 6.32 - 6.52.
- 3.10 New Zealand, with a GINI coefficient of 34 for the mid-2000s, is one of the least equal counties in the OECD, sharing a ranking of 23 out of 30 countries.<sup>60</sup> Changes announced in the May 2010 Budget that include personal and corporate income tax cuts, Goods and Services Tax increases on consumption products including food and reductions in early childhood education, will widen the income gap.<sup>61</sup>

#### Bullying

- 3.11 Bullying is an issue of serious concern for children in school and early childhood education (please see Paragraphs 5.17 and 7.6 - 7.7) and out of school. Children experiencing mental illness, or who are gay,

lesbian or transgender or who are refugees or migrants describe bullying as being about discrimination.<sup>62</sup>

#### Discrimination on the basis of age

- 3.12 The Human Rights Act 1993 defines “age” as a prohibited ground of discrimination but also states that “age” as grounds of discrimination does not apply to any child under 16 years<sup>63</sup>. The Act therefore does not provide children aged under 16 with any protection from discrimination on the basis of their age.
- 3.13 ACYA considers that there is no real justification for the limitation to the coverage of age discrimination to continue. All persons in New Zealand should enjoy the right to freedom from age discrimination. The Human Rights Act should be amended accordingly with exclusionary sections being added to the Act to ensure the protection of children and reflect public policy considerations. Such sections already exist under Part 2 of the Act in respect of other discrimination grounds.<sup>64</sup>
- 3.14 Children are discriminated against in various statutory provisions. A person under 18 years who has a child may be unable to make a will leaving money or property to the child without first getting leave from the Family Court. Children and youth who have been adopted and are under 20 years have no entitlement to information about their biological parents while children aged 16 and 17 years who were conceived with donor sperm or ovum can access information about the donor if the Family Court gives its approval. On a more positive note, the Evidence Act 2006 where a child complainant is to give evidence in a criminal case the Court must first consider whether the child should be permitted to give evidence from outside the courtroom, from behind a screen or by means of a video-recording made in advance of the hearing

### **Article 3 – Best Interests of the Child**

#### Absence of a comprehensive policy for children

- 3.15 Please see Paragraphs 1.18 to 1.25 above.

#### Strengthening the consideration of children in political decision-making processes

- 3.16 There is no coherent system or means by which children’s issues are placed at the centre of Government decision-making. It follows that there is only limited, disjointed monitoring of the effects of legislation, policy and programmes on children.
- 3.17 Every Child Counts,<sup>65</sup> a lobby group for children supported by thousands of individuals and many organisations (including ACYA) has been calling for a coherent and comprehensive approach which includes a senior Minister for Children, a Parliamentary Select Committee, child impact reporting, and incorporation of the Treaty of Waitangi and the Convention on the Rights of the Child into relevant legislation.<sup>66</sup> Neither the previous nor current Government has shown any intention to consider such measures.
- 3.18 Please also see Paragraphs 1.21 - 1.22 about the recommendations of the Public Health Advisory Committee to strengthen the consideration of children in political decision-making.
- 3.19 The current Government is making widespread changes to the role of the state which affect all sectors. The Committee may wish to enquire what processes the Government uses to ensure that the best interests of the child are considered when the Government is undertaking such reforms.

#### Allocation of economic and budgetary resources

- 3.20 As noted in Paragraphs 1.26 - 1.28, while the absence of disaggregated budgetary data makes it difficult to assess the overall extent to which the Government is targeting its spending towards improvements in outcomes for children and young people, the Committee should consider the changing pattern of investment signaled in the 2010 budget to programmes such as Fresh Start which includes unproven and

punitive initiatives such as “boot camps and extensions of residential orders for children in the juvenile justice systems.

- 3.21 There is no budgetary framework that sets the best interests of children as a criterion for Government budgetary decisions or resource allocations.

#### Judicial Consideration of Article 3

- 3.22 The application of Article 3 in administrative decision making was recently considered by the Supreme Court in *Ye v Minister of Immigration*<sup>67</sup> (as was Article 12 – please see below at Paragraph 3.32). The *Ye* case was an appeal by New Zealand-born children against the decision by the Department of Immigration to deport their parents, who were unlawfully in New Zealand. A central issue of the case was the extent to which Immigration officers are required to make inquiries concerning children. The Supreme Court found that the best interests of the child per Article 3 in such a case should be granted “due weight” (per Article 12), but not, in the particular context, “paramount weight” which the Court considered would disproportionately fetter other relevant considerations.<sup>68 69</sup>

### **Article 6 – the right to life, survival and development**

#### Infant Mortality

- 3.23 Māori and Pacific children, and children living in the most deprived areas, continue to experience high rates of infant mortality<sup>70</sup> – please see Paragraphs 3.3, 3.8 and 6.3.

#### Youth Suicide rates

- 3.24 In 2004 - 2006, New Zealand had the second highest male and youth female youth suicide death rates among 13 OECD countries. In 2006, the suicide death rate for Māori youth was nearly twice that of non-Māori.<sup>71</sup> Please also see Paragraphs 6.8 and 6.26.

### **Article 12 – Respect for the views of the child**

#### Legislative developments

- 3.25 In 2003 the UN Committee recommended the Government undertake a review of legislation and regulations affecting children, to ensure the right of each child to be heard and have his or her views taken into account.<sup>72</sup> This has not happened.
- 3.26 Some legislative developments have, however, enhanced the ability of children and young people to be heard in judicial proceedings. The Care of Children Act 2004 provided that in proceedings under that Act, the child must be given reasonable opportunities to express their views on matter affecting them and that those views must be taken into account.<sup>73</sup> The Care of Children Act also provides that a lawyer appointed by the Family Court to represent the child in such proceedings must facilitate the representation of the child’s views to the Court.<sup>74</sup> It also breaks new ground by giving children a right of appeal against Family Court decisions as to their guardianship, day-to-day care and contact although this right is constrained by complex procedural formalities which require the child to have a litigation guardian. Please also see Paragraph 3.14 about the Evidence Act 2006.

#### Representation in local government

- 3.27 Some local government authorities in New Zealand have established Youth Councils in order to provide young people with an avenue for participation in municipal decision-making structures. However, the amendments to the Local Government Act amalgamating seven councils in Auckland into one authority covering a third of the population, will have the effect of disestablishing the current Youth Councils in the region. To date, it is unclear as to the Government’s position regarding the future of Youth Councils in the Auckland region. A Member of Parliament’s Supplementary Order Paper proposing the legislative

enactment of a Youth Council was voted down upon its introduction to Parliament during the Bill's Third Reading.<sup>75</sup> Children are legally unable to be appointed to Community Boards which are advisory bodies which give Councils the benefit of their local knowledge and views. Given that this new 'supercity' local authority will contain over one third of New Zealand's population, it is an important signal to send about local citizenry for children and young people.

- 3.28 ACYA is concerned that the Government does not recognise any obligation on the part of local government authorities to meet the requirements of the UN Convention on the Rights of the Child. Please see Paragraphs 1.39 to 1.43 above.

#### Other areas

- 3.29 In addition to the entitlements outlined in Paragraph 3.26 above, children aged 16 years and under are entitled to free representation by experienced Court-appointed legal counsel (entitled a Youth Advocate)<sup>76</sup> in proceedings in the Youth Court. The age limitations of the Children, Young Persons, and their Families Act 1989 mean that 17 year olds charged with a criminal offence are not entitled to representation by a Youth Advocate, as this entitlement only exists within the Youth Court jurisdiction.
- 3.30 Children and young people who are held in custody at a Child, Youth and Family youth justice or care and protection residential facility have an entitlement to make a complaint about any matter arising from their care or treatment in the residence. Any complaint must be investigated promptly by the staff of the residence and the child or young person advised of the outcome.<sup>77</sup> If dissatisfied with the outcome, the child or young person can have the complaint referred to an independent Grievance Panel which, if the complaint is upheld, can make recommendations which are almost always implemented. In the last five years, after an independent report commissioned by Child, Youth and Family was very critical, the complaints system has been improved with more robust systems for recruitment and training of panel members and the appointment of a National Grievance Co-ordinator to review complaints and follow up on Grievance Panel recommendations. While the Regulations have given residents a right to an advocate to support them in making a complaint for 14 years there is no provision for payment of advocates and independent advocates have not been available. Some residences have in recent years recruited volunteer lay advocates, but internal documentation shows that residents lodging complaints are rarely represented by an advocate.<sup>78</sup>
- 3.31 Although the Education Act 1989 provides that appointments to secondary school Boards of Trustees must include a student representative,<sup>79</sup> there is little external support available for student representatives to assist them with the difficult task of representing a range of student interests and views. At the Board level, they are heavily outnumbered by school staff and parents, and risk alienating the adult members if they are robust in their advocacy for student interests.
- 3.32 As noted in Paragraph 3.22, *Ye v Minister Immigration* the Supreme Court considered the application of Article 12 in respect of the duties of the Department of Immigration when determining the deportation of the parents of New Zealand-born citizen children. The Supreme Court upheld and applied the provisions of Article 12 in considering the obligations of Department of Immigration officials charged with administering such matters, stating "*we cannot accept the Crown's argument that officers are never obliged to look beyond what the parents may advance in the interview process.*"<sup>80</sup>
- 3.33 The United Nations Youth Association of New Zealand (UNYANZ) has held three annual events where young people have discussed issues of concern and developed Youth Declarations which they have presented to political leaders.<sup>81</sup>

#### **4. CIVIL RIGHTS AND FREEDOMS (Articles 7, 8, 13 - 17 and 37(a))**

##### **Article 7 - Name and Nationality**

###### Citizenship by birth – Citizenship Act 1977

- 4.1 The Citizenship Act 1977 was amended to require that in order for a child born in New Zealand after 1 January 2006 to be granted citizenship by birth, one of the child's parents must be a New Zealand citizen or permanent resident.<sup>82</sup> Previously all children born in New Zealand were entitled to be citizens.
- 4.2 We are concerned that this can lead to uncertainty regarding the nationality of children born in New Zealand to non-citizen/resident parents. Children born in New Zealand to parents unlawfully in New Zealand are particularly vulnerable. While these children retain an entitlement to access education and health services in New Zealand pending a decision about their parents' application for citizenship, it adds to the stress and uncertainty about their future and the strong possibility of their deportation along with that of their parents and siblings.

##### **Article 8 – Preservation of Identity**

- 4.3 A child's right to preservation of identity is not adequately protected. The Adoption Act 1955 is yet to be updated despite ongoing calls for major reform along the lines of the proposals in the Law Commission report in 2000. New Zealand laws provide little legal recognition to traditional Māori whāngai (adoption arrangements). Please also see Paragraphs 3.14 and 5.31 – 5.33.
- 4.4 In 2003, the UN Committee welcomed the New Zealand Government's then stated intention to reform adoption laws. Shortly afterwards adoption reform was dropped from the Ministry of Justice work programme and virtually no progress has been made in the intervening seven years.
- 4.5 Sections 13 to 27 of the Status of Children Act 1969 (brought into force in 2004) provide the legislative basis for paternity and maternity in respect of children conceived through artificial reproductive technology. However, the Act does not confer upon the child any right to information as to the identity of the persons who donated ova or sperm for these purposes.
- 4.6 A large number of New Zealand children do not have an identified father on their birth certificate because New Zealand's birth registration laws did not ensure that the child's father's was named unless he was married to the mother. Important changes made by the Care of Children Act 2004 and the Births, Deaths, Marriages and Relationships Registration Amendment Act 2008 should result in the name of the father appearing on the child's birth certificate in the majority of cases.<sup>83</sup>

##### **Articles 13 - 15 - Freedom of expression, thought, conscience, religion and association**

- 4.7 The New Zealand Bill of Rights Act 1990 provides the legislative basis for the legal rights to freedom of expression, thought, conscience, religion and association, subject to limitation where those rights are contrary to the provisions of other statutes<sup>84</sup> or where those rights can be reasonably limited in such a manner as can be "demonstrably justified in a free and democratic society."<sup>85</sup> In addition, the Care of Children Act 2004 confers upon parents and guardians the right to decide for or with the child, the child's religious denomination and practice.<sup>86</sup> A parent or guardian can also withdraw their child from any religious classes in a state primary school.<sup>87</sup>
- 4.8 There is concern by non-government organisations about human rights abuses occurring in New Zealand as a result of forced underage marriages, which, whilst illegal, still occur in some communities. This has led to a Parliamentary Petition being lodged by Pacific Women's Watch calling on the House to investigate the prevalence of such practices in New Zealand and to initiate legislation to counteract it.<sup>88</sup> The Petition was referred to the Justice and Electoral Select Committee for consideration.

- 4.9 Submissions in support of the Petition lodged by Shakti Community Council Inc, an Auckland-based non-governmental organisation delivering services to migrant and refugee women, cited New Zealand case examples of this practice involving girls as young as 14 who, as a result, suffered sexual and physical abuse and psychological trauma.<sup>89</sup> The submissions note that the Marriage Act 1955 does not provide adequate protections against such practices and has recommended extensive amendments.<sup>90</sup> There is currently no explicit requirement in section 18 of the Marriage Act requiring the consent of a minor party to a marriage. The Justice and Electoral Select Committee is yet to release any written report regarding the issue.
- 4.10 The Housing NZ national tenancy agreement issued in 2009 prevents a person subject to Court bail from residing at a Housing NZ residence without Housing NZ permission, unless that person was an existing tenant or partner of a tenant. This policy was subject to criticism that it was discriminatory and could lead to a child or young person being separated from their parents or extended families.<sup>91</sup>
- 4.11 There have also been reports of local councils and schools installing ‘mosquito’ alarms, which emit a high-pitched frequency audible only to persons aged under 25, to deter young people from frequenting school or council property for the purposes of reducing graffiti or vandalism. We note that this practice has been criticised as discriminatory by overseas human rights groups.<sup>92</sup>

#### **Article 16 – the right to privacy**

- 4.12 The Privacy Act 1993 provides for general privacy rights for all persons, including children. The only specific limitation on the basis of age authorises an agency to refuse disclosure of personal information to a person aged under 16, if that information is considered “contrary to their interests”.<sup>93</sup>
- 4.13 The Law Commission is currently undertaking an extensive review of New Zealand’s privacy laws, including a review of the Privacy Act 1993.<sup>94</sup> The Commission’s review of the Privacy Act includes whether additional safeguards should be added to the Act to protect children<sup>95</sup> and whether an age of capacity for exercising rights under the Act should be established.<sup>96</sup>

#### **Article 17 – Access to appropriate information**

- 4.14 Both the Broadcasting Standards Authority (BSA) and Advertising Standards Authority (ASA) guidelines and codes of practice, which regulate the broadcasting and advertising sectors, refer to the principles of the Convention. However, both the BSA Television Code and the ASA Code for Advertising for Children define “children” as persons aged under 14 years, in reference to the Children, Young Persons, and their Families Act 1989,<sup>97</sup> rather than through application of the Convention’s definition. The codes accordingly do not confer any specific obligations upon broadcasters or advertisers regarding material or information aimed at, or likely to be accessed by, 15 to 17 years olds.

