

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.

ACYA holds the copyright of this Report. People are welcome to quote it or copy it as long as the source is acknowledged.

ACYA is very appreciative of the JR McKenzie Trust for their grant, and the 6th Early Childhood Convention Committee for their assistance, which has made possible the printing and distribution of this report.

Printed by Keyprint Printing Limited.

Published by Action for Children and Youth Aotearoa, PO Box 11 318 Manners St, Wellington, Aotearoa New Zealand. This Report – and any errata – will also be available on the ACYA website www.acya.org.nz

ISBN number: 0-473-09446-0

Table of Contents

Mihi	iii
Acknowledgements	iv
Executive Summary	v
About Action for Children and Youth Aotearoa	xvi
How this Report was written	xviii
 CHILDREN AND YOUTH IN AOTEAROA	
I. General Measures of Implementation	1
II. Definition of the Child	11
III. General Principles of the Convention	12
IV. Civil Rights and Freedoms	15
V. Family Environment and Alternative Care	16
VI. Basic Health and Welfare	18
VII. Education, Leisure and Cultural Activities	23
VIII. Special Protection Measures	26
 APPENDICES	
1. Summary of New Zealand's compliance with the <i>Suggestions and Recommendations</i> made by the United Nations Committee on the Rights of the Child to the Initial Report of New Zealand, 1997	39
2. Te Tiriti o Waitangi and the Convention on the Rights of the Child	43
3. Maori Tamariki and Rangatahi	51
4. Pacific Children and Youth	59
5. Asian Children and Young People	73
6. Refugee and Asylum Seeking Children and Youth	77
7. Children and Youth with Disabilities	91
8. General Measures of Implementation of the Convention	103
9. The Definition of the Child	121
10. General Principles of the Convention	125
11. Civil Rights and Freedoms	140
12. The Family Environment	156
13. The Health of Children and Young People	170
14. The Living Standards of Children and Youth	179
15. The Education of Children and Young People	187
16. The Right to Play, Leisure, Recreation, Artistic and Cultural Activities	203
17. Youth Justice	206
18. Protecting Children from Violence and Neglect (Care and Protection)	222
19. Child Labour	235

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.

When the invisible hand rocks the cradle: New Zealand children in a time of change (2002). Blaiklock, AJ, Kiro, CA, Belgrave, MP, Low, W, Davenport, E, Hassall, I. Innocenti Working Paper No. 93. Florence: UNICEF Innocenti Research Centre.

Our Children: The priority for policy (Second edition). 2003. Child Poverty Action Group. Auckland: Child Poverty Action Group.

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.

Acknowledgements

Action for Children and Youth Aotearoa Incorporated (ACYA) acknowledges the substantial work and contributions of the many people that have made this Report possible.

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 (NZAHD)
OMEP Aotearoa
Otara 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.

- *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.

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.

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,

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.

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

- 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. Transience – 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 i;
- # 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, there 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 s 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.

Appendix One

SUMMARY OF NEW ZEALAND'S COMPLIANCE WITH THE *SUGGESTIONS AND RECOMMENDATIONS* MADE BY THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD TO THE INITIAL REPORT OF NEW ZEALAND, 1997

ACYA Committee

Please Note: Paragraph numbers refer to the Concluding observations of the Committee on the Rights of the Child : New Zealand. 24/01/97.

21. In the spirit of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in June 1993, which urged States to withdraw reservations to the Convention on the Rights of the Child, the Committee wishes to encourage the State party to take steps to withdraw its reservations to the Convention. Furthermore, the Committee encourages New Zealand to extend the application of the Convention with respect to the territory of Tokelau.

Comment: The Reservations have not been withdrawn and the application of the Convention has not been extended to Tokelau.

Some progress has been made in regard to age mixing in prisons but this is dependent on facilities. ILO 182 has been ratified and its implementation is being prepared.

22. The Committee suggests that the State party prepare and adopt a comprehensive policy statement with respect to the rights of the child, incorporating the principles and provisions of the Convention, that could provide guidance to all those involved in support services delivered or funded by the Government.

Comment: In February 2002 the Government released its *Youth Development Strategy Aotearoa* for those aged 12 to 24, and in June 2002 released its *Agenda for Children* for those under the age of 18 years. Both acknowledge the Convention. Children and young people were included in the consultation about both strategies.

However the Government's commitment to implementation and resources to implement both strategies is unclear. Unfortunately New Zealand has had many excellent reviews of the situation of children and plans to improve policies and services, which have been patchily implemented. There are serious concerns that the same may happen to the *Agenda for Children* and *Youth Development Strategy Aotearoa*. In an endeavor to encourage action, fourteen NGOs released a response called *Making it Happen* on what needs to be done to implement the *Agenda for Children*.

23. The Committee recommends that the Government pursue the process of bringing existing legislation into line with the principles and provisions of the Convention. In this regard, the Committee suggests that the minimum age for being charged with very serious criminal offences and for access to employment be reviewed as a matter of priority.

Comment: There is no active strategy for bringing existing legislation in line with the Convention. For example, Article 3 is not consistently reflected in legislation, Article 4 is not reflected in funding decisions, and Article 12 is not consistently reflected in legislation or policy. The minimum age for charging children with very serious criminal offences has not been changed. There is still no minimum age for employment.

24. While the Committee is encouraged that a review of all government policy, administrative practice and legislation is under way to determine consistency with the Human Rights Act 1993, the Committee suggests that a separate or complementary review take place, taking into account the principles and provisions of the Convention, of all aspects of government policy, administrative practice and legislation having an impact on children. Furthermore, the Committee suggests that the Office of Commissioner for Children be strengthened and that further consideration be given to measures, which would give the Office, increased independence and make it accountable directly to Parliament.

Comment: In general, the Convention is not used as the basis for policy-making at central or local government level although it is increasingly referred to. There has been no review as to whether government policy, administrative practice and legislation having an impact on children is in line with the Convention. In the 2002 Government Budget the Commissioner for Children's Office was allocated increased funding and there is legislation in process that will strengthen the Office, but not give it the independence of being accountable directly to Parliament.

25. The Committee recommends that a further review of the system of data collection be undertaken, giving priority attention to the identification of appropriate disaggregated indicators, including in the field of complaint registration, with a view to addressing all areas covered by the Convention and all groups of children, particularly the most disadvantaged.

Comment: There is much more quantitative information available about the situation of children overall than there was in 1997. However, there is little disaggregated information, and little information on some areas covered by the Convention, particularly about disadvantaged groups of children and youth. Government departments are reluctant to adhere to the implications of Article 1 in the preparation of statistics. This makes it difficult to monitor the implementation of the Convention.

26. The Committee recommends that, with respect to the implementation of article 4 of the Convention, budget allocations should be made to the maximum extent of the State party's available resources and 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. The Committee also suggests that the State party undertake a study on the impact on children and their families of the economic reform process that has been ongoing for the last several years in terms of its impact on government budgetary resources available for support services, as well as on the impact of unemployment and changed conditions of employment on children, young persons and their families. Conclusions from such a study could be a useful starting point for developing a comprehensive strategy for future action.

