

**QUESTIONS CRC 2010 Report  
about the Rights of the Child**

A review of the Convention on the Rights of the Child as part of the preparation for the next report to the Committee on the Rights of the Child (CRC)

**WORKING PAPER**

Compiled by Alison Blaiklock, Robert Ludbrook,  
Beth Wood, Peter Shuttleworth

Provisional – Progressive Completion  
26 August 2009

ISSN 1177-7656 (print)

ISSN 1177-7664 (online)

This Working Paper has been compiled for ACYA. The views expressed in it may not represent the views of ACYA or each ACYA member. The issues in this Working Paper are true and accurate to the best knowledge the contributors and the ACYA Committee. We make the usual statement that no liability is assumed any contributors or ACYA for any losses suffered by any person arising directly or indirectly from the publication of this Working Paper.

The copyright of this Working Paper is held by ACYA. People are welcome to quote it or copy it as long as the source is acknowledged.

ACYA is very appreciative to the J R McKenzie Trust which has made possible the printing and distribution of this report.

## CONTENTS

INTRODUCTION	2
QUESTIONS (1) GENERAL MEASURES	3
QUESTIONS (2) DEFINITION OF THE CHILD	7
QUESTIONS (3) GENERAL PRINCIPLES	8
QUESTIONS (4) CIVIL RIGHTS AND FREEDOMS	11
QUESTIONS (5) FAMILY ENVIRONMENT AND ALTERNATIVE CARE	14
QUESTIONS (6) BASIC HEALTH AND WELFARE	19
QUESTIONS (7) EDUCATION, LEISURE AND CULTURAL ACTIVITIES	22
QUESTIONS (8) SPECIAL PROTECTION MEASURES	26
QUESTIONS (9) OPTIONAL PROTOCOLS	32

## INTRODUCTION

This paper is concerned to address issues arising from the Government ratification of the Convention on the Rights of the Child (UNCROC). The text is available at [http://www.occ.org.nz/\\_data/assets/pdf\\_file/0009/3312/OCC\\_UNCROC\\_in\\_English\\_and\\_Te\\_Reo\\_Maori.pdf](http://www.occ.org.nz/_data/assets/pdf_file/0009/3312/OCC_UNCROC_in_English_and_Te_Reo_Maori.pdf)

The 3<sup>rd</sup> & 4<sup>th</sup> Periodic Report of the Government was sent to the United Nations Committee on the Rights of the Child (CRC) in November 2008. The report gives a picture of the lives of children in New Zealand based on the Convention. Much is good, but many children need better protection and assistance. The government report is available at:

<http://www.myd.govt.nz/Rights/uncrocinnewzealand.aspx>

Where appropriate we quote the Government report page number after a heading as “Gpage.....”.

CRC sets out tight guidelines on the form in which we are to report. The Report must not exceed 30 pages and has to fit under specified headings, known as “Cluster Groups”. Whilst this structure may seem strange to us in NZ, the strength of our Report will lie in its succinct overview of conditions in New Zealand. This may mean we lose the depth of detail many of us might wish. However there is the opportunity for detailed submissions in the form of Working Papers which we will present as Appendices to the Report. The CRC Concluding Observations (CRC CO) with Recommendations to the Government issued in 2003 are available at:

[http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/73f172e77b12c842c1256df20033829f/\\$FILE/G0344655.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/73f172e77b12c842c1256df20033829f/$FILE/G0344655.pdf)

We will progressively pose questions under each of these headings, based on the Implementation Handbook for CRC and our work. Not every one of our ACYA members will agree with each of the comments or how the question is posed but all agree that they want improvements to the wellbeing of children. How we work through the issues engenders the debate and solutions.

We are now seeking the answers to the questions posed and hope they will be a sound preparation for the Alternative Report to CRC, and elicit a response from them and subsequently the Government and society.

## **QUESTIONS (1) GENERAL MEASURES**

(Articles 4, 42 & 44 para 6)

### **Policies for Children (Gpage 18 & 37)**

Article 4 requires the State to undertake all appropriate legislative, administrative and other measures to implement the Convention and the issue was raised in CRC CO No11.

The Agenda for Children was published in 2002 and the Government told the Committee that it provided a national plan of action for improving the rights of children and young people. The Agenda was a far-reaching document based to some extent on the provisions of the Convention. However a fundamental flaw with Agenda for Children was that it was framed in generalities and had no binding force on government agencies. ACYA's review of the implementation of each of the areas of the Agenda found there has been no systematic implementation of the Agenda. The Youth Development Strategy Aotearoa appears to have some currency, and is better because it does contain some specific recommendations.

Q 1 a (i): What has happened to the Agenda for Children?

Q 1 a (ii): Has anything taken its place? Is there going to be an overarching strategy for ensuring the rights and wellbeing of children and young people?

### **Permanent mechanism for issues arising from the convention (Gpage 18)**

There has been some discussion among children's advocates on the best structures within central government to co-ordinate policy and services to protect and enhance the wellbeing of children, but there has not been widespread public discussion. Other countries have used a range of options within Cabinet (such as a senior Cabinet Minister for Children) to address this issue.

Q 1 b: How will what the Agenda for Children called "a whole child approach" be achieved throughout all levels of Government?

### **The Role of the Office of the Commissioner for Children (OCC) (Gpage 20)**

The CRC CO No 13 recommended that the Government ensure that the Office of the Commissioner for Children and the National Human Rights Commission are equally independent and that the relationship between the two institutions be clearly defined as well making a clear division of their respective activities. In addition, the Committee urges the State party to ensure that the Office of the Commissioner for Children receives sufficient human, material and financial resources to carry out its mandate.

The two organization's roles and responsibilities are defined in separate Acts with the Children's Commissioner having specific responsibilities in relation to the Children, Young Persons and their Families Act 1989, UNCROC, and the Optional protocol to Convention Against Torture (OPCAT)..

The unique roles of the Children's Commissioner are an essential part of the fabric of children's rights in New Zealand.

Q 1 c: In what ways can the Children's Commissioner's critical roles be secured and strengthened?

### **Review of legislation affecting children (Gpage 16)**

The CRC CO No 9 asked that all legislation be reviewed to ensure compliance with the Convention. There is no official process by which Bills are scrutinised within government to identify areas of non compliance with UNCROC. We believe the CYF ( Court Jurisdiction and Orders) Bill undermines the Government commitment to UNCROC.

Q 1 d (i): What has Government done to review existing legislation for its compliance with the Convention?

Q 1 d (ii): What happens with new legislation to ensure compliance with the Convention ?

### **Children of Tokelau (Gpage 15)**

The children of Tokelau, some 600, are citizens of New Zealand. One Committee of the UN wants Tokelau to be independent but after two referenda the people of Tokelau want to be protected by New Zealand. NZAid supports Tokelau with grants of \$14 million per year. Tokelau has not signed the Convention which puts the Government in an interesting position. The CRC CO No7 (b) raised the issue. ACYA has made numerous enquiries of the Government to ascertain the position of the welfare of Tokelauan children.

Q 1 e: Given the unique position of Tokelauan children in this legislative/political situation how are the best interests of its children protected?

### **REMOVAL OF RESERVATIONS**

New Zealand made three reservations to the Convention, The Committee has asked New Zealand to remove the reservations, CRC CO Nos 7 and 21 (c).

### **Age mixing in prisons (Gpage 14)**

New Zealand made a reservation to Article 37 of the Convention which says that those under 18 years should be separated from older inmates unless it is in the best interests of the child not to do so.

There are four male youth units, but some young men 18 years and over, are permitted in these establishments. There is no separation of girls from women in custody. Separation of children and young people in custody from adults in custody also needs to apply in police cells, remand and in transit.

Q1 f (i): What progress is being made to ensure that a child or young person is always separated from adults in detention unless it is not to be in the best interests of the child or young person?

Q 1 f (ii): How are decisions made about what is in the best interests of the child or young person?

Q 1 f (iii): What factors prohibit the Government removing the Reservation?

