

Children and Youth in Aotearoa 2003

The second non-governmental organisations' report
from Aotearoa New Zealand to the United Nations
Committee on the Rights of the Child



March 2003



Action for Children and Youth Aotearoa
www.acya.org.nz

The grandchild (mokopuna) whose picture graces the front cover is Bailey Poi. Ko Ngati Porou me Ngaphui oku Iwi (the tribal affiliations) o Bailey. ACYA wishes to acknowledge him and his whanau (family) for the use of his image for the Report.

The Report has been prepared by ACYA and the views expressed in it may not represent the views of each ACYA member. The contents of this Report are true and accurate to ACYA's best knowledge. However, we make the usual statement that no liability is assumed by ACYA for any losses suffered by any person arising directly or indirectly from the publication of this Report.

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ACCOMPANYING REPORTS

Making it happen: Implementing New Zealand's Agenda for Children (2002). Institute of Public Policy, UNICEF New Zealand and Children's Agenda. Wellington: Institute of Public Policy at AUT, Children's Agenda and UNICEF New Zealand.

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Mihi¹

Te Roopu Whakamahi ma nga Tamariki me nga Taiohi o Aotearoa e mihi nui ana ki a koutou o te United Nations Committee on the Rights of the Child e pikau ana tenei takenga mo tatou katoa o te Ao. He kaupapa na to tatou tupuna i pupuri hei whakamarama I nga tini ahuatanga o te Ao. E whai ake nei, nga whiriwhiringa te kaupapa nei, tangohia hei whiriwhiri maa koutou. No reira ki a koutou. He mihi mahana ki a koutou katoa.

ACYA would like to send our greetings to the United Nations Committee on the Rights of the Child in carrying this very important matter to the world. The topic under discussion our ancestors had a grasp of, and made it clear to the family about the many different ways of the world. What follows in this Report about this kaupapa (rights of the child), we are sure that you will take and talk about in your discussion in the Committee. Once again warm greetings to you all.

Tena koutou ki te roopu whakamahi ma nga Tamariki me nga Taiohi o Aotearoa. Tenei te mihi mahana ki a koutou, hei whakaputa whakaaro e pa ana ki tenei take mo tatou tamariki, taiohi o te Ao. No reira tena tatou katoa.

Greetings to the members of the Action for Children and Youth of Aotearoa. Thank you all for putting forward your views about our children and youth of New Zealand. Greetings to us all.

Na

Whakamahi ma nga Tamariki me nga Taiohi o Aotearoa (ACYA)

¹ This mihi is our greeting.

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The current ACYA Committee members who have worked so hard on the preparation of this Report are: Tanya Allport, Alison Blaiklock (Chairperson), Philipa Biddulph, Vivian Cheung, Piripi Davis, Diana Grant-Mackie, Riripeti Haretuku, John Harrington, Hilary Nobilo, Charlotte Robertson, Bettina Schempf (Secretary), Nicola Taylor (Treasurer), and Beth Wood.

We are deeply appreciative of the co-ordinators and members of the sixteen volunteer Working Groups who worked for up to two years to help produce this Report, and to all those who contributed to, and commented on, drafts and meetings. Metua Faasisila, John Hancock, Nola Harvey, Mike O'Brien, Sandy Latimer, Robert Ludbrook, Mike O'Brien, Peter Shuttleworth, Ben Taufua, John Waldon, and others did an enormous amount of work. Marilyn Christy and Steffan Robertson helped with the cover design and Alistair Paterson with editing – thank you very much. The international NGO Group for the Convention on the Rights of the Child gave very helpful advice.

The wonderful child whose picture is on the front cover is Bailey Poi and we are deeply appreciative of him and his whanau (family).

We thank the United Nations Committee on the Rights of the Child. It is your courage, wisdom and commitment to all children and young people throughout the world that has called to us.

We are also indebted to the Hostel of the Holy Name Trust and the JR McKenzie Trust for their generous and helpful financial support of ACYA's work. UNICEF New Zealand and the Christchurch City Council Youth Advocate Office gave much valued financial assistance with the costs of writing sections of the Report. Chris Biddulph provided invaluable support for the development of the ACYA website www.acya.org.nz, and ACYA members have made generous donations to ACYA's work. Save the Children New Zealand is generously supporting ACYA in making a short video from children and young people for the United Nations Committee on the Rights of the Child.

The generosity of the JR McKenzie Trust, the 6th Early Childhood Convention Committee, and Chris Biddulph has enabled the printing and distribution of this Report and its publication on the web. We are very grateful.

We express our admiration and respect for the considerable work, dedication and commitment of the many people in families, the community and all levels of government who do everything they can to respect and promote the rights of all children.

Our own families have been wonderfully supportive of the work we have done, and tolerant of the time we have not been with them. Thank you very much.

Our biggest appreciation is to the children and young people we love, and the children and young people we know and are yet to know. It is you who inspire us, teach us, and give us courage. It is the growing movement for you, and with you, that brings hope.

Executive Summary

This Report from non-governmental organisations in Aotearoa New Zealand to the United Nations Committee on the Rights of the Child emphasises what needs to be done to effectively implement all the principles and provisions of the *United Nations Convention on the Rights of the Child*. The Report and recommendations have been developed by those who actively work with children and youth with input from children and youth themselves.

It is ten years since New Zealand ratified the Convention. Progress has been slow and many children and youth are not able to enjoy their rights because of gaps in government policies, practices and actions.

Government has made some advances, notably in developing national strategies for children and youth. But implementation of these promises lags. Many children and young people are affected by inequality and poverty: three in ten live in poverty. The rates of violence against children and youth are high. Many children and youth experience various forms of discrimination and have limited opportunities for participation in their culture, communities and schools.

Often new policy initiatives have not been followed by funding and effective implementation. This has been aggravated by the shortage of intersectoral approaches to delivery of services. Impact analysis of new policies on the lives of children and youth is almost non-existent. The benefits to children, young people, families, and society, of prevention and early intervention – as opposed to ‘cleaning up’ – are often forgotten.

This report portrays key obligations on the New Zealand Government:

- To actively work towards removing New Zealand's Reservations to the Convention, and remedying the systemic failures of legal and government systems in New Zealand to ensure full compliance with the Convention.
- To prioritise, resource and implement its key strategies for children (*Agenda for Children, Youth Development Strategy Aotearoa*, and related policies) so that the outcomes described in them can be achieved within the earliest possible time frame.
- To address the issues facing children at source, in the context of their family and in a holistic manner – particularly in the areas of issues for indigenous children and youth, poverty, violence, and issues facing children and youth who are outside the mainstream (including issues needing to be addressed for children and youth from different ethnic groups with respect for their cultural background and family environment, those with disabilities, and those who are refugees or seeking asylum).
- To respect the views of children and youth.
- To be alert and responsive to new risks and issues facing children and youth, and proactive in ensuring that the rights of children and youth are protected and met.

Key recommendations

I. General Measures of Implementation

Introduction

- The Government make every effort to address the Recommendations made by the United Nations Committee in 1997 that have yet to be fully implemented.

Te Tiriti o Waitangi

- Implementation of the United Nations Convention on the Rights of the Child for Maori children and youth requires the Government to honour its obligations to Maori under Te Tiriti o Waitangi and to recognise the individual and collective rights of Maori children and youth in legislation and government policy and practices.

New Zealand's Reservations to the Convention

- The Government urgently review its position with regards to its Reservations to the Convention, undertake to the UN Committee to withdraw its Reservations, and set clear deadlines for achieving compliance.

- The Government consult with the people of Tokelau about extending the protection of the Convention to the children and youth of Tokelau.

International agreements

- The Government take all necessary steps to ratify the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.
- The Government take all necessary steps to ratify ILO Convention 138 on a minimum age of employment.
- The Government develop a plan of action to implement the Outcome Document of the UN General Assembly Special Session on Children, and implement this plan with specified targets and time frames. The plan should build on work already done by the Government in its strategies for children and youth.

Conformity of legislation and practice with the Convention

- The Government establish an executive administrative process whereby all proposed legislation, regulations and supplementary order papers are audited for consistency with the Convention. Such audits should be routinely published.
- Existing legislation be reviewed and amended to ensure consistency with the Convention. This includes:
 - # Repealing section 59 of the Crimes Act 1961;
 - # Amending the Children, Young Persons and their Families Act 1989 to include all those under eighteen years;
 - # Amending the Human Rights Act 1993 to cover the ground of age discrimination for complainants aged under 16;
 - # Amending the Sentencing Act 2002 to comply with the Convention's provisions; and
 - # Extending the provisions of the Commissioner for Children Bill.
- The independence of the Commissioner for Children be increased by the Commissioner being made an Officer of Parliament.

National strategy for children

- The Government prioritise full implementation of the *Agenda for Children* and the *Youth Development Strategy Aotearoa*.
- In implementing these strategies, the Government utilise the recommendations from *Making It Happen*, commit to funding and implementation with specific targets and deadlines, and provide regular public reports on progress.

The reforms of the economy and the state

- Proposed government policies, programmes and actions – including economic actions – be assessed for their potential impact on children and youth, and if introduced, monitoring and evaluation include assessment of their impact on children and youth.

Mechanisms to co-ordinate policies relating to children and monitor implementation of the Convention

- The Government establish:
 - # A Minister for Children and Young People in Cabinet with sufficient seniority to carry policies and programmes forward;
 - # A Cabinet Committee chaired by a Minister for Children and Young People; and
 - # A Parliamentary Children and Youth Issues Select Committee to monitor all proposed legislation introduced to Parliament to ensure New Zealand meets its obligations under the Convention.
- A Convention-based template be established for data collection by specified government agencies and the national census for collecting and reporting aggregated and disaggregated data on children and youth, and government research funding place a much higher priority on high quality research relating to children and youth.

Budgetary allocations

- The Government implement a framework into the annual budget allocations that accounts for its Article 4 obligations.
- The Government prioritise the elimination of child poverty, and services for children and youth, in budgetary allocations.

International co-operation

- NZAID include, within its policy framework, international obligations under the Convention and periodically report on its progress in this area.
- NZAID funding be increased to the UN guideline of 0.7 percent of GNP.

Measures to make the principles and provisions of the Convention more widely known

- The Government, in partnership with children and youth, develop and implement strategies to ensure children and youth know about the Convention, including education in the school curriculum for all ages.
- Initial and ongoing education for all people working with children and youth, promote their understanding and respect for the rights of children and youth.

II. Definition of the Child

- The Government amend, as a matter of urgency, the Children, Young Persons and Their Families Act 1989 in order to extend its coverage to 17 year olds.
- The Government amend the minimum ages of criminal liability for very serious offences under the Crimes Act to ensure consistency with the Convention.
- The Government take all necessary measures to be able to ratify ILO Convention 138.
- The Government, via the office of the Attorney General, audit proposed legislation, regulations and order papers that affects children and young people, for consistency with the definition of the child under Article 1 of the Convention.
- The Government set itself a deadline of no later than 2010 to implement full legislative consistency with the Definition of a Child under Article 1 of the Convention.

III. General Principles of the Convention

Non-Discrimination

- The Government review all legislation and government policies and practice to ensure that the rights of children and youth to freedom from discrimination are upheld. This includes:
 - # Amendments to the Human Rights Act 1993 to cover discrimination on the basis of age by complainants under 16;
 - # Repeal of section 59 of the Crimes Act 1961;
 - # Making the Child Tax Credit available to all low-income families;
 - # Ensuring that children with disabilities are able to access their education; and
 - # Placing a high priority on actions to reduce inequity and disadvantage, including actions that tackle racial discrimination, age discrimination, sexual harassment and discrimination against people with disabilities.

Best interests of the child

- A review be made of all Government legislation, policies and practices – including those concerned with economic and taxation issues as well as those more traditionally recognised as affecting children and youth – to establish the extent to which they operate according to the best interests of the child and the principles and provisions of the Convention.
- The Government write the cost of full implementation of the *Agenda for Children* and the *Youth Development Strategy Aotearoa*, into the Annual Budget in sufficient, accountable allocations.

The right to life, survival and development

Please see Section VI.

Respect for the views of the child

- The Office of the Commissioner for Children be adequately resourced to allow the Office to consult with children and young people concerning all proposed legislation that affects them, and the findings of the consultation be presented to Select Committees.
- The Education Act 1989 be amended to include a requirement for consultation with primary and intermediate age children and the appointment of an adult advocate to primary and intermediate school boards; and a requirement that two or more student representatives sit on secondary school boards.
- The Ministry of Education develop a School Circular (in consultation with the Office of the Commissioner for Children and the Ministry of Youth Affairs) on best practice guidelines for consulting with children in school.
- The Local Government Act 2002 be amended to include a requirement that Councils resource youth councils and employ child and youth advocates.
- Amendments be made to the Crimes Act 1961, the Children, Young Persons and their Families Act 1989, the Guardianship Act 1968, the Adoption Act 1955 and the Children, Young Persons and their Families (Residential Care) 1996 Regulations, in order to uphold respect for the views of children and young people.

IV. Civil Rights and Freedoms

- The Government take all necessary steps to ensure the right of each child and young person to their name, nationality, and preservation of identity. This includes incorporating the recommendations of the Law Commission's report, *Adoption and its Alternatives*, into legislation and adding a new requirement that the best interests of the child shall be paramount.
- The proposed National Plan of Action for Human Rights to be undertaken by the Human Rights Commission include the specific promotion of children and young people's rights to free expression, religion, thought, conscience and association, including public education.
- The Privacy Commissioner develop a Privacy Code for Schools, and the Health Information Privacy Code include specific provision for the rights of children and young people.
- The Government draft and implement comprehensive guidelines, outlining formal requirements for the drug testing and searching of school students that are in accord with the Convention.
- The Commissioner for Children enquire into Police treatment of young people, and furnish a report and recommendations to the Government, and the Government implement the Commissioner's recommendations.

V. Family Environment and Alternative Care

- There be a consistent use to the words family and whanau in legislation and policy.
- The Government adopt a family-based approach to statistical information by extending the notion of household to include the places where children reside in multiple households.
- The Government address the serious deficits of the Department of Child, Youth & Family in terms of staffing, funding and resources so that child and family needs can be adequately met.
- The Government take urgent steps to address the recommendation made by the UN Committee in 1997 that a study be done on the projected needs of one parent families and measures be taken to avoid potential negative consequences for children, young people and their parents.
- The Government apply the recommendations of the Law Commission's report of 2000 on adoption and address the rights of children compromised by current legislation.
- The Government act to resolve the multiple and conflicting age minima and maxima that restricts a child's access to the protection of their family and society.

- The Government ensure the care and protection of the child or young person is not reduced by age restrictive criteria overriding evident need, and that services for children and youth are available until no longer required.
- The Government promote and advocate for recognition and valuing of indigenous models of family.

VI. Basic Health and Welfare

Children and youth with disabilities

- The Government undertake all necessary measures to implement the principles and provisions of the *New Zealand Disability Strategy* in order to promote and protect the rights of children and youth with disabilities, with urgent attention being given to the following objectives:
 - # Objective 3: Provide the best education for disabled people;
 - # Objective 4: Provide opportunities in employment and economic development for disabled people;
 - # Objective 6: Foster an aware and responsive public service;
 - # Objective 7: Create long-term support systems centred on the individual;
 - # Objective 13: Enable disabled children and youth to lead full and active lives; and
 - # Objective 15: Value families, whanau and people providing ongoing support.

Health and health services

- The Government take urgent action to the maximum extent of available resources to eliminate inequities and discrimination in health on the basis of ethnic, cultural, social and economic factors. This includes action to eliminate poverty among children and youth and strategies to improve the health status of Maori and Pacific children and youth.
- Effective implementation of the *Child Health Strategy*, *Youth Health: A Guide to Action*, and the *Sexual and Reproductive Health Strategy* requires prioritising the development and implementation of public health strategies, workforce development, improving intersectoral co-ordination, and specified time frames and processes, designated funding and resources, and regular and publicly available progress reports.
- The Government ensure that all children and young people under 18 years have free and adequate access to the health system at all levels, with immediate attention being given to:
 - # Free and ready access to all primary health care services including nurses, family doctors, allied health professionals, community and youth health workers, dental care, and prescription medicines and using the experience of ground level initiatives that work (particularly among Maori and Pacific services);
 - # Expansion of youth health services, including sexual and reproductive health services; and
 - # Expansion of mental health services for children, youth and their families.
- The Government give priority attention to countering youth suicide, and in particular Maori male youth suicide.
- A review be done of the experiences of children and young people with chronic illness and an appropriate strategy developed and implemented with the involvement of children and youth with chronic illnesses and their families.
- Intersectoral strategies be developed and implemented to address sexuality education and young men's sexual and reproductive health; the Education Act be amended so that students have the right to decide to participate in sexuality education classes; funding be made available to support teachers to implement the sexuality component of the curriculum; and standards for best practice in sexuality and relationship education be developed, funded and monitored.
- The Government urgently consider the routine offer and recommendation of an HIV test in antenatal care to reduce infection rates in babies.

Standard of living

- The Government take urgent action on the 1997 Recommendations made by the United Nations Committee on the Rights of the Child and its obligations under the Convention, to fulfil the promise made in its *Agenda for Children*, and end child poverty.

- The Government urgently adopt the recommendations in the Child Poverty Action report, *Our Children: the priority for policy (second edition)*, and act to put specific policy measures in place with a detailed timeframe and transparent monitoring, in order to end poverty among children and young people.
- The Government urgently eliminate the discriminatory features of the Child Tax Credit and act to restore the value of Family Support.
- The Government identify and implement measures to reduce the costs of housing for families with children and young people.

VII. Education, Leisure and Cultural Activities

Education

- The Government incorporate Articles 28 and 29 of the Convention into education law to ensure the human rights of students are recognised and acted on.
- The Government amend the Education Act 1989 to ensure:
 - # All children and young people in New Zealand have the right to good quality education including adequate staffing levels; and
 - # Higher staff to student ratios in schools which serve lower income families, schools which have a disproportionate number of indigenous, cultural minority and refugee children, and schools with children with special needs and children in institutional care.
- The Government ensure all children and young people have ready access to free education by:
 - # Increasing resources to schools;
 - # Establishing processes to ensure that state primary and secondary education is free to all children and youth;
 - # Ensuring affordable early childhood education is available to all, especially for children from low income families and families in difficult circumstances;
 - # Increasing the number of teachers fluent in Maori and Pacific languages;
 - # Monitoring school enrolment and attendance with consistent and appropriate follow-up procedures;
 - # Making exclusion or expulsion the disciplinary measure of last resort;
 - # Increasing funding for education of children and young people with special needs; and
 - # Eliminating child poverty as promised in the *Agenda for Children*.
- Education curricula be broadened to meet the vocational needs of students, and students from minority cultures be given opportunities for the maintenance and development of their own languages and the understanding and enjoyment of their own and the cultures of others.
- Amendments be made to the Education Act to increase student representation on school boards.
- Initiatives that address bullying such as the Eliminating Violence and Cool Schools be extended and strengthened.
- The Ministry of Education build educational partnerships with Maori and Pacific and other communities.
- Sufficient funding and resources be provided to meet the educational and related needs of teenage parents.
- Sufficient funding and resources be provided to meet the educational and related needs of children and young people with special needs.