Comment: New Zealand remains a very unequal society. Three out of ten New Zealand children live in poverty, which profoundly affects the realisation of their rights. Social assistance provisions are discriminatory against some groups of children. Family poverty and the charging of fees limit children's access to health and education. Schools often charge fees for what is legally intended to be 'free education'.

The Government has promised to end child poverty but has not said when or how.

There has been no Government study of the impact of the reforms on children, but the UNICEF Innocenti Research Centre has published a study, which accompanies this Report to the UN Committee.

27. The Committee suggests that a study on the projected needs of single-parent families be made in light of this increasing trend, and that measures be taken to supplement those already in place to avoid potential negative consequences for these children and their parents in the future.

Comment: Although New Zealand has a high rate of children living in one-parent families and these children are much more likely to live in poverty, such a study has not been done, and no additional measures taken.

28. The Committee suggests that the State party continue to give priority to studying the possible causes of youth suicide and the characteristics of those who appear to be most at risk, and take steps as soon as practicable to put in place additional support and intervention programmes, be it in the field of mental health, education, employment or another field, which could reduce this tragic phenomenon. In this regard, the State party may want to call on Governments and experts in other countries, which also may have experience in dealing with this problem.

Comment: The overall male youth suicide rate has fallen but the Maori male rate and the female rate has not. The reasons for the overall fall are unclear. Government has established more initiatives, but has yet to fully address related broader issues including problems of poverty, discrimination and violence.

29. The Committee recommends that the State party review legislation with regard to corporal punishment of children within the family in order to effectively ban all forms of physical or mental violence, injury or abuse. It further recommends that appropriate mechanisms be established to ensure the physical and psychological recovery and social reintegration of children victims of such ill treatment and abuse, in the light of article 39 of the Convention.

Comment: Although reviewed by Government in 2001, the physical punishment of children within the family is still legal. There are serious deficiencies in service provision for children who have been abused and neglected. Violence against children is common.

30. While noting the efforts made by the Government in the areas of health, education and welfare with regard to the Maori population, the Committee encourages the authorities to pursue and strengthen their programmes and activities to fill the remaining gap between the Maori and the non-Maori children.

Comment: There has been little progress made and the gap continues.

31. The Committee recommends that the policy and law in relation to child labour be reviewed and that the State party consider ratifying ILO Convention No. 138 on minimum age for admission to employment.

Comment: A review of the law commenced in 2001 has not been completed. There is no minimum age of employment and New Zealand has not ratified ILO 138.

32. The Committee recommends that all refugee children, including asylum seekers coming to New Zealand outside UNHCR-organized schemes, be given the benefit of introduction assistance and Government-delivered or funded support services.

Comment: This has not happened and the rights of children and youth who are not citizens or residents continue to depend on their parents' residency status.

33. Finally, in the light of article 44, paragraph 6, of the Convention, the Committee recommends that the publication of the initial report and written replies presented by the State party be considered, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention, its implementation and monitoring within the Government, the Parliament and the general public, including with the concerned non-governmental organizations.

Comment: In 1997 and 1998 there was limited dissemination of the Government's written replies to the Committee's questions and the Committee's report and Recommendations. The Government did not disseminate the summary records of the examination of New Zealand's initial report.

There has been some increase in public awareness and discussion of the Convention due to the activities of non-governmental organisations, several university centres, the Commissioner for Children, the activities of the Ministry of Youth Affairs, and increased reference to the Convention in the court.

The Ministry of Youth Affairs consulted widely in developing *Children in New Zealand (2000)*, the Government report to the UN Committee. There has been no Government strategy to raise awareness of the rights of children among children and young people, their families and those who work with children.

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.

Appendix Two

TE TIRITI O WAITANGI AND THE CONVENTION ON THE RIGHTS OF THE CHILD

ACYA Working Group on Te Tiriti o Waitangi and the Convention

E tipu, e rea, mo nga ra o tou ao.

Ko te ringa, ki nga rakau a te Pakeha, hei ara mo te tinana

Ko to ngakau ki nga taonga a o tupuna Maori hei tikitiki mo to mahuna a

Ko te wairua, ki te Atua, nana nei nga mea katoa

- Sir Apirana Ngata²⁶

Introduction

E nga mana e nga reo, tena koutou katoa, kua tangihia, kua korerotia nga mate, kia koutou nga kanohi ora.
Tena koutou katoa.²⁷

Maori are the indigenous peoples of Aotearoa/New Zealand, a tribal people with at least a millennium of indigenous occupation and a more recent history of a treaty based colonization by settlers (Tipene-Leach, 1999).

On the 6th of February 1840, northern Maori chiefs and a representative of the British Crown, namely William Hobson Lieutenant Governor, signed a treaty at Waitangi: Te Tiriti o Waitangi (the Maori version) and the Treaty of Waitangi (the English version). The primary aim, as outlined in the Preamble of the Treaty, was to restore law and order among European settlers and provide a means whereby European and Pakeha could reside together harmoniously in Aotearoa New Zealand. The treaty also established British Government and consequent settlement in Aotearoa and confirmed the protection of Maori land, rights and self-determination.

Maori were not wholly adverse to the idea of a formal relationship, as has sometimes being assumed, with the British Crown as potential growth and development was immediately evident in trading and technology, however it was not anticipated that it would usurp a Maori way of life. Despite this covenant between two nations the accelerating demands for land, strained relations between Maori and Pakeha and a fairly standard colonial history ensued in Aotearoa New Zealand with war, appropriation of native lands and marginalisation of indigenous communities, erosion of cultural customs, language and values.

Fundamental to the effectiveness of this treaty was the commitment of the two parties involved to ensure that it was regarded and applied. According to the conditions outlined in the Maori and English version of the treaty, the Crown failed to uphold its obligations and responsibilities. For example, the Crown obtained large tracts of Maori land through legal confiscation – which had an oppressive effect on the economic, social and cultural base of Maori. This has in turn affected the well-being of generations of Maori children and young people. The treaty continues to echo the sentiments of the original signatories to the New Zealand Government of today that Maori have always remained committed to the intention of the treaty and Maori wish to see it honoured. Maori people today also believe that Te Tiriti o Waitangi can provide an effective framework from which to develop strategies that can improve the health and well-being of Maori.

²⁶ This saying is from the revered elder Sir Apirana Ngata, and is translated as:

Grow up o tender youth.

With your hands grasp the tools of the Pakeha to sustain your physical needs.

Your heart to the treasures of your ancestors as a crown for your head.

Your Spirit to God the Creator of all things.

²⁷ This is a greeting.

Around one in seven of the total population, and one in four children and young people, are Maori. Although Maori live among other New Zealanders in a free-market based western democracy, most Maori live in poor urban areas with distressingly high exposure to under education, unemployment and poorer health. Two decades of conservative economic adjustment in New Zealand has seen the long-standing disparities in Maori and non-Maori health indices widen.