#### **Article 37(a) - Right not to be subject torture, or other cruel, inhuman or degrading treatment**

##### Detention of children and young people in police cells

- 4.15 The 2006 Ministry of Social Development Review and Analysis of Youth Justice Custody Placements (the Saxon Report) showed there was an 18 percent increase in police custody of young people between 2002 and mid 2006. Between January 2002 and July 2006, 224 young people were held in police cell custody for durations of between 7 days and 15 days. Ministry of Social Development advised ACYA on 3 April 2009 in response to an Official Information Act request, that for the year to June 2008, 284 children (down from 680 for 2005) were detained at an average of 2.2 bed nights. The Children’ Commissioner advised they have figures for year to 30 June 2009 that show 117 children or young persons were held for an average of 2.1 days.

4.16 Police cells are not designed to accommodate persons of any age for any prolonged period. Whilst the ongoing detention of children and young people in police cells is governed by statute,<sup>98</sup> it is a last resort measure that happens primarily due to a lack of availability of beds in Child, Youth and Family (CYF) youth justice residences. In ACYA's view this injurious standard of custodial environment for a child or young person raises concerns that New Zealand is in breach of Article 7 of the International Covenant on Civil and Political Rights, and the Beijing Rules on the Administration of Juvenile Justice as well as the Convention on the Rights of the Child. Please also see Paragraph 1.11.

#### Monitoring detention of children and young people

4.17 The Government has ratified the Optional Protocol to Convention against Torture (OPCAT) and thus is required to monitor places of detention.

4.18 The Human Rights Commission is the Central National Preventative Mechanism (NPM) responsible for co-ordinating monitoring and reporting on the Government's compliance with OPCAT. The Children's Commissioner and the Ombudsmen are joint NPMs responsible for monitoring youth justice and care and protection residences. The Independent Police Conduct Authority (IPCA) is responsible for monitoring police detentions, including police cell detentions and some court cell detentions of children and young people. Military detention is monitored by the Inspector of Service Penal Establishments.

4.19 The Human Rights Commission published its second OPCAT annual report in December 2009.<sup>99</sup> There is no specific mention of police cell detention of children and young people in the IPCA's section of the report and therefore it is unclear to what extent this aspect was monitored under the OPCAT criteria.<sup>100</sup> We consider that, given the vulnerability of children and young people subject to police cell detention, it is imperative that this issue is specifically monitored and reported on as part of each OPCAT report.

4.20 The Children's Commissioner identified a number of areas for improvement in its report on youth justice and care and protection facilities. He noted that there is a lack of Standard Operating Procedures regarding secure care, powers of punishment and discipline, searches, and the rights of child and youth residents. He also noted his concern at both the criteria and processes to reporting critical incidents to the national office and problems with addressing issues raised in audit reports.<sup>101</sup> Please also see Paragraph 3.30.

### **5. FAMILY ENVIRONMENT AND ALTERNATIVE CARE (Articles 5, 18(1-2), 9 - 11, 19 - 21, 25, 27(4), and 39)**

#### **Articles 5, 18 (1 - 2) Parental guidance and responsibilities**

5.1 New Zealand children live in a diverse range of families, often reflecting the child's cultural background and parental circumstances. Family structures vary from small nuclear family units to extended, interdependent, intergenerational family groups. Migrant and refugee children may have parents living in other countries. Children whose parents or caregivers are ill or disabled may have additional responsibilities in providing care or income.

5.2 In 2006 twenty-six percent of children lived in one parent families.<sup>102</sup> New Zealand has more sole parent families with children than any other OECD country except the United States.<sup>103</sup> Māori are disproportionately represented as sole parents.

5.3 New Zealand has a relatively low entitlement to paid parental leave<sup>104</sup> compared with similar countries.<sup>105</sup> Parents who are employed or self employed and meet certain criteria about their employment are entitled to state funded paid parental leave if they are employed or self-employed for up to 14 weeks. This may be shared between both parents. In 2005/06, an evaluation found that two-thirds of all women in paid work in the immediate period before giving birth or adopting a child took paid parental leave. Most women returned to paid employment after six months but would have preferred to have waited until their baby was older.<sup>106</sup>

- 5.4 Increasingly children under the age of two are being placed in early childhood care and education centres, as their parents are working to obtain family income. The Office of the Children’s Commissioner is researching the use of out of home childcare, particularly for children under two years. Please also see Paragraphs 6.46 and 7.17 - 7.18.
- 5.5 New Zealand has a high rate of incarceration at 199 prisoners per 100,000 population and this rate is steadily increasing.<sup>107</sup> This means that New Zealand has a high rate of children of prisoners. These children are usually invisible in policies and practices around the arrest, sentencing, incarceration, visiting, and the health, educational, social and economic effects of parental imprisonment, and their needs are rarely a priority.<sup>108</sup>
- 5.6 In April 2010 the Government released “Whānau Ora: Report of the Taskforce on Whānau Centred Initiatives”. (“Whānau” refers to Māori who share common descent and kinship and “Ora” can be roughly translated as “wellbeing”). The Taskforce’s vision of whānau-centred services is that they are focused on the whānau as a whole, build on whānau strengths and capacity, and are integrated, comprehensive and shaped by Māori values, aspirations and world views. This would require major changes to the delivery of social, health and other services from vertical integration to horizontal integration within specific communities of high need.
- 5.7 Whānau Ora services have the potential to fulfil the UN Committee’s 2003 recommendation that state assistance to Māori families respects and supports traditional family structures.<sup>109</sup> The Government has appointed a Minister of Whānau Ora, the Hon. Tariana Turia who is Co-leader of the Māori Party. Pilot funding was announced in the 2010 Budget, based on taking funding from the government’s Pathways to Partnerships programme (a Ministry of Social Development programme to strengthen community-based family, child and youth focused services) and the Ministry for Maori Development.<sup>110</sup> There has been discussion among Pacific communities of the potential benefits of a similar approach for Pacific peoples.<sup>111</sup> A word of caution is that this programme will receive only preliminary funding and while there is considerable political and public support for the idea of integrating services and locating these within communities of highest need, it does not address underlying determinants of social disadvantage such as joblessness, inadequate incomes, and lack of investment in education for Māori, Pacific, disabled and new migrant children.

#### **Article 19 – Protection from all forms of violence and maltreatment**

- 5.8 In 2003 the UN Committee on the Rights of the Child expressed concern at the prevalence of child abuse in New Zealand, and said that services aimed at preventing abuse were insufficiently resourced and coordinated. The Committee recommended an expansion of services, prevention programmes, and improved co-ordination.<sup>112</sup>
- 5.9 Violence against children remains a serious problem in New Zealand. In the five years to 2005, 36 children under 15 years died as a result of assault and the assault death rate for children under 5 years was 1.6 deaths per 100,000.<sup>113</sup> The Family Violence Death Review Committee’s first annual report states that on average 10 children were killed per year as a result of family violence between 2006 and 2008.<sup>114</sup>
- 5.10 In 2008/09, Child, Youth and Family identified 10,938 cases of emotional abuse, 2,855 cases of physical abuse; 1,126 cases of sexual abuse; 4,677 cases of neglect; 4,256 cases of behavioral difficulties; and 106 cases of self harm – a total of 23,958 cases. Some children may have been recorded in more than one category and so it is not known how many children were identified as having been abused or maltreated.<sup>115</sup>
- 5.11 There have been some positive initiatives, including the cross-sector Taskforce for Action on Violence within Families; the creation of 45 child advocate positions to encourage communities to take action for the safety and wellbeing of children affected by family violence; the monitoring framework agreed between the Children’s Commissioner and Child Youth and Family; the work of Family and Community Services adding to the potential for better coordination of Government and non-governmental support

for families and children; and recently introduced campaigns to prevent babies being shaken, improve co-ordination between hospital and care and protection services, and improve data collection.

- 5.12 In 2009 the Government eliminated 18 positions for Community Liaison Social Workers.<sup>116</sup> Their primary responsibility was community, professional and inter-agency education on child abuse prevention and the development of protocols for reporting child abuse. These positions had been established because the Government had considered this approach would be more effective than legislation for mandatory reporting.
- 5.13 The Child Maltreatment Prevention work being led by the Ministry of Social Development for the Taskforce for Action on Violence in the Family was to report in mid-2009. This report was delayed and there is currently no publicly available information on the Taskforce's approach to reducing child maltreatment. The Children's Commissioner hosted the Independent Experts Forum on Child Abuse in March 2009. The report of the Independent Experts Forum on Child Abuse, including recommendations, was received by the Minister and made public in November 2009. There has been no indication as to whether the recommendations will be adopted.
- 5.14 In 2009 reports of considerable delays in Police response to reports of child abuse led to an investigation by the Independent Police Conduct Authority. Some of the delays were of five or more years during which time the child was still living with the alleged perpetrator. The Authority has released Part 1 of its Inquiry. There were serious service failures identified in five police areas in respect of investigating child abuse. The Authority made 34 recommendations about priorities, policies, structures, management and investigation of cases, recording, and audit. The Police Commissioner has stated that he will act to implement them as quickly as possible. Of grave concern was the attitude in some areas to child abuse investigations being of low priority and references to it "not being real policing" with specialist investigators as "poor cousins." The Authority recognised positive initiatives had been made by the Police.<sup>117</sup>
- 5.15 The Law Commission has drafted a Crimes (Offences Against the Person) Amendment Bill which the Government intends to introduce to Parliament in 2010. The Bill increases the maximum penalty for child ill treatment and neglect; creates a "new offence for those living with a child or vulnerable adult, of failing to take reasonable steps to protect such a victim from any known risk of death, serious injury or sexual assault"; and extends parental statutory duty by introducing an additional requirement for parents to take reasonable steps to protect a child from injury. The Bill limits injury to actual bodily injury, and psychological or emotional injury is excluded from the provision.<sup>118</sup>
- 5.16 The Domestic Violence Act 1995 provides that children are covered by a protection order protecting their parent.<sup>119</sup> However, the Act does not define persons aged under 18 who are married or in a civil union as a "child" for this purpose.<sup>120</sup> In addition, the Act requires that all children aged under 16, and in some cases aged 16, may only apply for a protection order through a representative appointed by the Court. The procedure for applying for a protection order is complex and, as such, this places under 17 year olds at a disadvantage when seeking such protection. There is no power under the Act for the Court to appoint a lawyer for a 17 year old, and for younger children, such an appointment is discretionary and rarely occurs.<sup>121</sup> However, an amendment to the Act coming into force on 1 July 2010 will enable police officers attending the scene of a domestic violence incident to serve the person responsible for the violence with an on-the-spot protection order. In doing so, a police officer must take into account the welfare and best interests of any children affected.<sup>122</sup>
- 5.17 Addressing bullying, harassment and abuse in early childhood centres and schools is one of the priorities identified in the New Zealand Action Plan for Human Rights 2005. Please see Paragraphs 3.11 and 7.6 - 7.7.

#### Corporal Punishment

- 5.18 Please refer to Paragraphs 1.51 to 1.54 above.

## Gangs

- 5.19 There are estimated to be 3,000 to 3,500 patched gang members and associates in New Zealand. Many are parents. Youth gangs have emerged since the 1990s, usually in poorer urban areas with limited support for young people. Gangs are often associated with violence, illicit drugs and other criminal activity.<sup>123</sup>
- 5.20 A comprehensive community wide approach to youth gangs in the Counties Manukau area of the Auckland region has had positive effects.<sup>124</sup> This could be undermined by government changes around youth justice – please see Paragraphs 1.57, 2.9 – 2.10, and 8.6 - 8.13.

## **Article 39: Rehabilitation and reintegration of victims of violence**

- 5.21 The Government, through its Accident Compensation Corporation (ACC), has funded counselling and therapy for mental injuries caused by sexual abuse. In October 2009 the criteria for funding changed, despite protests from survivors, professionals, professional organisations, advocates, and the researchers whose research was used to support the changes.
- 5.22 Anecdotal evidence suggests that the changes are deterring many who have been raped or sexually assaulted from even trying to get help through ACC. It appears that almost nine out of ten claims from sexual abuse victims are declined by ACC (often after long delays).<sup>125</sup> To receive help a child has to be diagnosed with a mental illness as defined by the American Psychiatric Association Diagnostic and Statistical Manual IV. This may require sessions with different assessors, repeated telling of deeply personal stories, and significant travel. Children are now often being declined because they are considered to have a pre-existing or co-morbid diagnosis, or have lived in a dysfunctional or violent environment, or been fostered. The new ACC Pathway does not include access to traditional pathways of healing for Māori children and is thus culturally unsafe and inappropriate. If approved, the planning of treatment and evaluation of progress may be done by an ACC appointed professional without training or experience in treating traumatised children. The Government has established a review of the changes.<sup>126</sup>
- 5.23 Before the changes to ACC child victims of other forms of violence and maltreatment had less opportunity to access counselling and therapy with professionals trained in the area, than did child victims of sexual abuse. The needs of these children are still to be addressed.