### **No Minimum age for employment (Gpage 12)**

New Zealand has no minimum age of employment.

In the Ministry of Youth Development's Five Year Work Programme 2004-2008 for implementation of the Committee's recommendations, the initial step was for Government to sign the International Labour Organisation Minimum Age Convention (ILO 138). ILO 138 has a minimum age of 13 years for "light work" which is to be defined by each country following guide notes.

New Zealand has still not signed ILO 138, and our understanding is there is no desire for the Government to do so.

Q1 g (i): What are the issues involved in removing the Reservation?

Q1 g (ii): Why does the Government not wish to protect very young children from exploitation in the work place?

### **Care for children not legally in New Zealand (Gpage 10)**

Through no fault of their own, some children live in New Zealand without residency status. This has left them without entitlement to education, health and other essential services. We understand that the Government has been looking at how to address this in an amended Immigration Bill. Limited Purpose Permits are designed to permit schools to enrol children but are they practical? Will over stayer parents be prepared to obtain them?

Q 1 h (i): Is the Government ready to remove this Reservation?

Q1 h (ii): When will the Immigration Bill process through Parliament?

### **OTHER ISSUES**

#### **Publicity about the Convention and issues of non compliance (Gpage 27)**

Articles 40 and 44 address the need for the Government to promulgate the Convention and the issues was raised in CRC CO No19(a). It appears that many children, young people and adults are not aware of the Convention and its implications for them. The recently agreed New Zealand Curriculum for schools will be of benefit

Q1 i: How well is the Convention understood in society, and what will be done to increase understanding?

#### **Parliamentary debate on the Convention**

It has been suggested by the UN Committee that Reports to the UN Committee and their response should be tabled in Parliament.

Q1 j: Why are the reports and the UN Committee's responses not tabled in Parliament?

#### **The Convention and Local Authorities, Health Boards and School Trustees**

When the government ratified the Convention it undertook to ensure that all aspects in society covered by legislation recognised the Convention. Having made some enquiries, ACYA is doubtful that many Local Authorities, District Health Boards and School Boards of Trustees understand their responsibilities under the Convention.

Q1 k (i): What actions are being taken by the Government to assist Local Authorities, District Health Boards and School Boards of Trustees understand their responsibilities?

Q 1 k (ii): What more could be done to engage support for the Convention and ensure all sectors' work is underpinned by its provisions?

### **Resources for children (Gpage 21)**

The Committee recommended: "*The State Party... prioritise budgetary allocations to ensure the economic, social and cultural rights of children in particular those belonging to economically disadvantaged groups,*" CRC CO No 15"

Q 1 l (i): How can the Government identify appropriate allocation of resources to children?

Q 1 l (ii) Has the Government determined a definition(s) of child poverty ?

### **Data collation (Gpage 23)**

In 2003 CRC CO No 15, asked for substantial data and recommended New Zealand develop a system of data collection that covers all areas of the Convention.

Two recent reports – Monitoring the health of New Zealand children and young people: Indicator handbook (Paediatric Society of New Zealand & New Zealand Child and Youth Epidemiology Service) and the Ministry of Health's last Health Survey - contain valuable information about the health and wellbeing of children and young people. Children and Young people: Indicators of well-being in New Zealand and the Social report do provide improved information.

Q 1 m: What progress is being made in developing a comprehensive system of information that covers all areas of the Convention?

### **Education of professionals on the principles of the Convention. (Gpage 27)**

All professionals working with children need to be trained in the principles and practice of the Convention, CRC CO No 19(b)

Q 1 n: How is the Government meeting its obligations to educate professionals and sectors about the Convention and their responsibilities under it?

### **Human Rights Act**

The Human Rights Act has a clause that discriminates against those under 16 years which has implications for instance in employment issues.

Q 1 o: Should discrimination for under 16 year olds be removed from Human Rights legislation?

### **International Co-operation (Gpage 22)**

Articles 4, 24 and 27 requires the State to work within a framework of international co-operation.

Q1 p: How does New Zealand participate in international co-operation?

## **QUESTIONS (2)**

### **DEFINITION OF THE CHILD**

(Article 1)

Article 1 defines a child for New Zealand purposes as a person under 18 years of age.

#### **Minimum age of criminal responsibility (Gpage 29)**

CRC CO No 21 (a) asked the Government to raise the age of criminal responsibility. Recently the “Young Offenders (Serious Crimes) Private Members Bill was rejected by the Select Committee and the proposed legislation did not proceed. The Bill’s aim was to reduce rather than increase the age of criminal responsibility. The minimum age for criminal responsibility remains at 10 years old for murder or manslaughter. Otherwise the minimum age is 14 years.

Q 2 a What proactive steps has the Government taken towards raising the age of criminal responsibility as recommended by the UN Committee?

#### **Raising the age of the Children and Young Persons Families Act (Gpage 30)**

The current Act does not apply to 17 year olds, and is therefore not compliant with the Convention. The Children, Young Persons and their Families Amendment Bill (No 6) is currently before Parliament and includes this amendment.

Q 2 b: What priority is being given to passage of the Children, Young Persons and their Families Amendment Bill (No 6) as required by CRC CO No 21(b)?

#### **Definition of children in legislation (Gpage 30)**

The convention defines children as those under the age of 18 years. It also notes that definition is subject to any majority law. New Zealand majority is age 20. the Convention balances the need to give children protection against the concept of evolving capacities. The UN has asked the government to look at age limits in legislation. There should be no discrimination by race or sex.

Some of the age limits needing to be considered are:

Legal and medical counselling without parental consent

Medical treatment without parental consent

End of compulsory education

Sexual consent

Marriage

Joining armed forces and participation in hostilities

Lodging complaints

Ability to enter into contracts

YouthLaw have a useful document “When Can I”: <http://www.youthlaw.co.nz/>

Q 2 c (i) Are there anomalies in current legislation about age?

Q 2 c (ii) What progress has been made by government to look at this issue?

## **QUESTIONS (3) GENERAL PRINCIPLES**

(Articles 2, 3, 6, 12 and 30)

### **DISCRIMINATION (Gpage 33)**

Articles 2 and 30 seek to remove discrimination of the child or parents or care givers. It lists 12 areas of potential discrimination including race, colour, sex, language, religion, disability, political, national ethnic or social origins but this list is not exclusive and covers discrimination of any kind and this must include discrimination on the grounds of age (youthfulness). CRC CO Nos 23 and 24 raised with the Government two issues:

- a) to ensure existing legislation is not discriminatory
- b) that in practice there is no discrimination.

Discrimination can be active (stopping young people wearing “hoodies” from coming into shops) or passive (accepting ethnic groups to be socially disadvantaged) or structural (through defective legislation or government policies and priorities).

Discrimination in the provision of health, education and social services and assistance are addressed in Questions 6 & 7 of this paper.

Q 3 a (i) Does New Zealand have discriminatory legislation?

Q 3 a (ii) Is there evidence of children suffering discrimination?

Q 3 a (iii) Are there situations where children are discriminated against on the grounds of their young age?

### **Racial intolerance**

The UN Committee asked Government for a specific response to the 2001 World Conference against Racism.

Q 3 b (i) Are there situations where racial discrimination is an issue for children in New Zealand?

Q 3 b (ii) What progress is being made in reducing the inequities between ethnic groups of children and families?

### **Religious intolerance**

NZ society has religious diversity but sometimes religious intolerance or disrespect is manifest.

Q 3 c Does religious discrimination affect children in NZ?

### **VOICE OF CHILDREN (Gpage 36)**

Article 12 gives the right of children to be heard, their views being given weight in accordance with their age and maturity, including in judicial and administrative proceedings. The Care of Children Act and Evidence Act have successfully applied this concept as required by CRC CO No 26..

A TV One’s Fair Go programme has demonstrated two incidents. In the first a 12 year old disclosed she had been working for 50c an hour in delivery work. In the second case a 9 year old complained that while waiting to play netball in Christchurch in winter the dress code was harmful. Both got a good hearing.