International instruments such as the *United Nations Convention on the Rights of the Child* articulate the rights of children and the responsibilities of States to adopt and uphold these rights. Whilst Te Tiriti o Waitangi articulates the collective rights of Maori the rights of Maori tamariki (children) are not seen as divisible. It is therefore important to understand how indigenous and Maori rights work alongside the rights of children and youth as set out in the *United Nations Convention on the Rights of the Child*.

The Declaration of Independence

Uniting Maori under one recognised Maori authority began in earnest in the 1820s. Important hui held around this time led to the conception of a national Maori flag primarily to register locally built ships used by Maori in their trading, but more importantly as an internationally recognisable symbol of Maori autonomy and nationhood. The 1835 Declaration of Independence, signed by the Northern Confederation of Chiefs, also sought to establish processes whereby Maori could not only trade independently with other nations but also govern their own affairs as a nation. For Maori, the issue of indigenous rights is made explicit in the 1835 Declaration of Independence. It was an agreement between thirty-three northern Rangatira (chiefs) and James Busby, the British Resident and categorically stated Maori intention to retain sovereignty over their lands, estates and affairs. Many significant developments and events such as these strongly suggest that Maori had no intention of ceding sovereignty to another nation.

The Declaration was a clear assertion of Maori sovereignty and Maori have consistently referred to it in this way ever since (Murphy, 2002)

The Declaration was a statement by Maori to both the outside world and themselves that these Islands of Aotearoa and Te Waipounamu were to be an independent state (Manuka, 1994)

The Articles of Te Tiriti o Waitangi / the Treaty of Waitangi

The text of Te Tiriti o Waitangi and the Treaty of Waitangi is included at the end of this paper.

Article One

In the Maori version of Te Tiriti o Waitangi the British Crown were conferred the right of *kawanatanga*, a literal transliteration of the word government. In the English version the word used was *sovereignty*. The Declaration of Independence had five years previously, proclaimed Maori sovereignty and the desire to unite all the tribes of Aotearoa, and this was reaffirmed in the 1840 Te Tiriti o Waitangi. Despite these affirmations the British Government of the day, by way of their acquired authority, enforced many legal injustices upon Maori. Having said that the New Zealand Government has, in recent years, begun to acknowledge that a distinctive relationship between the Crown and Maori does exist. But rather than seeing the relationship as a partnership, successive governments have insisted on redefining the nature of that relationship from a government perspective.

In international law, if there is a disagreement between two versions of a treaty, then under the contra preferentum rule and article 33 of The Vienna Convention, the version of the indigenous people (in this case, Te Tiriti o Waitangi) prevails (Kingsbury, 1989). This therefore means that the Crown does have the right to govern, but it also means Maori retain their sovereign rights. The New Zealand Government broke with international convention by giving equal recognition to both versions of the Treaty by way of the *Treaty of Waitangi Act 1975* and thus giving rise to the situation where two treaties form a treaty-based analysis. International convention gives greater status to Te Tiriti o Waitangi.

Article Two

The Maori version agreed that Maori retain the full and exclusive rights of their lands, villages and all they treasured, but gave to the Queen the right of pre-emption for land purchases.

Article Three

In this article Maori were promised all the rights and privileges of British citizenship.

Article Four

A verbal consideration, sometimes referred to as Article Four, mooted by the Catholic Bishop Pompallier and endorsed by those present in Waitangi, was the right to religious freedom. It is certain that Bishop Pompallier was concerned that the Treaty between Maori and the British Crown would bring the strong establishment of the Church of England at the possible expense of Catholicism. This acknowledgement by the Treaty signatories was critical for the growth of Religious orders within Aotearoa/New Zealand.

International human rights instruments

The importance and application of international human rights instruments and the related work of the United Nations are not fully realised by New Zealanders. This is especially true of the instruments, discussions and resolutions that affect indigenous peoples.

New Zealand is in a unique situation to lead in the implementation of the *United Nations Convention on the Rights of the Child* with a full recognition of the rights of the indigenous people, working towards a holistic understanding of the specific conflicts and challenges this creates – and how those can be met in a way that honours all those involved.

New Zealand played a leading role in the development of the *Universal Declaration of Human Rights* in the 1940s. Since the early 1970s successive New Zealand governments have entered into a range of international conventions and covenants, including the *International Convention on the Elimination of all forms of Racial Discrimination* (ratified in 1972), the *International Covenant on Civil and Political Rights* (ratified in 1975), the *International Covenant on Economic, Social and Cultural Rights* (ratified in 1978), the *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief* (adopted in 1982), the *Convention on the Elimination of All Forms of Discrimination Against Women* (ratified in 1985), the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (ratified in 1989), and the *Convention on the Rights of the Child* (ratified in 1993).

In 1989 Hiwi Tauroa, the New Zealand Race Relations Conciliator, pointed out that:

Through these conventions New Zealand governments acting within its United Nations agreement could, since 1972, have righted many of its treaty obligations to the Maori people. The great majority of New Zealand people are ignorant of their responsibilities arising from the ratification of these covenants (Tauroa 1989).

The Convention on the Rights of the Child and indigenous children

The Convention provides that indigenous children, in addition to all their other rights, have rights as indigenous children. The importance of this has been recognised by the Committee on the Rights of the Child making the rights of indigenous children the focus of the Committee's annual Day of Discussion in 2003.

In 2002 the Early Childhood Development (Nga Kaitaunaki Kohungahunga) Organisation released a Draft Charter on the Rights of a Maori Child clearly outlining their Maori rights. More opportunities to articulate Maori rights will undoubtedly lead to the development of robust guidelines surrounding indigenous rights.

In order for indigenous children to enjoy their rights under the *Convention on the Rights of the Child*:

- Measures must be taken by government to identify groups of children who are of indigenous origin.
- Indigenous children have the right to enjoy their own culture in community with members of their group.
- Indigenous children have the right to profess or practise their own religion in community with members of their own group.
- Indigenous children have the right to use their own language in community with members of their group and if for whatever reason they are not fluent in the language measures must be made available for teaching them their language.
- These rights must be translated into their language.

- The Government must actively protect, sponsor and enforce in law these rights and must assist indigenous children to realise these rights (Newell & Hodgkin, 2002).

The Draft Declaration on the Rights of Indigenous Peoples

Maori organisations and the New Zealand government have been active in the development of the *Draft Declaration on the Rights of Indigenous Peoples*.

At times Maori have been critical of government's stance in negotiations. Previous New Zealand governments have opposed the Declaration including the right to self-determination and opposed the use of the term 'peoples' preferring the term 'populations', which has been interpreted as an attempt to avoid recognition of the rights invested in peoples under various United Nations conventions.

Maori children and youth have rights inherent in being part of an indigenous people. The *Draft Declaration on the Rights of Indigenous Peoples* relates to the rights of Maori children and young people. Te Puawai Tapu, a Maori health organisation who do considerable work with rangatahi (youth), comment:

*Article 3 of the Declaration, for example, has particular significance. It states that: Indigenous Peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development*²⁸.