Right to play, leisure, recreation, artistic and cultural activities

- Local and central government develop a strategy and funding to ensure that all children have opportunities to participate in a greater range of sporting, music, artistic and cultural activities, including low cost strategies for meeting the essential recreation needs of children and youth.
- Government review the impact of advertising on leisure and recreational activities.
- Local and central government work together with children and young people to ensure more 'safe' public places in both urban and rural environments for children and young people to play and associate in an autonomous and safe way.
- Children and young people be represented on local body committees or community boards so that their voice can be heard.

- An independent monitoring group – comprising community members, researchers, best practice broadcasters, advocates, children and youth – be established to monitor the media environment for children and youth and to make recommendations to Government for actions to ensure the best media environment.

VIII. Special Protection Measures

Refugee and asylum seeking children and youth

- The Government ensures that refugee and asylum seeker children enjoy equal rights with New Zealand children through development and implementation of a comprehensive national resettlement and integration policy, which establishes special protection for refugees and asylum seekers and targets obstacles to equality. It must be devised in consultative and participatory process with these groups and the children and youth and contain specific and well targeted actions aimed at eliminating discrimination and promotion of positive settlement and integration outcomes, and ensuring that resettlement process reflects partnership between Government and non-governmental agencies and the refugee communities.
- The Government withdraw its Reservation to the Convention and ensure that all children of asylum seekers and refugees have equitable access to health care, welfare services and education. This includes:
 - # The provision of adequate resources and appropriately trained interpreters, education and health personnel;
 - # The development of culturally appropriate, systematic and ongoing training for specialised care and support (including gender sensitivity);
 - # Teachers in early childhood education, schools and the tertiary sector who are able to speak, read and write in two or more languages; and
 - # Targeted measures to reduce disparities in health and welfare status.
- Children of refugees and asylum seekers have access to a well-resourced refugee mental health and well-being integration system and specialised support staff who are culture, gender, and age sensitive.
- The Government ensure that:
 - # Guardians are appointed for separated refugee and asylum seeking children and young people;
 - # Actions are taken to ensure that vulnerable separated children and young people are placed in safe accommodation; and
 - # All policies concerning refugee and asylum seeking children and youth explicitly state that the best interests of the child are paramount.
- The Government desist from any form of detention of children and young people in compliance with articles 9 and 37 of the Convention.

Children involved with the system of administration of juvenile justice

- The New Zealand Government take all necessary measures to withdraw its Reservation to the Convention about age-mixing in prisons.
- All facilities contracted to house young people in the youth justice and prison system, be independently evaluated every two years, including feedback from the young people in residence, families and whanau, and NGOs.
- The Youth Development Strategy Aotearoa be implemented throughout all youth justice facilities and youth prison units.
- The Government take all necessary steps to address the knowledge, support, safety, mental and physical health, educational, social and cultural needs of young people deprived of their liberty, in line with the provisions of the Convention. This includes the provision of highly trained and well-qualified staff as promised before the introduction of youth prisons, fair and consistent application of policy, procedures, and rules, urgently addressing health care needs, and ensuring that prison is used as a last resort for those youth who pose a high risk to the community.
- The Children, Young Persons and their Families Act be amended to apply to all under the age of 18 years.

- The age of criminal responsibility be reviewed and brought into line with the provisions of the Convention.
- Independent research be carried out to assess the extent of non-compliance with the statutory requirements regulating Police questioning of children and the Children, Young Persons and their Families Act, and Police Directions be amended accordingly.
- An independent evaluation of Family Group Conferences be carried out nationally.
- The Government take all necessary steps to ensure that children and young people can receive legal assistance and information if required.
- The Government act urgently to ensure that children and young people under 18 years are not held in Police cells.
- The Human Rights Commission conduct an inquiry into treatment of children in Child, Youth and Family Services residences focussing particularly on searching, placement in secure care, effectiveness of grievance procedures and unnecessary restrictions on the liberty of children in residences.
- The Department of Child, Youth and Family Services review the current grievance procedures and introduce statutory or regulatory requirements to ensure that complaints procedures will provide an effective means by which children can raise concerns and know that these will be considered and addressed promptly, efficiently and confidentially.

Protecting children from violence and neglect

- The Government take measures to end physical punishment of children and young people through public education about non-violent parenting, the provision of adequate support services for families with children and repeal of section 59 of the Crimes Act 1961.
- The outcomes for children under the Children, Young Persons and their Families Act 1989 and the effects of the care and protection processes arising from the Act be properly evaluated through research.
- In order to monitor whether New Zealand is improving its performance in the care and protection of children and reducing violence, a set of reliable data is established which remains constant over time and is reported on regularly.
- The Government take all necessary steps to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography, and the United Nations Convention Against Transnational Organised Crime and its accompanying Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
- Successive Governments commit to a stable, well-resourced public care and protection system with well-educated and well-supported staff. The Governmental protection system must work in a fully co-operative way with the NGO sector, respecting the expertise that exists in that sector and supporting the development and maintenance of the services the sector provides. Key issues requiring urgent action include:
 - # Improvements in the assessment of children and young people's care and protection needs;
 - # Fully addressing the rights of children and young people being cared for outside their birth families and the support needs of their caregivers;
 - # Improving the resourcing and availability of specialised therapeutic services;
 - # Addressing the care, protection and rehabilitation of children caught up in domestic violence;
 - # Improving the provision of high quality and culturally appropriate services to meet the needs of Maori;
 - # Respecting the participation rights and legal representation needs of children and young people; and
 - # Fully funding implementation and evaluation of the effectiveness of positive new initiatives, including the *Agenda for Children, Te Rito – the Family Violence Strategy*, and the *Blueprint for Care and Protection*.

Economic exploitation including child labour

- New Zealand withdraw its Reservation to the Convention on child labour and ratify ILO Convention 138.
- All Government activity concerning child and youth labour be cognisant of the Convention on the Rights of the Child and the relevant ILO Conventions.

- A minimum age for work be established by legislation. The development of such legislation requires consultation and discussion – including with children and youth – about minimum ages for fulltime and part-time employment, and for light work, and what exceptions should be granted with specific rules for selected activities (such as entertainment, working for parents).
- Enforcement and health and safety regimes be evaluated for their effectiveness to protect children and youth.
- A minimum wage be established for the protection of those under the age of 16 years, and measures taken to establish a minimum wage for all workers irrespective of age, with the minimum wage being index-linked to cost of living adjustments.
- Urgent research be made into the extent, nature, reasons, risks and outcomes of child labour in New Zealand, Government produce disaggregated statistics about children and young people in work.
- Government and child protection agencies define their obligations under ILO 182, identify and monitor exploitation factors, and promulgate the programmes and policies arising out of the ratification of ILO 182 without delay.
- There be a legal requirement that children and young people should not be employed in work or under conditions of work that are cruel, inhumane, degrading or exploitative.

Drug abuse

- The Government takes all necessary measures to protect children and young people from harm related to alcohol, tobacco, marijuana and other harmful substances. This includes:
 - # Education and warnings on labels about the risks of alcohol in pregnancy;
 - # A review of the excise tax on alcohol;
 - # A ban on alcohol advertising in broadcasting;
 - # A ban on alcohol sponsorship; and
 - # Alternative funding for sponsorship of recreational activities for children and youth, including sports, music and dance.

Maori tamariki and rangatahi (children and youth)

- The Government honour its obligations to tamariki and rangatahi under Te Tiriti o Waitangi as well as the Convention.
- The Government takes urgent action to address the disparities between Maori and the dominant culture. This includes attention to the historical and cumulative issues that impact on the well-being of tamariki and rangatahi, and support for the right of all tamariki and rangatahi to enjoy their culture and language.
- The Government establishes effective systems for the development and co-ordination of services for tamariki and rangatahi. This should be done in partnership with tamariki and rangatahi, whanau, hapu and iwi.
- The Ministry of Maori Development Act 1991 be amended to include specific responsibilities for the Ministry to promote the rights of Maori tamariki and rangatahi, and provide an annual report to Parliament on the state of Maori tamariki and rangatahi.
- The responsibilities of the Commissioner for Children outlined in the new Bill, are expanded to include promoting understanding of the rights of tamariki and rangatahi under Te Tiriti o Waitangi.

Pacific children and youth

- Government undertake an urgent review of immigration policy to address gaps identified with children of non-resident parents.
- Government continue to work with Pacific peoples in further development of robust intersectoral policies that address the rights of Pacific children and youth in the context of family, church and culture and work *with* Pacific peoples in the implementation of the United Nations Convention on the Rights of the Child.
- Government ensures that initiatives targeting Pacific children and young peoples are actively implemented with timelines, adequate and specific funding and regular reporting back to Pacific peoples on the achieved outcomes.

- Government recognise, and respond accordingly, that in the context of Pacific families, definitions of children and youth are made by parents and families as opposed to an age specific status;
- Government recognise in policy development and service provision that Pacific children and youth in New Zealand come from a diversity of Pacific nations, and that their diverse cultural heritage, birthplaces (New Zealand, a Pacific nation, or elsewhere) and their families' varying experiences of migration, forms their identity as Pacific children and youth.
- Government supports and enables children to develop a strong sense of identity through their families, churches and school systems including teachers 'adding value' to the culturally specific skills that children bring from home.
- Government take a positive approach when reporting on and responding to the strengths and needs of Pacific children and their families. This means recognising and building on strengths rather than focusing on deficits and supporting the provision of ethnic-specific role models of all ages for Pacific children and young people.
- Government acknowledges and builds on:
 - # The strengths of extended families to optimise children's education and health. Families are the most basic unit for Pacific children's healthy development, providing opportunities for mentoring, support and guidance from older people. Pacific youth who are at risk have highlighted the need to have a significant adult in their lives who could provide stability and connectedness, listen and respond to young people's concerns
 - # The strengths of churches to support the healthy development of Pacific children and their families – churches provide the spiritual dimension of health that is often ignored in NZ health policies and provision.
 - # Pacific concepts of healthy development that incorporate social, emotional, physical and spiritual well-being, not just of the child but of the extended family.
- Government extend youth advocacy services, given the importance of this service for Pacific youth, especially in terms of negotiating between parents and their children in difficult situations.
- Government provides translations of the Convention on the Rights of the Child into languages of the Pacific, namely Samoa, Tonga, Cook Islands, Niue, Tokelau, Fiji and other languages as required.

Asian children and young people

- A plan of action be developed and implemented – with the participation of Asian children and youth and their families and communities – to ensure they are able to enjoy all their rights under the Convention without discrimination.
- Legislation, government policies and practices, and service provision recognise the importance of extended families and valuing of collective responsibility to Asian children and youth, and ensure that the funding and provision of services is able to cater to different family profiles.
- Intersectoral and community development strategies that are intended to improve the situation of children, youth and families, must involve Asian communities.
- The Commissioner for Children carry out an urgent review of the situation of the safety and well-being of children and youth in New Zealand as international students, with special attention being given to the situation of young unaccompanied children.
- The Ministry of Education give urgent attention to assisting schools develop and review strategies for protecting children from racial harassment and bullying, and review the measures taken by schools to assist students for whom English is a second language.
- Asian children and young people's right to enjoy their own cultures, religions and languages be protected and encouraged in all aspects of government and New Zealand life. This requires more thorough and sensitive planning, preparation and integration of, as well as support for, Asian children, youth, families and communities.

About Action for Children and Youth Aotearoa

This Report has been prepared by Action for Children and Youth Aotearoa Incorporated (ACYA), which is a coalition of non-governmental organisations (NGOs) and individuals interested in children's rights in Aotearoa New Zealand.

ACYA has over 100 members, made up of individuals, families and NGOs including:

Barnados New Zealand
Barnados South Auckland
Birthright New Zealand Inc.
Canterbury Playcentre Assn
Catholic Social Services
Child Cancer Foundation Inc.
Child Helpline Trust
Child Poverty Action
Child Protection Carissimi
Children's Agenda
Children's Health Camps
Children's Issues Centre
Christchurch City Mission
Christchurch Community Law Centre
Doctors for Sexual Abuse Care
Education For Change
Equal Employment Opportunities Trust
EPOCH New Zealand
Home and Family Society
Immunisation Advisory Centre
KEEA Trust
Manukau the Healthy City
Mind and Body Consultants Ltd
National Association for OSCAR
National Council of Women
New Zealand Family Planning Assoc (Inc.)
New Zealand Council of Christian Social Services
New Zealand Playcentre Federation Inc.
NZ Association for Adolescent Health and Development (NZAAHD)
OMEP Aotearoa
Otago Health Inc.
Parentline Hawkes Bay Inc.
Parents as First Teachers
Peace Foundation
Peace Movement Aotearoa
PHAB Association Inc
Pillars (Auckland) Inc
Royal New Zealand Plunket Society (Inc.)
Save the Children New Zealand
Skylight
Taranaki Family Support
Te Puawai Tapu
TLH Trust Inc
Tongan Community North Harbour
UNICEF New Zealand

United Nations Youth Association of New Zealand
Youth Advocates Office, Christchurch City Council
YouthLaw Tino Rangatiratanga Taitamariki

The wide membership base means that the views in this Report are not able to reflect the views of all members of ACYA, and we know there will be some areas of discussion, debate and controversy. Such discussions will increase our understanding and knowledge.

ACYA evolved out of Action for Children Aotearoa, which prepared the non-governmental organisations' report for the UN Committee on the Rights of the Child in 1996. ACYA is an Incorporated Society with a democratic structure. ACYA is joining the international child rights coalition, the NGO Group for the Convention on the Rights of the Child.

The ACYA Constitution says ACYA:

Seeks to promote respect for children and youth and their rights. In order to do this it will:

- a. Promote understanding and implementation of the UN Convention on the Rights of the Child.*
- b. Promote action on the recommendations of the UN Committee on the Rights of the Child for Aotearoa New Zealand.*
- c. Provide reports from NGOs in Aotearoa New Zealand to the UN Committee on the Rights of the Child.*
- d. Promote opportunities for the voice and participation of children and youth.*
- e. Anything else that will further these aims.*

The values that underpin ACYA are respect for all people, respect for Te Tiriti o Waitangi (the Treaty of Waitangi) and respect for the rights of children and youth.

ACYA and the Working Groups have a strong commitment to incorporating child and youth perspectives into the reporting process, and supporting children and young people to prepare a video to the UN Committee.

One of ACYA's priorities has been the development of its website www.acya.org.nz as a means of promoting the rights of children and youth, and developing this Report. ACYA maintains an extensive electronic mailing list of around 600 people who are regularly updated about issues to do with children and young people. ACYA newsletters and a pamphlet are also available and have been widely disseminated.

How this Report was written

Action for Children and Youth Aotearoa (ACYA) has prepared this report for the United Nations Committee on the Rights of the Child to present the concerns and views of non-governmental organisations about what has been done, and not been done, by the New Zealand Government to implement the *United Nations Convention on the Rights of the Child*.

Over the past two years more than 150 people have contributed to the Report, almost all on a voluntary basis. ACYA has no paid staff. The ACYA Committee and sixteen Working Groups have written the Report. The order of contents of the Report generally follows that requested by the UN Committee. The Report is supported by nineteen appendices and three accompanying documents.

ACYA saw the process of developing the Report as providing an important opportunity for NGOs (non-governmental organisations) to work together, increase understanding of the rights of children and youth, and develop consensus about priorities. ACYA is also supporting children and young people to present their concerns and views to the UN Committee through a video.

Papers from the sixteen Working Groups are in the appendices and provide the basis of the main Report. The Working Groups were formed around the headings requested by the UN Committee and five population groups (Maori children and youth, Pacific children and youth, Asian children and youth, refugee and asylum-seeking children and youth, and children and youth with disabilities).

The Working Groups have included community leaders, families, people working with children and youth, researchers and experts in the field. They have used the knowledge of those working in the area and existing reports, including reports and research incorporating the perspectives of children and youth. Some directly consulted with children and young people for their views. The Working Groups varied in size from two or three to over twenty members. They generally operated in an informal and co-operative way to gather information and support each other in identifying key issues and bringing them together in a paper. Most took a community development approach to ensure that a wide and diverse range of people were involved and contributed. The main Report was developed by the ACYA Committee out of draft Working Group papers, and a draft was sent to ACYA members and interested people for consultation.

There are gaps in the Report. We have not had the resources to establish other Working Groups to look at different age groups, different genders, and some groups of children and youth in special circumstances. Although communities and organisations outside government (both voluntary and for profit) are very important in the lives of children and youth, this Report is about Government activity – including Government actions to support communities and the voluntary sector – and is not a review of actions taken by communities, the business sector, and the voluntary sector. These are all important areas, but beyond the scope of the Report to the UN Committee.

The Report is primarily written for the UN Committee in response to Article 44 of the Convention. We hope that it will also be useful for the New Zealand Government in reviewing its actions and plans, people who work with children and youth within central and local government and other services, and the growing movement for and with children and youth in New Zealand.

In New Zealand, the terms 'children and youth' or 'children and young people' are usually used to refer to those up to the age of adulthood, and the term 'children' is used for those up to about ten to thirteen years of age. Hence we use the terms 'children and youth' or 'children and young people', rather than simply 'children' to describe those covered by the Convention.

CHILDREN AND YOUTH IN AOTEAROA

ACYA Committee

I. GENERAL MEASURES OF IMPLEMENTATION

Articles 4; 42; and 44, Paragraph 6, of the Convention, and the Optional Protocol on the Involvement of Children in Armed Conflict.

Introduction

Many children and youth in New Zealand are happy and live fulfilling lives. Much law and policy in New Zealand complies with the *United Nations Convention on the Rights of the Child* and many programmes promote children's rights and well-being. The Government has made some progress in responding to the Recommendations made by the United Nations Committee on the Rights of the Child in 1997.

There is much wider awareness throughout the public and government that children and young people have special needs and human rights. An increasing number of political leaders, and tens of thousands of public servants at all levels of government, work tirelessly for children and youth and do all they can to promote and respect their rights.

Recent strategies and innovations such as the Government's *Agenda for Children*², *Youth Development Strategy Aotearoa*³ and *Disability Strategy*⁴ offer new hope that the advantages enjoyed by many children and young people in New Zealand will be extended to all.

However, there is still much to be done for New Zealand to comply with the Convention.

The Government's view of its achievements is described in its report to the United Nations Committee on the Rights of the Child, *Children in New Zealand (2000)*,⁵ and additional reports that the Government may present to the UN Committee. We are very positive about the open and constructive approach taken in *Children in New Zealand 2000*, and the consultative and open way that the Ministry of Youth Affairs prepared that report.

Children in New Zealand (2000) emphasises progress in compliance with the Convention from the point of view of the development of new policies and initiatives. This Report from non-governmental organisations focuses on what is happening in the lives of children and youth and what needs to be done, and emphasises that positive new policies and initiatives must be properly implemented and evaluated if they are to benefit children and youth.