## **Articles 9, 20 and 25 - Children in Alternative Care**

- 5.24 There are about 4,700 children in care and protection placements outside their home within the framework of The Children, Young Persons, and Their Families Act 1989.<sup>127</sup> The principles of this Act state that intervention into family life should be the minimum necessary to ensure the safety and protection of a child or young person and that removal should only occur where there is a serious risk of harm.<sup>128</sup> The Act also provides that the wishes of a child or young person are to be considered with weight appropriate to the circumstances at hand.<sup>129</sup> Except in matters where urgency is required or the child is already in state custody, all care and protection proceedings must involve an initial consideration by a Family Group Conference.<sup>130</sup>
- 5.25 The current legal framework under the 1989 Act was to be amended by the Children, Young Persons, and Their Families Amendment Bill No. 6. This Bill sought to strengthen the collaboration and accountability of agencies' involved with any child or young person subject to a care and protection intervention, including information sharing. The Bill also sought to provide a greater level of state support for young people transitioning from care to independence. This was to continue until the young person turned 25. Currently, while some transition services are available in the community, the Act's current age limitations and lack of statutory obligation prevent provision and obligation of ongoing support. This Bill has not progressed under the current Government. Please see paragraphs 1.55 and 8.6.

- 5.26 Children with disabilities in foster care are at greater risk of abuse and are less likely to be reunited with their family of origin. There are over 500 children with disabilities under the care of Child, Youth and Family and in care and protection placements outside their home.<sup>131</sup>
- 5.27 Currently, 17 year olds fall outside the jurisdiction of the Act, unless an order has been made placing them under the guardianship of the Chief Executive of the Ministry of Social Development, which is rare. The No. 6 Bill sought to redress this by including 17 years olds within the special protection measures contained within the Act. However, as noted in Paragraph 1.56 above, the No. 6 Bill has not progressed to its Second Reading.
- 5.28 There has been some progress in promoting the rights of children under state care. Child, Youth and Family have developed a Children's Charter, outlining a child or young person's legal rights which is provided to both children and carers. However, it is felt that the Charter should be promoted more widely to ensure that all organisations contracted by Child, Youth and Family are providing all children in their care and their social workers with copies.
- 5.29 There is need for greater provision of funding for specialist training for social workers. Prospective amendments to the Social Workers Registration Act should ensure that more child protection social workers are registered, although the volume of information required to obtain registration may render the process too onerous for some.
- 5.30 Child, Youth and Family have developed a formalised process to review and investigate complaints. Because this is not a statutory procedure and information on this process is not widely distributed throughout the sector, it is not easy to assess its effectiveness. The Children's Commissioner continues to provide independent monitoring of Child, Youth and Family and can independently investigate any decision or omission under the Act.<sup>132</sup> The Commissioner is also the designated Convention Against Torture National Preventative Mechanism for reviewing secure care and youth justice facilities.

#### **Article 21 - Adoption**

- 5.31 In the last 30 years, there have been six major reports and reviews proposing changes to the Adoption Act 1955, but none has been acted on. New Zealand's adoption laws are inconsistent with the Convention in many ways. For example, the best interests of the child is not the paramount consideration when decisions are made about adoption; there is no mechanism for the child's views to be ascertained and taken into account; the Court is not required to take into account cultural factors affecting the child's relationship with family; and New Zealanders can adopt children from countries which are not parties to the Hague Convention on Inter-country Adoption without any restrictions and without any scrutiny by the New Zealand courts or authorities.<sup>133</sup> Please also refer to Paragraph 4.3 about legal recognition of traditional Māori whangai, and 3.14 about discrimination.
- 5.32 In 2003 the Government indicated to the Committee its intentions to reform adoption laws in line with the recommendations from the Law Commission's comprehensive 2000 report, "Adoption and its Alternatives: A Different Approach and a New Framework." The Committee welcomed this and made recommendations as to what should be included in the reform. There has been no progress at all on adoption law reform and the current Government has indicated that is a low priority.
- 5.33 The archaic adoption laws remain an obstacle to the Government ratifying the Optional Protocol on the Sale of Children which New Zealand signed in 2000 – please see Paragraph 9.1.<sup>134</sup>

#### **Article 27 (4) – Recovery of Maintenance for the Child**

- 5.34 The Child Support Act 1991 provides the legislative framework for child support. The objectives of the 1991 Act focus on parents and especially the obligations and responsibilities of the non-custodial parent. The "Report of the Working Party to the Child Support Review 1994" (the "Trapski Report") made many recommendations for change but these have been largely ignored.

5.35 The concept of the welfare of the child is missing from the Act. Other issues include the way in which child support liability calculations can cause inequity and be destructive to harmonious relationships but not protect the custodial parent and children from economic hardship; the avoidance of responsibility by some liable parents; and the perception that the Act is punitive towards liable parents. The Minister for Revenue says he intends to review the Act.<sup>135</sup>

## 6. BASIC HEALTH AND WELFARE (Articles 6, 18 (3), 23, 24, 26, and 27(1 - 3))

### Article 24 - Right to health and health services

6.1 In 2003 the UN Committee made extensive recommendations about what New Zealand could do to improve child health. Implementation of the Committee's recommendations about health has been at best patchy.<sup>136</sup>

#### International comparisons and health equity

6.2 The 2009 OECD report, *Doing Better for Children*, in its policy focused measures of child wellbeing, ranked New Zealand 29<sup>th</sup> out of 30 countries for health and safety and 24<sup>th</sup> out of 30 for risk behaviors.<sup>137</sup>

6.3 Infant mortality rates are higher for Māori and Pacific children and those living in the most deprived areas. New Zealand has high rates of injury morbidity and mortality, youth suicide, Sudden Unexplained Death in Infancy and communicable diseases such as acute rheumatic fever, compared with similar countries. There are marked inequities between different ethnic groups across these indicators, in risk factors, such as obesity and smoking, and access to preventative measures such as immunisation.<sup>138 139</sup>  
<sup>140 141 142 143</sup> Please also see Paragraph 3.2 - 3.4 and 3.8.

6.4 These inequities illustrate the effects of the lack of consideration of children in policy decision-making, discrimination, colonisation, poverty, poor housing and difficulties in accessing primary health care – please see Paragraphs vii - xi, 1.18 - 1.24, 1.26 - 1.28, 3.1 - 3.22, 6.13 - 6.17, 6.25, and 6.32 - 6.52.

6.5 Breastfeeding rates at birth are consistent with other OECD countries. The rates are low at six weeks, especially among Māori and Pacific women. Exclusive breastfeeding prevalence drops sharply in the first six weeks after birth and then continues to decline as partial and artificial feeding becomes more common.<sup>144</sup> Please see paragraph 6.19.

6.6 While immunisation coverage has been increasing in New Zealand, rates have remained low compared to other developed countries. New Zealand immunisation rates were ranked 23rd out of 25 OECD countries in a UNICEF report.<sup>145</sup> The latest information shows that 64 percent of children were fully immunised at six months and 69 percent were fully immunized at 18 months.<sup>146</sup> The lowest immunisation rates are among young children. Maori children, and/or those living in the most deprived areas.<sup>147</sup> New Zealand children have higher rates of vaccine preventable diseases than children in comparable countries.<sup>148</sup>

6.7 Among 24 OECD countries, New Zealand has the highest rates of deaths by injury and accidents in the under 19 year age group.<sup>149</sup> Injury is the leading cause of death for children outside the perinatal period.<sup>150</sup> There are ethnic differences in injury related hospitalisation rates and for children living in the more deprived areas.<sup>151</sup>

6.8 New Zealand has the highest suicide rate in the OECD among males aged 15 to 19.<sup>152</sup> In 2006, the suicide death rate for Māori youth was nearly twice that of non-Māori.<sup>153</sup> In 2007 the suicide rate for males aged 15 to 19 was 18.4 per 100,000, and for females in the same age group it was 7.7 per 100,000. Year to year rates fluctuate but the general pattern is that the male youth suicide rate has been declining since the mid 1990s but the female rate has remained steady.<sup>154</sup> Please see Paragraphs 3.24 and 6.26.

- 6.9 New Zealand had the fifth highest rate of teenage birth rates among OECD countries in 2005.<sup>155</sup> Teenage pregnancy rates gradually increased between 1980 and 2007 but teenage birth rates declined during this period due to the increase rate of abortions.<sup>156</sup>
- 6.10 The 2006/07 New Zealand Health Survey found 29 percent of children aged 2 to 4 years were obese or overweight.<sup>157</sup>
- 6.11 Thirteen percent of boys and fifteen percent of girls aged 14 to 15 years are regular smokers.<sup>158</sup> Smoking rates are falling but are still high, especially for Māori and even more so for Māori women, and are a major contributor to the difference in life expectancy between Māori and non-Māori.<sup>159 160</sup> Please see paragraph 6.23.
- 6.12 A 2005 survey estimated that 22 percent of young people drank alcohol at least once a week.<sup>161</sup> Binge drinking is common,<sup>162</sup> and there is considerable concern about young people's use of alcohol.<sup>163</sup> Please see paragraph 6.22.

#### Child health strategies

- 6.13 In 2003 the UN Committee recommended that sufficient human and financial resources be allocated to implement the Child Health Strategy. Unfortunately the Child Health Strategy seems to have disappeared.
- 6.14 There are substantial issues around the co-ordination of central child policy development and the work of individual District Health Boards. For example, some District Health Boards have a child health plan and some do not.
- 6.15 Many District Health Boards have policies that are broadly supportive of children's participation rights. Non-governmental organisations such as IHC New Zealand Inc. and the Paediatric Society have been promoting this. But children are not yet routinely provided with information about their health, given opportunity to have questions answered, and have their opinion taken into consideration in planning treatment. Avenues for complaint resolution are adult-centred.

#### Public health programmes and services

- 6.16 Please see Paragraphs 1.21 - 1.22 about the Public Health Advisory Committee's advice and recommendations to improve the health of children.
- 6.17 There is no overall public health strategy to improve the health of children. Paragraphs 6.18 to 6.23 below are illustrations of the lack of priority given to child public health. There are concerns that the funding of public health services is being reduced and that the public health workforce – and in particular the Maori, Pacific and health promotion workforces - are being reduced.<sup>164</sup>
- 6.18 Despite New Zealand's "clean green" image, some children do not have access to good quality clean water (especially those living in smaller communities) and some are exposed to polluted air (especially those living in large urban areas).<sup>165</sup> In 2007/2008, 83 percent of the total population had drinking water that complied with the Drinking-water Standards for E. coli.<sup>166 167</sup>
- 6.19 The National Breastfeeding Advisory Committee has stated that New Zealand measures do not meet the minimum standards of the International Code of Marketing of Breast-milk Substitutes, particularly regarding marketing of follow-on formula, toddler milk, teats and bottles, and internet marketing.<sup>168</sup> The main Codes which implement the International Code in New Zealand are voluntary and self-regulatory.<sup>169</sup> It is lawful to label complementary foods as suitable for infants as young as four months. New Zealand has not ratified ILO Maternity Protection Convention No.183. Please also see Paragraph 6.5.
- 6.20 There is considerable advertising and marketing of energy dense low nutrient foods aimed at children. Such advertising and marketing is largely self-regulated by the industries.<sup>170 171</sup> There have been big cuts

to the nutrition components of the Government's Healthy Eating Healthy Action programme to improve nutrition and physical activity. Please also see Paragraph 6.10.

- 6.21 The school curriculum takes a 'resiliency' approach to sexuality education.<sup>172</sup> Evaluations of sexuality education in schools have found inconsistencies and gaps across high schools.<sup>173 174</sup> Please also see Paragraph 6.9.
- 6.22 The Sale of Liquor Act 1989 and subsequent amendments made alcohol much more readily available. Advertising and marketing of alcohol is supposed to be self-regulated by the industries – and in practice, much advertising and marketing appears aimed at young people. The alcohol industry is a leading sponsor of sports. The Law Commission made an extensive review of what could be done to reduce the harm done by alcohol to young people and other New Zealanders. It recommended legislative, regulatory and other changes – including raising the age of purchase of alcohol, increasing taxation, reducing availability, and reducing the promotion of alcohol through advertising and sports sponsorship.<sup>175</sup> The Government's response has been muted. Please also see Paragraph 6.12.
- 6.23 More positive moves are happening around tobacco. The Government recently announced substantial increases in tobacco taxation, and this received support from almost all Members of Parliament. Non-governmental organisations are currently campaigning to end tobacco displays in shops. The Māori Affairs Select Committee is holding an inquiry into the Tobacco Industry in Aotearoa and the Consequences of Tobacco Use for Māori. The Committee has received comprehensive evidence-based submissions about how New Zealand could have an "end-game strategy" to effectively end the use of tobacco in New Zealand. This would be of substantial benefit to child health – please also see Paragraph 6.11.

#### Other child health services

- 6.24 The provision of antenatal care was restructured in the 1990s leading to the separation of maternity and post natal care from primary health care. There have been difficulties in ensuring consistent transfer of care of infants from Lead Maternity Carers to Well Child providers and primary health care services.
- 6.25 Although the Primary Health Strategy has improved access to primary health care for many New Zealanders<sup>176</sup> there remain significant barriers for children obtaining health care – including the fact that consultations for children are not universally free, and charges for after hours primary care services are high, leading families to delay consultation which may result in children getting sicker. Many young people are not enrolled in primary health care practices. There are concerns that the current reorganisation of the primary health care sector may reduce or reverse gains that have been made by those in disadvantaged communities.<sup>177</sup>
- 6.26 There is a serious shortage of mental health and drug and alcohol services for children and young people, partly because of a shortfall of child mental health professionals and a lack of workforce planning and service development.<sup>178 179</sup> A 2007 Mental Health Commission review of mental health services found that access rates for children under 18 years were more than 50 percent below the targets and indicated that targeted goals had not been met.<sup>180</sup> The shortage of mental health services also impacts on rehabilitation services for children who have been abused, and places a considerable load on psychology, counseling and pastoral services in schools. Please also see Paragraphs 3.24, 5.21-. 5.23, 6.8, and 6.12.