*Other articles of the Draft Declaration on the Rights of Indigenous People have been identified by Te Puni Kokiri as having significant relevance to the rights of Maori children and young people*²⁹. *These correspond directly with the rights of Maori children and young people under (the Convention on the Rights of the Child), as follows:*

Article 15 recognises the right of indigenous children to have access to education in their own culture and language and for indigenous communities to have the right to establish and control education systems and institutions with state resourcing.

Article 19 identifies the rights of indigenous people to participate fully in all levels of decision making which may affect their rights, lives and destinies.

Article 23 identifies the right of indigenous people to determine and develop strategies and priorities for their own development.

An explicit acknowledgment of Maori children and young people as part of the indigenous collective will reorient the development of policies and processes toward the integration of both their individual and collective rights.
(Te Puawai Tapu, 2000.)

Maori and the human rights debate

Concerns have been expressed among Maori that international instruments (that are typically interpreted from a western paradigm of human rights) place a greater emphasis on the individual rather than the collective. In essence the rights of Maori children will not be realised until the rights of Maori are realised. For Maori whanau, balanced development ensures all whanau members develop together. This does not discourage individual development but ensures that personal growth can be supported and encouraged by the wider whanau. Whanau strongly influence the attitudes, beliefs and values of their children and their consequent well-being. This means that solutions sought for individuals and not for the collective, are marginalised by the wider implications and issues that can often affect whanau. The application of the principles outlined in various covenants, conventions and treaties instituted will support the well-being of Maori whanau.

Further support for the notion that the application of the principles of international covenants will support the well-being of whanau Maori, comes in advice from the distinguished Maori jurist, Justice Eddie Durie:

²⁸ The Work on the United Nations Working Group on the Rights of Indigenous Peoples - The Draft Declaration on the Rights of Indigenous People, Moana Jackson, Ngakaiwhakamarama I Nga Ture. (Footnote from original document.)

²⁹ Seminar on Children's Policy: Maori Children: Discussion Paper, Parliament, Te Puni Kokiri June 2000. (Footnote from original document.)

...focus not upon the precise meanings of the words in international covenants, at least initially, but on the purpose to be achieved – to respect “the inherent dignity...of all members of the human family” as a foundation for freedom, justice and peace.

Looking then to the spirit of the covenants rather than the terms, we may each find ways whereby particular cultural or other group preferences may be accommodated within the national legal framework, or according to the circumstances, whereby particular areas of jurisdiction can be entrusted to specialist tribunals for a specified clientele (Durie, 2000, p. 51)

In an article, *Cultural Rights: Definition and Contexts*, Margaret Wilson (who was then a professor of law and is now a Cabinet Minister and the Attorney-General) says:

The law is but one vehicle for the enforcement of actioning of the right to access and participation in one’s culture, or for the protection and promotion of a group’s culture. The creation of an environment that values cultural diversity and the allocation of resources that reinforce that environment are obvious other methods of translating aspirations into reality. (Wilson, 2000, p. 22)

As Margaret Wilson rightly points out, the allocation of resources and the policies that encourage and promote the rights of Maori Children so that they can participate fully in all aspects of their culture is as important as the process for legal redress.

Conclusion

Disregard for Maori opinion in the past, lack of action taken by Government to improve and protect Maori interests, intergenerational poverty and the erosion of traditional Maori society, have all contributed to the reluctance of Maori to participate in a process which achieves little or no relief.

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

The 44 Articles in the *Convention on the Rights of the Child* are perceived to be fundamental to the needs of every child and able to work alongside the tenets of Te Tiriti o Waitangi. Advocates of the Convention who want to see the successful implementation of this convention in Zealand must also support the recognition the tenets of the Te Tiriti o Waitangi and should not marginalise in any way the pursuit of indigenous rights and self-determination.

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 indivisibility of the individual and collective rights of Maori children and youth in legislation and government policy and practices.

Acknowledgements

ACYA is deeply appreciative to Riripeti Haretuku, Kirsten May, and others who contributed.

Versions of Te Tiriti o Waitangi

Tiriti O Waitangi 1840 (Maori text of the Treaty)

Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira—hei kai wakarite ki nga Tangata Maori; o Nu Tirani—kia wakaetia e nga Rangatira Maori; te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu—na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amoa atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

KO TE TUATAHI

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu—te Kawanatanga katoa o ratou wenua.

KO TE TUARUA

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu—ki nga tangata katoa o Nu Tirani te tino rangatiratanga o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua—ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

KO TE TUATORU

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini—Ka tiakina e te Kuini o Ingarani nga tangata Maori; katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

[signed] William Hobson Consul & Lieutenant Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Modern English Translation of the Maori Text of the Treaty of Waitangi 1840 [by Prof. Sir Hugh Kawharu]

Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship (1) and their lands to them and to maintain peace (2) and good order considers it just to appoint an administrator (3) one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands (4) and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness. So the Queen has appointed 'me, William Hobson a Captain' in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents (5) to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government (6) over their land.

The second

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise (7) of their chieftainship over their lands, villages and all their treasures (8). But on the other hand the Chiefs of the Confederation and all the Chiefs will sell (9) land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties (10) of citizenship as the people of England (11).

[signed] William Hobson Consul & Lieut. Governor

So we, the Chiefs of the Confederation of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.

Was done at Waitangi on the sixth of February in the year of our Lord 1840.

Notes

- (1) 'Chieftainship': this concept has to be understood in the context of Maori social and political organization as at 1840. The accepted approximation today is 'trusteeship'.
- (2) 'Peace': Maori 'Rongo', seemingly a missionary usage (rongo - to hear i.e. hear the 'Word' - the 'message' of peace and goodwill, etc).
- (3) Literally 'Chief' ('Rangatira') here is of course ambiguous. Clearly a European could not be a Maori, but the word could well have implied a trustee-like role rather than that of a mere 'functionary'. Maori speeches at Waitangi in 1840 refer to Hobson being or becoming a 'father' for the Maori people. Certainly this attitude has been held towards the person of the Crown down to the present day - hence the continued expectations and commitments entailed in the Treaty.
- (4) 'Islands' i.e. coastal, not of the Pacific.
- (5) Literally 'making' i.e. 'offering' or 'saying' - but not 'inviting to concur'.
- (6) 'Government': 'kawanatanga'. There could be no possibility of the Maori signatories having any understanding of government in the sense of 'sovereignty' i.e. any understanding on the basis of experience or cultural precedent.
- (7) 'Unqualified exercise' of the chieftainship - would emphasise to a chief the Queen's intention to give them complete control according to their customs. 'Tino' has the connotation of 'quintessential'.
- (8) 'Treasures': 'taonga'. As submissions to the Waitangi Tribunal concerning the Maori language have made clear, 'taonga' refers to all dimensions of a tribal group's estate, material and non-material heirlooms and wahi tapu (sacred places), ancestral lore and whakapapa (genealogies), etc.
- (9) Maori 'hokonga', literally 'sale and purchase'. Hoko means to buy or sell.
- (10) 'Rights and duties': Maori 'at Waitangi in 1840 refer to Hobson being or becoming a 'father' for the Maori people. Certainly this attitude has been held towards the person of the Crown down to the present day - hence the continued expectations and commitments entailed in the Treaty.
- (11) There is, however, a more profound problem about 'tikanga'. There is a real sense here of the Queen 'protecting' (i.e. allowing the preservation of) the Maori people's tikanga (i.e. customs) since no Maori could have had any understanding whatever of British tikanga (i.e. rights and duties of British subjects.) This, then, reinforces the guarantees in Article 2.