The voice of the child needs to be heard in many situations including:

Adoptions

Family law and policies (including family violence)

Child protection laws (including Family Group conferences),

Education (including early childhood education),

Medical care and entitlements,

Disability (whether physical, intellectual, mental or social),

Immigration issues,

Birth registration and name change,

Witnesses and victims,

Institutional care,

Local issues including transport, leisure facilities,

Employment (including work as contractors), and

Social issues

Complaint procedures need to be accessible, child friendly and effective.

Q 3 d (i) What legislation, official policies and practices need to be changed to give full effect to the voice of children?

Q 3 d (ii) Are complaints procedures child friendly and accessible and do they give fair treatment?

Q 3 d (iii) Are there examples of the Government having consulted appropriately with children on relevant legislation and policy?

Q 3 d (iv) Should the Local Government Act be amended to give recognition to child and youth advocates in local authorities and recognition of the Convention?

### **Right to Life and Development (Gpage 35)**

The Committee on the Rights of the Child considers a range of issues under Article 6, including the inherent right to life of the child, abortion, euthanasia, infanticide, early marriage, the death penalty and armed conflict (UNICEF Implementation Handbook on the Rights of the Child, Third edition).

“New Zealand children have higher rates of preventable illness and deaths from injuries than children in almost any other OECD country. They have comparatively high infant mortality rates and low immunization rates” (Child Poverty Action Group 2008).

Rates of avoidable deaths are much higher for Maori and Pacific peoples. There is evidence that the gap in life expectancy between Maori and non-Maori has begun to close.

The Convention on the Rights of the Child “deliberately leaves open the starting point of childhood, that is, whether it is conception, birth, or sometime in between. Thus, the Convention leaves individual states to decide for themselves the conflicting rights and interests involved in issues such as abortion . . . The Committee has commented adversely on high rates of abortion, on the use of abortion as a method of family planning and on selective abortion by gender, and it has encouraged measures to reduce the incidence of abortion” (UNICEF Implementation Handbook on the Rights of the Child, Third edition, page 85).

Q 3 e (i) What measures has the Government taken to reduce deaths among babies, children and young people?

Q 3 e (ii) What measures has the Government taken to reduce deaths among Maori and Pacific peoples?

Q 3 e (iii) What measures is the Government taking to reduce New Zealand's high rate of abortions?

### **Best Interests (Gpage 35)**

Article 3 - the best interest of the child - is a cornerstone of the Convention. It is important in ensuring recognition of the interests of children who have much less power than adults in New Zealand society.

The best interests of the child principle needs to be considered at different levels, including national, community, and family. It applies across the many services and actions that affect whether directly or indirectly the day to day lives of children - government departments, government agencies, crown entities, local authorities; District Health Boards; schools; other health, educational and social services; the provision and protection of water, air and sanitation; the courts and justice system; the police; community organisations and groups; the media; sports, leisure, entertainment; etc. It also applies in families and the Convention recognises the primary responsibility and importance of families, parents and guardians (Preamble, Articles 2, 5, 10, 14, 18,19, 24, 27, 29 and 37).

This means that Government needs to take a comprehensive and planned approach to putting the best interests of the child principle into practice.

The Government's Agenda for Children (2002) provided a framework for establishing a comprehensive "best interests" approach in Government policy and practices. Action Area 1 of the Agenda promoted a "whole child approach" across government. However ACYA's review found there has been no systematic implementation of the Agenda.

Q 3 f (i): What has happened to the Agenda for Children?

Q 3 f (ii): What measures has the Government taken to establish a comprehensive "best interests" approach across central and local government?

Q 3 f (iii) What resources are in place to ensure that the day to day actions of government agencies, organizations, communities, and families will be in the best interests of children and young people?

Q 3 f (iv) Is the Government undertaking a comprehensive review of laws and official policies and practices to assess compliance and consistency with the best interests of the child and the other principles and provisions of the Convention?

### **Human Assisted Reproductive Technology (Gpage 42)**

This is a complex issue that needs further advice.

## QUESTIONS (4)

### CIVIL RIGHTS AND FREEDOMS

(Articles 7, 8 13-17 and 37 (a))

#### **Registration and Nationality (Gpage 40)**

Articles 7 and 8 cover the registration of children at birth, identity and right to nationality. The Citizenship Amendment Act requires non resident mothers who give birth to register the child under another nationality, but no child can be made stateless.

Q 4 a (i) Have difficulties arisen in the registration of children in New Zealand?

Q 4 a (ii) Is the Citizenship Amendment Act working effectively so that no child is in a stateless position for more than three months while issues are resolved?

Q 4 a (iii) What measures are in place to ensure that, as far as is possible, children have the right to know the names of their parents?

Q 4 a (iv) How do these measures respond to issues that have arisen from changes in family structure and developments in new birth technology and DNA parentage testing?

Q 4 a (v) Should changes be made to legislation that allows children to change their name or nationality?

Q 4 a (vi) Do children have the right according to age and maturity to seek information on such issues as adoption, outcomes of artificial conception or identifying genetic parents?

Q 4 a (vii) Are there other issues affecting the rights of children in registration, identity and nationality?

#### **Freedom of Expression (Gpage 42)**

The Universal Declaration of Human Rights entitles everyone to freedom of expression. Article 13 addresses this specifically for children whether in the home, school or elsewhere, subject to provisos protecting the rights of others. In family life this may well cause friction.

Q 4 b Does Article 13 cause issues for families or at schools? If so, how are these issues being addressed?

#### **Freedom of Thought, Conscience and Religion (Gpage 43)**

Freedom of thought and conscience, Article 14, are very personal to the child and there seems to be little commentary on these issues directly.

However religious liberty however both in New Zealand and elsewhere is often an emotive issue and raises issues of dress, conduct, and conscience in the home, at school and in society. As New Zealand moves into a more ethnically mixed culture such issues are likely to escalate.

Q 4 c Are there issues around freedom of thought, conscience and religion of children that need to be addressed to ensure social harmony? If so, how are these issues being addressed?

#### **Peaceful assembly(Gpage 43)**

There seems little to comment under this heading from Article 15.

Q 4 d Have there been situations where children have been denied freedom of association or peaceful assembly?

### **Privacy (Gpage 43)**

This issue is addressed under Article 16 and includes respect for physical privacy in institutional establishments, and the right not to be named in certain public situations or where the acts of parents or caregivers impact on the life of the child as to their privacy. This is particularly relevant in breaches of the law, as an offender or victim, in the media and in disclosure of information on record for instance in medical situations or schools.

The Advertising Association and Broadcasters have particular privacy rules for those under 16 years..

Q 4 e (i) Are children's rights to confidential counselling respected and supported?

Q 4 e (ii) Are children refused access to records about themselves?

Q 4 e (iii) Are children adequately protected from media interference and harmful publicity?

Q 4 e (iv) Are there adequate complaints procedures if children's privacy is breached?

Q 4 e (v) Is consideration being given to the development of a Privacy Code for schools which would consider a range of issues including drug testing and searches?

### **Access to appropriate information (Gpage 44)**

Article 17 has a comprehensive sweep to ensure children are well informed at an appropriate age on a wide range of health, educational, social issues but at the same time are protected from harmful material. Given the development of the internet in the last five years there is an astonishing range of material available from world wide sources enhanced by easy access to mobile phones. Care has to be taken that access to information in English, Maori, Sign and other languages is reasonably available. A difficulty comes with the need for censorship, and restricted access to material deemed unsuitable such as pornography, sexually explicit material, graphic violence, and sadistic practices. The public and entertainment media has some restrictions in place to protect children. However the internet is proving difficult with unwarranted intrusions.

Q 4 f (i) Is freedom of access to information suitable to the maturity of children available to children in New Zealand?

Q 4 f (ii) How accessible is such information for children whose first language is not English and/or who have limited reading skills?

Q 4 f (iii) Are censorship laws adequate and appropriately monitored to protect children

Q 4 f (iv) Is abuse of children occurring through the internet? What measures are in place to protect children?