#### Health workforce and capacity building

- 6.27 New Zealand faces significant workforce shortages across the health sector. Māori health workers are more likely to be lower paid, have less formal qualifications and access to training opportunities and more likely to be in unregulated occupations and employed by non-governmental organisations. Māori providers need funding to enhance capacity as well as capability. There are similar issues for the development of the Pacific workforce and developing the capacity of Pacific providers. Training and

development are needed to ensure that non-Māori and non-Pacific workforce and providers are able to address the issues of Māori and Pacific children appropriately and effectively.

### **Article 23 – Rights of disabled children**

- 6.28 In 2003 the UN Committee was concerned that children with disabilities were not fully integrated into society and that services, in particular education services, were often difficult to access. The Committee recommended that the Government ensure there were sufficient resources to implement the New Zealand Disability Strategy and in particular aspects related to the integration of children with disabilities into mainstream education.<sup>181</sup> Please see Paragraph 3.7.
- 6.29 New Zealand signed the United Nations Convention on the Rights of Persons with Disabilities in 2007, and ratified the Convention in October 2008.
- 6.30 There appears to be an increase in children with disabilities facing ongoing discrimination in education.<sup>182</sup> Please also see Paragraphs 7.11 - 7.16.
- 6.31 Access to justice is another issue for young persons with disabilities. In 2003 the government introduced new legislation called the Intellectual Disability Compulsory Care and Rehabilitation Act (2003). Youth were initially not considered an issue under this legislation but as it has settled into law, it has been reported to ACYA that young persons with intellectual/learning disabilities are being increasingly charged and incarcerated.<sup>183</sup> This is compounded by a lack of separate secure facilities for children with intellectual disabilities who need to be contained for their own protection or that of the community, a short-coming which has led to criticism by Youth Court Judges in recent cases where a young person has been found unfit to stand trial.<sup>184</sup>

### **Articles 18(3), 26 and 27 (1) – (3) – Social security, child care services and standard of living**

#### Child poverty

- 6.32 In 2003 the UN Committee expressed concerns at the significant proportion of New Zealand children living in poverty, and that single parent families headed by women as well as Māori and Pacific Island families are disproportionately affected.<sup>185</sup> The Committee recommended that the Government take appropriate measures to assist parents, in particular single parents, and others responsible for the child to implement the child's right to an adequate standard of living.<sup>186</sup>
- 6.33 Child poverty rates are increasing. In 2007/08 after taking housing costs into account, 28 percent of all children, were below a poverty line set at 60 percent of median income up from 22 percent the previous year.<sup>187</sup>
- 6.34 In 2007/08 the hardship rate for sole parent families was around four times that of two parent families; beneficiary families with dependent children five times that of working families with children; Māori and Pacific people some two to three times that of those in the European or Other ethnic groups; and families with four or more children were much more likely to be in hardship than those with one or two children.<sup>188</sup> Twenty-five percent of children with a disability live in a home that depends on welfare benefit payments and 28 percent of disabled children live in sole parent homes.<sup>189</sup>
- 6.35 The global recession has adversely impacted on families with children. The number of children supported by a caregiver receiving a main benefit increased 16 percent from 199,108 in June 2008 to 230,642 in December 2009.<sup>190</sup> There has been a substantial increase in the number of benefit dependent children and families seeking assistance from non-governmental organisations.
- 6.36 Māori, Pacific and young workers have been disproportionately impacted by the recession. For example in the year ending September 2009 the unemployment rate for Māori was 11.2 percent compared with

4.7 percent for non-Māori. Among Māori youth had the highest rates of unemployment, with 23 percent of those aged 15 to 24 years unemployed in September 2009.<sup>191</sup>

#### Social assistance for families with children

- 6.37 From 2001 a number of policies, especially Working for Families and also including the return of the Income Related Rent policy and changes to the Accommodation Supplement were successful in reducing the number of children living in poverty for some years, but the poverty burden on children is increasing.
- 6.38 The largest component of Working for Families, the In Work Tax Credit is only available to families with dependent children who meet the working hours criteria, rendering most beneficiary families ineligible. This is despite the children of beneficiaries experiencing the greatest levels of financial and social hardship.
- 6.39 In 2007, an independent evaluation reviewed how the Working for Families policy was developed. Policy development documents were obtained under the Official Information Act and key external stakeholders were interviewed. There is no evidence to indicate the Government considered its obligations under the Convention. Instead the policy makers and advisors described the priority as being increasing economic performance. Although the Child Poverty Action Group had laid a human rights complaint against the Crown about the Child Tax Credit (the predecessor to Working for Families), the Government did not consult with the Children's Commissioner, the Human Rights Commission or the Child Poverty Action Group.<sup>192</sup>
- 6.40 The Child Poverty Action Group brought a claim under the Human Rights Act 1993 before the Human Rights Review Tribunal that the In Work Tax Credit component of Working for Families is discriminatory against children whose parents are on benefits. The case goes back to 2002 and was raised in ACYA's last report to the UN Committee. There have been some changes of the name and amount of the Tax Credit but the issues have remained the same.
- 6.41 The Tribunal determined that the Government action was discriminatory and causes significant harm, but decided that such discrimination was the prerogative of a democratically elected government.<sup>193</sup> The Child Poverty Action Group is appealing the decision to the High Court and the hearing is due late June.
- 6.42 The rise in unemployment with the recession means that some children who previously benefited from Working for Families will no longer be eligible.<sup>194</sup>

#### Housing

- 6.43 Housing quality is variable. In 2004 it was estimated that 375,000 children were living in dwellings that were likely to be cold, damp and expensive to heat. In 2006, 39 percent of children under 14 years live in rented accommodation – a higher proportion than any other age group – and 80,000 were living in temporary accommodation (such as garages), with children being more likely than any other group to live in crowded housing, especially Pacific children (47 percent) and Maori children (28 percent).<sup>195</sup>
- 6.44 Since then the government has introduced a major programme for subsidising installation of housing insulation and clean energy efficient home heating systems.<sup>196</sup>
- 6.45 A 2010 review found children's housing is also compromised in other ways. New Zealand has a large poorly performing housing stock that is too expensive for very many families with children and not designed flexibly to meet children's needs. Planning of neighbourhoods largely ignores the developmental needs of children. Housing assistance is inadequate. Housing services are fragmented and limited.<sup>197</sup>

#### Child care facilities

- 6.46 Please see Paragraphs 5.4 about very young children in childcare and 7.17 – 7.18 about changes in early childhood education.

### Reports from the Children's Commissioner and non-governmental organisations

- 6.47 A 2008 Children's Commissioner and Barnados report, *A Fair Go for All Children*,<sup>198</sup> outlined actions to reduce child poverty in New Zealand. Recommendations include actions to give children a good start, supporting parents to work, ensuring an adequate income for all families with children and setting goals and targets for the elimination of child poverty.
- 6.48 In 2008 the Child Poverty Action Group also released a report *Left Behind: How Social and Income Inequalities Damage New Zealand Children*<sup>199</sup> which contains a set of specific recommendation regarding actions needed to reduce child poverty, including that the Government pledge to end child poverty in terms of all poverty measures, set an official poverty line at 60 percent of the median household disposable income after housing costs and set net income for those on benefits at this measure to prevent poverty and other recommendations related to health, education and housing policies.

### Current reforms

- 6.49 The Government has recently established its Welfare Working Group to undertake "an expansive and fundamental review of New Zealand's welfare system" with a focus on "how to reduce long-term welfare dependency." "Adequacy of income from welfare" is not within the scope of the review.<sup>200</sup> The Group is to report by the end of 2010. The Committee may like to ask the Government what the Group's deliberations will mean for children.
- 6.50 The Government's Social Assistance (Future Focus) Bill introduces a work-test to the sole parent Domestic Purposes Benefit which requires parents to work at least 15 hours per week when their youngest child reaches 6 years of age. Failure to comply will result in the benefit being halved. Sole parents on the minimum wage may end up worse off when work related expenses are taken into account. The Bill will not reduce child poverty.<sup>201</sup> In order to benefit, parents will need to work at least 20 hours per week so that full advantage can be taken from the Working For Families income supplements. Sole parents will be competing for employment with the 168,000 unemployed people currently looking for work.<sup>202</sup>
- 6.51 The Attorney-General stated that these reforms breach the Bill of Rights by discriminating on the basis of family status, marital status, and gender.<sup>203</sup> The Minister acknowledged this was so. Women who are single, divorced or separated and caring for children, and men who have been widowed and are caring for children will have a work-test. Women on a widow's benefit caring for the same aged children will not face a work test and neither will older women living alone.
- 6.52 The May 2010 Budget announced some major changes which will impact on children. A reduction in income, company and trust taxes will be of considerable benefit to those people who are better off. The Goods and Services Tax (GST) is to be increased from 12.5 percent to 15 percent. GST applies to all goods and services, and will especially impact on those on low incomes who cannot afford to save or benefit from the lower tax rate for companies and trusts. People on benefits and receiving Working for Families will receive an increase to compensate for the rise in GST, but not an increase to compensate for other expected rises in costs for petrol and electricity, and the likely reductions in funding for health services and rise in part charges (including Accident Compensation Corporation funded services). Government funding for early childhood education services (please see Paragraph 7.18) was substantially reduced, which will impact on quality and/or charges. These changes are likely to lead to an increase in inequity and child poverty.<sup>204</sup>

## 7. EDUCATION, LEISURE AND CULTURAL ACTIVITIES (Articles 28, 29 and 31)

### Articles 28 and 29 - Education

#### Overview

7.1 New Zealand's primary and secondary educational outcomes compare relatively well with other OECD countries. However, there has been concern that a "long tail" exists of children who suffer from marked inequities in educational opportunities, participation and outcomes.<sup>205</sup>

#### Cost barriers

7.2 Although under the Education Act 1989, state primary and secondary schooling is required to be free, many state schools vigorously pursue parental donations in order to supplement their state funding. There have been reports that some state schools have hired debt collection agencies to pressure parents to pay "donation fees".<sup>206</sup> In addition, parents are required to pay for non-core curriculum activities, materials costs and uniforms.

#### Curriculum

7.3 The education system is required to develop the talents, mental and physical abilities of the child within a broad framework of national education standards and social concepts. This framework should encourage flexibility, initiative and attainment of a set of pre agreed standards. A new secondary school curriculum, which has widespread support in the education sector, is to commence in 2010. The new curriculum includes reference to human rights in its 'Values' section but does not explicitly refer to the Convention or other international or domestic human rights instruments (please see Paragraph 1.37).

#### Achievement/Outcomes

7.4 The overall number of young people leaving New Zealand schools with a qualification of at least NCEA Level 1 stands at around 85 percent. This is reported as an improvement from 2002 figures. Māori (70 percent) and Pacifica students (79 percent) had lower rates of this attainment, although the data indicates that these disparities are reducing.<sup>207</sup>

7.5 The Government has introduced a new policy of 'National Standards' requiring teachers to assess a child's reading, writing and numeracy against a set of standards designed for all primary and intermediate students. The results will be reported to parents in plain language and used to set targets for achievement. The policy is controversial as it is to be implemented nationally without any pilot or evaluation, except for pilots in Kura Kupapa Maori schools for the first year. There is also concern that any insistence towards sector-wide targets and public reporting will lead to inequitable outcomes, in that it will disadvantage students with learning or language difficulties and those attending low-decile (lower socio-economic) schools through publication of school league tables.

#### Bullying

7.6 Bullying is reported as one of the primary fears or concerns of children at school. Accordingly, the Office of the Children's Commissioner undertook an investigation into violence and bullying in schools culminating in a report in March 2009.<sup>208</sup> The report identified bullying as a problem in all schools, with internet and cell phones compounding the problem. It also found that rates of bullying in New Zealand schools are very high by international standards and contribute to a significant amount of school suspensions.<sup>209</sup> The report issued a number of recommendations for reform. Other research indicates that gay, lesbian and bisexual students are among those most likely to feel unsafe at school.<sup>210</sup> The Human Rights Commission has expressed concern at the particular vulnerability of disabled students and students with special needs to bullying and social exclusion in schools.<sup>211</sup> The Human Rights Commission has also undertaken a parallel review of bullying in schools and concluded that current legislation and policies contain significant gaps in respect of the impact of bullying on victims.<sup>212</sup>

- 7.7 Information and support for teachers and parents has been produced by the Ministry of Education, Police, Ministry of Youth Affairs, Child Youth and Family, and an NGO, the Mental Health Foundation. The Mental Health Foundation has supported forums for experts to share and disseminate information to combat bullying. However, to date there have been no substantive legislative or policy changes made in response to these reports. Please also see Paragraph 3.11 and 5.17.

#### School discipline – stand-down, suspension, exclusion and expulsion

- 7.8 The numbers of students subject to suspension or stand-down has increased substantially over the last decade.<sup>213</sup> Māori students are over three times more likely to be suspended, and twice as likely to be stood-down as Pakeha students.<sup>214</sup> Targeted initiatives by Ministry of Education, such as its Student Engagement Initiative, have not led to widespread systemic change.
- 7.9 Over 30 percent of all suspended students are excluded [removed] or expelled [if aged 16 years or older] from school. Exclusion figures for the 2009 academic year indicate that less than 50 percent of excluded students that year have been placed in another school and approximately 30 percent remain disengaged from education altogether.<sup>215</sup>
- 7.10 These figures are highly concerning and have been evident for many years. There have been calls from the Office of the Children’s Commissioner<sup>216</sup> and other organisations seeking the establishment of an independent tribunal or authority empowered to review and confirm or over-turn, inter alia, school suspensions, exclusions and expulsions.