The Government, no matter how well intentioned, faces difficulties in implementing the Convention. Reasons include:

- *Discrimination*. Twenty-seven percent – or three out of eleven – of those living in New Zealand are under the age of eighteen⁶, which is relatively high for an industrialised country. A growing proportion of children are in one parent and non-European families, and thus outside the mainstream culture.⁷ A much higher proportion of children and youth belong to Maori, Pacific and Asian ethnic groups. In 2001, 14 percent of the total population percent identified with Maori, six percent with Pacific and six percent with Asian ethnic groups. Among those under 18 years, 23 percent identified with Maori (up from 20 percent in 1991), eleven percent with Pacific (up from seven percent in 1991) and seven percent with Asian ethnic groups (up from three percent in 1991).⁸ This may have contributed to children's marginalisation in the political process.⁹

² Maharey, S., Harre, L., & Turia, T. (2002). *New Zealand's Agenda for Children – making life better for children*. Wellington: Ministry of Social Development.

³ Harre, L. (2002). *Youth Development Strategy Aotearoa*. Wellington: Ministry of Youth Affairs.

⁴ Dalziel, L. (2001). *Making a World of Difference: Whakanui Oranga. The New Zealand Disability Strategy*. Wellington: Ministry of Health.

⁵ Ministry of Youth Affairs. (2000). *Children in New Zealand. United Nations Convention on the Rights of the Child: Second Periodic Report of New Zealand. December 2000*. Wellington: Ministry of Youth Affairs.

⁶ Statistics New Zealand. (2000). *Population update for children under 18 years. Background material for the Seminar on Children's Policy, 19 – 20 July 2000, Parliament Buildings, Wellington*. Wellington: Statistics New Zealand

⁷ In 1986 sixteen per cent of all children under 15 years were in one parent families. In 1996 twenty-four per cent of all children under 15 years lived in one parent families. Source: Statistics New Zealand (1999), *Children* (1998 ed.). Wellington: Statistics New Zealand.

⁸ Maharey, S., Harre, L., & Turia, T. (2002). *New Zealand's Agenda for Children – making life better for children*. Wellington: Ministry of Social Development.

⁹ Blaiklock, A. J., Kiro, C., Belgrave, M., Low, W., Davenport, E., & Hassall, I. (2002). *When the invisible hand rocks the cradle: New Zealand children in a time of change* (Innocenti Working Paper 93). Florence: UNICEF Innocenti Research Centre.

- *The inferior status of children and youth.* A major problem is the lack of status for children and youth. Those under the age of 18 cannot vote, have negligible political power and have been usually invisible in government policy and decision-making. Although the New Zealand population is younger than most industrialised societies,¹⁰ it is gradually ageing and at times this issue seems to preoccupy Government.

However parents, policy makers and adults working with children, are recognising the benefits to be gained from acknowledging children and youth as human beings who can contribute to personal, family and societal decision making processes.^{11 12} New Zealand is a democratic society, and the ultimate responsibility for progress in implementing the Convention is with adult voters.

The Government has recognised the problem of children's status in its 2002 *Agenda for Children* when it said 'if New Zealand is to be a great place for children we need change. We need to treat children as respected citizens who can contribute to society now and not just as "adults in the making" . . . Child policies have tended to focus on children as dependants.'¹³ Much more needs to be done through legislative, policy and practice initiatives.

- *Mixed history of meeting treaty obligations* Successive New Zealand governments have a mixed history in implementing treaties and international obligations when faced with competing demands. New Zealand places considerable reliance on international law because New Zealand is a small nation and the economy is dependent on international trade. New Zealand is very active in international trade negotiations and a strong advocate of free trade. New Zealand is also active in the United Nations – it has, for example, supported peace keeping, accepts many refugees, and took a child rights stance during the United Nations General Assembly Special Session on Children.

However successive governments have often not fulfilled all their human rights obligations under international law because of what are seen as competing demands. The slow progress in implementing the *Convention on the Rights of the Child* is an example. Another is Te Tiriti o Waitangi (the Treaty of Waitangi), which was signed between the British Crown and Maori in 1840 and guaranteed Maori rights. It has been systematically compromised to the serious disadvantage of Maori whose rights it guarantees, as successive governments have found it difficult to reconcile their obligations under Te Tiriti o Waitangi with other demands.

- *Misunderstanding of children's rights.* As the *Agenda for Children* recognises, there is widespread misunderstanding of the human rights of children¹⁴ and of human rights in general. A Human Rights Commission survey found that adult New Zealanders' views of human rights focus strongly on the issue of the fair treatment of individuals and see New Zealand as having a relatively good record on human rights with major human rights violations occurring in other countries. There is a lack of knowledge about human rights standards and Te Tiriti o Waitangi among adults, with younger New Zealanders being considered more aware of human rights issues.¹⁵ Much more attention is paid to civil and political rights than to economic, social and cultural rights. Human rights are often seen as 'tradable commodities' and that if one group gets more rights then another group gets less. Hence, there is a fear that recognising the rights of children means fewer rights for adults and parents.
- *Social and economic pressures.* As a result of social and economic changes, communities and extended families have come under increasing pressure and fragmentation with consequent reduction in the quality of care and opportunities available to children and youth.

¹⁰ Blaiklock, A. J., Kiro, C., Belgrave, M., Low, W., Davenport, E., & Hassall, I. (2002). *When the invisible hand rocks the cradle: New Zealand children in a time of change* (Innocenti Working Paper 93). Florence: UNICEF Innocenti Research Centre.

¹¹ Smith, A., Gollop, M., Marshall, K., & Naim, K. (2000). *Advocating for children: international perspectives on children's rights*. Dunedin: University of Otago/

¹² Smith, A. B., Taylor, N. J., & Gollop, M. M. (Eds.). (2000). *Children's voices: Research, policy and practice*. Auckland: Pearson Education .

¹³ Maharey, S., Harre, L., & Turia, T. (2002). *New Zealand's Agenda for Children – making life better for children*. Wellington: Ministry of Social Development, p. 2 & p. 13.

¹⁴ Maharey, S., Harre, L., & Turia, T. (2002). *New Zealand's Agenda for Children – making life better for children*. Wellington: Ministry of Social Development.

¹⁵ Human Rights Commission (2003). Human Rights and the Treaty of Waitangi. Unpublished paper.

- *Reforms of the state.* The extensive reforms of the state over the last two decades may have made government more efficient but less effective.^{16 17 18} This makes it difficult for government to effectively introduce changes to benefit children. There has been a tendency for governments to produce plans, strategies and policies, which are at best only partly implemented.¹⁹
- *Lack of assistance for the early years of life.* Despite increased recognition of how experiences in the early years shape outcomes for children over their life spans there have been and continue to be inadequate measures in place to reduce the number of children affected by poverty and violence in the early years, and substantial gaps in services, such as intensive home visiting, that help ameliorate some of the effects of poverty in early life. The lack of assistance in the early years has ongoing effects throughout childhood and youth.

Nevertheless, the Government has made some progress since 2000. This has been as a result of considerable advocacy by non-governmental organisations and children's advocates, greater public concern, increased recognition by Government of the importance of children and youth, and the requirement for Government to report progress to the United Nations Committee on the Rights of the Child.

Recommendation

- The Government make every effort to address the Recommendations made by the United Nations Committee in 1997 that have yet to be fully implemented.²⁰

Te Tiriti o Waitangi

Please see Appendix Two: *Te Tiriti o Waitangi and the Convention on the Rights of the Child.*

Maori are the indigenous peoples of Aotearoa New Zealand. Maori are a tribal people with at least a millennium of indigenous occupation and a more recent 162-year history of a treaty-legitimised colonisation. Following the Maori 1835 Declaration of Independence, the British made a treaty with Maori in order to establish a colony. Te Tiriti o Waitangi (the Treaty of Waitangi) was signed between Maori and the British Crown in 1840. Under the terms of Te Tiriti o Waitangi Maori granted administrative authority to the British agents of the Crown and a monopoly right to buy land from Maori. In return the Crown promised to protect Maori sovereignty and taonga (treasures), and to protect Maori and ensure that they have the same rights as British citizens. The Treaty of Waitangi (English version) said that Maori ceded sovereignty to the Crown. However this is not in the Maori version and under international law, the contra preferentum rule and article 33 of The Vienna Convention, the version of the indigenous people (Te Tiriti o Waitangi) prevails. Successive governments' lack of recognition that Maori did not surrender sovereignty has been a source of ongoing difference with Maori.

Although Te Tiriti o Waitangi clearly defined the rights and responsibilities of Maori and the Crown, a fairly standard colonial history ensued in Aotearoa New Zealand: war, appropriation of large tracts of native lands, marginalisation of indigenous communities, and erosion of cultural customs, language and values. The widening gap between Maori and non-Maori in health, education, housing, economic, and other statistics demonstrate that the Crown has not fulfilled its obligations to the protection and rights of Maori under Te Tiriti o Waitangi.

The rights of Maori children and young people are described in detail in:

- New Zealand law and international human rights instruments ratified by the New Zealand Government which describes their human rights.
- The *Convention on the Rights of the Child*, which describes their human rights as children and has been ratified by the New Zealand Government.
- The *Draft Declaration on the Rights of Indigenous Peoples Rights* which describes their rights as indigenous people and which will hopefully be ratified by the New Zealand Government.

¹⁶ Advisory Group on the Review of the Centre. (2001). Report of the Advisory Group on the Review of the Centre, Presented to the Ministers of State Services and Finance November 2001. Wellington: State Services Commission.

¹⁷ Petrie, M., & Webber, D. (2001). *Review of evidence on broad outcome of public sector management regime* (Treasury Working Paper 01/06). Wellington: New Zealand Treasury.

¹⁸ Schick, A. (2001). Reflections on the New Zealand model. Wellington: New Zealand Treasury.

¹⁹ Blaiklock, A. (2000). *Children's health in the next five years (commentary)*. Paper presented at the Seminar on Children's Policy, July 2000, Wellington.

²⁰ Please see Appendix One for a summary of progress thus far on the UN Committee's 1997 Recommendations.

- Te Tiriti o Waitangi which describes their special rights as Maori, to which the signatories are Maori and the Crown, and which is a commitment that has existed since 1840.

To Maori, the rights of children and youth are not divisible from the Maori collective, and the rights of Maori children will not be fully realised unless the collective rights of Maori families and Maori as a people are fully realised. The Government usually interprets international human rights instruments from a western paradigm of human rights and hence places greater emphasis on the individual than the collective. Progress in addressing the rights of Maori of children and youth must be resolved within the context of Maori rights as stated in Te Tiriti o Waitangi. Current Government policies and practice do not explicitly acknowledge Maori children and youth as part of the indigenous collective. Policies and processes need to be reoriented towards the integration of both their individual and collective rights.

Recommendation

- Implementation of the United Nations Convention on the Rights of the Child for Maori children and youth requires the Government to honour its obligations to Maori under Te Tiriti o Waitangi and to recognise the individual and collective rights of Maori children and youth in legislation and government policy and practices.

New Zealand's Reservations to the Convention

Articles 22, 32(2) and 37(c) of the Convention. Please also see Appendix Eight: General Measures of Implementation of the Convention.

New Zealand made three Reservations to the Convention – about children who were not citizens or residents; protection of children in employment; and about mixing children in with adults in prison. In 1997, the UN Committee asked the Government to withdraw these Reservations. Although the Government has been reviewing these Reservations, little progress has been made and they still apply. This means that unknown numbers of immigrant children who are not citizens or residents do not attend school, and may only receive health care in emergencies. There is no minimum age for employment and only limited protection for working children. Some children are still imprisoned with adults.

Recommendations

- The Government urgently review its position with regards to its Reservations to the Convention, undertake to the UN Committee to withdraw its Reservations, and set clear deadlines for achieving compliance.
- The Government consult with the people of Tokelau about extending the protection of the Convention to the children and youth of Tokelau.

International agreements

Please also see Appendix Eight: General Measures of Implementation of the Convention.

The New Zealand Government has been active in:

- Support for the programme of action of the *International Convention on Population and Development*, which makes special commitments regarding the health of children and youth;
- The development of both *Optional Protocols to the Convention on the Rights of the Child*;
- The development of *ILO Convention 182 on the worst forms of child labour*;
- The development of *A World Fit for Children, the Outcome Document of the UN General Assembly Special Session on Children*. New Zealand successfully negotiated for specific reference to indigenous children. In negotiations New Zealand also said that the *Convention on the Rights of the Child* was the central and logical framework for any plan of action for children; and
- Supporting the UN weapons inspection process as a route to the disarmament of Iraq, and stating that New Zealand does not support military action against Iraq without a mandate from the Security Council.

New Zealand has:

- Ratified the *Optional Protocol on the involvement of children in armed conflict* (New Zealand made a Reservation that 17 year old volunteers may be recruited into the armed forces);
- Signed, but not ratified, the *Optional Protocol on the sale of children, child prostitution and child pornography*;
- Ratified *ILO Convention 182 on the worst forms of child labour* and established an officials group to assist in its implementation;
- Not yet ratified *ILO Convention 138 on a minimum age of employment* (ratification was recommended by the UN Committee in 1997 and some work is being done by Government officials on the issues); and
- As yet, made no visible progress in reviewing what needs to be done or in developing a plan to implement the *Outcome Document of the UN General Assembly Special Session on Children*.

Recommendations

- The Government take all necessary steps to ratify the Optional Protocol to the Convention the sale of children, child prostitution and child pornography.
- The Government take all necessary steps to ratify ILO Convention 138 on a minimum age of employment.
- The Government develop a plan of action to implement the Outcome Document of the UN General Assembly Special Session on Children, and implement this plan with specified targets and time frames. The plan should build on work already done by the Government in its strategies for children and youth.

Conformity of legislation and practice with the Convention

Please also see Appendix Eight: General Measures of Implementation of the Convention.

Policy, practice and legislation

In 1997 the UN Committee recommended that there be a review of all aspects of government policy, administrative practice and legislation having an impact on children to determine consistency with the Convention. This has not happened and there is no plan for this to happen. There is no administrative process in place to ensure that new legislation and regulations comply with the Convention.

The Convention is not incorporated into domestic law. Instead it relies on the development of administrative case law as a means for establishing its legal application in New Zealand. The Family and Youth Courts have also applied the Convention in some judgements. However, the courts are bound to interpret the Convention within the parameters of existing legislation. Hence, while the Courts can readily apply the Convention to New Zealand's family law legislation, with its focus on the best interests and welfare of the child, it is more difficult where the Convention is in direct conflict with a statutory provision.

Some legislation (including recent legislation) is inconsistent with the Convention, including

- Section 59 of the *Crimes Act 1961* which specifically allows parents and guardians to use force in the discipline of children;
- The *Children, Young Persons and their Families Act 1989*, which deals with care and protection and youth justice issues, does not apply to seventeen year olds;
- The *Human Rights Act 1993* allows for discrimination against children under 16 years on the basis of their age;
- The *Sentencing Act 2002* says young persons aged 15 years and over may be remanded to adult prisons while they wait trial or sentence; and
- Various other statutes set certain ages that are not in accord with the Convention.

Commissioner for Children

The Commissioner of Children has done considerable work in advocacy and raising public and community awareness of the Convention, and has recently taken the commendable step of establishing an advisory group of children and young people. The Government has increased funding for the Office of the Commissioner of Children and introduced the *Commissioner for Children Bill* (which is still awaiting final passage through Parliament). When passed the new Act should strengthen the Office. The Bill gives the Commissioner additional functions including raising awareness and understanding of the Convention; acting as an advocate for children and young people (but not before a court or tribunal) increased power to conduct investigations (but not decisions of courts or tribunals); and advancing and monitoring the application of the Convention.

However, the Bill does not require the Office of the Commissioner for Children to review its own compliance with the Convention and the appointment process remains within the jurisdiction of the Minister responsible for the Department of Child, Youth and Family Services although there are provisions that should make the appointment a more consultative, open and transparent process than it has been in the past. The Bill fails to address the Government's partnership responsibilities under Te Tiriti o Waitangi. The Bill does not make the Commissioner an Officer of Parliament. If the Commissioner were accountable directly to Parliament – as is the Human Rights Commission – the independence of the Office would be strengthened.

Recommendations

- The Government establish an executive administrative process whereby all proposed legislation, regulations and supplementary order papers are audited for consistency with the Convention. Such audits should be routinely published.
- Existing legislation be reviewed and amended to ensure consistency with the Convention. This includes:
 - # Repealing section 59 of the Crimes Act 1961;
 - # Amending the Children, Young Persons and their Families Act 1989 to include all those under eighteen years;
 - # Amending the Human Rights Act 1993 to cover the ground of age discrimination for complainants aged under 16;
 - # Amending the Sentencing Act 2002 to comply with the Convention's provisions; and
 - # Extending the provisions of the Commissioner for Children Bill.
- The independence of the Commissioner for Children be increased by the Commissioner being made an Officer of Parliament.

National strategy for children

Please also see Appendix Eight: General Measures of Implementation of the Convention, and the accompanying report, *Making It Happen*.

The Government has produced two key documents, the *Agenda for Children* and the *Youth Development Strategy Aotearoa*, which potentially provide a national policy to ensure that the interests, needs and rights of children and youth are provided for and monitored in a comprehensive and integrated manner. Children and youth were included in consultation for both.

The *Agenda for Children* focuses on children and youth under 18 years and names consistency with the Convention at the head of its ten principles. Its seven key action areas are:

- Promoting a 'whole child approach'
- Increasing children's participation
- An end to child poverty
- Addressing violence in children's lives with a particular focus on reducing bullying
- Improving central government structures and processes to enhance policy and service effectiveness for children
- Improving local government and community planning for children
- Enhancing information, research and research collaboration relating to children.

The *Youth Development Strategy Aotearoa* focuses on the needs of people aged between 12 and 24. The Strategy is comprised of four components, namely, an overall vision, six principles of youth development, aims and goals.

These are recent documents and their actual effectiveness is yet to be gauged. For example, the *Agenda for Children* promises to end child poverty and for the first time there is official acknowledgement of the extent of child poverty in New Zealand with three out of ten children being poor. However the *Agenda* did not say when or how child poverty would be ended and, despite the considerable existing body of research on child poverty, said that more research was needed.

In response to the *Agenda for Children*, fourteen non-governmental organisations (including Action for Children and Youth Aotearoa) produced a report, *Making it Happen: Implementing New Zealand's Agenda for Children*. This outlined action needed to be taken to implement the Agenda, and pointed out that the Agenda requires

substantial government funding if it is to make a difference.²¹ The report *Making It Happen* accompanies this Report to the UN Committee on the Rights of the Child.²²

Recommendations

- The Government prioritise full implementation of the *Agenda for Children* and the *Youth Development Strategy Aotearoa*.
- In implementing these strategies, the Government utilise the recommendations from *Making It Happen*, commit to funding and implementation with specific targets and deadlines, and provide regular public reports on progress.

The reforms of the economy and the state

Please also see the accompanying report, *When the Invisible Hand Rocked the Cradle: New Zealand Children in a Time of Change*.