### **Cruel, inhuman or degrading Treatment (Gpage 46 )**

Article 37 (a) has been strengthened by the Optional Protocol to the Convention Against Torture. The Human Rights Commission is the lead National Preventive Mechanism and they have issued their initial report for the year ending 30 June 2008. The next report is awaited. Children in police cells are addressed in Cluster Group 8 Juvenile Justice.

Q 4 g.(i) What are the places of detention covered by OPCAT

Q 4 g (ii) How many children, their gender and age blocks come within the detention

definition?

**Not hitting children (Gpage 61)**

Addressed in Articles 37 (a) and 19, and CRC CO No 30, Section 59 of the Crimes Act that permitted corporal punishment of children saw a major campaign for reform in 2006/7. In a surprise move both major political parties, and some other parties, agreed to amend legislation to ban corporal punishment of children. There were wild accusations by the opponents that the police would be inundated with complaints. This has not happened. A postal referendum is being held in August 2009 to seek amendment to the law. The act has a revision clause that is to be addressed in 2009/10.

Q 4 h (i) How are the Police using their discretionary powers?

Q 4 h (ii) Are parents getting sufficient information and support with changing their behaviour?

Q 4 h (iii) What measures have been taken to inform the public about New Zealand's law change on physical discipline and to engage their support?

Q 4 h (iv) Are positive parenting initiatives to help parents learn about disciplining children without use of physical discipline sufficiently resourced and co-ordinated?

## **QUESTIONS (5)**

### **FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

(Articles 5, 18 (para 1&2), 9-11,19,-21, 25, 27(para 4), 39)

#### **Family (Gpage 50 & 52)**

The Convention recognises in Articles 5 and 18 (paragraphs 1-2), the important roles and responsibilities of the family in the care and wellbeing of the child. It provides for the child, depending on age and maturity, to become able to make decisions affecting their wellbeing. It recognises concepts of parental responsibility, and the “evolving capacity” of the child. It repeatedly says that the State has an obligation to assist families.

The importance of the family in the care of the child comes into many aspects of the topics we are reviewing. For example, economic demands often see both parents of young children working which poses a challenge to what may be in the best interests of the child, and increases demand for appropriately funded, equipped and staffed child care centres

Q 5 a (i) How does legislation support parents having primary responsibility for the upbringing and development of children and reflect that this responsibility must be based on the best interests of the child?

Q 5 a (ii) Is there a need to increase education about parenting and the care of children in schools and the wider community?

Q 5 a (iii) How adequate is paid parental leave?

Q 5 a (iv) Are there sufficient affordable early childhood education and out-of-school-care centres?

Q 5 a (v) Do we have “latch key” children in New Zealand?

Q 5 a (vi) Are overseas-based children being educated in New Zealand without proper parental care?

#### **Protection from violence (Gpage 58)**

Article 19 (and Article 37a under Civil Rights- hitting children) deals with violence to children by those who care for the child. The Article covers physical or mental violence, sexual abuse, injury or neglect. The State is required to protect and support victim children by law and through other measures identify, assess, protect and treat such children.

The UN Committee, CRC CO 28 expressed concern at the prevalence of child abuse, and that services aimed at preventing abuse did not have sufficient resources and were insufficiently coordinated. It recommended an expansion of services, prevention programmes, and improved co-ordination.

Non- accidental deaths of children continue to receive media attention and public outrage. Domestic violence has received increased Government and public recognition. The increase in notifications to Child Youth and Family may reflect families, extended families, professionals and the public are becoming more open to raising the issues of abuse.

Violence in New Zealand is a grave social issue and much publicity and effort is being taken to address the issue.

Q 5 b (i) Do New Zealand families accept that all physical or and psychological violence towards children is unacceptable?

Q 5 b (ii) Is violence towards children an issue society is now willing to fully condemn

Q 5 b (iii) Is there evidence that current initiatives including legislation, publicity, policies, government funding and community response beginning to take affect and reduce violence to children?

Q5 b (iv) If not what more can and should be done to protect children from all forms of violence?

Q 5 b (v) Is bullying at school an issue?

Q 5 b (vi) Are State institutions that provide for the care or detention of children free from violence?

Q 5 b (vii) Is reporting of violence by professional groups, social workers and others complicated by privacy and confidentiality issues?

Q 5 b (viii) Should the law require professionals working with children to report any instances of abuse or neglect?

Q 5 b (ix) Are positive parenting initiatives to help parents learn about disciplining children without use of physical discipline sufficiently resourced and co-ordinated?

Q 5 b (x) Are programmes to prevent domestic violence and child abuse sufficiently resourced and co-ordinated?

Q 5 b (xi) Are there adequate trained and experienced staff at appropriate locations throughout New Zealand to investigate and respond to allegations of child abuse and assist with the recovery of children who have been abused?

Q 5 b (xii) Are services and programmes for assisting children recover from child abuse sufficient, co-ordinated and effective?

Q 5 b (xiii) Are services appropriate for children and families from different ethnic communities?

Q 5 b (xiv) Has the integration of Child Youth and Family into the Ministry of Social Development improved services to children?

Q 5 b (xv) What progress is being made in following up the findings of the Ministry of Social Development report, "Children at Increased Risk of Death from Maltreatment and Strategies for Prevention"?

Q 5 b (xvi) The Office of the Children's Commissioner has a statutory responsibility to monitor the Children, Young People and their Parents Act 1989 and the operation of the Government Department that implements it. What are the mechanisms set up to ensure this happens?

### **Alternative Care (Gpage 48)**

As provided for in Article 9, The Children, Young Persons and Their Families Act has complex provisions for assessing when a child under 17 years is in need of care or protection and for meeting the child's needs by providing support or parenting programmes for the parents and in serious cases of abuse and neglect arranging an alternative placement with a family member, with foster parents or in a care and protection residence.

Q5 c (i) Are there ways in which New Zealand's laws, policies, and practices for child protection and alternative care for children and young persons could be improved?

Q5 c (ii) Is there enough assistance (financial and practical) provided to family members and foster parents who care for children whose parents are unable or willing to care for them adequately?

Q5 c (iii) Do the conditions in which children and young persons are held in Child, Youth and Family facilities serve the welfare and best interests of the children concerned, and are there adequate safeguards and accessible and effective complaints procedures available to them?

### **State Care (Gpage 48, 17)**

If it is not in the best interests of the child to stay in the family then Article 20 imposes duties on the State. This can include temporary or permanent care. Child Youth and Family (CYF) a unit within Ministry of Social development has this responsibility.

In looking at such cases CYF has four basic choices: alternative family care, foster care, institutional care or adoption. In all such cases the best interest of the child is paramount and there needs to be an appropriate access to complaint procedures by the child, available in a suitable manner.

Q 5 d (i) Does CYF have adequate resources to cope with its work load in each of the locations where it is situated?

Q5 d (ii) Are there homeless children ("street kids") in New Zealand, and if so what resources are available to help them?

Q5 d (iii) Are there adequate numbers of foster carers available who are suitable, trained and monitored in appropriate regions?

Q 5 d (iv) Is the foster care system working?

Q 5 d (v) Are children's voices heard during all the processing and placement and is there accessible and effective suitable complaints procedures?

Q 5 d (vi) Are State facilities for children in need of care or protection (including residences, transport to and from court and court facilities) adequate and ensure the safety of the child?

### **Rehabilitation of child victims (Gpage 58)**

*"State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim..."* Article 39. And see also Article 19 (2).

This topic is also addressed under the Optional Protocol on the sale of children, signed by New Zealand in 2000 but not yet ratified. There may be a few refugee children now in New Zealand who need following trauma or involvement in armed conflict. Article 39 also links to Articles 19, 22, 32-38 and 40.

Q 5 e (i) Are children subject to abuse being identified in a timely manner?

Q 5 e (ii) Are there adequately trained and experienced staff with appropriate resources in each major location in New Zealand available to work with and for children who have been abused or neglected?

Q 5 e (iii) Are there adequately trained and experienced staff with appropriate resources to work with children to foster their recovery throughout New Zealand?