#### Students with disabilities (please also refer to Paragraphs 3.7 and 6.28 – 6.31)

- 7.11 Many children with disabilities are only able to access schools and early childhood services for limited hours and miss out on wider curricular activities and the sense of belonging within their educational community. In addition, parents attempting to choose inclusive education for their child regularly report instances where their children are not given the opportunity to learn on the same basis as their peers - for example, early childhood centres and schools may limit attendance, require parents to financially contribute to teacher aide hours, or refuse enrolment altogether. Specialised, individual support for children with mild or moderate learning disabilities, such as dyslexia, is also very limited, with no mandatory training requirements for teachers or Resource Teachers: Learning and Behaviour (RTLBs) regarding these issues. There continue to be ongoing issues for children with disabilities transitioning between early childhood services and schools, resulting in many parents experiencing significant distress due to disruptions to their child’s education caused by a fragmented approach to funding entitlements.
- 7.12 Deaf Aotearoa made a complaint to the Human Rights Commission in relation to the right to access their own sign language (which is an official language<sup>217</sup>).<sup>218</sup> The complaint was made because the Ministry of Education had not recognised New Zealand Sign Language as a medium for education nor the role Deaf identity and culture play for deaf students’ education. This complaint is on hold as Deaf Aotearoa tries to resolve these issues with the Ministry of Education.
- 7.13 Maori children with physical disabilities also face barriers, due to a lack of specialist facilities at Maori language educational centres such as Te Kohunga Reo (early childhood centres) and Te Kura Kaupapa (schools). There is only one tri-lingual New Zealand Sign Language interpreter available to these students.<sup>219</sup>
- 7.14 IHC New Zealand Inc. have also laid a complaint to the Human Rights Commission in regards to education and discrimination where it is alleged that while it is government policy to ensure that all children and students are able to participate in all aspects of student life, the reality for students with disabilities is that they are not able to participate fully in their local school. The complaint outlines that disabled students continue to experience limited attendance because of the lack of teacher aide funding; having to miss class activities because of a lack of support; suspension and/or expulsion because of behaviors due to the disability and / or the absence of support to assist with such behavior; failure to provide students who have hearing impairment with access to New Zealand Sign; parents

being required to contribute financially to their children's participation; and students being refused enrolment because of their disability.<sup>220</sup>

- 7.15 In January 2010, the Government launched a wide-ranging review of the special education sector which may result in changes to the legislative framework vested under the Education Act 1989.<sup>221</sup>
- 7.16 The exclusion and expulsion rates for children with identified special educational needs who have been suspended from school is very high. 41 percent of the suspensions were of students with identified special needs who had prior support from Group Special Education or a specialist Learning and Behaviour teacher (RTL).<sup>222</sup> This is evidence of the limited support available in schools for children with learning and behavioral disabilities.

#### Early Childhood Education

- 7.17 New Zealand's early childhood education services rate highly against international standards, particularly in respect of high participation rates, its national curriculum and its aspiration for a fully qualified and registered workforce.<sup>223</sup> State assistance for families with young children seeking appropriate child care and early childhood education opportunities was increased when in July 2007 the Government introduced 20 hours free early childhood education for every three and four year old in New Zealand. The aim of this policy was to increase participation rates (by removing the cost barrier) and boost the number of hours children received, with a view to better long term education outcomes.<sup>224</sup> By 2009 participation rates had increased. However rates for Māori and Pacific children were lagging behind, as were rates for children from low income communities. Wealthier communities had better provision, partially attributable to the private provision of early childhood education that charge additional fees.<sup>225</sup> The current Government has extended this to include three and four year olds in parent/whānau-led services. Please see Paragraph 5.4.
- 7.18 However, there have been a number of recent policy and funding decisions that are likely to have an adverse impact on the sector. Funding was withdrawn for research, professional development for teachers, and the parent support and development pilot programme.<sup>226</sup> The target for registered teachers in early childhood services has been reduced from 100 percent in 2012 to 80 percent with no timeline. The ten year strategic plan (2002 – 2012) has been discontinued.<sup>227</sup> These combined effects potentially impact negatively on the quality of services provided, and are contrary to international research evidence<sup>228</sup>. In addition, the 2010 Budget cut approximately \$NZ100 million in funding from what was projected for the sector, including reductions in the subsidies for Early Childhood Education centres.<sup>229</sup> Early childhood sector groupings continue to advocate for the subsidies to be extended to children under three, a move that will relieve the inevitable fee increases early childhood services will extend to families in response to cuts to funding announced in the last Budget.<sup>230</sup> Please see Paragraph 6.52.

#### **Article 31 – Leisure and Recreational Activities**

- 7.19 It is generally taken for granted that New Zealand children have access to a diverse array of recreational and cultural activities. However, entrenched socio-economic inequities, increased housing density in the larger cities, the lack of priority given by central and local government authorities to children's recreational and cultural activities and the current constrained economic climate would perhaps suggest otherwise. Since 2009 there have been Government funding cuts to recreation, physical activity and lifestyle programmes aimed at children and young people.<sup>231</sup> We recommend that the Committee seek further information from the Government regarding this issue.

## **8. SPECIAL PROTECTION MEASURES (Articles 22, 30, 38, 39, 40, 37(b - d),32 - 36)**

### **Article 22 Refugee Children, Asylum Seeking Children and Children Unlawfully in New Zealand**

- 8.1 Changes to New Zealand's immigration laws now mean that asylum seekers who have given birth to children in New Zealand, but not had residence approved are not able to claim New Zealand citizenship for their children.<sup>232</sup> Should the parents be declined refugee status (as happens in 85 percent of cases) the children will be able to be removed from New Zealand with their parents.
- 8.2 Information from the Refugee Status Branch of the Department of Labour states that as at 30 April 2009 the total estimated number of children aged 0 - 17 who are unlawfully in New Zealand totaled 1,666, up from 1,098 six months previously. These figures do not include those children unlawfully in New Zealand who may have been born after 1 January 2006 to non-resident parents who have not applied for a visa<sup>233</sup> and notes that the Department has no way of assessing the numbers of these children. The information also shows that 18 unaccompanied minors lodged claims for asylum between 2004 and 2010. All were from Iran, Chad or Somalia. Four of these claims were approved, three of which were only approved on appeal.<sup>234</sup>
- 8.3 The legislative definition of "dependent child" is currently limited to children aged under 17 under the Immigration Act 1987,<sup>235</sup> including with regards to refugee status claims by minors.<sup>236</sup> However, the Immigration Act 2009, which is expected to come into force later in 2010,<sup>237</sup> has amended this definition to bring it in line with the Convention and include children under the age of 18.<sup>238</sup>
- 8.4 There is concern that there is a lack of specialist ongoing support services for the children of refugees who are settled through the Refugee Convention or through Family Reunion. The Refugee Voices (2004) report, which collated interviews of refugees and service providers regarding their journey to resettlement, noted the lack of effective service provision as a key barrier for refugee children and their families. The Report also notes the detrimental impact this has on refugee children who have suffered difficult or traumatic circumstances.<sup>239</sup>
- 8.5 Whilst such support is available for refugee children during their first six weeks placement at the Mangere facility, the level of expert professional support drops off after placement in the community. Lack of assured and continuous funding has adversely affected community groups supporting refugee families. This has led to child refugees and their families having poor access to qualified, child-oriented interpreters and a corresponding over-reliance on a small number of over-worked specialists and volunteers with limited training.<sup>240</sup> It is also of note that, despite the impending commencement of the Immigration Act 2009, there have been reports of children of asylum-seeking parents being excluded from state schooling.<sup>241</sup> The Human Rights Commission reported that in 2009 this practice was still commonplace.<sup>242</sup>

### **Article 40 - Administration of Juvenile Justice**

- 8.6 As noted in Paragraphs 1.55 - 1.57, the juvenile justice sector has been subject to extensive review since the UN Committee issued its 2003 Concluding Observations. Whilst the Children Young Persons and their Families Amendment Bill No. 6 sought to align the care and protection and juvenile justice systems with the age parameters of the Convention and per the 2003 recommendation of the UN Committee on the Rights of the Child, this no longer appears to be a Government objective. Conversely, the 2009 Children Young Persons and their Families (Youth Court Orders and Jurisdiction) Act instead seeks to lower the age of criminal prosecution for indictable offences from 14 to 12 years. The Act is due to come into effect in October 2010.
- 8.7 The Children, Young Persons, and their Families (Youth Court Orders and Jurisdiction) Act also adopts a number of amendments to the sentencing orders available to the Youth Court, including doubling the

length of the sole custodial sentence<sup>243</sup> open to the Youth Court from three months to a maximum of six months. The Act will also lower the age the Youth Court can transfer a young person to the District Court for sentencing from 15 to 14 years. Currently, should a Youth Court decline its jurisdiction in respect of a 14 year old who has pled guilty to a purely indictable offence, the young person will be transferred to the High Court for sentencing. If a young person appears before a District Court or High Court for sentencing, the Court is bound to apply the adult sentencing provisions under the Sentencing Act 2002, not the specialist sentencing options under the Children, Young Persons, and their Families Act. This leads to young people being sentenced to imprisonment or home detention.

- 8.8 In addition, the Government is to spend over \$NZ 35 million dollars to establish military-style corrections camps under its 'Fresh Start' youth justice policy, aligned to the sentence of 12 months supervision with a six-month activity component due to be available upon assent of the Children, Young Persons, and their Families (Youth Court Orders and Jurisdiction) Act. It is notable that the corrective training sentences, a "boot-camp" sentence for youth offenders that was discontinued in 2002 resulted in very high recidivism rates of over 90 percent.<sup>244</sup>
- 8.9 Concurrently, in February 2010, the Government announced it will discontinue its funding of the Te Hurihanga youth justice facility in Hamilton for cost savings purposes. The Te Hurihanga facility started in April 2007 and was under pilot until 30 March 2010, providing an intensive rehabilitation programme for serious young offenders. A Ministry of Justice evaluation of the facility, reported that the programme was competently and effectively run. None of the young people who had completed the programme had re-offended to date.<sup>245</sup> Despite its initial costs, a cost benefit analysis by PriceWaterhouseCoopers found that the programme would "break even" after five years.<sup>246</sup>
- 8.10 Since 2002 specialised or therapeutic Court-based programmes have been implemented in certain districts, such as Marae-based Youth Court, the Christchurch Youth Drug Court and the Intensive Monitoring Group programme held in the Auckland Youth Court.
- 8.11 Overall, offending by children and young people has remained relatively static for the past decade and has declined over the past year. The Ministry of Justice's 2009 figures reported that Police apprehension rates for both children (0 to 13 years) and young people (14 to 16 years) fell in 2008/9, as did rates of violent offending by those groups. Police apprehension rates of adults increased over that period.
- 8.12 Almost 70 percent of police apprehensions of children and young people in 2008/9 resulted in disposal with a police youth aid diversion (40 percent) or a formal warning or caution (29 percent). Intention-to-charge (pre-prosecution) Family Group Conferences (FGCs) were held for six percent of cases, with 22 percent resulting in prosecution.<sup>247</sup> Whilst the Ministry of Justice Statistics do not disaggregate the proportion of prosecutions that resulted in Court-ordered FGC's, the proportion is likely to be very high.
- 8.13 FGCs continue to provide an effective means for resolving youth justice matters and are an integral plank of New Zealand's juvenile justice and care and protection systems. However, the Government is yet to conduct a systematic evaluation of their practice and outcomes.

#### **Articles 11 and 35 - Child Abduction and Trafficking**

- 8.14 In September 2009 the Minister of Immigration released a New Zealand "Plan Of Action To Prevent People Trafficking". This Plan is a whole-of-government response to people trafficking and is said to represent the combined efforts of government agencies and the advocacy of non-government agencies. Implementation of this Plan rests with the Department of Labour. However, the Plan neither mentions nor addresses the trafficking of children nor recognizes the special risks pertaining to children under its structure of Prevention, Protection and Prosecution.

#### Homeless Children

- 8.15 The Government report states there is very little evidence of the number of children who live on the streets. However, information produced by the Auckland City Council indicates there are approximately 300 to 400 people in the city without secure housing and about 100 “rough sleepers”, including young people, and reports that there is a lack of services available for homeless young people.<sup>248</sup>
- 8.16 The Children, Young Persons, and their Families Act 1989 does not provide for special care and protection measures for homeless young people aged 17 years, unless that young person is currently under the legal guardianship of the Chief Executive of the Ministry of Social Development.<sup>249</sup> In addition, a homeless young person aged under 18 is not entitled to any income assistance from Work and Income New Zealand unless they are aged 16 or 17 years and qualify for the Independent Youth Benefit which requires that their parents cannot be reasonably be expected to financially support them (whether by absenteeism or family breakdown) and that they are enrolled at secondary school or on an employment training course, or have a sickness, illness or disability, or are willing work.<sup>250</sup>

### **Article 37 - Deprivation of Liberty and Torture**

- 8.17 For commentary on age-mixing in prison, please refer to paragraphs 1.8 - 1.11.
- 8.18 For commentary on police cell detention and monitoring of places of detention, please refer to Paragraphs 4.15 - 4.20.

#### Deaths in Custody

- 8.19 We note that the Government report makes mention of the Liam Ashley tragedy. Liam Ashley was a 17 year old boy who was murdered by a 25 year-old adult prisoner whilst detained in transit from the Court to prison, circumstances in breach of the provisions of the Convention and the International Covenant on Civil and Political Rights.
- 8.20 We consider that this tragedy was a clear example of the potential consequences where a human rights principle designed to protect the welfare of young people is compromised by administrative expediency. The tragedy resulted in an extensive Chief Ombudsman report and ensuing recommendations and has led the amendments to practice and regulations regarding prisoner transportation tantamount to compliance with the Convention and ICCPR. However, there is lack of clarity on the extent of the implementation of the recommendations of that report.

#### Tasers

- 8.21 In September 2008 the Commissioner of Police announced that tasers are now authorised for police use. The Human Rights Commission has reported that trial evaluation data indicated that 21 percent of taser incidents involved people with mental health issues and 58 percent of incidents involved Māori or Pacific people.<sup>251</sup> Guidelines on the use of tasers against children have not been created although general directions for use are in the Standard Operating Procedures.<sup>252</sup> We encourage the Committee to seek further information.
- 8.22 We note the recommendation of the UN Committee Against Torture that the New Zealand Government should consider relinquishing the use of tasers on the basis that the impact of these weapons on the physical and mental state of targeted persons appear to violate articles 2 and 16 of the UN Convention Against Torture.<sup>253</sup>

#### Anti-terrorism Police Raid (“Ruatoiki Incident” or “Operation 8”)

- 8.23 In October 2007, subsequent to a lengthy surveillance operation, the police made an anti terrorist raid in a rural area often referred to as the “Ruatoiki incident” or “Operation 8”. Subsequently eighteen people, originally charged with anti-terrorism offences, underwent pre-trial deposition hearings on firearms and other charges. Concerns were raised by the UN Human Rights Committee.<sup>254</sup>

8.24 We have heard reports that some of the children caught up in the raid were treated in ways that were frightening and distressing. A complaint regarding police conduct during the raids was lodged by a Queen's Counsel on behalf of the Tuhoe iwi and subsequently referred to the Independent Police Conduct Authority.<sup>255</sup> At the time of writing, the Independent Police Conduct Authority is yet to publish its findings in respect of the complaint. We encourage the Committee to seek further information.