The Treaty of Waitangi 1840 (English text of the Treaty)

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands.

Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize 'me William Hobson a Captain' in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and

without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess, over their respective Territories as the sole Sovereigns thereof.

ARTICLE THE SECOND

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

[Signed] W Hobson Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified

Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.

References

- Durie, E. Te Hono ki Hawaiki. In Wilson, M & Hunt, P (eds), Culture, Rights and Cultural Rights: Perspectives from the South Pacific. Wellington: Huia Publishers.
- Early Childhood Development Nga Kaitiaki Kohungahunga (2002). Te Komako. Wellington, New Zealand.
- Kingsbury, B. (1989). The Treaty of Waitangi -some international law aspects. In Kawahari, IH (ed), Waitangi -Maori and Pakeha Perspectives of The Treaty of Waitangi. Auckland: Oxford University Press: 121-157
- Manuka, H. (1994). There is no tribal history only Maori history. Paper to New Zealand Historical Association Conference, Auckland, August 1994.
- Murphy, M. (2002). Te Pumaomao, An awakening, A discovery, A celebration of Mana Maori. Whakatane.
- Newell, P, Hodgkin, R. (2002) UNICEF Implementation Handbook for the Convention on the Rights of the Child, UNICEF, New York.
- Tauroa, H. Healing the breach : One Maori's perspective on the Treaty of Waitangi. Auckland : Collins, 1989
- Te Puawai Tapu (2000). 'The individual and collective rights of Maori children and young people as indigenous (taken from Te Puawai Tapu Submission on the draft of the government report to the UN Committee on the Rights of the Child).' Action for Children in Aotearoa Newsletter from the Interim Committee, December 2000.
- Wilson, M. (2000) Cultural Rights: Definition and Contexts. In Wilson, M & Hunt, P (eds), Culture, Rights and Cultural Rights: Perspectives from the South Pacific. Wellington: Huia Publishers.

Appendix Three

MAORI TAMARIKI AND RANGATAHI

ACYA Working Group on Maori Tamariki and Rangatahi

Please also see Appendix Two: *Te Tiriti O Waitangi and the Convention on the Rights of the Child*, Appendix Twelve: *The Family Environment*, Appendix Thirteen: *The Health of Children and Young People*; Appendix Fifteen: *The Living Standards of Children and Youth*; Appendix Fifteen: *Education*; Appendix Seventeen: *Youth Justice*; Appendix Eighteen: *Protecting Children from Violence and Neglect (Care and Protection)*; and the accompanying report, *When the Invisible Hand Rocks the Cradle: New Zealand children in a time of change*.

Ahakoia he iti, he pounamu.
Although it is small, it is precious.

Te Mana o te Tamaiti Maori

Indigenous Maori children occupy a unique place as Tangata Whenua³⁰ in their ancestral lands. They cannot be separated out from their people. It is against all Maori philosophy that a sector of our people be separated away from their people and given rights – the people as a whole have an inherent collective right that is inextricably connected to the land. For Maori the collective protects the individual rights (Action for Children in Aotearoa 1996, the first report from non-governmental organisations to the United Nations Committee on the Rights of the Child.).

A Draft Charter of the Rights of the Maori Child – *Te Mana o Te Tamaiti Maori* has been produced by the Government's Early Childhood Development. This Charter, based on the *United Nations Convention on the Rights of the Child*, says that the Maori child, like all children around the world:

- 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 their cultural values

Te Mana o te Tamaiti Maori, states that in addition to human rights the Maori child also has fundamental indigenous rights:

- 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 (sub tribe), 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.

Wider social and economic influences

The recovery of the Maori population since low numbers at the end of the nineteenth century has been marked by substantial demographic change (Pool, 1991) and reclamation of their rights under Te Tiriti o Waitangi. Maori now represent one in six people in Aotearoa New Zealand, and a quarter of all those under eighteen years of age (Statistics New Zealand 2000).

³⁰ Tangata whenua are the indigenous people of the land.

Action for Children in Aotearoa 1996, the first non-governmental organisations' report to the UN Committee, quoted Sharon Cree, a Cree Indian Jurist, who said:

We need the provision of draft Article 6 of the Declaration to ensure that our children are raised as Indigenous children and not by products of the settler society.

Colonisation had enormous and cumulative impact on the well being of Maori, initially devastating the Maori economy and then the Maori population (Gardiner, 1994). The chronic legacy of colonisation can be seen in the disparities between Maori and the governing culture. Generations of Maori tamariki (children) and rangatahi (young people) in Aotearoa New Zealand have not had access to the tribal lands and resources once possessed by their ancestors. Many Maori tamariki and rangatahi are unable communicate in their tribal language, and many are unacquainted with their genealogy or cultural identity.

Government responses to these problems have been to encourage familial and tribal economic independence from the state. Maori have also seen opportunities in the reform process to break non-Maori control over social services for Maori and advance self-determination, and iwi have seen the devolution of government services as a means to strengthen tribal economies and services (Cheyne et al., 2000; Durie, 1998; Kiro, 2000). Maori have developed much greater capacity to provide health and social services to Maori.

The extensive reforms of the economy and the state over the last two decades have been a double-edged sword for Maori who welcomed the opportunities to develop Maori services, but were seriously affected by the increase in inequality (Kiro, 2000). A review of the impact of the reforms (Blaklock et al, 2002) said:

The overall picture for the well being of many Maori children is bleak. Maori as a population have been most affected by corporatisation, rising unemployment, and reductions in government transfers. The economic reforms have cut deeply into their extended families' financial and physical well being, and eroded their ability to participate in cultural institutions such as marae (traditional meeting places). Maori children are more likely to experience poor health, have higher rates of youth unemployment, and there are persisting disparities in education.

Maori development

The 1970s marked the beginning of a cultural renaissance for Maori with increasing political action directed to reaffirming Te Tiriti o Waitangi, addressing grievances and the realisation of Maori self-determination with a more active role in New Zealand society (Awatere, 1984). By 1984 Maori opinion supported a more operative and positive approach, reiterating the importance of cultural identity, self-determination, economic and social factors. This approach reaffirms the importance of Maori knowledge and the further growth and development of 'by Maori for Maori' care models.

As described in Appendix Two: *Te Tiriti o Waitangi and the Convention on the Rights of the Child*, the Government is obliged to protect the rights of Maori children and youth under Te Tiriti o Waitangi.