Q 5 e (iv) Does the time between identification, assessment, treatment and rehabilitation of abused and neglected children meet international best practice?

Q 5 e (v) Are historic cases of children in State Care Institutions being investigated,

perpetrators punished and victims rehabilitated and compensated?

### **Review of Institutional Care (Gpage 46)**

Article 25 requires periodic review of treatment of children who are placed in the care of the State for their protection or treatment. It addresses issues of State neglect or mistreatment. The Optional Protocol of the Convention against Torture recently ratified will strengthen the monitoring processes.

Q 5 f (i) Are the law, regulations and practice guidelines or codes of practice adequate to protect children in State care?

Q 5 f (ii) Do complaints procedures exist and are they effective for the children concerned?

Q 5 f (iii) Are the systems for review of placement and treatment of children in care adequate, and do they enable the voice of the child to be heard and taken into account when decisions are made?

### **Parental Separation (Gpage 53)**

Article 9 sets out the position when parents/caregivers separate. The best interest of the child is paramount and the voice of the child is to be heard. The child has a right to maintain personal relations and contact with both parents unless it is not in the child's best interests. The Care of Children Act lists parental rights and responsibilities and provides various mechanisms for resolving disputes about children. A proposed amendment will give children a new right of access to counselling in some situations.

Article 10 addresses family reunion across national borders. Article 11 is concerned with illicit transfer of children or non return of children across national borders. The Hague Convention on Civil Aspects of International Child Abduction (Hague Convention) sets out bilateral agreements.

Q 5 g (i) Are there any changes needed to the Care of Children Act to make it work better for children?

Q 5 g (ii) Is the Family Court the best forum for making decisions about the care of children?

Q 5 g (iii) Are immigration laws and practices appropriate for the reunification of children and their families?

### **Illicit Transfer and non return of children (Gpage 56)**

The Hague Convention is the substantive protection protecting children from unlawful separation.

Q 5 h (i) Is there evidence of children being taken out of or brought into New Zealand in breach of the Hague Convention?

Q 5 h (ii) Is there a conflict between the Care of Children Act and the Hague Convention?

Q 5 h (iii) Should New Zealand enter into further multilateral or bilateral agreements to protect children?

### **Adoption (Gpage 55)**

Reform of adoption laws has stalled which will be of concern to the UN Committee who in 2003 Concluding Observations paragraph 34 raised a number of issues. The topic is also important as it is the reason given why New Zealand cannot ratify the Optional Protocol on the Sale of Children (OPSC) which New Zealand signed in 2000. Article 21 addresses adoption issues both within the country and inter country adoption.

Q 5 i (i) What aspects of the Adoption Act 1955 give cause for concern?

Q 5 i (ii) Should children at a certain age have to give their informed consent to their adoption?

Q 5 i (iii) Is the screening of potential adopting parents adequate?

Q 5 i (iv) Should unmarried and civil union couples (including same-sex couples) be considered as adoptive parents?

Q 5 i (v) Are resident New Zealand children adopted overseas?

Q 5 i (vi) Is the current policy/legislation appropriate for New Zealand residents wanting to adopt overseas based children?

Q5 i (vii) Should New Zealanders be able to adopt children from countries who are not parties to the Hague Convention on inter-country adoption?

Q 5 i (viii) Is provision adequate for adopted children to learn of and have an ongoing relationship with their birth parents?

### **Child support –maintenance (Gpage 55)**

The absent parent has obligations to contribute to the wellbeing of the child whose parents are separated (Article 27.4).

Q 5 j (i) Can the child support system be improved?

Q 5 j (ii) Is the collection of child support appropriately managed when the separated parent is overseas?

Q 5 j (iii) Should New Zealand enter into more bilateral agreements on child maintenance and support?

## **QUESTIONS (6) BASIC HEALTH AND WELFARE**

Because of the size of this topic it will be in three parts:

PART A Health (Article 24)

PART B Disabilities (Article 23, Right to Life Article 6)

PART C Child Care (Article 18.3) , Social security & welfare (Articles 26, 27.1-3)

### **PART A HEALTH (Gpage 63)**

Article 24 covers the topic of the child's right to health and health services. It can be summarised as follows:

24.1 Every child has the right to access health care.

24.2 The State is to

- Diminish infant and child mortality
- Develop primary health care
- Combat disease and malnutrition and foster healthy living
- Provide prenatal and postnatal care
- Provide society with healthy living standards
- Provide preventive health care.

24.3 State to abolish traditional practices prejudicial to health

24.4 State to encourage international cooperation.

The UN committee in 2003 raised the following issues (paragraph 36):

- Implement child health strategy
- Improve immunisation coverage
- Address infant mortality and injuries
- Reduce disparities in health care indicators with emphasis on Maori and other ethnic groups.

Under paragraph 38 the following are also noted:

- Address youth suicide teenage pregnancy and binge drinking
- Improve counselling and support services with particular emphasis on mental health, rural areas, residential institutions, ensuring Maori children are included in these services.

The Convention Implementation handbook, under these headings, covers 30 pages and they are addressed under CRC CO Nos 36 and 38. Health services are a substantive amount of Government expenditure and children's health competes for its share. Framing questions for this preparation of the Government report is therefore selective. ACYA expects health professionals to invest time and effort to look at the health issues of children and members of the public, including children and young people, to raise particular issues. Questions 6 addresses issues raised in the UN Committee report

Q 6 a (i) Is the Child health Strategy relevant and being progressively implemented?

Q 6 a (ii) Are immunisation rates improving?

Q 6 a (iii) Is infant mortality reducing?

Q 6 a (iv) Has improvement been made to reduce infant accidents?

Q 6 a (v) Are disparities of health indicators being successfully addressed?

- Q 6 a (vi) Is youth suicide rate continuing to decline?
- Q 6 a (vii) Is the teenage pregnancy rate reducing? Is this because of abortion?
- Q 6 a (viii) Can youth binge drinking be reduced?
- Q 6 a (ix) Are mental health services adequate and available for all children
- Q 6 a (x) Are adequate resourced counselling and support services for health related issues available for children in all major centres with a population over 10,000.
- Q 6 a (xi) what is the extent of HIV/AIDS for children and are appropriate measures in place to minimise the effects?
- Q 6 a (xii) Are maternity services of an appropriate standard throughout the country?
- Q 6 a (xiii) Is the promotion of breastfeeding successful in meeting international standards?

### **PART B DISABILITIES (Gpage 102)**

“State parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in society” Article 23.1. CRC CO No 40 addresses the related issues.

Under the subsequent paragraphs the Article requires the State to recognise special care of such children, respecting the circumstances of each child, if possible providing services free of charge, to facilitate education, health services, training, and rehabilitation services.

- Q 6 b (i) Are support services available throughout the country to provide assistance to children with disabilities?
- Q 6 b (ii) What barriers exist for parents/caregivers to obtain support for disabled children that is timely and appropriate?
- Q 6 b (iii) Has the New Zealand Disability Strategy when it applies to children been implemented successfully?
- Q 6 b (iv) Are disabled children being successfully integrated into society?
- Q 6 b (v) Has the State recognised and implemented the “Standard rules on the equalisation of opportunities for people with disabilities”?
- Q 6 b (vi) Are the complaints procedures for children with disabilities robust and easy to access?

### **RIGHT TO LIFE**

Article 6 has already been dealt with under Questions (3) General Principles.

### **PART C**

#### **CHILD CARE (Gpage 75)**

The State’s obligation to provide child-care services is set out in Article 18.3

- Q 6 c (i) Are child care services available for working parents available in places where the local population exceeds 2,000?
- Q 6 c (ii) Are child-care services affordable for 90% of parents?
- Q 6 c (iii) Is the standard of child- care services meeting international best practice?

#### **SOCIAL SECURITY(Gpage 74, AND WELFARE (Gpage 71)**

Article 26 makes provision for children to receive social security.

Article 27 paragraphs 1-3 recognises the need for children to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The duty is shared between the parents and caregivers who have prime responsibility and the State.