#### Detention of children seeking asylum

8.25 Upon its commencement, the Immigration Act 2009 will introduce the warrantless detention of children aged under 18, subject to deportation or suspected of liability for deportation, in Department of Child, Youth and Family secure residences for periods of up to 96 hours.<sup>256</sup> This is harsher and more arbitrary than the current 1987 Act which provides arrest and detention of up to 72 hours if travel arrangements cannot be procured and the appointment of a responsible adult to ascertain and convey the views of any minor subject to removal or detention pending removal.<sup>257</sup> The 2009 Act retains the right of minors to the appointment of a responsible adult if subject to detention procedures.<sup>258</sup>

8.26 The Human Rights Commission has raised concerns that the 96 hour warrantless detention constitutes arbitrary detention in breach of the New Zealand Bill of Rights Act 1990, and in the case of minors, has questioned whether such a practice should be used at all.<sup>259</sup>

### **Article 34 – Sexual Exploitation**

#### Prostitution Law Reform Act

8.27 The Prostitution Law Review Committee presented its report on the Prostitution Law Reform Act to the Associate Minister of Justice in May 2008.<sup>260</sup> In general, the report concluded that the Act had been effective and had not made prostitution an attractive potential occupation for young people. The Committee also found that current powers available to Police under the Children, Young Persons, and their Families Act 1989 are sufficient to safeguard young people under the age of consent. The Committee did not support recriminalising under-age people involved in prostitution, or extending Police powers to demand age verification of young people suspected of being involved in prostitution. A ten year review of the Act was recommended.

8.28 The Committee made four recommendations to the Government, including amendment to the Children, Young Persons, and their Families Act 1989 to allow police to uplift any child or young person aged under 18 to align with the Prostitution Law Reform Act. A 2010 request by ECPAT NZ to the Minister of Justice for information demonstrating the progress on these Recommendations has not yet been responded to. We have not been able to establish any Government policy or programme regarding support services available to young people who may have been involved in under-age prostitution.

### **Article 32 – Child Employment**

8.29 There has been some progress in providing a limited degree of minimum wage equality for 16 and 17 year old workers, specifically those who have, since turning 16, been in employment for 200 hours or more, or who train other workers,<sup>261</sup> and extending workplace health and safety protections for child contractors. However, there is still no minimum wage protection for employees aged under 16 and it is unlikely that this will change in the foreseeable future.

8.30 In 2009 the Employment Relations Act was amended to allow employers to terminate without notice new employees subject to a 90 day trial period, without the employee having any recourse to remedial action where the termination was unjustified.<sup>262</sup> Despite concerns that this would allow for the exploitation of vulnerable, low-wage workers,<sup>263</sup> the amendment was promoted by the Government as providing employers with a greater incentive to hire young workers.<sup>264</sup> However there is little evidence that this is the case as youth unemployment figures for 15 to 24 year olds rose steadily during 2009 peaking at 18 percent for the December 2009 quarter and then falling to 17 percent for the March 2010

quarter. The unemployment rate for 15 to 19 year olds was 25 percent in the March 2010 quarter, a significant increase from 19 percent in the March 2009 quarter.<sup>265</sup>

- 8.31 Some progress has been made on issues affecting the working conditions for children, and publication of appropriate information. However there is no evidence of any systematic, substantive Department of Labour monitoring of compliance with Health and Safety Regulations in respect of children in the workforce. ACYA is supportive of the Department of Labour initiative to collate information to assist young workers know about their rights in the new website, "My First Job".<sup>266</sup>
- 8.32 Section 30 of the Education Act 1989 prohibits work that interferes with school. Health and Safety Regulations provide minimum standards for young workers in some circumstances, including restrictions on workers aged under 15 to work with machinery, tractors and mobile mechanical equipment and perform potentially injurious tasks.<sup>267</sup> The Regulations also prohibit night employment (defined as between the hours of 10pm and 6am) for workers aged under 16.<sup>268</sup> Accordingly, these protections are not accorded to all workers aged under 18. They have however, been extended to protect children and young people who are contractors as well as employees. Please refer to Paragraphs 1.5 – 1.7.
- 8.33 However, other than the restrictions on night employment, the Health and Safety in Employment Regulations do not provide any limitations on the amount of hours that a child or young person may be required to work in an employment agreement or a contract for services. An Approved Code of Practice for children in the entertainment industry is yet to be agreed.
- 8.34 The Government has issued its report on compliance with the ILO 182 Worst Forms of Child Labour Convention for the period July 2007 to May 2009.

#### **Article 30 – Children belonging to indigenous and minority groups**

- 8.35 New Zealand's failure to take sufficient action to protect, respect and fulfill the rights of indigenous children, and children from minority ethnic groups, is a major and constant theme throughout this report. Please see Paragraphs vii – xi, 1.1 – 1.4, 1.12 – 1.15, 1.33, 3.1 – 3.7, 3.23 – 3.24, 4.1 – 4.3, 4.9, 5.1, 5.6 - 5.7, 5.22, 5.31, 6.2 – 6.11, 6.17, 6.25, 6.27, 6.32 – 6.36, 6.43, 7.4, 7.8, 7.12 – 7.13, 7.17, 8.1 – 8.5, and 10.1 – 10.3.

### **9. OPTIONAL PROTOCOLS**

#### **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

- 9.1 This Optional Protocol was signed in 2000 but is not ratified. Ratification requires amendment to the Adoption Act 1955, and there have been ongoing delays for nine years in reviewing the Act. To achieve ratification, the New Zealand Government has passed the Child and Family Protection Bill through its first reading and that has been sent to a Select Committee. The Bill contains the last legislative amendment required for New Zealand to ratify the Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Ratification of the Optional Protocol will ensure that New Zealand is meeting its international obligations to protect children from economic and sexual exploitation. Please also see Paragraph 5.33.
- 9.2 ECPAT New Zealand has recently taken the initiative to offer free internet protection software. ECPAT Child Alert introduced a computer Hotline to enable computer users to easily and safely report Internet sites suspected of containing offensive and illegal child sex abuse images. This facility allows a computer user to click on a browser icon if offensive material is observed. The software will remove the screen from sight and capture the URL and Internet Service Providers details. This is encrypted and sent

through an ECPAT filter to the Censorship Compliance Unit of the Department of Internal Affairs for inspection and appropriate action.

- 9.3 The Department of Internal Affairs is implementing a Digital Child Exploitation Filtering System. This will allow Internet Service Providers to voluntarily allow their traffic to be filtered against a DIA database of sites already identified as containing illegal child sex abuse images.

#### **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

- 9.4 The Government has rejected calls to increase the age of recruitment to the armed Forces to those over 17 years of age, citing a number of reasons as set out in their report, Paragraph 10.4.

#### **Optional Protocol to establish an UNCROC complaints mechanism**

- 9.5 ACYA will continue to lobby the New Zealand Government to adopt a positive position in relation to the need for an Optional Protocol and to participate in drafting.

### **10. TOKELAU**

- 10.1 Tokelau is a non-self-governing territory of New Zealand. Tokelau have twice rejected a public referendum for independence from New Zealand. The current administrative practice is to devolve day-to-day administration to each atoll.

- 10.2 There is a lack of clarity on the standards of health, education and other facilities and services available to Tokelauan children. World Health Organisation data indicates an infant mortality rate of 38.0 per 1000 live births,<sup>269</sup> over seven times higher than that of New Zealand. We are concerned that the approximately 600 children of Tokelau who are New Zealand citizens may not currently be enjoying an equitable degree of coverage under the Convention on the Rights of the Child as New Zealand resident children. We are unaware of any evidence that the Government has continued its discussions with the Tokelauan people regarding extending the Convention to their territory as recommended by the UN Committee on the Rights of the Child in 2003.<sup>270</sup>

- 10.3 The Committee may wish to ask the New Zealand Government what steps it takes to support the wellbeing of Tokelauan children, including with regard to health and education services, given that the children of Tokelau are New Zealand citizens.

## APPENDIX

### ACYA Recommendations to increase New Zealand's compliance with the Convention on the Rights of the Child

#### Part 1: General Measures of Implementation (Articles 4, 42 and 44(6))

##### Reservations

1. The Government take action to withdraw its general reservation to the Convention and its reservations to Articles 32.2 and 37(c), including:
  - (a) Cabinet commitment to withdraw the reservations; and
  - (b) Formulation of a timetable to achieve withdrawal of the reservations without delay

##### Legislation

2. The Government enacts legislation to provide the Convention with statutory status and takes all necessary measures to require that all national and local government legislation and regulations are in accord with the Convention.

##### National Plan of Action

3. The Government develops and implements a National Plan of Action for Children encompassing all areas covered by the Convention and addressing, in particular, child poverty, abuse and inequitable outcomes for children. The Plan of Action should include the following processes, goals and entities:
  - (a) Strengthening of central government leadership for children through establishing a well-supported senior Cabinet position specifically for children and developing a cross-party agreement that provides strategic direction;
  - (b) A timetable for achieving targeted reductions in child poverty, instances of child abuse and disparate social indicators across all government sectors;
  - (c) Establishment of a permanent high-level mechanism to co-ordinate the implementation of the National Plan of Action for Children;
  - (d) Implementation of a Convention based framework for legislative and policy development across all Government departments, agencies and entities and ensuring an integrated, whole-of-government approach to planning and service delivery;
  - (e) Designated timeframes, responsibilities and budgetary allocations including the allocation of sufficient human and financial resources; and
  - (f) Independent monitoring and evaluation with annual reports to Parliament.

##### Allocation of resources

4. The Government establishes a budgetary mechanism or reporting procedure to identify the budgetary allocations that give specific priority to the implementation of the economic, social and cultural rights of children, particularly those belonging to socially disadvantaged groups.

##### Data collection

5. The Government amends its data collection policies concerning children in order to ensure that disaggregated data compatible with the Convention's parameters are collected, analysed and disseminated.

##### Dissemination of information

6. In order to better meet its obligations under Article 42, the Government enhances its dissemination of the principles and provisions of the Convention to the public; and implements a systematic training programme on the Convention for public servants, local government employees and professionals who work with children.

### Independent Monitoring

7. The Children's Commissioner Act 2003 is amended to strengthen the independence of the office by making the Commissioner an Officer of Parliament.

### **Part 2: Definition of the Child** (Article 1)

8. The Government amends the Children, Young Persons, and their Families Act 1989 to ensure that all persons aged under 18 are subject to the Act's care and protection and juvenile justice jurisdiction.
9. Further to the Committee's 2003 recommendations in respect of New Zealand and its 2007 General Comment, the Crimes Act 1961 is amended to provide that the age for criminal responsibility is set at an internationally acceptable level.

### **Part 3: General Principles** (Articles 2, 3, 6 and 12)

*Please also see Recommendation 2.*

### Non-discrimination

10. The Government:
  - (a) Takes all necessary steps – including legislative changes, implementation of the New Zealand Action Plan for Human Rights, affirmative action, and regular transparent reporting of measures of progress - to end all forms of discrimination against children; and
  - (b) Pays special attention to the rights of indigenous children, children from minority ethnic groups, children with disabilities, gay, lesbian and transgender young people, and children living in especially difficult circumstances.
11. The Government amends legislation and policies that currently prevent children with disabilities from full enjoyment of their rights to education, and ensure New Zealand has an inclusive rights-based education system.
12. The Government amends the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990 to protect all children from unlawful discrimination on the grounds of their age.

### Best interests of the child

13. The Government takes all necessary measures, including reviewing current legislation and child impact reporting, to ensure that the principle of the best interests of the child is systematically integrated as a paramount consideration into all legislation, policies and programmes that have an impact on children.

### Right to life, survival and development

14. The Government undertakes all appropriate measures to the maximum extent of available resources (including financial and human resources) to protect children's right to life and development, including the expansion of measures to prevent illness, injury, disability and death and increase health equity.

### Respect for the views of the child

15. The Government takes all necessary measures to ensure that the views of the child are ascertained and considered in all administrative and judicial proceedings that affect them; and pays special attention to ensuring the consideration of the views of indigenous children, children from ethnic minority groups, children with disabilities, children in the juvenile justice system, children in the Family Court, children in care, children with a parent incarcerated, children excluded from school, and children with mental health issues.

16. The Government support forums and other opportunities for children's participation in planning and informing decision making at community, neighbourhood, school, local government and central government levels.

**Part 4: Civil Rights and Freedoms** (Articles 7, 8, 13 - 17 and 37(a))

17. The Government takes action to:
- (a) Curtail the practice of detaining children and young people in police cell custody under s238(1)(e) of the Children, Young Persons, and their Families Act 1989.
  - (b) Ensure that detention of children and young people in police cells under s238(1)(e) of the Act is specifically monitored and reported on by the designated National Preventative Mechanism, in accordance with the Government's obligations under the Optional Protocol to the Convention Against Torture.

**Part 5: Family Environment and Alternative Care** (Articles 5, 18(1-2), 9-11, 19-21, 25, 27(4) and 39)

Whanau Ora services

18. The Government:
- (a) Ensures the development and sustainability of Whanau Ora services through legislation and allocation of sufficient human and financial resources; and
  - (b) Consults with Pacific peoples and other communities about the development of similar programme(s).