Te Tiriti provides a framework upon which initiatives can be developed. For example, the *New Zealand Health Strategy* aims to improve the health of New Zealanders and its first principle acknowledges the Crown's special relationship under the Treaty of Waitangi (Minister of Health, 2001). In *Te Korowai Oranga* (Minister of Health, 2002) and subsequent health strategies, the Treaty has been used to provide a framework for promulgating healthy public policy that reflects a Maori perspective. Treaty obligations can be interpreted into proposed legislation, regulation, and policy advice, funding agreements, and provider contracts.

A strategy to address disparities between Maori and non-Maori has been to purchase specific 'by Maori for Maori' health services. This has resulted in the continued growth of 'by Maori for Maori' health service providers (Kiro, 2001). What is yet to be considered is the long-term guidance or co-ordination of these services. The ad hoc development of health services has led to Government rather than Maori driven priorities. The chair of the national committee for funding indigenous health research has pointed out the importance of initiatives being Maori-driven:

We should have more Maori researchers working with their iwi, hapu and whanau to start addressing the issues that iwi, and Maori see as important. At the moment most of the research around Maori comes from researchers rather than the communities determining what is needed. Often we see a gap between research and its effectiveness because the researchers do not understand what they have observed or know how to turn their results into meaningful information (Milne, 2003)

As Maori service provision has increased in number and accessibility, several common themes have emerged. Programmes are delivered in a way that is considered uniquely Maori – Maori workers are able to address the wider issues affecting whanau. Interventions usually focus on the promotion of well being and these initiatives are Maori driven. Intervention programmes developed and implemented by Maori communities are more likely to be effective for Maori because the needs and priorities are identified and set by the community.

Effective initiatives for tamariki and rangatahi require the support of tamariki and rangatahi, whanau, hapū, and iwi, and should involve a wide range of government agencies at local and national levels working in partnership with Maori community organisations and providers. A commitment, by Government, to Tiriti o Waitangi provides a mechanism for fostering and supporting the views of tamariki and rangatahi.

Poverty

One of the major factors affecting the lives of tamariki and rangatahi is poverty. Poverty is an issue that affects children throughout Aotearoa. Maori children and young people have been especially affected (Blaklock et al, 2002). Maori family structures also changed. More tamariki live in one-parent households. This denies many Maori the benefits of strong social support.

Poverty levels increased as a by-product of neo-liberal political reforms, and show signs of perpetuating new inequalities for succeeding generations of children. Within the Maori population declining incomes and subsequent drop in living standard has had a profound effect, affecting tamariki and rangatahi in all areas in what appears to often be an inter-generational pattern of deprivation. There are multiple factors in the cycle of poverty and intergenerational despair.

Maori participation and under achievement in education is strongly associated to lower rates of employment (Chapple 2000), which determines the level of the family's income, and this subsequently affects access to housing, food and other vital resources. Restricted access to poorer quality housing, food and other necessities of life affect both access to quality education and the levels of participation and achievement outcomes. If education is not attained, the individual suffers alongside the whanau. Maori have lower rates of participation in early childhood education, lower rates of school qualifications, and leave school earlier compared with non-Maori.

Maori have been especially affected by the structural changes that increased unemployment. The rate of Maori participation in the labour force has been consistently lower than that of non-Maori. Employment rates are generally used as an indication of educational outcomes both on a personal level and across populations. The lower educational achievement rates for Maori make them vulnerable to even slight changes in their economic situations (Chapple, 2000). There is a large disparity with Maori being almost two and a half times more likely to be unemployed than non-Maori (Te Puni Kokiri, 2000). This is of particular concern because unemployment is a key component in perpetuating cycles of disadvantage.

Disparities in the economic status of Maori whanau are driven by the disparities of income between Maori and non-Maori. Maori wage and salary earners receive on average a lower hourly rate than non-Maori. This disparity is related to education and occupation type. Maori are more likely to be over-represented in low-paid occupations, or to receive income from governmental social assistance benefits for the Unemployment and Domestic Purposes Benefits (Te Puni Kokiri, 2000). Tamariki living in households where the income is low (whether it be from paid employment or from benefits), or rangatahi who themselves are in low-paid employment or a benefit, are affected by the poverty created by such an economic situation.

A lack of good quality state assisted housing is yet another factor that has been influenced by political reforms, the limited availability of state and council housing, and the reduction of housing income assistance. Maori families are much more likely than non-Maori households to be in rental accommodation (Te Puni Kokiri, 2000). This limits the ability of Maori to own houses and build capital –Maori are much less likely to own the house they live in (Te Puni Kokiri, 1998). Low-quality housing and overcrowding adversely affect tamariki and rangatahi.

Poverty affects tamariki and rangatahi across their lives, impacting on them physically mentally and spiritually, as well as influencing them at all levels of their whanau, hapu, and iwi relationships. The cyclical nature of the poverty that adversely affects Maori tamariki and rangatahi is a problem that is intergenerational. The low levels of educational achievement within a whanau can impact on the continuing attitudes and lives of tamariki and

rangatahi. This in turn affects the standard of living of tamariki and rangatahi, their access to basic living requirements such as housing and food and their access to education and ability to make the most of education. Alongside human rights instruments such as the *Convention on the Rights of the Child*, Te Tiriti o Waitangi advocates for the right of Maori children in Aotearoa New Zealand to be free from poverty

Health

The health of tamariki and rangatahi

Despite some gains in the health of tamariki Maori over the last decade, their health status is generally poorer than non-Maori and disparities remain.

Tamariki are more likely to live in social circumstances associated with an increased risk of serious ill health. They are much more likely to die from a wide range of causes including injuries and poisonings, road traffic injuries, Sudden Infant Death Syndrome (SIDS or cot death), respiratory conditions, and infectious diseases – all potentially preventable health conditions. They are less likely to be immunised. They are much more likely to be admitted to hospital (especially in the first five years of life) for respiratory conditions, injuries and poisoning, and communicable diseases. They have more oral health problems (Ministry of Health, 1998). They are more likely to have hearing problems, and are over-represented in disability statistics that reflect higher rates of injury and disease. Maori adults are also more likely to experience the disabling long term effects of childhood communicable disease, such as the chronic heart problems caused by rheumatic fever, and primary liver cancer associated with Hepatitis B infection (Pomare et al, 1995). Tamariki, especially girls' aged 12 to 15 years are becoming committed smokers at rates well above those of other young teenagers. More Maori women smoke in pregnancy (Ministry of Health, 1997). Young Maori women are much more likely to be mothers (UNICEF, 2002).

Maori tamariki health service provision

In response to these concerns and its obligations under the Treaty of Waitangi, in 1992 the Government established the broad parameters for Maori health, in *Whaia te Ora mo te Iwi*, the key public policy document for Maori (Department of Health and Te Puni Kokiri, 1993). These are:

- Recognition of Maori aspirations and structures;
- Promotion of positive health outcomes for Maori; and
- Encourage greater Maori participation.