The UN Convention recommendation paragraph 42 draws attention to the child's rights to "*an adequate standard of living*" and specifically mentions the need to assist single parents, Maori and Pacific Island families.

Child Poverty Action Group (CPAG) has consistently drawn attention to child poverty and their latest publication "Left Behind" paints a sorry picture. While "Working for Families" has been of benefit to many families, CPAG has taken legal action before the Human Rights Review Tribunal against the Government because children in families with any core benefit income do not receive equal treatment with others.

An on-going difficulty for assessing an adequate standard of living is the lack of agreement between Government and the rest of society on definitions of poverty and the practical implications of such formulae.

The Office of the Commissioner for Children has issued a detailed report "a Fair Go for all children" that includes a programme to substantially reduce child poverty.

Q 6 d (i) How should an adequate standard of living be defined and explained?

Q 6 d (ii) Is "Working for Families" helping many children to have an adequate standard of living?

Q 6 d (iii) As the UN Committee has identified single parents, Maori and Pacific Island families for particular attention has their standard of living improved since 2003?

Q 6 d (iv) In view of the downturn in the economy what steps are necessary to protect children so affected?

Q 6 d (v) Are budgeting services for parents who face financial hardship available in all locations of 5,000 or more people?

Q 6 d (iv) How serious is the issue of overcrowding of homes?

Q 6 d (v) Has the Government adopted a policy of making sure beneficiaries and others entitled to have social benefits have easy access to information?

Q 6 d (vi) Will the Children's Commissioner's report achieve its stated aims?

## **QUESTIONS (7)**

### **EDUCATION, LEISURE AND CULTURAL ACTIVITIES**

PART A Education (Article 28)

PART B Education (Article 29) & Leisure and cultural activities (Article 31)

#### **PART A EDUCATION (Gpage77)**

Article 28 sets out broad educational aims while Article 29 look at the individual's response to the educational system.

#### **ARTICLE 28**

##### **Paragraph 1**

The key issues in paragraph 1 are:

- a) compulsory free primary education
- b) flexibility in secondary education including general and vocational options, with minimal costs to parents.
- c) Ensuring there is availability of tertiary education
- d) Making sure students are aware of their educational and vocational options
- e) Ensuring school attendance is monitored.

In paragraph 2 school discipline is addressed.

Paragraph 3 emphasises the obligation to address international cooperation and for New Zealand the assistance to Pacific Island countries.

#### **Commentary**

There is "free" compulsory primary education in New Zealand, with an emphasis being place on early childhood education quality and accessibility.

While in theory compulsory secondary schooling up to the age of 16 years is free, much attention has been given to the issues of funding, parent "voluntary donations", activity fees, costs of material. Given that education competes with health, defence, justice, social security and other major budget allocations there will inevitably be pressure on resources available for education at all levels.

Vocational training and apprenticeships are coming back into vogue. The Government has recently announced plans to encourage and extend education through to 18 years.

Given the access to internet there is a substantive amount of information not available when the Government last reported in December 2000.

A major issue however is the worrying percentage of students that leave school without two NCEA credits.

The CRC CO No 44 recommendations, in part, ask the State

- a) to ensure all children have access to free primary education
- b) to prohibit the exclusions on arbitrary grounds such as pregnancy
- c) take effective measures to address disparities in enrolment and drop out rates between ethnic groups
- d) provide quality counselling in schools, respecting the right to privacy.

- Q 7 a (i) Is attendance at primary school free of cost?
- Q 7 a (ii) What evidence is there that some children may not be attending school, because they have not been enrolled or have moved and not been attending?
- Q 7 a (iii) How serious is absenteeism for primary school children?
- Q 7 a (iv) How can evidence be collected to identify arbitrary grounds for exclusion from secondary schools?
- Q 7 a (v) How effective is the monitoring of absenteeism in secondary schools?
- Q 7 a (vi) How well is New Zealand education system comparing to other countries in international surveys?
- Q 7 a (vii) Are disparities evident in education attainment, and if so what remedial steps are being taken?

**Paragraph 2(Gpage 79 and 82)**

This paragraph addresses school discipline and the Article requires that human rights are recognised.

**Commentary**

For some schools this is a major issue with many underlying and compounding social issues. Stand downs, exclusions and expulsions are necessary procedures in fairness to protect the vast majority of the pupils in a given school. How the matters are handled by Principals and School Boards of Trustees is the crucial question.

Are there e sufficient opportunities in schools and the education system generally for students under the age of 18 years to express their views freely and have their views taken into account when decisions are made which affect them?

The UN Committee raised the following as part of CRC CO 44

- a) that children of compulsory school age that have been excluded from school are enrolled elsewhere.
- b) that the necessary measures including of quality counselling programmes in schools are available to address behavioural problems, respecting the child's right to privacy.

Q 7 b i) If a child is refused enrolment or excluded or expelled from a school are there effective systems by which the refusal of enrolment or exclusion can be challenged?

Q 7 b (ii) Are there effective systems in place to provide adequate alternative schooling until 16 years of age?

Q 7 b (iii) How many children are excluded or expelled from Primary and Secondary each year for the last three years and are there ethnic disparities?

Q 7 b (iv) what is the extent of school counselling resources to address behavioural problems and are there issues with the role, client confidentiality and qualifications of school guidance counsellors in dealing with behavioural problems

Q 7 b (v) Are gangs influencing behavioural problems at schools and if so what can be done about it?

Q 7 b (vi) Are students adequately represented on Boards of Trustees and do student representatives give students of all schools an effective voice in decision-making;

Q 7 b (vii) Are there other ways in which students are effectively involved in school decision-making especially in private schools and boarding schools?  
Q 7 b (viii) Is it acceptable that parents can deny their children the right to attend tuition of those parts of the Health Curriculum dealing with sexuality education;  
Q 7 b (ix) Is it acceptable that parents can deny their children the right to attend religious education classes?

**Paragraph 3 (Gpage 22)**

New Zealand through NZAid makes a contribution to education in overseas countries.

It is not clear if the aid programmes promote compliance with the Convention

Q 7 c (i) To what extent does NZAid address education needs in the Pacific, especially for the Cook, Tokelau and Niue Islands?

Q 7 c (ii) Is promotion of the Convention a basic value for all aid programmes?

**PART B EDUCATION CONTINUED (Gpage 83)**

Article 29 in summary form covers:

- 1 (a) developing the full potential of children through education
- 1 (b) respect for human rights, freedom, and the United Nations charter
- 1 (c) respect for family, society, culture and heritage
- 1 (d) good citizenship
- 1 (e) environmental understanding

2. Acceptance of private schools that meet national standards

CRC CO 44 (c) made a recommendation to the Government to strengthen programmes for bilingual education

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. The consultation process for the recently finalised New Zealand Curriculum will hopefully provide an enhanced framework that will meet individual and national aspirations. The work of Building Human Rights Communities in Education Trust seeks to actively support a comprehensive human rights approach to education.

The Convention raises issues of the recognition and development of heritage, culture and diversity. It includes reference to environmental issues.

Private school systems are to be recognised provided they meet national standards. There is a need to consider issue of International students who are considered "vulnerable" Children from Years 1-8 are being offered places in New Zealand State schooling (and private schooling) system as a way of earning money for the school. The Ministry itself, after the review of the Pastoral Code for International students established a review on the Circumstances of very young international students in New Zealand(see Report on research into the Circumstances of very young international students in New Zealand July 2007 (<http://www.educationcounts.govt.nz/publications/international/14696>)). The report has the following statement:

*“In 2003 there are over 4,300 students in this age group, only half of whom reportedly live with a parent while in New Zealand. Ninety percent of all very young international students come from South Korea.”*

There is a concern among education providers that very young students are vulnerable and require special care. Very young international students face particular issues and may be at greater risk than others, because they are far from home during a critical, formative period in their development while in an unfamiliar cultural and linguistic milieu.

Q 7 d (i) Do schools offer sufficient flexibility in the allocation of timetables and resources to promote individual talents with physical and mental aptitude?

Q 7 d (ii) How is the Maori language development programme meeting its goals?