In 1997 the UN Committee on the Rights of the Child recommended that the Government carry out a study on the impact of New Zealand's reforms on children. This did not happen. However, a study was published in 2002 by the UNICEF Innocenti Research Centre, *When the Invisible Hand Rocks the Cradle: New Zealand children in a time of change*,²³ which accompanies this Report to the UN Committee.²⁴

When the Invisible Hand Rocks the Cradle investigated the impact of economic and social reforms in New Zealand since the mid-1980s on the well being of children and young people. These reforms were among the most sweeping in scope and scale in any industrialised democracy but their impact was not systematically monitored. The paper points out the difficulties in assessing the reforms, but it is possible to describe what happened to children during the reforms and consider the extent to which reforming governments took account of the best interests of children and responded to evidence of problems.

From 1984 onwards New Zealand's major policy emphasis was on restructuring the economy with an assumption that strong economic growth would allow the well being of children and their families to improve. Universal policies for children were abandoned in favour of highly targeted provisions. Although there were some improvements in the situation of children, such as increased participation in early childhood and tertiary education, the reforms have been associated with growing inequality and levels of poverty. Children – and in particular Maori and Pacific children and the growing numbers of children in one-parent families – have been disproportionately affected. The consequences are seen in absolute and relative declines in some measures of health status, and growing inequality in indicators of family income, housing, health and educational achievement. Greater choice and autonomy may have improved the situation of some New Zealand children, but increased inequality has prevented these benefits from being available to many others. Some negative indicators eased off from the mid-1990s as the pace of reform slowed and some targeted interventions were introduced. However, apart from increasing the emphasis on targeting, successive governments were slow to respond to the inability of the market place to improve children's well being and some government services, such as the statutory care and protection service, have been seriously stretched.

The paper concludes:

Relying on the social and economic reforms alone to improve the situation of children has been a major failing of the reform process. The Labour and Alliance parties who formed the Government after the election at the end of 1999 promised greater emphasis on the needs of children, although most of the framework for economic management continues The New Zealand experience demonstrates the importance of having effective mechanisms to monitor, protect and promote the interests of children, especially during times of major change, and how governments should carefully consider how their actions will impact on children – the most vulnerable and valuable members of any society (p. 48).

Recommendation

²¹ Institute of Public Policy, UNICEF New Zealand and Children's Agenda. *Making it happen: Implementing New Zealand's Agenda for Children* (2002). Wellington: Institute of Public Policy at AUT, Children's Agenda and UNICEF New Zealand.

²² It is also available from www.makingithappen.info.

²³ Blaiklock, A. J., Kiro, C., Belgrave, M., Low, W., Davenport, E., & Hassall, I. (2002). *When the invisible hand rocks the cradle: New Zealand children in a time of change* (Innocenti Working Paper 93). Florence: UNICEF Innocenti Research Centre.

²⁴ It can also be found at www.unicef-icdc.org/cgi-bin/unicef/Lunga.sql?ProductID=334 and a child-friendly version is at www.unicef.org.nz.

- Proposed government policies, programmes and actions – including economic actions – be assessed for their potential impact on children and youth, and if introduced, monitoring and evaluation include assessment of their impact on children and youth.

Mechanisms to co-ordinate policies relating to children and monitor implementation of the Convention

Please also see Appendix Eight: General Measures of Implementation of the Convention.

The lack of co-ordination of services and policies continues to be a serious problem. This was tragically described in the Commissioner for Children's 1999 report into the death of James Whakaruru, a four-year old boy who was murdered by his stepfather, and Judge Mick Brown's 2000 Ministerial Review of the Department of Child, Youth and Family Services

There have been some initiatives. The *Strengthening Families Strategy* in 1998 has provided a valuable service, which has improved co-ordination between agencies in some areas for some individual cases. However, it is not resourced to resolve the wider problems of a lack of overall systemic co-ordination between services that deal with young people.

The *Agenda for Children* also promotes a 'whole child approach'. *Making it Happen* points out that this requires the identification of a specific agency with responsibility for promoting the approach and developing education processes; staff at a senior level with the authority to see that the whole child approach is identified; the establishment of child advocates within communities to develop and integrate services; expansion of home-based and centre-based parent and child education and support programmes; a national database and communication system with appropriate privacy safeguards to ensure that each child receives his or her entitlement to quality health care, care and protection, education and other services; adequate provision of financial support and information to families caring for children; education, training and resources to fully inform government and community organisations about the whole child approach; and a research programme based on the whole child to inform policy and practice with children.

The *Agenda for Children* provides for the development of a regular report of indicators of the well being of New Zealand children, which will assist with future reports to the UN Committee on the Rights of the Child. Meantime, monitoring of policies that affect children continues on an ad hoc basis, with various agencies reporting to various Ministries.

Children in New Zealand (2000) notes the development of the *Agenda for Children* as an important means of gathering views from children and young people, an essential part of monitoring their perceptions of how policies affect them. To the Government's credit, both the *Agenda* and the *Youth Development Strategy Aotearoa* were significant for this matter, as they provide government agencies and non-governmental organisations with a policy platform that has been informed by the views of children and young people.

The Ministry of Youth Affairs is the only Government department that is specifically charged with protecting and promoting the interests of young people. It has the responsibility of co-ordinating the Government's compliance reports to the UN Committee on the Rights of the Child and did a lot of consultation with non-governmental organisations in developing the 2000 report. The existence of a youth-specific ministry helps to counter-act the marginalisation of children and youth at a political level. The Ministry of Youth Affairs is well regarded by those who work with young people, but is one of the smallest and least funded Ministries. The Government is considering to placing the Ministry of Youth Affairs' functions under the Ministry of Social Development. The Ministerial portfolio of Youth Affairs would remain but the Ministry itself would cease. There is considerable concern that this will mean that the interests of children and youth will become more marginalised at the highest political level.

While the Commissioner has a very important role in promoting and protecting children's rights, the Office does not formulate or implement policy. It is therefore important that the Commissioner's role is complemented by the existence of a Cabinet Office with specific responsibilities towards children and young people.

In its 1997 report on New Zealand, the UN Committee on the Rights of the Child noted its concern at insufficient disaggregated data and an absence of qualitative and quantitative data available for the purposes of assessing New

Zealand's implementation of the Convention. There is considerably more quantitative information available about children and youth than there was in 1997. However, the amount of disaggregated data on children is still deficient.

There are ongoing changes to definitions of ethnicity; limited information on the economic circumstances of children; little information that is able to show describes trends over time; little quantitative information about the situation of some groups of children, including Pacific children, Asian children, rural children, and children with disabilities; little information on trends in violence against children. Available quantitative information uses an inconsistent variety of age ranges and does not describe the heterogeneity within Maori or Pacific peoples or Asian peoples; published information does not often reflect the values, experiences and views of Maori, Pacific people or Asian people, nor of children and youth. There is little data available that corresponds to information needed to assess the implementation of the specific Articles in the Convention and no Convention-based template for data collection, analysis and reporting. Unfortunately government agencies research to inform policy too often does not reflect the 'whole child' approach and is inadequately funded to be of high quality. Social science research is under funded and, the rights and needs of children have been given a low priority.

The Government continues to state its willingness to co-operate with non-governmental organisations and has become more accessible and established more consultative processes. However, the impact of consultation on Government policy is often difficult to gauge. The Government reaction to *Making it Happen* has been mixed. The Government's junior coalition partner welcomed the report, but the senior Minister has not issued any formal statement on the Government's position. The Government's actions in following up the proposals in *Making It Happen* will be an indicator as to how closely the Government intends to work with civil society in implementing the *Agenda for Children* and how serious they are about implementing the *Agenda*.

Recommendations

- The Government establish:
 - # A Minister for Children and Young People in Cabinet with sufficient seniority to carry policies and programmes forward;
 - # A Cabinet Committee chaired by a Minister for Children and Young People; and
 - # A Parliamentary Children and Youth Issues Select Committee to monitor all proposed legislation introduced to Parliament to ensure New Zealand meets its obligations under the Convention.
- A Convention-based template be established for data collection by specified government agencies and the national census for collecting and reporting aggregated and disaggregated data on children and youth, and government research funding place a much higher priority on high quality research relating to children and youth.

Budgetary allocations

Please also see *Appendix Eight: General Measures of Implementation of the Convention*.

While there appear to have been additional resources allocated for child-based initiatives in recent budgets, the lack of any indicators as to implementation means that it is very difficult to gauge the extent to which New Zealand has met its Article 4 obligations. Government budget allocation for children and youth is included in general spending. As a result, it is not possible to track the allocation of funding to delivery of services to children and youth.

Much of New Zealand's current budget surplus allocations are being diverted into the Superannuation Fund to ensure the well being of older people. This sits uncomfortably against statistics that, although eight out of ten New Zealanders of European ethnicity will live long enough to access the benefits of this fund, six out of ten Maori and six out of ten Pacific people will not reach the age of entitlement. The major cause of this difference is the effects of poverty – and although the Government acknowledges that three out of ten children live in poverty, it has not prioritised ending child poverty in its budgetary allocations.

The shortage of funding for services for children and youth has several major implications. Often the services are simply not available. This is especially the case for the most vulnerable children and youth who have the least political influence, such as those who are abused, have disabilities, or are refugees and asylum-seekers Health services run at deficits and ration access (for example, although government has a policy of young children being entitled to well child care, the services are not funded sufficiently for all children to benefit from this entitlement. Many schools charge fees and raise money from community donations and bringing fee-paying international

students to New Zealand. Many adults working with children and youth work far longer hours than they are paid for – which means they cannot spend enough time with their own children.

Recommendations

- The Government implement a framework into the annual budget allocations that accounts for its Article 4 obligations.
- The Government prioritise the elimination of child poverty, and services for children and youth, in budgetary allocations.

International co-operation

Please also see Appendix Eight: General Measures of Implementation of the Convention.

The New Zealand Agency for International Development (NZAID) has refocused on the Pacific. The last OECD review of the Government's aid programme found it to be a 'serious and credible' programme. However, NZAID does not appear to have any specific policy regarding bilateral or multilateral initiatives on implementation of the Convention and nowhere in the NZAID vision, mission and policy framework does it mention any initiatives specific to children. The NZAID budget for overseas aid for 2000/2001 was approximately 0.27 percent of GNP.

Recommendations

- NZAID include, within its policy framework, international obligations under the Convention and periodically report on its progress in this area.
- NZAID funding be increased to the UN guideline of 0.7 percent of GNP.

Measures to make the principles and provisions of the Convention more widely known

Please also see Appendix Eight: General Measures of Implementation of the Convention.

There remains considerable lack of awareness of the Convention, among adults and children alike. However, proposed Government initiatives, if implemented successfully, should help promote the principles and provisions of the Convention, including the *Commissioner for Children Bill*, the Human Rights Commission *National Plan of Action*, the *Agenda for Children*, and the *Youth Development Strategy Aotearoa*.

Many non-governmental organisations and some academic institutions (such as the Children's Issues Centre of the University of Otago) actively promote the principles and provisions of the Convention. Children's awareness of the Convention is still very limited. This is partly because the Convention is taught in only a limited way in schools and not often raised in mediums that are popular and accessible to children and young people. Examples that do exist include the publications and website of Youth Law Tino Rangatiratanga Taitamariki, a community law centre providing people under 25 with a free legal service, and reference in youth publications such as *Tearaway* magazine and on youth web sites, such as URGE. The lack of any co-ordinated, high-profile campaign aimed at informing young people of the Convention and its contents has meant that it has remained a document largely inaccessible to children, youth and families, the general public and professionals.

Recommendations

- The Government, in partnership with children and youth, develop and implement strategies to ensure children and youth know about the Convention, including education in the school curriculum for all ages.
- Initial and ongoing education for all people working with children and youth, promote their understanding and respect for the rights of children and youth.

II. DEFINITION OF THE CHILD

Article 1 of the Convention. Please also see Appendix Nine: The Definition of the Child.

In 1997 the UN Committee on the Rights of the Child noted its concern at the disparity of age cut-offs in defining a child that exists in New Zealand legislation, and recommended that the minimum age for being charged with very serious criminal offences and for access to employment be reviewed as a matter of priority. There has been no change.

New Zealand has a plethora of differing age thresholds, including:

- A 'minor' is defined as a person under the age of 20 years by the *Age of Majority Act 1970*.
- A person may be charged with murder or manslaughter from the age of 10 years, charged with any criminal offence from the age of 14 years, and tried as an adult for the purposes of the criminal justice system at the age of 17 years. Under the *Sentencing Act 2002*, children and young people aged from 15 years can be held on remand, and sentenced to, adult prisons.
- Children aged up to 16 come under the jurisdiction of the state care and protection and child welfare jurisdiction via the *Children, Young Persons and their Families Act 1989*. Seventeen year-olds are excluded.
- Children 16 years and under are entitled to free court-appointed legal counsel in Youth Justice and Family Court proceedings. Seventeen year-olds are not.
- Young people can give informed consent to a medical procedure from the age of 16 years, though no age restriction applies in relation to abortion, and flexibility exists in the common law and in the *Health and Disability Consumers Code of Rights* for an under 16 year old to give informed consent to medical procedures.
- Those under 16 years are excluded from protection from age discrimination.
- There is no minimum age for access to employment. Minimum wage protection is available only to those 16 years and over through the *Minimum Wage Act 1983*.
- An unmarried person under 20 may not change their name without parental consent or leave of the Court.
- Eighteen year-olds may vote, join the armed forces and be sold alcohol and tobacco.

The *Commissioner for Children Bill*, currently before Parliament defines a child as a person aged below 18, in line with the Convention. However, the enactment of the Bill in its present form would not redefine the age thresholds listed above. Instead its purpose is to provide the Commissioner with a clear jurisdiction that is, paradoxically, further reaching than the child welfare or youth justice systems.

The lack of consistency and seemingly arbitrary nature of these limitations does not recognise the evolving capacities of children and young people. Instead it sends young people confusing messages about their place in society.

The exclusion of 17 year olds from the principles and protections of the *Children, Young Persons and their Families Act* is a serious breach of the Convention and means, for example, that 17-year-old prisoners are not eligible for the Specialist Youth Units in prison unless they are assessed as vulnerable. *Children in New Zealand (2000)* states that the issue of extending the youth justice protections in the *Children, Young Persons and their Families Act* to 17 year olds was due for consideration in 2002. This has not happened.

There remains no minimum age for access to employment (see Part VIII on child labour below) and the law concerning the minimum age of criminal liability has not changed since the UN Committee made its Recommendations. *Children in New Zealand (2000)* notes a public debate as to the possible lowering of the age of criminal liability. This issue has been prevalent in 2002 following high profile murders and other criminal matters involving young people. Any change to a younger criminal liability threshold would be of great concern as the current age thresholds are very low.

Young people are sometimes locked up in Police cells (where conditions can be worse than in prisons) for periods of up to six weeks as a result of the lack of available accommodation in the facilities of the Child, Youth and Families Service. The provisions of the *Sentencing Act 2002* are subject to a sunset clause, and expire in 2004 when alternative facilities will hopefully be available. In the meantime, the *Sentencing Act* which was supposedly to deal with a problem that governments had known about for a decade, will have the effect of more under 17 year olds being held in adult prisons.

Recommendations

- The Government amend, as a matter of urgency, the *Children, Young Persons and Their Families Act 1989* in order to extend its coverage to 17 year olds.
- The Government amend the minimum ages of criminal liability for very serious offences under the *Crimes Act* to ensure consistency with the Convention.

- The Government take all necessary measures to be able to ratify ILO Convention 138.
- The Government, via the office of the Attorney General, audit proposed legislation, regulations and order papers that affects children and young people, for consistency with the definition of the child under Article 1 of the Convention.
- The Government set itself a deadline of no later than 2010 to implement full legislative consistency with the Definition of a Child under Article 1 of the Convention.

III. GENERAL PRINCIPLES OF THE CONVENTION

Please also see Appendix Ten: General Principles of the Convention.

Non-Discrimination

Article 2 of the Convention.

The human rights framework in New Zealand has changed since the last report to the UN Committee through the 2001 amendment of the *Human Rights Act 1993* and subsequent changes to the Human Rights Commission. The Commission's educational functions have expanded and it is to facilitate a National Plan of Action for human rights. Government agencies and entities with a public function are now covered by the *Human Rights Act* (previously they were exempt). However, the Act remains discriminatory document, as it continues to restrict persons aged under the age of 16 from protection against discrimination on the basis of their age. The amendment of the Act gave the Government a good opportunity to rectify this situation, but this did not happen. Matters where it is sensible to have legal age restrictions could have been written into the Act as exceptions.

There remains much systemic discrimination of young people in New Zealand. As was commented in the 1996 *Action for Children in Aotearoa* report, it is somewhat naïve to assume that the legislative measures listed in *Children in New Zealand* can alone counter discriminative practices against young people. Many practices are socially and legally entrenched. It is often the most vulnerable children and young people who face discrimination. For example:

- Students have less direct recourse under the *Human Rights Act* against a school that neglects to deal with a sexual harassment complaint than they would against an employer.
- Young people below 18 years whose parents cannot or will not support them face serious restrictions in accessing benefits. Children aged 16 and 17 can apply for an Independent Youth Benefit where they are living away from home, but the threshold for this benefit is high. Applicants must undergo a psychological assessment. Young people who are not enrolled at school or in a training course are not eligible regardless of their personal circumstances.
- Housing New Zealand (the main provider of public housing) refuses to provide housing to children who are New Zealand citizens if their parents are not also citizens.

This Report includes many other examples: the Child Tax Credit; the gaps in education services for children and youth with disabilities; the refusal of services to children and youth who are not citizens or residents; employment law; parents being allowed to physically discipline their children (but not other adults); the systematic inequalities and experiences of many Maori, Pacific, Asian, refugee, and asylum-seeking children and youth.

Recommendation

- The Government review all legislation and government policies and practice to ensure that the rights of children and youth to freedom from discrimination are upheld. This includes:
 - # Amendments to the Human Rights Act 1993 to cover discrimination on the basis of age by complainants under 16;
 - # Repeal of section 59 of the Crimes Act 1961;
 - # Making the Child Tax Credit available to all low-income families;
 - # Ensuring that children with disabilities are able to access their education; and
 - # Placing a high priority on actions to reduce inequity and disadvantage, including actions that tackle racial discrimination, age discrimination, sexual harassment and discrimination against people with disabilities.

Best interests of the child

Article 3 of the Convention.

The Government repeatedly states its commitment to and interest in children and youth, but the application of these statements is constantly undermined by the failure to apply the best interests of the child principle to economic and budgetary decisions. At present, the best interests of the child can only be said to truly be a paramount consideration in New Zealand's family law jurisdiction under the umbrella of the *Children, Young Persons and their Families Act 1989* and the *Guardianship Act 1968*. Even in this child-focused jurisdiction, the best interests principle finds itself compromised. For example, the 2000 Ministerial review by Judge Mick Brown found that the statutory care and protection service believed that the *Children, Young Persons and their Families Act* was over-ridden by the requirements of the *Public Finance Act*.