In addition, the document proposed four specific Maori policy directions:

- Resource allocation priorities which take account of Maori health needs and perspectives; and development of culturally appropriate practices and procedures as integral;
- Enhancement and reorientation of mainstream health provision to improve the capacity to support Maori needs and expectations;
- Increased Maori participation at all levels of the public health sector; and
- Reinforcing the established 'matrix of relationships' throughout the health sector and also recognizing the necessity to grow and up skill the current Maori health workforce.

In the last decade a plethora of 'by Maori for Maori' health services have been established to address the health disparities between Maori and non-Maori children, this includes *Tamariki Ora*, *Mokopuna Ora*, *Pepi Ora*, *Whanau Ora* and *Maori SIDS prevention*.

Maori have formed professional collectives such as *Maori Midwives* and *Maori Doctors* to improve the dissemination of information and to improve co-ordination and information flow. Maori community health workers are considering the establishment of a collective for the purpose of establishing accord in practice and development. Maori personnel within mainstream organisations are also joining together to consider ways in which the organisation they work for can respond to the needs the Maori community in a more effective and timely way.

Health gains for tamariki and rangatahi Maori have been consistent over the last decade, and, it is reasonable to suppose that, improved access to 'by Maori for Maori' health service provision, acceptability of the messages and messengers, community focussed health promotion and prevention strategies and community action has all contributed to this.

However health disparities for Maori still remain significantly disproportionate to non-Maori. One key strategy to improve the health of tamariki and rangatahi Maori is to work in a more collaborative and co-operative way with all health providers. Collaborative approaches in the delivery of health services so that limited resources can be more efficiently utilised.

The delivery of efficient service delivery should be negotiated but Maori approaches must not be undermined in the process. Narrow contractual outputs also tend to undermine the importance of self determination desired by most Maori communities.

In 1994 the Ministry of Health linked the cultural compatibility of the health provider and the consumer of health services revealing that access to health services for Maori is linked to the cultural acceptability of the service for Maori consumers (Ministry of Health, 1995). This was translated into the development of a set of criteria for effective health service delivery to Maori underpinned by the assumption that culture and behaviour are inextricably bound. It was also identified as an indicator of quality in service delivery.

Education

High quality and relevant early childhood education is a basic right that must be available to all tamariki, regardless of wealth, income or where they live. Early childhood education produces beneficial outcomes for all children as well as their whanau /family (Bishop et al, 2001). Early childhood education provides an opportunity for children to interact with others beyond the whanau /family thereby enhancing their growth and development. Children who have experienced high quality in early childhood score higher on a range of competency measures when they start primary education.

Retention of Maori children at secondary school level is 43 percent compared to non- Maori children at 69 percent for 17 year olds (Te Puni Kokiri, 2000). Disparities in the achievement of grades and school qualifications are influential in terms of gaining entry to the labour force and tertiary training (Te Puni Kokiri, 2000, p.18). Maori school leavers who do not qualify to go into tertiary education institutions are more likely to appear in vocational training programmes or second chance education opportunities. Whilst these programmes appear to offer immediate financial relief in terms of meeting benefit criteria they tend to offer specific industry skills, within short time frames for some industries. Long-term employment stability is more likely to be achieved through participation in tertiary institutions.

There are wide gaps in the participation of different ethnic groups in early childhood education. Kohanga reo is the largest provider of early childhood education for Maori children. There are 670-licensed kohanga reo in New Zealand and a high demand for this type of early childhood education. Nevertheless, Maori participation rates in early childhood education programmes are low. In 1991 the rate of non-Maori participation in early childhood education for all four-year-olds was 97 percent, compared with only 75 percent of Maori four-year-olds. By 1997 Maori participation dropped to 71 percent for four-year-olds (Te Puni Kokiri, 2000).

There has been a decrease in the number of kohanga reo in recent years. While at the peak of the movement in 1993 there was over 800 kohanga Reo teaching 15,000 children, the number of kohanga reo has since dropped by a quarter. Barriers to the establishment of kohanga reo include cost, licensing requirements, bureaucracy, and building requirements and access difficulties. There are not always suitably qualified teachers or adequate resources available. Maori early childhood teachers and parents often spend long hours developing and making resources because there are few suitable resources within the education system.

Maori language is essential for the transfer of Maori knowledge and the education of Maori children. Maori would like to see the barriers removed to ensure the continued growth of kohanga reo and subsequent access for whanau to Maori language opportunities. This would require the provision of adequate funding by the Government.

For many Maori there has been no choice in terms of their educational participation because of insufficient capacity within the current education system. There are few opportunities for immersion education within the state school system. Maori should be able to exercise the choice of, immersion education within Kura Kaupapa Maori (schools with a Maori philosophy and often with teaching in Maori) or within the state education system.

Low educational achievement in Aotearoa New Zealand is strongly linked to low socio-economic status as well as access to limited family resources, both material and cultural. The negative effects of under achievement by children in education compound throughout their lives and affect not only their personal esteem but their ability to contribute to the needs of their whanau. This is especially critical for Maori who experience a disproportionate level of disadvantage for most indicators of disadvantage in education. It is essential that measures be taken to change this predicament before children get to secondary school.

The disparities for Maori in schools are illustrated by educational outcomes. Although increasing numbers of Maori students are leaving school with qualifications there is still a substantial gap. A way of looking at trends in the attainments of school leavers is to consider the changing numbers of school leavers without Sixth Form Certificate or a higher qualification. Sixth Form Certificate is generally considered the minimum qualification for entry into the job market. In 1984 there were 25 Maori school leavers with Sixth Form Certificate or higher qualification for every 100 Maori student without formal qualifications. By comparison, the respective figure for non-Maori school leavers were 91 in 1984 (Te Puni Kokiri, 2000).

Many tamariki and rangatahi with Maori names are denied an essential element of their identity through mispronunciation. For many this begins from the first day of school with the mispronunciation of their name and the consequent adoption of a European name to avoid embarrassment. This is a metaphor for the inclusion of children who are different. A denial of the identity of some children arises from the inability of teaching and support staff to pronounce a person's name. This was observed in a recent report where the author noted that 'some non-Maori teachers may have difficulty understanding Maori children (Else, 2002, p. 3)'.

This is not a new phenomenon. The Waitangi Tribunal is a permanent commission of inquiry set up to review government Treaty responsibilities to Maori. During the gathering of evidence for the Te Reo Maori (Maori language) claim, WAI 11, the Tribunal was told of the experience of another speaker's time at primary school, that 'as an infant and asking (in Maori for she could not speak English) if she could go to the toilet. She was punished and the memory was still vivid many years later (Waitangi Tribunal, 1986)'. The Waitangi Tribunal not only found that, the use of Maori in school was discouraged, but Maori were also being denied the choice in their education

If a facility in the Maori language is regarded as more important than skill in French or in European history then those parents of that mind should be enabled to ensure that the curriculum is shaped accordingly. Their children should be able to learn Maori (Waitangi Tribunal, 1986)

It was also noted that; 'the move to monolingualism in education was compounded by the movement of the majority of Maori people from tribal areas to urban areas, and reinforced by an official policy of 'pepper-potting' homes throughout the suburbs so that Maori families were scattered (Waitangi Tribunal, 1986)'.