Q 7 d (iii) Should social workers be part of the resources available to schools?

Q 7 d (iv) How do schools evaluate they are making steady progress in promoting healthy eating habits?

Q 7 d (v) Does the Education Review Office identify appropriate issues, offer assistance to schools in a way that is helpful, and how are they able to make assessments at a national level that recognises the issues covered by the Convention?

Q 7 d (vi) In respect of children who require particular assistance, is the “special needs” assessment working, and how are resources allocated to carry out remedial work?

Q 7 d (vii) Are there issues with private schools in respect of the scope of the Convention?

Q 7 d (viii) To what extent are schools providing meals for children?

Q 7 d (ix) What is the situation of international students attending school in New Zealand, especially those in Years 1 to 8: what are their special issues: and what follow up has there been on the 2007 review of the circumstances of very young international students in New Zealand?

#### **Vocational training (Gpage 84)**

Art 28 (4) raises the issues of vocational training.

Q 7 e What is the opportunity for vocational training for those under 18 years?

#### **REST LEISURE AND CULTURE (Gpage 91)**

Children have rights as set out in article 31 to rest, leisure, recreation, participation in cultural life and the arts.

Q 7 f (i) In what ways are children denied reasonable access to leisure and cultural activities?

Q 7 f (ii) How do Local Authorities respond to the leisure needs of their children?

**QUESTIONS (8)**  
**SPECIAL PROTECTION MEASURES**

PART A Exploitation (Articles 32-36)

PART B Juvenile Justice (Article 37 (b-d) & 40)

PART C Refugees, Rehabilitation and Armed Conflict (Articles 22, 39 &38)

**PART A EXPLOITATION**

Under this heading Articles 32 –36 are to be considered.

**Child Labour (Gpage 12)**

Article 32.1 requires the State to protect children from economic exploitation and from performing work that is hazardous or interferes with school or is harmful to health. Ratification of ILO 138 minimum age for work is recommended in CRC CO No 48.

Article 32.2 requires the State to set a minimum age for work regulate hours and conditions, and provide sanctions for non -compliance.

There is no minimum age for employment and no minimum wage for those under 16 years of age. The Education Act prohibits work that interferes with school. The health and safety regulations lays down some safe working conditions dependant on age. The Government in signing the Convention has a Reservation to the effect of not having a minimum age for work. UN Recommendation in 2003 (No 48) asked the State to withdraw the Reservation, and sign ILO 138. No progress has been made in 15 years on this issue. Health and Safety in employment regulations now include children who work as contractors.

Q 8 a (i) Why has the Government not introduced a minimum age for work?

Q 8 a (ii) When will children who work in the entertainment industry be protected by an “Approved Code of Practice”?

Q 8 a (iii) What other changes are required to bring best practice protection to young workers ?

Q 8 a (iv) How effective is the monitoring system that evaluates the compliance with Health and Safety in Employment regulations?

Q 8 a (v) When will children be protected by minimum wage law?

**Drug Trade (Gpage 98)**

The State under Article 33 is required to protect children from illegal use of narcotic drugs and psychotropic substances, and prevent children being used in drug trafficking. Media attention to drug related issues with schools have raised:

- prevalence of marijuana in some areas
- role of gangs using school children
- effects of “P”

Q 8 b (i) To what extent are those under 18 years being used to sell or procure drugs?

Q 8 b (ii) What is the extent and nature of drug use for those under 18 years?

Q 8 b (iii) what steps are being taken to provide rehabilitation for drug use of those under 18 years and are the resources adequate?

Q 8 b (iv) Do schools have appropriate training, experience and support available to identify drug use in or around school premises?

### **Sexual Exploitation (Gpage 99)**

Article 34 addresses child prostitution, pornography, sexual abuse and exploitation. The Prostitution Law Review Committee presented its report to the Associate Minister of Justice on 14 May 2008. The Committee's report, [\*The Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003\*](#), was tabled in the House of Representatives on 23 May 2008. A list of the Committee's recommendations can be found in the Executive Summary.

Chapter 7 deals with under age prostitution and the Recommendations were:

- 1. A collaborative approach between Police, the Ministry of Social Development, the Ministry for Youth Development and relevant NGOs should be taken to assist at risk young people.*
- 2. The Ministry for Youth Development and the Ministry of Social Development deliver increased funding to community-based organisations working with at risk youth.*
- 3. The Committee supports the amendment of section 48 of the Children, Young Persons and Their Families Act 1989, to include young people aged 17 years.*
- 4. The Ministry of Social Development should ensure when approached by or on behalf of young persons at risk, that they are adequately supported to prevent the young person being used in prostitution in order to survive.*

Substantial legal reform has endeavoured to reduce the harm to children. However through an ironic twist of legal delay to amending the Adoption Act, New Zealand who signed the Optional Protocol on the sale of children, child prostitution and child pornography in 2000 has not yet ratified the document.

Q 8 c (i) What resources have been provided by the State to assist child prostitutes reconsider their life choice?

Q 8 c (ii) Are adequate resources being made available to identify and remove sexual abuse, child pornography and sexual exploitation of children?

Q 8 c (iii) what level of police surveillance is adequate to prosecute all adults who live off the proceeds of child prostitutes?

Q 8 c (iv) In respect of the Recommendations in chapter 7 of The Prostitution Law Review Committee which Government agency is to take responsibility to identify and quantify the issues, implement, and monitor these recommendations in a meaningful way by May 2010?

In respect of sexual exploitation, abuse and pornography many of the issues are to be addressed in the Government report under ILO 182 Worst forms of Child Labour for the period 1 March 2007 to 31 May 2009.

Q 8 c (v) Has that report been issued and made available to the public?

### **Child Abduction and Trafficking (Gpage 57)**

The sale and trafficking of children covered by Article 35 does not appear to be a problem in New Zealand according to the government. This was challenged at the Universal Periodic Review session held in May 2009 by the Human Rights Council.

Q 8 d (i) What, if any, is the evidence that child abduction or trafficking takes place in New Zealand?

Q 8 d (ii) what evidence is there to show progress has been made on the New Zealand National Plan of Action to Prevent Trafficking in Persons?

In respect of abduction there has been media reports of children taken out of or brought into the country without approval of relevant family members and breach of the “Hague convention” and this is dealt with under Article 11.

### **Street Kids (Gpage100)**

This issue is one that does not attract media attention unless its related to such activities as glue sniffing and no government enquiries have been identified.

Q 8 e (i) Which Government and social agencies have experience of the nature and scope of this issue.

Q 8 e (ii) what is the extent of the issue and what steps are being taken to assist the children concerned?

### **Other form of Exploitation**

Article 36 is a “catch all” article protecting children from “all other forms of exploitation”. The Handbook identifies abuse by media and research experimentation as examples.

Q 8 f What other forms of child exploitation occur in New Zealand that are not covered by articles 32-35?

## **PART B**

### **JUVENILE JUSTICE (Gpage 95 & 46)**

Articles 37 (b) to (d) deal with juvenile justice. Article 37 (a) (torture and degrading treatment) is covered under the cluster group 3, “Civil Rights and Freedom”

Under this heading Article 37 covers:

- (b) unlawful and arbitrary arrest. Any detention shall be in accordance with the law and used as a last resort.
- (c) the need for every detained child to be treated with respect and their age recognised. Children in detention are to be separated from adults, unless its in their best interests, and are allowed to stay in contact with their parents, except in exceptional circumstances.
- (d) the right that every child detained to legal redress and prompt decision making for their case.

Article 40 can be summarised as follows:

Paragraph 1: Children who come before the law shall be treated with dignity, recognising their age, and the need for reintegration in society.

Paragraph 2

- a) Cases against children must be within the terms of existing law
- b)
  1. there is a presumption of innocence
  2. such children need to know the charges against them and through parents and others be able to prepare a defence
  3. prompt and fair trial
  4. right to silence
  5. right of review
  6. access to an interpreter

## 7. privacy

Paragraph 3. The State is to set up child related mechanism

- a) to set a minimum age for infringing the law
- b) flexible approaches to minimise the necessity of judicial proceedings

Paragraph 4. This sets up a range of options to deal with children appropriate to their wellbeing and proportionate to their circumstances and the offence including care, guidance and supervision orders, probation, foster care.