Violence, abuse and neglect

19. The Government implements a comprehensive and sustained public education campaign about the rights of the child to protection from assault in any circumstances.
20. The Government develops and implements a comprehensive strategy to eliminate violence, abuse and maltreatment of children. Such a strategy should:
- (a) Include prevention, intervention and treatment services;
  - (b) Take an inter-sectoral and whole of government approach and involve communities and non-governmental organisations, including protocols for the sharing of information between agencies;
  - (c) Designate timeframes, responsibilities and budgetary allocations including the allocation of sufficient human and financial resources; and
  - (d) Establish independent monitoring and evaluation with annual reporting of progress to Parliament.
21. The Government reinstates proper access to services for recovery, counseling, therapy and other forms of reintegration for child survivors of sexual abuse, and ensure that children who have experienced other forms of abuse and neglect are able to access services for recovery, counseling, therapy and other forms of reintegration.

Children in Alternative Care

*Please see Recommendations 8, 15, 18, 20 and 21 above.*

Adoption

22. The Government reforms the Adoption Act 1955 in accordance with the Law Commission's recommendations and that such reforms also provide greater statutory recognition for Maori whangai arrangements. In particular, reforms of adoption laws should:
- (a) Make the best interests of the child a paramount consideration in adoption processes;
  - (b) Require that the consent of children aged 12 years or older be given before an adoption order is made;

- (c) Provide that children have access to information and opportunities to contact their biological parents; and
- (d) Enable children to retain at least one of their original names.

**Part 6: Basic Health and Welfare** (Articles 6, 18(3), 23, 24, 26, and 27(1-3))

Health and health services

23. The Government develops and implements a comprehensive strategy and programmes to promote and protect the health of children and increase health equity. Such a strategy and programmes should include:
- (a) Public health measures;
  - (b) Actions to improve access to acceptable and high quality child health services, paying particular attention to primary health care services, after-hours care, and mental health services, and ensuring child health services are free, culturally appropriate, and accessible and appropriate for children with disabilities or for whom English is a second language;
  - (c) Actions to improve the social and ecological determinants of health;
  - (d) An inter-sectoral and whole of government approach and involvement of communities and non-governmental organisations;
  - (e) Establishment of a timetable and targets for achieving improvements in child health and health equity;
  - (f) Allocation of responsibilities across the health sector and the rest of government, including budgetary allocations, in order to improve child health and health equity;
  - (g) Actions to ensure the sustainability and development of the child health workforces, paying special attention to the Maori and Pacific child health workforces and providers; and
  - (h) Establishment of independent monitoring and evaluation with annual reporting of progress to Parliament.
24. The Government implements the Corrections (Mothers with Babies) Amendment Act 2008, and the International Code of Marketing of Breast Milk Substitutes, and ratify the ILO Maternity Protection Convention No. 183.

Children with disabilities

25. The Government takes all necessary measures to ensure that legislation regarding children with disabilities is effectively implemented and is consistent with its obligations under the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.
26. The Government takes action to implement the New Zealand Disability Strategy, including ensuring that there are sufficient human and financial resources for services and programmes to build an inclusive New Zealand society and to eliminate social and environmental barriers that prevent children with disabilities from enjoying their full rights.

*Please also see Recommendations 23, 29, 30, 32 and 35(c).*

Adequate standard of living

27. The Government:
- (a) Adopts and implements legislation which has, as its purpose, the ending child poverty by 2020;
  - (b) Gives priority in the legislation and in its implementation to those children in most need of support;
  - (c) Removes the discriminatory elements of Working for Families;
  - (d) Establishes a timetable for achieving targeted reductions in child poverty;
  - (e) Allocates responsibilities across government, including budgetary allocations, in order to end child poverty;

- (f) Allocates responsibilities across central and local government, including budgetary allocations, to ensure that all children live in safe and healthy housing and neighbourhoods;
- (g) Supports and provides education for parents to ensure that all children have nutritious food and adequate clothing; and
- (h) Establishes ongoing independent monitoring and evaluations of progress with annual reporting of progress to Parliament.

**Part 7: Education, Leisure and Cultural Activities (Articles 28, 29 and 31)**

28. The Government takes action to reduce the numbers of students who are excluded or expelled from school under the Education Act 1989 and in doing so:
- (a) Amend the Education Act 1989 to require that a decision to exclude or expel a student from school may only be utilised as a last resort measure;
  - (b) Amend the Education Act 1989 to ensure that those students who are excluded from school are returned to a school or educational establishment without delay;
  - (c) Introduce restorative justice conferencing as a compulsory process for resolving serious disciplinary matters in state or state integrated schools; and
  - (d) Introduce an accessible and independent appeal process for determining disputed disciplinary outcomes.
29. The Government takes action to reduce the disproportionate numbers of Maori and Pacific Island students and students with special educational needs who are subject to suspension, exclusion and expulsion from school.
30. In light of its Review of Special Education and in accordance with its obligations under Article 28 of the Convention and Article 24 of the Convention on the Rights of Persons with Disabilities, the Government ensures that students with disabilities are provided with individualised resource and learning support in all early childhood education centres, primary and secondary schools. This should include:
- (a) Increasing the number of specialist educators, including New Zealand Sign Language teachers, and supporting their ongoing professional development;
  - (b) Improve access to the physical environment;
  - (c) Improve processes for children transitioning between early childhood centres, schools, tertiary education and the workplace;
  - (d) Implementation of an Independent Review Authority to review decisions regarding special education funding and complaints regarding access to education from individual students and their families; and
  - (e) Improving the access to special services for students in Te Kohunga Reo and Kura Kaupapa facilities.
31. The Government takes action to address the prevalence of bullying in New Zealand schools, including:
- (a) Introduction of compulsory monitoring and reporting procedures and a periodic school safety audit process; and
  - (b) An expansion of existing restorative justice, peer mentoring and educational programmes.
32. The Government commits sufficient human and financial resources to the education sector, including the early childhood sector, to identify and assist children with learning and behavioural problems, including provision of early intervention programmes.

**Part 8: Special Protection Measures (Articles 22, 30, 32-36, 37(b-d), 38, 39, and 40)**

Refugee children

33. Further to the withdrawal of its general reservation (see recommendation 1 above), the Government enacts legislation that entitles children of asylum seekers or whose parents are unlawfully in New Zealand to the full range of rights and protections under the Convention, including access to free health care, housing, education and income support.
34. The Government increases provision of specialist professional support services, including interpreters, to refugee children subsequent to their integration into the community.

#### Juvenile justice

35. The Government:
  - (a) Repeals those reforms introduced by the Children, Young Persons, and their Families (Youth Court Orders and Jurisdiction) Amendment Act 2010 lowering the age of prosecution to 12 and doubling the length of supervision with activity and supervision with residence orders, instead, extend the jurisdiction of the Youth Court to include all persons aged 14 to 17 years; and
  - (b) Amends the Sentencing Act 2002 so that children and young people aged under 18 years who appear for sentence in a District or High Court shall be sentenced according to the youth justice principles in the Children, Young Persons, and their Families Act 1989 and not on the basis of the general adult sentencing principles in the Sentencing Act; and
  - (c) Ensures that all children and young people, including those with disabilities, subject to juvenile justice proceedings have access to rehabilitative or therapeutic programmes and specialist facilities, including places of detention.
36. Further to its commitment to remove its reservation to Article 37(c), the Government enacts legislation to prohibit age mixing juvenile prisoners with adults in all circumstances, including transit and in any facility run by a private contractor, unless it can be proven, after independent assessment, that it is in the juvenile's best interests.
37. The Government:
  - (a) Explicitly prevent the use of Tasers against children and young people; and
  - (b) Prescribe procedures to ensure that the welfare of children caught up in police raids is accorded due protection.

*Please also see Recommendations 1 and 9.*

#### Sexual exploitation and Trafficking

38. The Government act to:
  - (a) Implement the recommendations of the Prostitution Law Reform Committee aimed to protecting children and young people from under-age prostitution; and
  - (b) Amend its Plan of Action to Prevent People Trafficking to address child abduction and trafficking.

#### Child employment

39. The Government:
  - (a) Act to ensure that child employees and contractors are protected by a codified child employment policy which includes minimum wage protections and workplace conditions; and
  - (b) Ratify ILO Minimum Age Convention No.138.

*Please also see Recommendation 1.*

### **Part 9: Optional Protocols**

40. The Government ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

41. The Government support measures towards the development of an Optional Protocol to the Convention establishing a complaints mechanism.

**Part 10: Tokelau**

42. The New Zealand Government, in conjunction with the civil authorities of Tokelau, and recognizing New Zealand's special relationship with Tokelau and duties to the people of Tokelau, takes all necessary measures to ensure that the children of Tokelau are able to enjoy their full rights.

## ENDNOTES AND REFERENCES

<sup>1</sup> Abide with the grace of God. We submit for your perusal our report, *Children and Youth in Aotearoa 2010: Non-Governmental Organisations Alternative Periodic Report to the United Nations Committee on the Rights of the Child*, and the heralding light of the new dawn. The enclosed report is the result of your request to us to produce for you our opinions on aspects of the rights of children that are detrimental to the people of New Zealand. It is imperative that the wishes of the people who promote a philosophy of working together for the betterment of all, "Nāu te rourou, nāku te rourou ka ora te iwi"-when we share our resources we all thrive. We are now ready. Thus our report, *Children and Youth in Aotearoa 2010*. Your role now is to address and act on the matters raised in the report. We offer you our sincere greetings for you act as the helms- person, the navigator and the guide for the young people of the world in a new age through and beyond the year 2015.

<sup>2</sup> ACYA has made alternative reports about child rights to the Universal Periodic Review (2008), Committee Against Torture (2004 and 2008), the Committee for the Elimination of Racial Discrimination (2007), and the Human Rights Committee (2009). ACYA delegates attended Committee on the Rights of the Child Days of Discussion in 2003 and 2007. ACYA has made submissions to the New Zealand Government on draft state party reports on compliance with human rights treaties, proposed legislation, and other issues. Please see <http://www.acya.org.nz>

<sup>3</sup> Workshop reports, Working Papers and other documents are published on the ACYA website <http://www.acya.org.nz>

<sup>4</sup> Gabrielle, M., Kingi, V., Robertson, J., Morris, A., Cunningham, C., & Lash, B. (2004). *Achieving Effective Outcomes in Youth Justice: Final report*. Retrieved 25 October, 2009, from <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/research/youth-justice/>

<sup>5</sup> Policy Strategy and Research Group. (2007). *Over-representation of Māori in the criminal justice system: An exploratory report*. Retrieved 25 October, 2009, from <http://www.corrections.govt.nz/research/over-representation-of-maori-in-the-criminal-justice-system/executive-summary.html>

<sup>6</sup> Please see [www.a12aotearoa.ning.com](http://www.a12aotearoa.ning.com) Accessed 25 June 2010.

<sup>7</sup> Immigration Act 2009, s352(3).

<sup>8</sup> It was reported in the *UNCROC Work Programme: Updated Milestones 2007/8*, Ministry of Youth Development, that the Minister of Education intended that passing the Immigration Bill into law would enable the New Zealand Government to remove its general reservation . <http://www.myd.govt.nz/working-with-young-people/uncroc/index.html> Accessed 25 June 2010.

<http://www.myd.govt.nz/uploads/docs/Updated%20Milestones%202007%20to%202008.pdf> Accessed 25 June 2010.

<sup>9</sup> Immigration Act 2009 ss129-131.

<sup>10</sup> Children, Young Persons and their Families Act 1989 s238(1)(e).

<sup>11</sup> A/HRC/WG.6/L.7 p16, recommendations 8-10.

<sup>12</sup> A/HRC/12/8/Add.1 p2.

<sup>13</sup> Hansard (debates), available: [http://www.parliament.nz/en-NZ/PB/Debates/Debates/6/5/a/49HansD\\_20100420\\_00000071-Ministerial-Statements-UN-Declaration-on.htm](http://www.parliament.nz/en-NZ/PB/Debates/Debates/6/5/a/49HansD_20100420_00000071-Ministerial-Statements-UN-Declaration-on.htm) Accessed 25 June 2010.

<sup>14</sup> <http://www.huitaumata.com/publications/Documents/māori%20population%20statistics.pdf> Accessed 26 June 2010.

<sup>15</sup> <http://search.stats.govt.nz/search?af=ctype%3Astatistics+ctype%3Ainfoaboutstats+ct1%3Apopulation+%w=Maori+population&date=12m&button2.x=13&button2.y=11> Accessed 25 June 2010.

<sup>16</sup> <http://search.stats.govt.nz/search?af=ctype%3Astatistics+ctype%3Ainfoaboutstats+ct1%3Apopulation+%w=Maori+population&date=12m&button2.x=13&button2.y=11> Accessed 25 June 2010

<sup>17</sup> CRC/C/15/Add.216, 3 October 2003, paras 8,9.

<sup>18</sup> Human Rights Commission, *New Zealand Action Plan for Human Rights, Priorities for Action 2005-2010*, chapter 2.

<sup>19</sup> <http://www.hrc.co.nz/home/hrc/newsandissues/nzaphrthenextstep/nzaphrthenextstep.php> Accessed 26 June 2010.

<sup>20</sup> Public Health Advisory Committee (2010). *The Best Start in Life: Achieving effective action on child health and wellbeing*. Wellington: Ministry of Health. Published June 2010. <http://www.phac.health.govt.nz/moh.nsf/indexcm/phac-the-best-start-in-life-2010> Accessed 25 June 2010.

<sup>21</sup> CRC/C/15/Add.216, 3 October 2003, para 11.

<sup>22</sup> Blaiklock, A; Kiro, C., Belgrave, M., et al (2002). *When the Invisible Hand Rocks the Cradle: New Zealand Children in a Time of Change*. Innocenti Working Papers, 93, Innocenti Research Centre.

<sup>23</sup> CRC/C/15/Add.216, 3 October 2003, para 15.