There are no other examples of the best interests principle being expressly extended to other laws, such as in employment, education, health or social security, even although these areas have a direct impact on the livelihood of children. Against this background, the 'best interests of the child' continues to be a principle of relative insignificance when tracing its influence on New Zealand's budgetary and economic priorities.

The Agenda for Children, which purports a 'whole child approach', and *Youth Development Strategy Aotearoa* documents may develop to provide an influential framework for promoting the interests of children and youth. There is much work for Government to do. *Making it Happen* encapsulated the issue:

Until children as a group are routinely considered in government decision-making processes, they will continue to be the subject of policy that is neither 'joined-up' nor centred on their interests.

This Report contains examples illustrating that in many areas New Zealand is failing to ensure that the best interests of its children are provided for. These examples include the impact of New Zealand's economic reforms on children and young people, the prevalence of child poverty, the failure to provide adequate educational services for children and youth with disabilities, the serious under funding of care and protection services, the experiences of refugee and asylum-seeking children and youth, and the continuing and widening inequalities and disadvantage of some groups of children and youth.

Recommendations

- A review be made of all Government legislation, policies and practices – including those concerned with economic and taxation issues as well as those more traditionally recognised as affecting children and youth – to establish the extent to which they operate according to the best interests of the child and the principles and provisions of the Convention.
- The Government write the cost of full implementation of the *Agenda for Children* and the *Youth Development Strategy Aotearoa*, into the Annual Budget in sufficient, accountable allocations.

The right to life, survival and development

Article 6 of the Convention.

New Zealand continues to have high rates of infant mortality, injury, youth suicide, and young mothers for an industrialised country. Poverty and inequality have increased over the last two decades and are critical factors in negative health statistics for Maori and Pacific children and young people. The Government acknowledged in its *Agenda for Children* that 29 percent of dependent children are living in poor families. Children and youth are much more likely to be poor than adults. For example, the 1996 Census found that babies are twice as likely to be living in the most critically deprived area than those aged 65 years and over. Of the 105,000 children under 15 years living in the most deprived one tenth of neighbourhoods, approximately 55,000 of these children are Maori, and over 24,000 are Pacific children.

Recommendations are made in Section VI.

Respect for the views of the child

Article 12 of the Convention.

There has been some progress in the development of children's participation rights since the Government's last report of 1996, in particular the development of the *Agenda for Children and Youth Development Strategy Aotearoa*, which represents a shift towards a framework that ensures consultation with children and young people in the formulation of government policy. However, regrettably there continues to be several areas where the views and participation rights of children in Aotearoa New Zealand are not accorded the scope intended by Article 12 of the Convention.

Children in New Zealand lists the Prime Minister's Youth Advisory Forum and the Youth Parliament as examples of encouraging participation by children in New Zealand's administrative and legislative processes. However, their actual impact in terms of influencing policy is very minimal and the Prime Minister's Youth Advisory Forum appears to have been discontinued. It is also disappointing to note that the future of Youth Councils in some areas is tenuous with one recently being disbanded by the local council against the wishes of its youth members.

Participation rights in the school sector are of particular importance because children and young people attend school for significant periods of time and school impacts considerably on their lives. However, while there have been improvements, the legislative support for children and young people's views to be taken into account in the school system continues to be limited. There is no requirement that student representatives on a Board of Trustees be mentored or supported in order to strengthen a largely isolated position. Student participation in Board of Trustees' decision-making processes is limited to secondary schools (Year 9 and over). Students have no right of participation in any decision by a school authority concerning sex education at school.

Young people in Child, Youth and Family residences for care and protection or youth justice purposes are entitled to an internal grievance procedure. However, this process arguably falls below the rights contemplated by Article 12. Advocacy is not required during grievance procedures, nor is there any right of appeal to an independent authority. It is also concerning to note that the 2001 Audit Report of these residences expressed concern at significant numbers of outstanding complaints by youth residents not being adequately addressed.

The failure of the New Zealand legal system to extend to 17 year olds the entitlements accorded younger children represents a fundamental inconsistency with the Convention. A 17 year-old is an adult for the purposes of New Zealand's criminal justice system and also falls outside the jurisdiction of the *Children, Young Persons and their Families Act* for the purposes of care, protection and welfare matters. Thus they are not entitled to Counsel for Child and Youth Advocate representation in our Courts for these purposes. The Law Commission is currently reviewing both the general Court system and Family Court dispute resolution processes.

There continues to be concern about the slow progress by the Government on updating important pieces of legislation to bring them into line with the Convention. An example is the *Adoption Act 1955* which fails to provide children aged below 20 with any participation rights relating to accessing information about their birth parents or the circumstances of their adoption. The Law Commission has reviewed and made wide-ranging recommendations about adoption – however there has been no legislative change.

Children aged below 18 cannot vote and are therefore politically disenfranchised. This will always be the most difficult barrier to overcome in terms of providing children with a meaningful avenue for having their voice heard and opinions acted on. Politicians do not respond to children's views if the opinions expressed do not appeal to adult voters, leaving children extremely vulnerable to the whims of political expediency. An example of this is the Government's ongoing reticence to repeal section 59 of the *Crimes Act*, which authorises parental use of force in disciplining children, despite the findings of the *Agenda for Children* that children are strongly opposed to this discriminatory law.

Recommendations

- The Office of the Commissioner for Children be adequately resourced to allow the Office to consult with children and young people concerning all proposed legislation that affects them, and the findings of the consultation be presented to Select Committees.
- The Education Act 1989 be amended to include a requirement for consultation with primary and intermediate age children and the appointment of an adult advocate to primary and intermediate school boards; and a requirement that two or more student representatives sit on secondary school boards.

- The Ministry of Education develop a School Circular (in consultation with the Office of the Commissioner for Children and the Ministry of Youth Affairs) on best practice guidelines for consulting with children in school.
- The Local Government Act 2002 be amended to include a requirement that Councils resource youth councils and employ child and youth advocates.
- Amendments be made to the Crimes Act 1961, the Children, Young Persons and their Families Act 1989, the Guardianship Act 1968, the Adoption Act 1955 and the Children, Young Persons and their Families (Residential Care) 1996 Regulations, in order to uphold respect for the views of children and young people.

IV. CIVIL RIGHTS AND FREEDOMS

Articles 7; 8; 13; 14; 14; 16; 17; and 37(a) of the Convention. Please also see Section VII: Education, Leisure and Cultural Activities; Appendix Eleven: Civil Rights and Freedoms; Appendix Fifteen: The Education of Children and Young People; Appendix Sixteen: The Right to Play, Leisure, Recreation, Artistic and Cultural Activities; and Appendix Seventeen: Youth Justice.

Nearly all children born in New Zealand have a registered name. But there are some situations in which the child's right to a name is not fully assured: for example, the child may be required to bear the surname of an estranged and abusive parent. Children do not automatically have information about both parents included on their birth certificate. New Zealand citizenship is not automatically conferred on children over the age of 14 years who are adopted overseas by New Zealanders. The fees for citizenship application are high. Although refugee children are entitled to apply for citizenship after three years permanent residence, some remain stateless because of high application costs.

Children's rights to preservation of identity are not adequately protected. An adoption order means that the child ceases to be a child of his or her biological parents and hence have a family relationship with their biological parent's family. This may wipe out links with their cultural heritage. New Zealand adoption laws give little recognition to traditional Maori whangai (adoption arrangements), which involve the adoption of a child by a relative within the extended family. A child conceived by artificial reproductive technology has no legal right to information about their genetic heritage. The Law Commission presented an adoption review in its 2000 report, *Adoption and Its Alternatives*, but follow-up has stalled. Two bills are being considered which propose that children conceived through assisted reproduction have access to donor information when they reach 18 years of age.

Historically, children and youth in New Zealand have not had their views taken seriously by adult society. The *New Zealand Bill of Rights Act 1990* is a relatively weak code of civil rights and the rights contained in the *Bill of Rights* cannot supersede any other provisions in law. An example is the tension between the legal right of a school Board of Trustees to regulate uniform and appearance requirements and the right of a student to freely express themselves by way of their appearance. Many schools have fairly restrictive uniform requirements, and students – including those with cultural or religious appearance requirements – have been suspended or excluded from schools for breaches. The *Agenda for Children and Youth Development Strategy Aotearoa* documents go some way towards providing a framework for recognition of rights to self-expression and decision-making.

The *Guardianship Act 1968* gives parents or guardians religious and educational control over their children. Thus children and young people can be forced into arranged marriages or religious education. In the case of freedom of conscience, it is difficult for children and young people to exercise their own political voice. Youth councils at local government level and in schools provide young people with avenues for expressing their point of view.

The ability of young workers to associate with a union was improved through of the *Employment Relations Act 2000*. Their employment tends to be part-time or casual, and their employment agreements are often verbal and therefore illegal and difficult to enforce. Anecdotal evidence suggests retailers and shopping malls use the *Trespass Act 1980* to arbitrarily target and exclude some young people.

The disclosure of students' personal information by schools is an area in need of improvement both in what is disclosed to the student concerned and disclosure to third parties. Schools' disclosure of personal information to parents, without the consent of the student, continues to be a problem – particularly in the case of parental separation or divorce. Drug testing and searches are becoming more commonplace in New Zealand schools. The *Health Information Privacy Code* does not establish requirements specific to children, which could lead to

problems in matters involving care and protection issues. These issues warrant specific provisions that outline the health information privacy rights of children and young people. There are concerns about the way the media has depicted some children and young people, especially those who have committed offences and may be treated more harshly in the media than adults who have committed similar crimes.

Instances still remain where young people are being punished or treated in degrading and disproportionate ways. Young people in residential care can be subject to scanner searches, pat-down searches, Police dog searches and strip searches. They have been placed in Police holding cells – sometimes for more than a week. Police have powers of warrant-less search and can conduct 'blanket' searches in schools with or without warrants. The lack of case law and the absence of any codified policy on the part of the Police or the Ministry of Education with regards to drug dog searches in schools, has led to the proliferation of this practice.

Recent reported instances of concerning treatment of young people by Police include a media report of a scheme for repeat youth offenders being required to clean Police cells with their own spit, and various recent reports alleged mistreatment of young people by Police.

Recommendations

- The Government take all necessary steps to ensure the right of each child and young person to their name, nationality, and preservation of identity. This includes incorporating the recommendations of the Law Commission's report, *Adoption and its Alternatives*, into legislation and adding a new requirement that the best interests of the child shall be paramount.
- The proposed National Plan of Action for Human Rights to be undertaken by the Human Rights Commission include the specific promotion of children and young people's rights to free expression, religion, thought, conscience and association, including public education.
- The Privacy Commissioner develop a Privacy Code for Schools, and the Health Information Privacy Code include specific provision for the rights of children and young people.
- The Government draft and implement comprehensive guidelines, outlining formal requirements for the drug testing and searching of school students that are in accord with the Convention.
- The Commissioner for Children enquire into Police treatment of young people, and furnish a report and recommendations to the Government, and the Government implement the Commissioner's recommendations.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Articles 5; 9; 10; 11; 18, paragraphs 1 and 2; 19; 20; 21; and 27, paragraph 4 of the Convention. Please also see Section VIII: Protecting Children from Violence and Neglect (Care and Protection) below; Appendix Twelve: The Family Environment; Appendix Three: Maori Tamariki and Rangatahi; Appendix Four: Pacific Children and Youth; Appendix Five; Asian Children and Youth; and Appendix Seventeen: Protecting Children from Violence and Neglect (Care and Protection)

A focus on the family is a relatively new perspective for Government policy affecting children. The issue of family became an election issue in 2002. The Government plans a Commission for the Family with the establishment of several commissioners in 2003. There are concerns that children's rights will be subsumed by the establishment of a Commission for the Family, and fear that when responding to the multiple and competing needs of the family, the Government will respond to electoral interests ahead of the interests of children. In addition, the complicating nature of conflicting policies of state, inadequate or inaccurate information about families could compromise the ability of the Commission for the Family to uphold the rights of the child.

The diversity of families in New Zealand reflects the dynamism of its people; a mix of values, culture and ethnicity. We are a new nation struggling with legacy of rapid colonisation and immigration. Our history has brought successive changes to family structure. The extensive economic and social reforms of the last two decades have disadvantaged the poor and homeless, especially children and youth. Many parents are working long hours. Family structures have changed. A result has been an indelible stain on too many children in New Zealand. There are increasing rates of life style dissonance from unmet expectations. The results are changes in the parenting available

to children, especially for the children of young parents or ethnic minorities. These children and youth have recognised unmet needs and as a result many are reliant on the protection and support of the Government.

Maori children are disproportionately over represented in one-parent families. As a result of low socio-economic status, communities and extended families have come under increasing pressure and fragmentation with consequent loss of opportunities to care for children. This is reflected in the various poor outcomes in health, education, and care and protection issues that are associated with adverse life events and being raised in a family with low socio-economic status. This is also the experience of many ethnic minorities.

There are perceived tensions between collective (in this case the family) and individual rights of the child within the Convention. These tensions provide practical difficulties for the timely intervention by the Government to ensure that the rights of the child are preserved. The Reservations by the Government highlight the inability of the Government to provide policies to incorporate processes that protect the rights of the child and suggest some reluctance for the Government to act. Another example is the outdated legislation surrounding adoption that urgently requires change in order to protect the rights of children. At present the rights of adoptive children are greatly compromised by the prevarication of Government.

The Government is making progress in incorporating cultural diversity into its policy making – a diversity that is giving effect to the Treaty of Waitangi's acknowledged relationship between the Crown and whanau (family) hapu (subtribe) and iwi (tribe). However, the Government recognises in *Children in New Zealand (2000)* that whanau are a natural environment for the growth and well being of all its members and particularly children. This action by Government represents an acknowledgement of its obligations as a partner to the Treaty of Waitangi. The New Zealand Government's recognition of whanau as fundamental to the indigenous people of Aotearoa/New Zealand, places the Government in the natural position of advocate for indigenous models of familial groups as a choice for indigenous peoples.

Recommendations

- There be a consistent use to the words family and whanau in legislation and policy.
- The Government adopt a family-based approach to statistical information by extending the notion of household to include the places where children reside in multiple households.
- The Government address the serious deficits of the Department of Child, Youth & Family in terms of staffing, funding and resources so that child and family needs can be adequately met.
- The Government take urgent steps to address the recommendation made by the UN Committee in 1997 that a study be done on the projected needs of one parent families and measures be taken to avoid potential negative consequences for children, young people and their parents.
- The Government apply the recommendations of the Law Commission's report of 2000 on adoption and address the rights of children compromised by current legislation.
- The Government act to resolve the multiple and conflicting age minima and maxima that restricts a child's access to the protection of their family and society.
- The Government ensure the care and protection of the child or young person is not reduced by age restrictive criteria overriding evident need, and that services for children and youth are available until no longer required.
- The Government promote and advocate for recognition and valuing of indigenous models of family.

VI. BASIC HEALTH AND WELFARE

Children and youth with disabilities

Article 23 of the Convention. Please also see Appendix Seven: Children and Youth with Disabilities, and Appendix Fifteen: The Education of Children and Young People.

Children and young people with disabilities made recommendations for change in the Government's consultation for the *Agenda for Children*. These included more appropriate facilities, improved and better equipped services,

improvements to schools, better understanding, a buddy system for support and understanding, and more funding to help them participate in activities.

In 2001 the Government released the *New Zealand Disability Strategy*, a document to guide government action to promote a more inclusive society. It is based on a social model, promoting attitudinal, societal and environmental changes. Previous approaches have often been based on an underlying philosophy that children with disabilities have something wrong and need to be 'fixed'. There is considerable support among people with disabilities for the *Disability Strategy*, but serious concern that it will be yet another document that never reaches fruition because of inadequate resourcing and ineffective implementation. The *Disability Strategy* makes brief mention of the Convention.

The structure and philosophy of *Special Education 2000* is based on a non-disabled model of what it means to have a disability, and education services for children and youth are under-resourced. A government-commissioned evaluation was critical and said many children with special needs are missing out on the support they need to participate as much in schools as other children. Following a legal challenge by parents of students with disabilities, the High Court judgement found that *Special Education 2000* was in breach of the law in several respects and the education of many children had suffered as a result. The Government appealed the decision despite admitting in an internal Ministry document released to the High Court that there was a disjunction between the legislative framework and most assistance provided through the *Special Education 2000* policy. The Court of Appeal has upheld the ruling that the Government failed to comply with the *Education Act 1964*, in closing special needs units in schools and failing to ensure there were alternative options for students at nearby schools, but overturned the High Court judgement that the children's equal right to education and their right to be educated in special facilities had been breached. The Government's actions have left many feeling sceptical about Government commitment to the *Disability Strategy*, which includes the objective of providing the best education for disabled people.

There is much fragmentation and lack of co-ordination of services. Often parents have to battle for information, and support and funding can be dependent on the strength of parent's advocacy. Mainstream services may lack expertise about disability issues whereas disability services may lack knowledge around issues such as child abuse. Agencies try to fragment problems into bits that fit organisational structures. There are many reports of children and young people being denied support and resources as agencies argue about which one should be providing assistance. Families experience financial hardship as a result. Even accessing human rights mechanisms to attempt to resolve issues can be difficult as several statutory bodies deal with different and overlapping areas of discrimination – knowing which one to approach is confusing.

Some students with disabilities are not receiving the education and training they require to promote independence and facilitate their active participation in the community. There is an assumption that young people with disabilities will apply for a benefit when they leave school and few opportunities for further education or employment and few initiatives in place to support this transition.

There has been no progress in reducing discrepancies for Maori children. Although Maori are over-represented in the need for special education services, they have more difficulty accessing support. Some Maori are critical of *Special Education 2000* and voice concerns that it does not encompass their cultural values and consequently, does not meet their needs. There is a severe shortage of Maori educators, therapists and specialists, particularly those who are fluent in Te Reo. There are few culturally appropriate resources.

The delivery of culturally inappropriate services appears to also be a problem for children and young people with disabilities from other ethnic groups

Children and young people with disabilities frequently experience discrimination and exclusion from school, community and recreation activities. For example, children with disabilities are sometimes refused enrolment or denied full participation or deliberately set up to fail by schools. There is concern among families that school mediation processes appear biased and exhausting. There is serious concern that those with disabilities are more likely to be suspended or expelled from school for reasons relating to their disabilities. In a recent government consultation, most of the young participants with disabilities spoke of being bullied by other students. A number of schools, marae and public facilities fail to comply with accessibility standards. There are few inclusive playgrounds.

Despite a big increase in government funding under *Special Education 2000*, many children and young people have been left with less support than in the past, especially those with moderate disabilities. At some schools, parents are

expected to make substantial financial contributions to ensure their child receives necessary support. Schools that turn away students with disabilities may benefit financially under the present funding system. Some schools may be using funding meant to support children with disabilities on other activities.