Children between the age of 10-13 years can be prosecuted only for murder and manslaughter. Young People between 14-16 years can be charged with a broader range of offences and are generally dealt with in the Youth Court under the Children and Young Persons and their Families Act 1989.

The ACYA report to the UN committee “Children and Youth in Aotearoa 2003” Appendix 17 drew heavily on a survey of 40 young offenders. The research identified six broad areas of concern

- Limited knowledge of criminal justice system
- Lack of support
- Safety and age mixing in prison
- Education needs
- Health care needs and
- Cultural and social needs

Age Mixing in prisons has been dealt by Questions (1) General measures.

The concept of Family Group Conferences is now a key part of the youth justice system. There will always be a need to evaluate its effectiveness.

Children in held in police cells are a continuing cause of concern.

Q 8 g (i) Are there issues on the structure and procedures of Family Group Conferences?

Q 8 g (ii) Are there issues in the day-to-day arrangements and outcomes of Family Group conferences?

Q 8 g (iii) Are youth advocates available and appropriately trained to attend Family Group conferences when required?

Q 8 g (iv) What is the extent of the use of police cells to hold young people because Youth Units are not available?

Q 8 g (v) what is the extent and nature of complaints about police practices dealing with those under 18 years?

Q 8 g (vi) Are there issues arising from finger printing of those under 18 years?

Q 8 g (vii) Is legal aid readily available for children and young people?

Q 8 g (viii) Are complaints mechanism in Youth Offenders Units and Youth Residences effective?

Q 8 g (ix) Are rules and regulations of Youth Residences and Youth Offending Units compliant with the Convention?

Q 8 g (x) Are the Beijing Rules and Riyadh Guidelines being kept?

Q 8 g (xi) In what circumstances do the Tokyo Rules apply and are they being met?

Q 8 g (xii) In the year to June 2009 in what circumstances were Tasers weapons used on those under 18 years of age?

Q 8 g (xiii) What other issues need identifying to make youth justice fair and reasonable?

## **PART C**

### **REHABILITATION**

According to Article 39 the state shall take all appropriate steps to promote physical and psychological recovery and social reintegration of every child victim arising from torture, exploitation, neglect or any other cause, in an environment that is helpful to the child.

Examples of situations where this may apply include

- a) any form of violence, neglect, abuse or exploitation as addressed in articles 19 (mental or physical violence), 32 (child labour) 33 (drugs), 34 (sexual abuse) 35 (abduction) 36 (any other form of exploitation);
- b) cruel or degrading treatment Article 37;
- c) armed conflict Article 38

There is a need for Child Youth and Family, District Health Boards, schools and social workers to be able to identify and help such children.

Q 8 h (i) What comprehensive monitoring system exists to ensure all children who need rehabilitation are receiving the assessment and help they need?

Q 8 h (ii) Are the resources available to such children adequate and available in a local setting?

Q 8 h (iii) What procedures exist to prove all such children who have received assistance are reintegrated into society?

### **REFUGEES (Gpage 93)**

Article 22 Paragraph 1 provides for the protection of refugee children even if not accompanied by parents or others. Paragraph 2 addresses reunification with parents.

CRC CO No 46 recommends the State to continue its efforts to integrate refugee children into society and to evaluate programmes, including language training.

The key Government strategy for refugees is “Settling In” which operates in eight regions. ACYA understands the Department of labour is reviewing all aspects of refugee resettlement based around the New Zealand Settlement National Action Plan. Some research has been done on migrant and refugee youth settlement.

Q 8 i (i) Is the assessment of refugee children who arrive in New Zealand adequately identifying health, education, psychological strengths and weaknesses?

Q 8 i (ii) Are adequate resources available to help refugee children settle in New Zealand?

Q 8 i (iii) Is there evidence that refugee children after twelve months in New Zealand are not settling in? If so what action is being taken?

### **Armed Conflict (Gpage 106)**

Children involved in armed conflict is provided for in Article 38.

1. The State must abide by International humanitarian rules applicable to children.
2. Those under 15 years are not to take part in armed conflict.
3. No recruitment for armed forces below 15 years and when recruiting those close to 18 years should be selected.

4. Protect of children as part of civilian population in times of armed conflict.

In the absence of armed conflict in New Zealand paragraph three is the most appropriate issue needing monitoring, as recruits may serve overseas before they are 18 years. New Zealand has ratified the Optional Protocol on armed conflict and should report in 2008 to the UN committee. Questions (9) Optional Protocol addresses the issues.

## **QUESTIONS (9) OPTIONAL PROTOCOLS**

### **OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT (OPAC) (Gpage 107)**

The Protocol sets out requirements as follows

Article 1: members of the armed forces below the age of 18 are not to take direct part in hostilities.

Article 2 : No compulsory recruitment to those under 18 years of age.

Article 3 : In Article 38 of the Convention 15 years is the minimum age for recruitment and this article raises the age to 18 years and has safeguards for informed consent

Article 4 addresses militia

Article 5 accepts more favourable terms in legislation

Article 6 addresses providing public information

Article 7 addresses rehabilitation of children affected by hostilities

New Zealand has ratified the Optional Protocol and reported to the UN in 2000.

The UN committee in 2003

- Requested changes are made to legislation for voluntary recruitment age to meet the minimum age of 18 years
- Stated it wished to have more information on cadet forces
- Requested information on refugees and migrant children who have been involved in hostilities.
- Asked for training for military personnel on provisions of the Optional Protocol

Q 9 a (i) Is legislation now in conformity to the requirements of this Optional Protocol?

Q 9 a (ii) What information will be provided in respect of cadet forces?

Q 9 a (iii) Who in Government holds information on refugees or migrant children who may have been child soldiers, militia or experienced armed conflict?

Q 9 a (iv) What evidence is there that all military personnel are aware of the OPAC?

Q 9 a (v) Are reasons being given to retain the entry into armed forces at age 17 adequate to over-ride the 18 year requirement of the Optional Protocol?

### **OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (OPSAC) (Gpage 106)**

New Zealand signed in 2000 but has not ratified this Optional Protocol. The reason given by Ministry of Youth Development in the Five Year Work Programme Item 27 is the need for the Adoption laws to be revised, particularly to address international adoptions. Adoption has been addressed under Article 21 under Questions (3) Family Care. 120 countries have ratified this Optional Protocol. Much of the subject matter is addressed in Government reports under ILO 182, Worst forms of Child Labour for the period 1<sup>st</sup> June 2005 to 31 March 2007. The next report to May 2009 is being prepared.

The Optional Protocol arose from concerns that Article 34 (Questions 8 Special Protection Measures) covering sexual exploitation and abuse were inadequate.

OPSAC can be summarised as follows:

Articles

1. Prohibition of sale of children, child prostitution and pornography
2. Defines the terminology of Article 1
3. Sets out in greater detail the implications of Article 2 (e.g. addressing sale of body parts) both locally and internationally
4. Sets out legislative requirements
5. Addresses extradition
6. Covers standards of assistance for extradition
7. Seizure of goods
8. Protection and rehabilitation of child victims and witnesses, and provision for professional training
9. Promotion and strengthening of the OP through laws, policies, procedures and public education.
10. Promotion of international co-operation
11. Promotion of best legal options
- 12/17 Technical administration of the OP

Q 9 b (i) what is Cabinet's position for a timetable to ratify the Optional Protocol for the Sale of children?

Q 9 b (ii) Is the Minister of Social Development, or any other Minister of the Crown, notwithstanding the need for a resolution of the revision of the adoption laws, prepared to create a programme to ensure compliance with all other aspects of this OP by preparing a draft initial report to the UN committee.

Q 9 b (iii) what is the role of the Office of the Commissioner for Children, the Human Rights Commission and the Families Commission in facilitating the ratification of this OP?