- <sup>24</sup> <http://www.stats.govt.nz/~media/statistics/publications/analytical-reports/children-in-nz/children-in-nz.aspx> Accessed 25 October 2009.
- <sup>25</sup> CRC/C/15/Add.216, 3 October 2003, para 17.
- <sup>26</sup> C/C/15/Add.216, 3 October 2003, para 15.
- <sup>27</sup> <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/monitoring/children-young-indicators-wellbeing/2008-report/cyi-report-2008.pdf> Accessed 25 October 2009.
- <sup>28</sup> <http://dnmeds.otago.ac.nz/departments/womens/paediatrics/research/nzcyes/index.html> Accessed 25 October 2009.
- <sup>29</sup> Personal communication to ACYA from Jed Horner, March 2010.
- <sup>30</sup> Public Health Advisory Committee( 2010). *The Best Start in Life: Achieving effective action on child health and wellbeing*. Wellington: Ministry of Health. Published June 2010. <http://www.phac.health.govt.nz/moh.nsf/indexcm/phac-the-best-start-in-life-2010> Accessed 25 June 2010.
- <sup>31</sup> <http://www.youthlaw.co.nz>
- <sup>32</sup> [http://www.occ.org.nz/publications/reports\\_documents/reports\\_\\_and\\_\\_publications](http://www.occ.org.nz/publications/reports_documents/reports__and__publications) Accessed 25 June 2010.
- <sup>33</sup> <http://nzcurriculum.tki.org.nz/The-New-Zealand-Curriculum/Values> Accessed 25 October 2009.
- <sup>34</sup> <http://www.rightsined.org.nz>
- <sup>35</sup> CRC/C/15/Add.216, 3 October 2003, para 19(b).
- <sup>36</sup> Local Government Act 2002 , s3.
- <sup>37</sup> Letter from Minister of Local Government to ACYA dated 2 April 2008.
- <sup>38</sup> Local Government Act 2002, Part 7.
- <sup>39</sup> Ibid Part 8.
- <sup>40</sup> CRC/C/58 paras 42-72 General Guidelines regarding the form and contents of periodic reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention. Adopted by the Committee on the Rights of the Child on 11 October 1996. Para 45.– from *Implementation Handbook for the Convention on the Rights of the Child*, Hodgkin, R. and Newell, P., UNICEF 1998
- <sup>41</sup> Irving, A., Fisher, N. *Local Government: Respecting the Rights of Our Children*, UNICEF New Zealand 4 June 2010, page 2.
- <sup>42</sup> Children’s Commissioner Act 2003 s12.
- <sup>43</sup> CRC/C/15/Add.216, 3 October 2003, para 30(a).
- <sup>44</sup> Crimes (Reasonable Parental Control and Correction) Amendment Bill – Members Bill per John Boscawen MP.
- <sup>45</sup> For example, a survey of 200 parents in July 2009 (New Zealand Herald Digipoll) found that 39% of mothers and 33% of fathers never hit their children, compared with below 10% over the past four decades. Two thirds of those interviewed admitted to smacking children “occasionally”.
- <sup>46</sup> CRC/C/15/Add.216, 3 October 2003, para 21(b).
- <sup>47</sup> Children, Young Persons and their Families Act 1989 s117(1)(a).
- <sup>48</sup> Established in *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] All ER 402.
- <sup>49</sup> CRC/C/15/Add.216, 3 October 2003, para 21(a).
- <sup>50</sup> Ibid para 21(b).
- <sup>51</sup> Sentencing Act 2002 s86A
- <sup>52</sup> CRC/C/15/Add.216, 3 October 2003, para 21 .
- <sup>53</sup> CRC/C/15/Add.216, 3 October 2003, para 23.
- <sup>54</sup> CRC/C/15/Add.216, 3 October 2003, para 24.
- <sup>55</sup> CRC/C/15/Add.216, 3 October 2003, para 22.
- <sup>56</sup> See for example, Ministry of Social Development (2008), *The Social Report 2008*; Ministry of Social Development (2008), *Children and Young People Indicators of Wellbeing 2008*; Fletcher, M., Dwyer, E. (2008), *A Fair Go for All Children*, Office of the Children’s Commissioner and Barnardos; Child Poverty Action Group (2008), *Left Behind*; New Zealand Child and Youth Epidemiology Service, (2007), *Monitoring the Health of New Zealand Children and Young People*.

- <sup>57</sup> Sobrun-Maharaj, A., Tse, S., Hoque, E., Rossen, F. 2009, The Settlement and Social Inclusion of Immigrant Youth in Aotearoa New Zealand. *The International Journal of Interdisciplinary Social Sciences*, 4 (7): 97-111.
- <sup>58</sup> <http://www.odi.govt.nz/resources/publications/nzds/index.html> Accessed 18 February 2010.
- <sup>59</sup> Public Health Advisory Committee (2010). *The Best Start in Life: Achieving effective action on child health and wellbeing*. Wellington: Ministry of Health. Published June 2010. <http://www.phac.health.govt.nz/moh.nsf/indexcm/phac-the-best-start-in-life-2010> Accessed 25 June 2010.
- <sup>60</sup> The New Zealand Institute (2010). *NZ ahead: A report card of New Zealand's social, economic and environmental wellbeing*. <http://nzinstitute.org/index.php/nzahead> Accessed 25 June 2010.
- <sup>61</sup> St John, S., Johnson, A. Presentation at Child Poverty Action Group Post Budget Breakfast "Accounting for children?" 21 May 2010, Auckland.
- <sup>62</sup> Fiona Beals. Personal communication. 4 May 2010.
- <sup>63</sup> Human Rights Act 1993 s21(i)
- <sup>64</sup> In addition, any claim against a Government agent is subject to a limitation test under section 5 of the New Zealand Bill of Rights Act.
- <sup>65</sup> <http://www.everychildcounts.org.nz>
- <sup>66</sup> Every Child Counts Policy Statement, 2008.
- <sup>67</sup> [2010] 1 NZLR 104.
- <sup>68</sup> Ibid para 52.
- <sup>69</sup> The best interest of the child is not always accorded primary judicial consideration in all cases. For example, under the Property (Relationships) Act 1976, the Court must have regard to the interests of any minor or dependent children and may make an order settling specified relationship property for the benefit of such children. But the Court is not bound to consider the best interests of the child as a primary consideration, children have no right to apply for orders and their interests are not represented in proceedings under the Act. Orders in favour of children are rare because there is seldom detailed information before the Court about their situation.
- <sup>70</sup> *The Children's Health Social Monitor New Zealand* (2009). [http://www.nzchildren.co.nz/infant\\_mortality.php](http://www.nzchildren.co.nz/infant_mortality.php). Accessed 18 February 2010.
- <sup>71</sup> Ministry of Social Development (2009). *The Social Report 2009*. <http://socialreport.msd.govt.nz/index.html> Accessed 25 June 2010.
- <sup>72</sup> CRC/C/15/Add.216, 3 October 2003, para 26.
- <sup>73</sup> Care of Children Act 2004, s6
- <sup>74</sup> Care of Children Act 2004, s7
- <sup>75</sup> [http://www.parliament.nz/en-NZ/PB/Debates/Debates/3/0/9/49HansD\\_20090917\\_00000001-Local-Government-Auckland-Council-Bill-In.htm](http://www.parliament.nz/en-NZ/PB/Debates/Debates/3/0/9/49HansD_20090917_00000001-Local-Government-Auckland-Council-Bill-In.htm) Accessed 25 June 2010.
- <sup>76</sup> Children, Young Persons, and Their Families Act 1989, s323.
- <sup>77</sup> Children, Young Persons, and Their Families (Residential Care) Regulations 1986 rr15,16 & 29-31
- <sup>78</sup> Ludbrook, R. Personal communication to ACYA, 20 June 2010.
- <sup>79</sup> Education Act 1989 s97(2).
- <sup>80</sup> [2010] NZLR 104 at para 50.
- <sup>81</sup> <http://www.unyanz.co.nz/NationalEvents/YouthDeclaration2010.aspx> Accessed 26 June 2010.
- <sup>82</sup> Citizenship Act 1977 s6(1)(b)
- <sup>83</sup> Care of Children Act 2004, ss 17-19, Birth, Deaths, Marriages and Relationships Registration Amendment Act 2008 s10, amending s9 of the principal Act. Despite these changes, official figures show that in 2009, the first year after the changes came into effect, over 3800 children were registered without the name or details of their father.
- <sup>84</sup> New Zealand Bill of Rights Act 1990, s4.
- <sup>85</sup> Ibid, section 5.
- <sup>86</sup> Care of Children Act 2004, s16(2)(e).
- <sup>87</sup> Education Act 1964 s79.
- <sup>88</sup> Petition 2008/52, 24 November 2009, presented to Jackie Blue MP, referred to Justice and Electoral Select Committee.

- <sup>89</sup> Submission of Shakti Community Council Inc. to Justice and Electoral Select Committee, 3 February 2010, Part 3, pages 5-7.
- <sup>90</sup> Ibid para 9.6. Note: A number of other submissions from other organisations, including Pacific Women’s Watch and Shine\*, also called for amendment to the Marriage Act 1955 and criminal sanctions and civil penalties for agents of forced marriages.
- <sup>91</sup> <http://www.radionz.co.nz/news/stories/2009/05/26/1245b0ab4e49>; Accessed 25 June 2010 <http://www.hnzc.co.nz/hnzc/web/about-us/news/national-tenancy-agreement-to-help-manage-tenancies.htm> Accessed 25 June 2010
- <sup>92</sup> [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10608743](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10608743) Accessed 25 June 2010.
- <sup>93</sup> Privacy Act 1993, s29(1)(d).
- <sup>94</sup> Law Commission, *Review of Privacy Act 1993*, NZLC 17, [http://www.lawcom.govt.nz/UploadFiles/Publications/Publication\\_129\\_460\\_Whole%20Document.pdf](http://www.lawcom.govt.nz/UploadFiles/Publications/Publication_129_460_Whole%20Document.pdf) Accessed 25 June 2010.
- <sup>95</sup> Ibid, para 18.26.
- <sup>96</sup> Ibid, para 18.40.
- <sup>97</sup> Appendix 1, Broadcasting Standards Authority, Free-to-Air Television Code, Advertising Standards Authority, Code for Advertising for Children, Definitions section.
- <sup>98</sup> Children, Young Persons and Their Families Act 1989 s238(1)(e).
- <sup>99</sup> Human Rights Commission, Monitoring Places of Detention, Annual Report of Activities under the Optional Protocol to the Convention Against Torture (OPCAT), 1 July 2008 to 30 June 2009, published December 2009, [http://www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/18-Dec-2009\\_14-23-46\\_Opcat\\_2009\\_final-web.pdf](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/18-Dec-2009_14-23-46_Opcat_2009_final-web.pdf) Accessed 25 June 2010.
- <sup>100</sup> Ibid pages 7-10.
- <sup>101</sup> Ibid page 18.
- <sup>102</sup> Ministry of Social Development (2008). *Children and Young People Indicators of Wellbeing 2008*.
- <sup>103</sup> Ministry of Social Development (2009). *The Social Report 2009*.
- <sup>104</sup> Under the Parental Leave and Employment Protection Act 1987.
- <sup>105</sup> Susan Kell Associates (2006). *Parental Leave and Carers Leave: International provision and research. Report for the Department of Labour*. Wellington. <http://www.dol.govt.nz/publications/research/parental-leave-international/> Accessed 25 June 2010.
- <sup>106</sup> Department of Labour (2007). *Parental leave in New Zealand: 2005/06 Evaluation*.
- <sup>107</sup> International Centre for Prison Studies, Kings College London (2010). World Prison Brief. [http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb\\_country.php?country=202](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=202) Accessed 15 June 2010.
- <sup>108</sup> Gordon, L. (2009). *Invisible Children: First year research report of “A study of children of prisoners”*. Christchurch. PILLARS. <http://www.pillars.org.nz> Accessed 25 June 2010.
- <sup>109</sup> CRC/C/15/Add.216, 3 October 2003, para. 42.
- <sup>110</sup> [http://img.scoop.co.nz/media/pdfs/1005/Microsoft\\_Word\\_\\_WhanauOraQA.pdf](http://img.scoop.co.nz/media/pdfs/1005/Microsoft_Word__WhanauOraQA.pdf). Accessed 20 June 2010.
- <sup>111</sup> Tu’itahi, S (2010). Fanau Ola: A Pacific perspective on Whanau Ora. *Hauora* 81, Autumn 2010.
- <sup>112</sup> CRC/C/15/Add.216, 3 October 2003, paras 27, 28.
- <sup>113</sup> Ministry of Social Development (2008). *Children and Young People: Indicators of Wellbeing in New Zealand 2008*.
- <sup>114</sup> Family Violence Death Review Committee (2010). *First Annual Report to the Minister of Health, October 2008 to September 2009*. Wellington: Ministry of Health. [http://www.fvdr.health.govt.nz/moh.nsf/pagescm/7637/\\$File/fvdr-annualreport-09.pdf](http://www.fvdr.health.govt.nz/moh.nsf/pagescm/7637/$File/fvdr-annualreport-09.pdf) Accessed 25 June 2010.
- <sup>115</sup> Peter Hughes, Chief Executive of Ministry of Social Development. Personal communication, 23 April 2010.
- <sup>116</sup> These positions resulted from an amendment in 1995 to the Child, Young Persons, and Their Families Act 1989.
- <sup>117</sup> Independent Police Conduct Authority (2010). *Inquiry into Police Conduct, Practices, Policies and Procedures Relating to the Investigation of Child Abuse: Part 1*. Wellington: Independent Police Conduct Authority. <http://www.ipca.govt.nz/Site/Child-Abuse-Inquiry/default.aspx> Accessed 25 June 2010.
- <sup>118</sup> Law Commission (2009). Review of Part 8 of The Crimes Act 1961: Crimes Against the Person - NZLC R 111. Wellington: Law Commission.
- <sup>119</sup> Domestic Violence Act 1995, s16(1)
- <sup>120</sup> Ibid s2

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<sup>267</sup> Health and Safety in Employment Regulations, 2008 cl 54-57.

<sup>268</sup> *Ibid* cl 58.

<sup>269</sup> [http://www.wpro.who.int/countries/2009/tok/health\\_situation.htm](http://www.wpro.who.int/countries/2009/tok/health_situation.htm) Accessed 25 June 2010.

<sup>270</sup> CRC/C/15/Add.216, 3 October 2003, para 7(b).