The insecurity of the funding structure has meant many schools are reluctant to take on permanent special education staff. As a result, units are increasingly being staffed by low- paid, inexperienced staff on short-term employment, while professional, experienced staff become employed on a casual basis only. Changes in the distribution of resources and the loss of staffing positions under *Special Education 2000* have led to the closure of a number of disability units attached to schools.

Although teacher-aides have an important role in the education of many children and youth with disabilities, some teacher-aides lack skills and specialist knowledge. There is still no compulsory disability awareness training for teachers. There are few teachers and other professionals with disabilities. This restricts opportunities for children and young people with disabilities to benefit from mentoring and to receive support from adults with personal knowledge of disabilities.

Transport and equipment provision remain critical concerns. Too many children need transport to access schools outside their area because they have been turned away from their local school. Equipment is often not available for children or arrives too late to be of use.

Recommendation

- The Government undertake all necessary measures to implement the principles and provisions of the *New Zealand Disability Strategy* in order to promote and protect the rights of children and youth with disabilities, with urgent attention being given to the following objectives:
 - # Objective 3: Provide the best education for disabled people;
 - # Objective 4: Provide opportunities in employment and economic development for disabled people;
 - # Objective 6: Foster an aware and responsive public service;
 - # Objective 7: Create long-term support systems centred on the individual;
 - # Objective 13: Enable disabled children and youth to lead full and active lives; and
 - # Objective 15: Value families, whanau and people providing ongoing support.

Health and health services

Article 24 of the Convention. Please also see Appendix Eight: General Measures of Implementation, and Appendix Thirteen: The Health of Children and Young People.

New Zealand has particularly high rates of communicable diseases, injuries, Sudden Infant Death Syndrome (SIDS, cot death), youth suicide, and births to teenage mothers. Mortality rates are much higher for Maori and Pacific children, and for children from socio-economically disadvantaged families. Maori and Pacific children also have higher rates of injuries, pneumonia, tuberculosis, rheumatic fever, and hearing loss at school entry. Much of the burden of the high rates of communicable disease is carried by Maori and Pacific children. The continuing serious epidemic of meningococcal disease particularly affects young Maori and Pacific children. Immunisation rates are low. There are nutritional problems with iron deficiency and a growing epidemic of obesity among children and young people. New Zealand continues to have one of the highest rates of youth suicide in the OECD. The youth suicide rate is much higher among young men than young women, and is highest for young Maori males. Poor mental health is a significant problem for many children and young people. New Zealand has relatively high rates of sexually transmitted infections. There are also environmental health problems which affect children and young people.

The health of New Zealand children is seriously affected by harmful social conditions including poverty, inequality, discrimination and violence. Public health services struggle with inadequate funding, restructuring, serious workforce shortages, and the impact of the wider determinants of health on health status. Although initiatives are being undertaken, their implementation is often fragmented and unsupported. Examples are:

- Few New Zealand hospitals have been accredited as meeting the standards required in the UNICEF/WHO Baby Friendly Hospital Initiative.
- Government has a policy of well-child health care entitlements for children, but these are not fully funded.
- Immunisation coverage, a marker of the accessibility and acceptability of primary health care services, is generally poor and there are significant variations by ethnicity.

- Exposure to second hand smoke, mothers smoking during pregnancy and high rates of smoking among teenagers continue to be serious health problems, disproportionately affecting poorer children.
- Parents can remove their children from sexuality education classes. There is no system to monitor and evaluate the differing sexuality programmes that schools may have. Sometimes resources used in schools are factually inaccurate. The New Zealand *Sexual and Reproductive Health Strategy* was released in 2001. However the related Sexual and Reproductive Health Action Plans being developed by the Ministry of Health in 2002 have not yet been completed.
- Most primary maternity health care providers do not follow current New Zealand guidelines to routinely assess the risk of HIV and testing those at risk.
- Primary care is only partly subsidised by the Government. The increased subsidies for family doctor visits and medicines for children under six years have improved access for many (although parents still have to pay for evening or weekend visits). While hospital level care is free at point of contact, families with children in hospital also face financial and travel barriers. A positive development has been the establishment of Maori and Pacific providers offering primary health care services parallel to mainstream services, including a range of medical, nursing, well child and support services and awareness of the needs of Maori and Pacific children and youth and their families and communities. These services often struggle because of funding issues.
- Children, young people, and pregnant mothers who are not residents or citizens have to pay for their health care. In 1997 the Committee on the Rights of the Child asked the Government to review its Reservation to the Convention about this, but the Reservation remains.
- Access to age-appropriate healthcare services is also an area where improvements could be made

The well-regarded *New Zealand Child Health Strategy* was launched in 1998, but implementation has been very slow. There are serious concerns that the same will happen with the 2002 strategy for youth health, *Youth Health: A Guide to Action*. Funding problems and constant restructuring of the health and other sectors has aggravated the poor implementation of effective child health policy. The Ministry of Health produces many excellent policy documents that give guidelines on what child health services should provide, but these are often not accompanied by the funding or support needed for implementation.

There is a major need to improve the co-ordination between services, particularly the flow of information between primary care services and hospitals – and in developing better working relationships between child, parent and professional, and among services. There are issues around communication, participation (including participation by children and young people) and cultural understanding and knowledge.

There is tension between providing specialist facilities for children and young people and wider pressures to contain costs. For example, and despite considerable opposition from parents and staff and against internationally accepted standards of practice, cost pressures have meant that some children from the Starship Hospital (the country's most specialised paediatric hospital, which looks after the sickest children) will be in facilities combined with adults. Children and youth with cancer and other chronic illnesses experience problems because of the gaps in co-ordination between the health and education sectors. There are serious gaps in the provision of mental health services and services for youth.

The health workforce has been seriously affected by health sector restructuring and the lack of workforce planning over the last decade. Mainstream services are sometimes not sufficiently responsive and skilled with dealing with the children, youth and families of Maori, Pacific and other cultural groups. Staff need realistic workloads to ensure high quality of care. There are few Maori health professionals. Pacific peoples are also under-represented in the health workforce. A major concern is the serious shortfall in the mental health workforce to work with children and their families.

Recommendations

- The Government take urgent action to the maximum extent of available resources to eliminate inequities and discrimination in health on the basis of ethnic, cultural, social and economic factors. This includes action to eliminate poverty among children and youth and strategies to improve the health status of Maori and Pacific children and youth.
- Effective implementation of the *Child Health Strategy*, *Youth Health: A Guide to Action*, and the *Sexual and Reproductive Health Strategy* requires prioritising the development and implementation of public health strategies, workforce development, improving intersectoral co-ordination, and specified time

frames and processes, designated funding and resources, and regular and publicly available progress reports.

- The Government ensure that all children and young people under 18 years have free and adequate access to the health system at all levels, with immediate attention being given to:
 - # Free and ready access to all primary health care services including nurses, family doctors, allied health professionals, community and youth health workers, dental care, and prescription medicines and using the experience of ground level initiatives that work (particularly among Maori and Pacific services);
 - # Expansion of youth health services, including sexual and reproductive health services; and
 - # Expansion of mental health services for children, youth and their families.
- The Government give priority attention to countering youth suicide, and in particular Maori male youth suicide.
- A review be done of the experiences of children and young people with chronic illness and an appropriate strategy developed and implemented with the involvement of children and youth with chronic illnesses and their families.
- Intersectoral strategies be developed and implemented to address sexuality education and young men's sexual and reproductive health; the Education Act be amended so that students have the right to decide to participate in sexuality education classes; funding be made available to support teachers to implement the sexuality component of the curriculum; and standards for best practice in sexuality and relationship education be developed, funded and monitored.
- The Government urgently consider the routine offer and recommendation of an HIV test in antenatal care to reduce infection rates in babies.

Standard of living

Articles 26; 27, paragraphs 1, 2 and 3; and 18, paragraph 3 of the Convention. Please also see Appendix Fourteen: The Living Standards of Children and Youth, and the accompanying reports, Our Children: The Priority for Policy (second edition), and When the Invisible Hand Rocked the Cradle: New Zealand Children in a Time of Change.

In 1997 the United Nations Committee on the Rights of the Child expressed concern that the *extensive economic reform process undertaken in New Zealand since the mid-1980s has affected the budgetary resources available for support services for children and their families and that all necessary measures to ensure the enjoyment by children of their economic, social and cultural rights to the maximum extent of the State's resources have not been undertaken (Para. 14)*

and recommended that the New Zealand Government should:

give priority to the realization of the economic, social and cultural rights of children, and that particular attention be paid to children belonging to the most disadvantaged groups (Para. 26).

New Zealand has no official poverty line. However, all the available research suggests that about one in three children live in poverty. Studies of income inequality and changes in income inequality show that in the 1980s and 1990s the increase in inequality in New Zealand was larger than for any other comparable country. Incomes fell for the bottom 80 percent, but increased by a third for the top ten percent. In 2002 the Government in its *Agenda for Children* acknowledged that in 1997/1998, '29 percent of children were living in poor families (defined as families with incomes below 60 percent of the median adjusted for housing costs). The level recorded in 1987/88 was 16 percent (p. 11).' Children and young people living in one-parent families were particularly affected.

Although employment, taxation and economic policies impact on the incomes of families with children, there are no signs that the rights of children and youth are directly or indirectly incorporated into the employment and economic decision-making processes. The recent review of taxation legislation paid no attention at all to children or issues of child poverty.

The 1991 benefit cuts led to a dramatic increase in poverty. These cuts have not been restored. Benefits continue to be inadequate and increases have met only part of the rise in cost of living, especially as increases in the costs of food exceeds the general inflation rate. The use of food banks (where community and church groups give parcels of food to poor people) has not changed. High housing costs are a major contributor to child poverty. There has been some improvement for those living in public housing (known as state housing), but the majority of low-income

children do not live in state housing. For beneficiary families reliant on social security, but living in private sector rental housing, the changes in the methods of setting rentals have made no difference.

Poverty is unevenly distributed. Most children in one-parent households are in low-income situations. But because overall there are more two-parent households, most children in low-income households are from two-parent families. Although Maori, Pacific and Asian children are more likely to live in low-income families than Pakeha children, the total number of Pakeha children in low-income households is higher because they form a proportionately higher number in the population. Those at greatest risk of poverty are children in larger families.

The effects of poverty on children are multiple. For example, low-income households often do not have sufficient income to give children a basic healthy diet, and low-income families are more likely to live on less healthy food, because such foods alleviate hunger. Other problems arise in paying for doctors' visits and medicines, clothing, heating, and school and examination fees.

New Zealand's support for children has over the last few years moved towards greater use of targeting through a range of income tests. Inevitably, these overlap and interact in confused and confusing forms. These create take up and abatement issues for families and exacerbate levels of child poverty.

Family Support was introduced in 1986 to provide financial support to families with children and forms an integral part of both the income support system and of the financial support to low-income families in work. With the abolition of the universal child benefit in 1991, Family Support was the only system providing financial support to families. The maximum Family Support for a one-child family has risen only 12 percent since 1986 and Family Support has not increased since 1996.

The Child Tax Credit, introduced in the mid-1990s, is a maximum \$NZ 15 per week per child in addition to Family Support and is limited to those households who are supporting themselves entirely from paid work. Those households reliant on accident compensation, student loan, superannuation or income support benefits are ineligible. Children in these families are actively discriminated against simply because of their parents' employment status. That discrimination increases the level of poverty among those households and penalises children living in those households. The Child Poverty Action Group has recently laid a complaint with the Human Rights Commission over this. Extending the Child Tax Credit to all children in low-income families would improve the position of those children.

The position is a little better for families with older children because there was an increase in assistance to such families in 1993 and again in the 1996 Budget, but there have been large increases in charges for education for older children.

The Government promised to end child poverty in its *Agenda for Children*. However it did not say when or how. Government Budget forecasts show that there are no planned increases in family tax credits for the next four years.

There are growing calls on the Government to end child poverty. In 2001 the Child Poverty Action Group report *Our Children: the priority for action* made extensive recommendations about what needed to be done, and have followed this with a second edition in March 2003 which accompanies this Report. Departmental briefing papers to the incoming Government following an election are the only opportunity officials get to state their own views to politicians. The 2002 briefing papers from the Ministry of Social Development (the leading source of advice to Government on social issues) made child poverty its highest priority.

Recommendations

- The Government take urgent action on the 1997 Recommendations made by the United Nations Committee on the Rights of the Child and its obligations under the Convention, to fulfil the promise made in its *Agenda for Children*, and end child poverty.
- The Government urgently adopt the recommendations in the Child Poverty Action report, *Our Children: the priority for policy (second edition)*, and act to put specific policy measures in place with a detailed timeframe and transparent monitoring, in order to end poverty among children and young people.
- The Government urgently eliminate the discriminatory features of the Child Tax Credit and act to restore the value of Family Support.

- The Government identify and implement measures to reduce the costs of housing for families with children and young people.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education

Articles 28 and 29 of the Convention. Please also see Section VI: Children and Youth with Disabilities; Appendix Fifteen: The Education of Children and Young People, Appendix Five: Asian Children and Youth; and Appendix Seven: Children and Youth with Disabilities.

The Convention has had relatively little impact on education law, policy and practice. Teachers and parents have the biggest influence in the development of curricula, teaching approaches and education policy and administration.

Government meets the major cost of primary and secondary education, and under the *Education Act 1989* primary and secondary government schools are supposed to be free. But schools are under considerable financial pressure. Schools are inspected on the quality of the services they provide, but are not funded sufficiently to meet the required standards. Accordingly they have to fund raise – by pressuring parents (and sometimes students) for donations, community fund-raising activities, and attracting foreign fee-paying students. In reality many schools illegally charge 'fees' for attendance and course materials. Some students drop out because they are unable to pay examination fees.

The Government has issued an early childhood strategic plan, but quality staffing and management, and services for families on lower income and families in difficult circumstances are often unavailable. Overall participation rates dropped between 2001 and 2002, while Maori and Pacific participation is significantly lower than that of European/Pakeha children.

There is a high rate of intermittent or prolonged absences from school. Truancy – often because of housing problems – also causes problems, especially for children and young people in poorer areas. The Non-Enrolment Truancy Service tracks down students and helps children restart but is under funded. Boards of Trustees and school principals have a legal obligation to ensure attendance, but formal procedures are inadequate. Schools sometimes refuse to enrol a student who is legally entitled to attend that school. The present system encourages a culture of blame with some students being labelled unruly or disruptive.

Boards of Trustees make by-laws for school control and management. Physical punishment is banned, but no law bans cruel, inhuman or degrading punishments except in Early Childhood Centres. New Zealand's high rate of exclusions, which should be a matter of last resort, often results in damaging or ending a child's education.

Large classes, lack of resources and opportunities for children with special interests or abilities, and increased emphasis on the academic curricula, have reduced the range of what is being done for the development of personal qualities, interests and special abilities. Human rights education focuses on civics and citizenship rather than on international human rights instruments and access to advice and advocacy about human rights.

Tuition in Maori culture is increasingly available and more Maori can complete their education in the Maori language. School charter and curricula increasingly recognise the Treaty of Waitangi.

More could be done concerning complaints of racial and cultural discrimination and in providing opportunities for children and young people from a wide range of backgrounds to learn about their own culture and language.

A traditional authoritarian climate in schools emphasises the attainment of formal qualifications, tends to exclude democratic processes and militates against imaginative initiatives by students and their full participation in decision-making. Bullying is a major concern identified by children and young people in schools.

Alternative educational establishments and home schooling are not well funded.

Maori suffer considerable educational disadvantage and need additional funding, increased staffing levels and closer school partnership with Maori communities and extended families.

New Zealand's high teenage pregnancy rate requires urgent action in order to provide those concerned with the assistance required for them to continue their education. There have been serious problems for many children and young people with special needs, in part due to the serious under funding of educational services for these students.

Recommendations

- The Government incorporate Articles 28 and 29 of the Convention into education law to ensure the human rights of students are recognised and acted on.
- The Government amend the Education Act 1989 to ensure:
 - # All children and young people in New Zealand have the right to good quality education including adequate staffing levels; and
 - # Higher staff to student ratios in schools which serve lower income families, schools which have a disproportionate number of indigenous, cultural minority and refugee children, and schools with children with special needs and children in institutional care.
- The Government ensure all children and young people have ready access to free education by:
 - # Increasing resources to schools;
 - # Establishing processes to ensure that state primary and secondary education is free to all children and youth;
 - # Ensuring affordable early childhood education is available to all, especially for children from low income families and families in difficult circumstances;
 - # Increasing the number of teachers fluent in Maori and Pacific languages;
 - # Monitoring school enrolment and attendance with consistent and appropriate follow-up procedures;
 - # Making exclusion or expulsion the disciplinary measure of last resort;
 - # Increasing funding for education of children and young people with special needs; and
 - # Eliminating child poverty as promised in the *Agenda for Children*.
- Education curricula be broadened to meet the vocational needs of students, and students from minority cultures be given opportunities for the maintenance and development of their own languages and the understanding and enjoyment of their own and the cultures of others.
- Amendments be made to the Education Act to increase student representation on school boards.
- Initiatives that address bullying such as the Eliminating Violence and Cool Schools be extended and strengthened.
- The Ministry of Education build educational partnerships with Maori and Pacific and other communities.
- Sufficient funding and resources be provided to meet the educational and related needs of teenage parents.
- Sufficient funding and resources be provided to meet the educational and related needs of children and young people with special needs.

Right to play, leisure, recreation, artistic and cultural activities

Articles 17 and 31. Please also see Appendix Sixteen: The Right to Play, Leisure, Recreation, Artistic and Cultural Activities.

Poverty has a substantial impact on the ability of children and youth to engage in play, leisure, recreation, artistic and cultural activities, for example, in being unable to afford equipment, clothes or shoes for sports, pay fees, or have transport to attend these activities. For parent(s) and young people who work long hours just to survive financially there is little time to spend on recreational activities.

Leisure opportunities have become increasingly commercialised with powerful business interests targeting children and youth as consumers, for example, to purchase Play Station and computer games, McDonalds fast food or the latest 'label' clothing, and so forth. This encourages lower levels of exercise and unhealthy eating habits. Sport and Recreation New Zealand's funding priorities focus on sports that have enjoyed recent publicity on the international stage rather than those most frequently engaged in by children and young people.

Government support for young peoples' recreation is mostly focused on a narrow range of physical activities rather than the broader range of activities including artistic and cultural activities. Some young people also state that the pressure of academic work is a major barrier to their ability to pursue these activities. Some children are restricted in their chances to play unsupervised in local parks or bike or walk to school by themselves due to a heightened perception of the associated risks. For children and young people with disabilities, the range of recreation opportunities is frequently restricted. However, there is increased awareness of the importance of involving children in the planning of cultural and recreational activities, especially within local government. Many councils have youth councils, policies for children and youth and in two cases councils employ specific advocates for children and youth. Strengthening local government and community action for children and young people is one of the action areas of the Government's *Agenda for Children*.

Although the media is a powerful part of children's environment it is not considered in the *Agenda for Children*. The new Broadcasting Standards Authority Codes include some recognition of the positive rights of children to information, but there is no regulation for the positive rights of children to a range and diversity of content provided by quotas or licence renewal obligations as in other nations. The advertising codes are self-regulated by the industry. NZ On Air, the funder of local children's content, requires producers to win commissions from commercial television companies. There is little commitment to informing children about their choices on air. Media educators are struggling to provide some critical awareness of advertising messages and the appreciation of media processes and products. Children's access to media education is under-resourced, both within their leisure entertainment media of choice and, more formally, within the classroom. Although there are some media education/literacy initiatives in New Zealand secondary schools, further resources are required at the primary school level, where they are potentially most effective.

Recommendations

- Local and central government develop a strategy and funding to ensure that all children have opportunities to participate in a greater range of sporting, music, artistic and cultural activities, including low cost strategies for meeting the essential recreation needs of children and youth.
- Government review the impact of advertising on leisure and recreational activities.
- Local and central government work together with children and young people to ensure more 'safe' public places in both urban and rural environments for children and young people to play and associate in an autonomous and safe way.
- Children and young people be represented on local body committees or community boards so that their voice can be heard.
- An independent monitoring group – comprising community members, researchers, best practice broadcasters, advocates, children and youth – be established to monitor the media environment for children and youth and to make recommendations to Government for actions to ensure the best media environment.

VIII. SPECIAL PROTECTION MEASURES

Refugee and asylum seeking children and youth

Article 22 of the Convention. Please see Appendix Six: Refugee and Asylum Seeking Children and Youth.

New Zealand has very humanitarian policies in acceptance of refugee peoples and is willing to accept those with high health, education, English language, and psychosocial needs.

There is however, no comprehensive resettlement and integration policy in place in New Zealand to meet the needs of refugee families, asylum seekers and their children and ensure a co-ordinated approach across sectors. Although eligible for services, children of refugee and asylum seeker families face barriers in access. Children and youth who arrive as asylum seekers suffer particular infringements of rights. Refugees and asylum seekers are not a priority for targeted interventions in government strategies to tackle inequalities in health and education.

There is no agreed method for assessing the ages of children from refugee families, and asylum seekers. There is no process for monitoring or evaluating the status of refugee children and youth and the services they use, and no

standardised and reliable data collection on refugee communities and asylum seekers. This means, for example, refugee populations are not represented in the disaggregation of census statistics and therefore population-based funding formulas do not recognise the size and growth rate of refugee populations in cities such as Auckland.

Many refugee and asylum seeker families live in poverty. Quota refugees receive an organised programme of resettlement and support on arrival, including health, education, welfare and housing support. This is not the case with asylum seekers and family reunification refugees. Although in theory they are eligible for many of the same services and support, in practice there is no organised support for their health, education, welfare, employment and housing needs.

Limited access to trained interpreters is available only within some levels of the health and judicial system, and not in early childhood, primary or secondary education. Co-ordination between sectors is patchy. Gender and cultural sensitivity of personnel is not seen as a priority. Access to the vital voluntary tutoring support for reintegration into an education system is under threat because of changes to the voluntary tutor scheme co-ordination funding. There is no provision of specialised immersion education programmes.

There are no specialised services dedicated to supporting physical and psychological recovery and social reintegration for refugee children or young people. There are limited community based services providing early intervention and family support services, but co-ordination of services is constrained by privacy and contractual competition issues.

Key operational issues requiring attention include significant improvements in specialised assessment of children and young people's needs, and respect for their needs. Examples are the inadequacies in the specialised age and gender sensitive therapeutic services for children traumatised by the refugee experience, gaps in the support, protection and rehabilitation services available to refugee children and youth separated from their families, and the disparities in levels of health and social service provision between asylum seekers and quota refugees.

Children of parents who have made an unsuccessful application for refugee status are not eligible for publicly provided health, education and welfare services. Children are unable to attend schools or seek medical attention unless their parents are able to pay.

Refugee procedures in New Zealand are not currently subject to legislation. Changes in the New Zealand Immigration Service procedures for refugees that occurred since September 2001 were made without consultative debate and changes were made to the *Immigration Act 1987* so that detention can occur for longer than 28 days. In September 2001 the Mangere Refugee Resettlement Centre, a facility for the reception of quota refugees, became a detention facility for asylum seekers. From September 2001 until late 2002 some families with children who arrived as asylum seekers were detained at the Mangere Refugee Reception Centre. The detention of children and youth does not comply with Article 9 of the *Convention on the Rights of the Child*. New refugee quota arrivals must now live in a designated detention facility for their first six weeks in New Zealand.

Following a legal challenge brought by the New Zealand Refugee Council and the Human Rights Foundation, the practice of detaining refugees at the Remand Prison or the Mangere Detention Centre, without right to apply for bail, was ruled unlawful in an interim judgement of the High Court. The Court found that the practice breached both provisions of the *New Zealand Bill of Rights Act 1990* and Article 31.2 of the *1951 Refugee Convention*. The Government has appealed this decision.

Recommendations

- The Government ensures that refugee and asylum seeker children enjoy equal rights with New Zealand children through development and implementation of a comprehensive national resettlement and integration policy, which establishes special protection for refugees and asylum seekers and targets obstacles to equality. It must be devised in consultative and participatory process with these groups and the children and children and youth and contain specific and well targeted actions aimed at eliminating discrimination and promotion of positive settlement and integration outcomes, and ensuring that resettlement process reflects partnership between Government and non-governmental agencies and the refugee communities.
- The Government withdraw its Reservation to the Convention and ensure that all children of asylum seekers and refugees have equitable access to health care, welfare services and education. This includes:

- # The provision of adequate resources and appropriately trained interpreters, education and health personnel;
 - # The development of culturally appropriate, systematic and ongoing training for specialised care and support, (including gender sensitivity);
 - # Teachers in early childhood education, schools and the tertiary sector who are able to speak, read and write in two or more languages; and
 - # Targeted measures to reduce disparities in health and welfare status.
- Children of refugees and asylum seekers have access to a well-resourced refugee mental health and well-being integration system and specialised support staff who are culture, gender, and age sensitive.
 - The Government ensure that:
 - # Guardians are appointed for separated refugee and asylum seeking children and young people;
 - # Actions are taken to ensure that vulnerable separated children and young people are placed in safe accommodation; and
 - # All policies concerning refugee and asylum seeking children and youth explicitly state that the best interests of the child are paramount.
 - The Government desist from any form of detention of children and young people in compliance with articles 9 and 37 of the Convention.

Children involved with the system of administration of juvenile justice

Articles 37 and 40 of the Convention. Please also see Appendix Seventeen: Youth Justice.

The *Children, Young Persons and their Families Act 1989* moved treatment of young people who offend against the criminal law away from a Court based system of prosecution, conviction and punishment towards a new concept of ‘family group conferences’ and restorative justice. However, good legislation is not always translated into good practice.

New Zealand entered a Reservation to the Convention which allows for the age mixing of under 18 year olds in some circumstances. At the end of 2002, there were 99 under 17 year olds in prison custody – 86 young males and 13 young females. Some 8 males were mixed with adults. All females under 18 remained mixed with adult women.

The Working Group on Youth Justice consulted with 40 young people who had been deprived of their liberty. The Working Group found that while age mixing is being addressed, slow progress is being made in all settings in fully meeting the needs of young people deprived of their liberty. The young people identified six broad areas of concern:

- Limited knowledge of the criminal justice system and poor communication with the young people.
- Lack of access to family, outside youth workers, and professional support staff.
- Safety in prison with many commenting adversely on the treatment from some staff, many saying they would prefer to be with the mainstream adult population because they felt adult prisoners received better treatment, greater privileges, and were treated with more respect, and reports of stand-over tactics and gang intimidation from other youth. Perceptions of safety appear to centre largely on staff behaviour and attitudes.
- Education needs with some positive perceptions towards educational courses offered, but a lack of opportunity for mainstream education, compounded by the fees young prisoners have to pay for education courses.
- Lack of access to services for mental and physical health care and an alarming number of interviewees commenting on the poor help made available for fellow youth suffering from mental health problems. Long waiting lists, delays, and intimidation by prison officers were cited as the core of these problems.
- Young prisoners reported few, if any, cultural and social opportunities available to them while in prison and mentioned rules that prohibited cultural expression – for example, young prisoners had been told not to speak, chant or sing in Maori.

In New Zealand criminal responsibility begins at the age of 10. Children between 10 and 13 years can be prosecuted only for murder and manslaughter. More serious young offenders may be transferred to a higher court where they are subjected to adult sentences and punishment, and offenders aged 17 years and over are dealt with in the District or High Court. The *Children, Young Persons and their Families Act* does not apply to 17 year olds.

Police continue to breach the requirements of the *Children, Young Persons and their Families Act* as is evident from a number of cases in which courts have ruled statements inadmissible, and often fail to make a real effort to contact parents or family members to support the child or young person.

Administrative practice and under-resourcing has failed to ensure the effectiveness of Family Group Conferences. For example, they are often held late due to workload, and successful rehabilitative or community-based options may not be able to secure funding from Child, Youth and Family Services.

There are several situations in which children miss out on legal information and assistance which they need: For example, it is rare for them to have the assistance of legal advice before making a statement to Police, often court procedures are not explained to them, and the Youth Advocate is sometimes unavailable.

For years children and young people been placed in Police cells pending the availability of accommodation in a Child, Youth and Family residence. Adults are rarely held in a Police cell for more than 48 hours, but children are frequently held there for several days. Although there are detailed regulations setting out a number of rights and protections for children in residential care, information gathered from Child, Youth and Family Services shows that these rights are regularly breached: for example, children and young people in some residences are being routinely strip-searched on entry to or on leaving the residence; in some residences Regulatory requirements for holding children in secure care (lock ups) are not always followed; and there are examples of complaints being lost or failing to be addressed for several months.

Recommendations

- The New Zealand Government take all necessary measures to withdraw its Reservation to the Convention about age-mixing in prisons.
- All facilities contracted to house young people in the youth justice and prison system, be independently evaluated every two years, including feed back from the young people in residence, families and whanau, and NGOs.
- The Youth Development Strategy Aotearoa be implemented throughout all youth justice facilities and youth prison units.
- The Government take all necessary steps to address the knowledge, support, safety, mental and physical health, educational, social and cultural needs of young people deprived of their liberty, in line with the provisions of the Convention. This includes the provision of highly trained and well-qualified staff as promised before the introduction of youth prisons, fair and consistent application of policy, procedures, and rules, urgently addressing health care needs, and ensuring that prison is used as a last resort for those youth who pose a high risk to the community.
- The Children, Young Persons and their Families Act be amended to apply to all under the age of 18 years.
- The age of criminal responsibility be reviewed and brought into line with the provisions of the Convention.
- Independent research be carried out to assess the extent of non-compliance with the statutory requirements regulating Police questioning of children and the Children, Young Persons and their Families Act, and Police Directions be amended accordingly.
- An independent evaluation of Family Group Conferences be carried out nationally.
- The Government take all necessary steps to ensure that children and young people can receive legal assistance and information if required.
- The Government act urgently to ensure that children and young people under 18 years are not held in Police cells.
- The Human Rights Commission conduct an inquiry into treatment of children in Child, Youth and Family Services residences focussing particularly on searching, placement in secure care, effectiveness of grievance procedures and unnecessary restrictions on the liberty of children in residences.
- The Department of Child, Youth and Family Services review the current grievance procedures and introduce statutory or regulatory requirements to ensure that complaints procedures will provide an

effective means by which children can raise concerns and know that these will be considered and addressed promptly, efficiently and confidentially.

Protecting children from violence and neglect

Articles 19; 20; 25; 34; 35; 36; 38; and 39 of the Convention and the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography. Please also see Appendix Seventeen: Protecting Children from Violence and Neglect (Care and Protection).

The limited information available shows that the incidence of violence to children in New Zealand is unacceptably high.

The Government has yet to fully implement the two specific care and protection Recommendations made by the United Nations Committee in 1997 about corporal punishment and the recovery of child victims of abuse. Physical punishment of children is still legal in New Zealand under section 59 of the *Crimes Act 1961*. During the reporting period there have been no significant measures taken to improve the recovery of child victims of ill-treatment and abuse.

The care and protection system has continued to be under funded, stressed and unstable. Abused and neglected children have not had their care and protection rights recognised, acknowledged and met adequately. Consequently and despite the dedicated work of many of its staff, the Department of Child, Youth and Family Services which is the statutory agency providing care and protection, lacks public confidence.

The rights of many children cared for outside their birth families are not being met – and neither are the needs of their care-givers. Specialised therapeutic services for children traumatised by abuse are inadequate. The support, protection and rehabilitation rights of children caught up in domestic violence are not adequately recognised and often neglected. Maori children and young people are over represented in child abuse statistics and there are insufficient high quality and culturally appropriate services to meet their needs. Children's participation rights and legal representation needs are not given priority or adequately respected in care and protection processes.

There is widespread support for the principles of the care and protection provisions of the *Children, Young Persons and their Families Act 1989* (and considerable international interest in the New Zealand approach), but the outcomes of this legislation have not been evaluated through research.

Although there has been progress in addressing sexual exploitation of children major problems still exist:

- More information is needed about the extent of commercial exploitation of children in New Zealand and advocates report a growing incidence of child prostitution in major cities.
- Services and support for children and young people already caught up in the sex industry are inadequate.
- Unless more action is taken to address the precursors of the problems (including poverty, family violence and an inadequate care and protection system) children will continue to be vulnerable to commercial exploitation and sexual abuse.
- The Government's Plan of Action to protect children from commercial exploitation has not yet been resourced or implemented.
- Although convictions for child pornography are relatively high the penalties are light in comparison with other western countries.
- The Government is yet to ratify the *Optional Protocol on Sale of Children, Child Prostitution and Child Pornography*, and the *United Nations Convention Against Transnational Organised Crime* and its accompanying *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*.

Prevention of violence towards children includes public awareness campaigns, community development initiatives and provision of early intervention and family support services. Provision of these activities has been patchy and insufficient. There are inadequate community based services providing early intervention and family support services in many communities and co-ordination of services is constrained by privacy and competition issues. Prevention also requires addressing child poverty (see Section VI).

A number of new Government initiatives (including the *Agenda for Children, Te Rito – the Family Violence Strategy* and the *Blueprint for Care and Protection*) may lead to improved outcomes for children in New Zealand over the next reporting period. However, these will only be effective if they are well funded, fully implemented and their effectiveness evaluated.

Recommendations

- The Government take measures to end physical punishment of children and young people through public education about non-violent parenting, the provision of adequate support services for families with children and repeal of section 59 of the Crimes Act 1961.
- The outcomes for children under the Children, Young Persons and their Families Act 1989 and the effects of the care and protection processes arising from the Act be properly evaluated through research.
- In order to monitor whether New Zealand is improving its performance in the care and protection of children and reducing violence, a set of reliable data is established which remains constant over time and is reported on regularly.
- The Government take all necessary steps to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography, and the United Nations Convention Against Transnational Organised Crime and its accompanying Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
- Successive Governments commit to a stable, well-resourced public care and protection system with well-educated and well-supported staff. The Governmental protection system must work in a fully co-operative way with the NGO sector, respecting the expertise that exists in that sector and supporting the development and maintenance of the services the sector provides. Key issues requiring urgent action include:
 - # Improvements in the assessment of children and young people's care and protection needs;
 - # Fully addressing the rights of children and young people being cared for outside their birth families and the support needs of their caregivers;
 - # Improving the resourcing and availability of specialised therapeutic services;
 - # Addressing the care, protection and rehabilitation of children caught up in domestic violence;
 - # Improving the provision of high quality and culturally appropriate services to meet the needs of Maori;
 - # Respecting the participation rights and legal representation needs of children and young people; and
 - # Fully funding implementation and evaluation of the effectiveness of positive new initiatives, including the *Agenda for Children, Te Rito – the Family Violence Strategy*, and the *Blueprint for Care and Protection*.

Economic exploitation including child labour

Article 32 of the Convention. Please see Appendix Nineteen: Child Labour.

New Zealand does not do well in protecting workers, especially children. It is widely accepted that children from about ten or twelve years of age (and sometimes younger) will work part-time. This is seen as both a way of learning responsibility and 'good work habits', and of earning money for the family, for educational costs and for 'pocket money'. Young workers tend to be in casual employment and without the protection of union membership, or working for family businesses (e.g. in shops or on farms). However, there is only a little research on the extent, nature, risks, reasons and outcomes for children and youth who work. Again, there is an absence of meaningful statistics, and no consistency among Government departments with respect to the provision of disaggregated statistics about child labour. This makes assessing the situation very difficult.

There is no minimum age for employment and New Zealand has continued its Reservation to the Convention on this. New Zealand has not signed *ILO Convention 138* on the minimum age of employment. A review team of Government officials has been formed to look at this issue.

The minimum wage for sixteen to eighteen year-olds is set at 80 percent of the adult minimum wage. There is no minimum wage for those under 16 years. This supports unjust treatment of young workers. There is no restriction on the number of hours children work except that under the *Education Act* schooling must not be interfered with for those under 16 years (with some exceptions) and the Occupational Health and Safety Regulations prohibit overnight work from 10 pm to 6 am for those under 16 years.

There appear to be no policies, procedures or practices in place in government departments to comply with or implement the Convention in respect of child labour. Legislation to protect young workers is fragmented or

missing. The *Occupational Health and Safety Regulations* restrict work in certain hazardous areas (unsafe areas, injurious lifting, machinery and tractors). The *Equal Pay Act 1972* provides for no sex discrimination, the *Human Rights Act 1993* prohibits discrimination in employment, and the *Minors Contracts Act 1969* mitigates harsh contracts. Complaint procedures for children and youth are available through the *Employment Relations Act*. This also provides for the identification of child labour in New Zealand, but adherence to this requirement is unknown. Inspections of workplaces are achieved through Occupational Safety and Health Inspectors, but the actual coverage of workplaces is very limited.

New Zealand ratified *ILO Convention 182 on the Worst Forms of Child Labour* in June 2001. A Child Labour Officials Advisory Committee has been formed. However with three out of ten children living in poverty and as free trade, market flexibility, and restructuring continue to drive economic decisions, the risk of exploitation of young workers persists and may be increasing.

Recommendations

- New Zealand withdraw its Reservation to the Convention on child labour and ratify ILO Convention 138.
- All Government activity concerning child and youth labour be cognisant of the Convention on the Rights of the Child and the relevant ILO Conventions.
- A minimum age for work be established by legislation. The development of such legislation requires consultation and discussion – including with children and youth – about minimum ages for fulltime and part-time employment, and for light work, and what exceptions should be granted with specific rules for selected activities (such as entertainment, working for parents).
- Enforcement and health and safety regimes be evaluated for their effectiveness to protect children and youth.
- A minimum wage be established for the protection of those under the age of 16 years, and measures taken to establish a minimum wage for all workers irrespective of age, with the minimum wage being index-linked to cost of living adjustments.
- Urgent research be made into the extent, nature, reasons, risks and outcomes of child labour in New Zealand, Government produce disaggregated statistics about children and young people in work.
- Government and child protection agencies define their obligations under ILO 182, identify and monitor exploitation factors, and promulgate the programmes and policies arising out of the ratification of ILO 182 without delay.
- There be a legal requirement that children and young people should not be employed in work or under conditions of work that are cruel, inhumane, degrading or exploitative.

Drug abuse

Article 33 of the Convention. Please also see Appendix Thirteen: The Health of Children and Young People.

A 1998 national survey of drug use among New Zealanders found alcohol was the most commonly used drug among young people. Three out of four people aged 15 to 17 years had used alcohol in the past 12 months. One in three 15 to 17 year olds had used tobacco in the previous 12 months, and one in four had used marijuana in the past 12 months. Use of other drugs was considerably lower. Maori young people had higher rates of cannabis use and dependence. Children and youth are also harmed by their parents and caregivers' use of alcohol, tobacco and other drugs.

Advertising and sponsorship by tobacco companies is banned. Alcohol advertising is legal but is not supposed to target youth. In practice it appears to do so. Alcohol companies sponsor many child and youth sport and recreational activities. There has been public debate around the decriminalisation of marijuana.

Recommendation

- The Government takes all necessary measures to protect children and young people from harm related to alcohol, tobacco, marijuana and other harmful substances. This includes:
 - # Education and warnings on labels about the risks of alcohol in pregnancy;
 - # A review of the excise tax on alcohol;

- # A ban on alcohol advertising in broadcasting;
- # A ban on alcohol sponsorship; and
- # Alternative funding for sponsorship of recreational activities for children and youth, including sports, music and dance.

Maori tamariki and rangatahi (children and youth)

Articles 30; 2; 3; 6; and 12 of the Convention. Please also see Appendix Two: Maori Tamariki and Rangatahi.

Indigenous Maori children occupy a unique place in their ancestral lands. They cannot be separated out from their people. For Maori, the collective protects individual rights.

A Draft Charter of the Rights of the Maori Child – Te Mana o Te Tamaiti Maori based on the Convention has been produced by the Government's Early Childhood Development service. It describes how like all children, the Maori child has human rights that are the basis of freedom, justice and peace; needs special care and attention; grows up best within a loving family; needs legal and other protection; and will flourish in an environment that acknowledges and respects his or her cultural values.

Te Mana o te Tamaiti Maori also states that, in addition:

- The Maori child has the right to be and feel empowered as a valued and unique individual, and as an integral member of whanau (family), hapu (subtribe), iwi (tribe) and the society of Aotearoa overall.
- The Maori child is a whole person and has the right to be treated in the wholeness of intellect, spirit and being.
- The Maori child descends from a unique culture and history based on strong genealogical links, relationships, and has the right to be respected within the full context of those links and relationships.
- The Maori child exists within a society of extensive relationships, and has the right to know, contribute positively to, and benefit from those relationships.

A quarter of the children and young people in Aotearoa New Zealand under eighteen years of age is Maori. The chronic legacy of colonisation is seen in the disparities between Maori and the dominant culture. Generations of Maori tamariki (children) and rangatahi (young people) have not had access to the tribal lands and resources once possessed by their ancestors. Many Maori tamariki and rangatahi are unable to communicate in their tribal language and many are unaware of the dynamics of Maori society.

The extensive reforms of the economy and the state over the last two decades have been a double-edged sword for Maori who have been seriously affected by the increases in inequalities but have welcomed the opportunities to develop Maori services. Maori have developed much greater capacity to provide health, educational and social services. Programmes are delivered in a way that is uniquely Maori; Maori workers are able to address the wider issues affecting whanau; interventions focus on promotion of well-being; and programmes are Maori driven.

Poverty and poor quality housing have particularly affected Maori children and young people. Poverty affects tamariki and rangatahi across their whole lives, impacting on them physically, mentally and spiritually as well as influencing their whanau, hapu, and iwi relationships. It is an intergenerational problem. Where the whanau has low levels of educational achievement, this impacts on the attitudes and lives of tamariki and rangatahi and affects their standard of living, access to basic living requirements such as housing and food, access to education, and ability to make the most of education.

Maori family structures have also changed. More tamariki live in one-parent households. This denies many Maori the benefits of strong social support.

Despite some gains in the health of tamariki Maori over the last decade, their health status is generally poorer than non-Maori. They are much more likely to die from a wide range of causes including injuries, Sudden Infant Death Syndrome (SIDS or cot death), respiratory conditions, and infectious diseases – all potentially preventable. They are less likely to be immunised. They are much more likely to be admitted to hospital for respiratory conditions, injuries and poisoning, and communicable diseases. They have more oral health problems. They are more likely to have hearing problems and other disabilities. They are more likely to smoke and Maori women are more likely to smoke in pregnancy. Young Maori women are much more likely to be young mothers.

The rapid gains in Maori health can be largely attributed to improved access to 'by Maori for Maori' health service provision, acceptability of the messages and messengers, community focussed health promotion and prevention

strategies. Maori organisations in Aotearoa New Zealand, with the key objective of improving the well-being of Maori whanau, work against a backdrop of political, socio-economic and cultural unrest.

Tamariki participation rate in early childhood education is much less than non-Maori participation, retention of Maori children at secondary school level is much lower; and there are substantial disparities in the achievement of school qualifications. There are 670-licensed kohanga reo (Maori language nests for those under five years) and a high demand for this type of early childhood education. But in spite of this, many children have not had access to kohanga reo in their area, there is a shortage of qualified teachers and adequate resources and there has been a decrease in the number of kohanga reo in recent years.

Maori language is essential for the transfer of knowledge and the education of tamariki and rangatahi in their culture and language heritage. For many Maori there has been no choice because of insufficient capacity within the current education system and there are few opportunities for immersion education. However, here are successful examples of iwi based educational programmes such as the programmes offered at Ngati Whatua o Orakei. These programmes provide additional tuition and supervised study for tamariki Maori and opportunities to learn about their tikanga (rules for living as a Ngati Whatua person).

Under Te Tiriti o Waitangi and the *Convention on the Rights of the Child*, the status of tamariki and rangatahi should be comparable with other children because one can address their human rights and the other their indigenous rights. Despite noticeable improvements over the last ten years, tamariki and rangatahi still experience substantial disparities in contrast to other New Zealand children. Urgent action is needed.

Recommendations

- The Government honour its obligations to tamariki and rangatahi under Te Tiriti o Waitangi as well as the Convention.
- The Government takes urgent action to address the disparities between Maori and the dominant culture. This includes attention to the historical and cumulative issues that impact on the well-being of tamariki and rangatahi, and support for the right of all tamariki and rangatahi to enjoy their culture and language.
- The Government establishes effective systems for the development and co-ordination of services for tamariki and rangatahi. This should be done in partnership with tamariki and rangatahi, whanau, hapu and iwi.
- The Ministry of Maori Development Act 1991 be amended to include specific responsibilities for the Ministry to promote the rights of Maori tamariki and rangatahi, and provide an annual report to Parliament on the state of Maori tamariki and rangatahi.
- The responsibilities of the Commissioner for Children outlined in the new Bill, are expanded to include promoting understanding of the rights of tamariki and rangatahi under Te Tiriti o Waitangi.

Pacific children and youth

Articles 30; 2; 3; 6; and 12 of the Convention. Please also see Appendix Three: Pacific Children and Youth.

The vision for Pacific children and youth in Aotearoa New Zealand is '*Healthy Pacific children and youth achieving their fullest potential*'. The key principles in achieving this are: children are a valued gift from God, children are our assets, an investment in our future, our heritage; justice; fairness; and trust. Pacific peoples believe the values which drive the accomplishment of the vision are centred around family, church; culture, language; and familiarity with the environment. Therefore, for Pacific peoples, the design and development of any programme must encompass these values for the assurance of an environment where children are encouraged to pursue their full potential and their sense of destiny in God.

The term 'Pacific' is used here to describe the migrants or descendants of seven major Pacific sovereign nation states with distinct cultures, customs and languages: Samoa, Cook Islands, Tonga, Niue, Fiji, Tokelau, and Tuvalu, recognising there are others. Pacific peoples in New Zealand are a young and rapidly growing group with nearly two in every five being under 15 years of age. Pacific children make up 11 percent of children in New Zealand and will make up 21 percent of all children by 2051.

Pacific children and youth are one of the most disadvantaged groups with disparities in health, education and economics. They are more likely to live in low income households and in homes with higher occupancy rates. Thirty percent of Pacific children live in one parent families. Pacific peoples are less likely to live in homes that have access to amenities like a motor vehicle, a telephone or the internet. New Zealand-born Pacific peoples have slightly higher levels of access to such amenities than overseas-born Pacific peoples.

The needs of young people in the 17 years age bracket upward requires special consideration as they often fall between the gaps in service provision and policy development. The youth population in New Zealand is ethnically diverse and changing. Pacific parents would probably define youth as not being confined to an age group – rather, young until marriage – and so if not married, individuals are regarded as youth. Youth specific services with an holistic and intersectoral approach can achieve desired outcomes.

Families are usually the most important people in a young person's life. Pacific children and young people cannot be defined in isolation of their families. Their very existence is derived from and continues through their families. This interdependency is crucial to the totality of the Pacific child and young person. Government initiatives such as *Strengthening Families* and *Family Start* offer a Pacific friendly foundation for the implementation of wrap-around services that meet the needs of families.

Churches provide a vehicle for the expression of people's spirituality. There is much activity within Pacific churches such as worship, fundraising and celebration of events. To Pacific peoples, family, community and Government are divinely appointed to carry out the ministry of nurturing and developing of people. To care and nurture a child represents the development of the total community. A child is not merely an individual or independent entity; but a projection and extension of the personality of the parents, family, community; village and nation.

The notion of human rights in relation to physical, social, mental, cultural, spiritual and emotional nurturance is generally undisputed across cultures. However, for Pacific peoples the notion of rights is generally considered within the context of family. People require such nurturance in order to become and remain active and sound participants in their respective societies. Pacific parents are expected to make informed decisions in the best interests of their children, hence the saying that children are 'seen and not heard'.

Health outcomes for Pacific children and youth still lag well behind those for other ethnic groups, in infant mortality, perinatal mortality, hospitalisation rates, infectious disease, hearing problems, and dental problems. Government has recognised this and the *Pacific Health and Disability Action Plan* (2002) includes priorities to improve outcomes. One of the goals in the *Youth Health: A Guide to Action* is to seek a 'measurable improvement in the health of Pacific young people'. Despite these initiatives the current health status of Pacific children clearly highlights disparities and gaps in service delivery and policy development where there are major barriers to access and eligibility because of, for example, Government rules around non-residents.

The continuation of positive initiatives such as the support given by government to language nests, Pacific education facilities and having more Pacific teachers, needs to progress with adequate and appropriate support and resources. With sound foundations to build upon, the education aspirations of Pacific peoples will lead to many to celebrate

Pacific peoples who have continued their journey to New Zealand for a better life, wish to contribute in a positive way to their new home. The Government's Reservation to Article 22, concerning the non-provision of benefits to children unlawfully in New Zealand, is of concern to Pacific peoples living in New Zealand. For some Pacific children and young people, their immigration status – neither citizens nor residents – means inequitable access to health, education and welfare services. Children and young people from Samoa, Tonga and Fiji who are not citizens or permanent residents are treated differently from children from Niue, Tokelau and the Cook Islands. The latter are New Zealand citizens. However, due to recent policy changes their citizenship grants them little advantage over their relatives from Samoa, Tonga and Fiji, in that they must prove residency within a certain time frame in addition to having New Zealand citizenship status.

Recommendations

- Government undertake an urgent review of immigration policy to address gaps identified with children of non-resident parents.

- Government continue to work with Pacific peoples in further development of robust intersectoral policies that address the rights of Pacific children and youth in the context of family, church and culture and work *with* Pacific peoples in the implementation of the United Nations Convention on the Rights of the Child.
- Government ensures that initiatives targeting Pacific children and young peoples are actively implemented with timelines, adequate and specific funding and regular reporting back to Pacific peoples on the achieved outcomes.
- Government recognise, and respond accordingly, that in the context of Pacific families, definitions of children and youth, are made by parents and families as opposed to an age specific status;
- Government recognise in policy development and service provision that Pacific children and youth in New Zealand come from a diversity of Pacific nations, and that their diverse cultural heritage, birthplaces (New Zealand, a Pacific nation, or elsewhere) and their families' varying experiences of migration, forms their identity as Pacific children and youth.
- Government supports and enables children to develop a strong sense of identity through their families, churches and school systems including teachers 'adding value' to the culturally specific skills that children bring from home.
- Government take a positive approach when reporting on and responding to the strengths and needs of Pacific children and their families. This means recognising and building on strengths rather than focusing on deficits and supporting the provision of ethnic-specific role models of all ages for Pacific children and young people.
- Government acknowledges and builds on:
 - # The strengths of extended families to optimise children's education and health. Families are the most basic unit for Pacific children's healthy development, providing opportunities for mentoring, support and guidance from older people. Pacific youth who are at risk have highlighted the need to have a significant adult in their lives who could provide stability and connectedness, listen and respond to young people's concerns
 - # The strengths of churches to support the healthy development of Pacific children and their families – churches provide the spiritual dimension of health that is often ignored in NZ health policies and provision.
 - # Pacific concepts of healthy development that incorporate social, emotional, physical and spiritual well-being, not just of the child but of the extended family.
- Government extend youth advocacy services, given the importance of this service for Pacific youth, especially in terms of negotiating between parents and their children in difficult situations.
- Government provides translations of the Convention on the Rights of the Child into languages of the Pacific. namely Samoa, Tonga, Cook Islands, Niue, Tokelau, Fiji and other languages as required.

Asian children and young people

Articles 30; 2; 3; 6; and 12 of the Convention. Please also see Appendix Four: Asian Children and Young People

The number of Asian children and young people has increased rapidly in the last few years. Asian children and youth include those born in New Zealand, recent migrants, and international students. Seven percent of those under 18 years identify with Asian ethnicity and this proportion is expected to continue increasing. The Asian population is the third largest ethnic group in New Zealand. However Asian children and youth are generally overlooked in government policies and practices, and are not included in *Children in New Zealand (2000)*.

Asian children, young people and their families experience discrimination and sometimes feel like 'second class citizens'. Sometimes services for children, young people and their families appear to not recognise the existence of Asian people or respect Asian cultures and values. For example, there is no overall government strategy for Asian people in any sector; some key services have few Asian staff; there are limited opportunities for Asian children and youth to learn and speak their mother tongue in a school setting; some Asian children and young people are bullied and harassed for speaking in their own language during school recesses and leisure activities; it is rare for information from government departments to be available in Asian languages and access to interpreters is limited; and Asian children and young people sometimes experience discrimination because of religious beliefs or stereotyping. There are various mechanisms for complaints about discrimination. However, the current complaints frameworks are not responsive to Asian means of resolution and do not recognise the value placed by Asian people on harmony and unity.

Government policies and agencies still assume that the norm of a family is the western nuclear family model. Many Asian people have a different perspective – placing considerable value on extended families, not necessarily seeing the family as a finite group, and regarding child rearing practices as involving family consultation, especially in family breakdown situations where the best interests of the child are seen as being the highest priority.

There are some family situations which may cause special difficulties for Asian children and youth in New Zealand, including 'parachute kids' where young people are left in New Zealand while their parents return to their home country and visit New Zealand periodically; 'astronaut families' when one parent stays in New Zealand with the children and the other works in their homeland; international students where the children and young people leave their family to attend educational institutions in New Zealand as 'foreign fee paying students'; and parents working very long hours – to make a living or because they are reluctant to apply for benefits.

In August 2001 there were about 1,823 foreign fee paying students in New Zealand primary schools and another 8,732 in secondary schools. Almost all primary and secondary school foreign fee paying students were from Asian countries. There are anecdotal reports of schools soliciting enrolments from young and unaccompanied students because of the fees that these children bring. Most of the foreign fee paying students under 18 years live with 'home stay' families. There are anecdotal reports of these children being left unsupervised, being expected to do unreasonable amounts of household chores, and of abuse and neglect.

Recently the Government established a *Code of Practice* for education providers with foreign fee paying students and guidelines about accommodation for those under 18 years. Compliance with the Code and Guidelines relies heavily on the providers. This may cause conflicts of interest between the provider's responsibility for student well-being and their source of income. The effectiveness of the Code and Guidelines on protecting the safety and rights of children and youth has yet to be established.

Asian children and young people often experience difficulties in the education system, especially if English is a second language. Schools often lack policies and processes to prevent racial harassment or systems to support students experiencing racial harassment. There are barriers to their families being involved in schools and many Asian children and youth experience the education system as not providing opportunities for them to develop to their full potential because of the dominance of western culture and values.

Recommendations

- A plan of action be developed and implemented – with the participation of Asian children and youth and their families and communities – to ensure they are able to enjoy all their rights under the Convention without discrimination.
- Legislation, government policies and practices, and service provision recognise the importance of extended families and valuing of collective responsibility to Asian children and youth, and ensure that the funding and provision of services is able to cater to different family profiles.
- Intersectoral and community development strategies that are intended to improve the situation of children, youth and families, must involve Asian communities.
- The Commissioner for Children carry out an urgent review of the situation of the safety and well-being of children and youth in New Zealand as international students, with special attention being given to the situation of young unaccompanied children.
- The Ministry of Education give urgent attention to assisting schools develop and review strategies for protecting children from racial harassment and bullying, and review the measures taken by schools to assist students for whom English is a second language.
- Asian children and young people's right to enjoy their own cultures, religions and languages be protected and encouraged in all aspects of government and New Zealand life. This requires more thorough and sensitive planning, preparation and integration of, as well as support for, Asian children, youth, families and communities.

Conclusion

There are many people in families, communities, services, Government and throughout New Zealand who – often despite considerable and various difficulties – do everything they can to respect the rights of children and youth. There is growing recognition of the importance of the *Convention on the Rights of the Child*.

Nevertheless, New Zealand has made slow progress in implementing the Convention. Many children and young people are still not able to enjoy their rights under the Convention – or under Te Tiriti o Waitangi – because of gaps in policies, practices and actions. Many suffer the effects of inequality and poverty. Many are harmed by violence. Many experience various forms of discrimination. Many are not able to participate fully in family life, their communities, schools, cultures, and society.

There are practical solutions – including implementation of existing Government strategies and the many recommendations that ACYA makes in this Report. There is a substantial amount of work to do over the next decade.

We are deeply appreciative of the United Nations Committee on the Rights of the Child, and the opportunity the UN Committee has given us to review the situation of children and youth in our country and present this Report.

We thank the members of the UN Committee very much for your concern, courage and commitment.

E aku rangatira, e hea te mea nui o tenei ao?

Maku e kii atu, he tamariki, he tamariki, a taatou tamariki.

Leaders, where does the future lie?

*In our children.*²⁵

²⁵ Professor Dame Anne Salmond made this challenge during her presentation at a recent major national conference on the future of New Zealand: The Knowledge Wave 2003 – Leadership Forum, 21 February 2003, Auckland.