Iwi based educational programmes

Ngati Whatua o Orakei iwi/tribal based programmes illustrate the success of Maori provision of education services. The programmes are voluntarily undertaken and provide additional tuition and supervised study for tamariki Maori to improve the likelihood of academic achievement. Ngati Whatua offers tamariki an opportunity to learn about their tikanga (rules for living as a Ngati Whatua person) i.e. to understand they are an important part of whanau, hapu, iwi/tribe and Te Ao Maori (the world of Maori).

A hapu (extended family group) Homework Centre focuses on tamariki and rangatahi at risk of underachievement in school. The Centre's key objectives are to improve educational achievement by:

- Providing access to additional resources to facilitate educational achievement;
- Helping tamariki and rangatahi to develop study habits for learning in Te Ao Maori;
- Raising their ambitions for further secondary and tertiary education; and
- Providing an educational environment in which students want to participate.

The Homework Centre also provides the opportunities for matua/parents and whanau to participate in the learning, in the same environment their tamariki are achieving, to improve their own literacy and numeracy skills as well as become more familiar with contemporary computer technology. The centre also has an additional opportunity and incentives for participation that includes sports coaching, cultural activities and wider community focused activities.

Conclusions

Regard for the intention of 'Te Tiriti o Waitangi and the *Convention on the Rights of the Child* will definitely improve the status of tamariki, rangatahi and all children. All children and young people have the right to grow in a society that respects the dignity of life and is free of poverty, discrimination, and other forms of degradation. All children and young people have the right to exercise meaningful choices in the process of their maturation and development, and to have a meaningful voice in the community. The lack of opportunities to exercise their rights limits their potential and contribution.

Despite significant improvements over the last ten years, in general, tamariki and rangatahi i still experience substantially poorer well being in health, education and other ways than non Maori children when assessed in terms of conventional measures such as mortality and school achievement.

Maori children have the right to access all the benefits of New Zealand society – including society's capacity to restore and strengthen their indigenous rights. A key responsibility of Maori whanau is to pass on to future generations the valuable knowledge of indigenous and tribal communities. New Zealand society must therefore, out of necessity, support the retention, growth and potential of Maori tamariki and rangatahi.

Recommendations

- The Government honours 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 wellbeing 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.

Acknowledgements

ACYA is deeply appreciative of Piripi Davis, Riripeti Haretuku, Tanya Allport, John Walden, Tania Pompallier, and others who contributed.

References

- Awatere, D. (1984). *Maori Sovereignty*. Auckland: Broadsheet Magazine Ltd.
- Bishop, R., Berryman, M., Richardson, C. (2001). *Te Toi Huarewa, effective teaching and learning strategies, and effective teaching materials for improving the reading and writing in te reo Maori of students aged five to nine years in Maori-medium education –Final Report to The Ministry of Education*. Wellington: Ministry of Education.
- Blaiklock, Alison J., Cynthia A. Kiro, Michael Belgrave, Will Low, Eileen Davenport and Ian B. Hassall (2002), 'When the Invisible Hand Rocks the Cradle: New Zealand Children in a Time of Change'. Innocenti Working Paper No. 93. Florence: UNICEF Innocenti Research Centre.
- Chapple, S. (2000). *Maori socio-economic disparity*. Wellington: Ministry of Social Policy.
- Department of Health, & Ministry of Maori Development Te Puni Kokiri. (1993). *Whaia te ora mo te iwi -Strive for the good health of the people* (Maori Health Policy Objectives of Regional Health Authorities and the Public Health Commission). Wellington: Department of Health and Ministry of Maori Development.
- Cheyne, C., O'Brien, M., & Belgrave, M. (2000). *Social policy in Aotearoa New Zealand. A critical introduction*. (2nd ed.). Auckland: Oxford University Press. Cited in Blaiklock et al (2002).
- Durie, M. (1998). *Te Mana, Te Kawanatanga: The politics of Maori self-determination*. Auckland: Oxford University Press. Cited in Blaiklock et al (2002).
- Early Childhood Development, Te Komako, Nga Kaitaunaki Kohungahunga (2000). *A Draft Charter of the Rights of the Maori Child, Te Mana o te Tamaiti Maori*, Wellington.

- Else, A., (1997). Maori Participation & Performance in Education, a Literature Review and Research Programme, a summary by Anne Else of the original report by Simon Chapple (NZIER), Richard Jefferies (Kokomuka Consultancy), and Rita Walker (Waikato University), Wellington: Ministry of Education
- Gardiner, W. (1994). Marae to Global Village: 100 years of Maori Development. In *Kia Pūmau Tonu - Proceedings of the Hui Whakapūmau Maori Development Conference, August* (pp. 67-73). Palmerston North: Department of Maori Studies, Massey University.
- Kiro, C. (2000). Assessing the impact of economic reforms on Maori tamariki and rangatahi. In A. Smith, M. Gollop, K. Marshall, & K. Nairn (Eds.), *Advocating for children: international perspectives on children's rights*. Dunedin: Otago University Press.
- Kiro, C. A. (2001), *Kimihiā Hauora Maori, Maori Health Policy and Practice*. Unpublished Doctor of Philosophy, Massey University, Auckland
- Milne M (2003). Health Research Council Newsletter, Issue No.4, March 2003)
- Minister of Health. (2001). *He korowai oranga Maori health strategy discussion document*. Wellington: Minister of Health.
- Ministry of Health. (1995). *He taura tēke - measuring effective health services for Maori*. Wellington: Ministry of Health.
- Ministry of Maori Development. (1994). *Tipu Ora Resource Kit*. Wellington: Ministry of Maori Development Te Puni Kokiri.
- Ministry of Health (1998). *Our children's health: Key findings on the health of New Zealand children*. Wellington: Ministry of Health.
- Pomare, E., Keefe-Ormsby, V., Ormsby, C., Pearce, N., Reid, P. Robson, B., & Watene-Haydon, N. (1995). *Hauora, Maori Standards of Health III, a study of the years 1970-1991*. Wellington: Te Rōpu Rangahau Hauora a Eru Pomare, Wellington School of Medicine. Te Puni Kokiri. (2000). *Progress towards closing social and economic gaps between Maori and non-Maori*. Wellington: Te Puni Kokiri, Ministry of Maori Development.
- Pool, I. (1991). *Te iwi Maori - a New Zealand population past, present & projected*. Auckland: Auckland University Press.
- 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: Statistics New Zealand.
- UNICEF (2002). *A league table of teenage births in rich nations*. Innocenti Report Card, Issue No. 3. Florence: Innocenti Research Centre.
- Waitangi Tribunal. (1986). *Report of the Waitangi Tribunal on the te Reo Maori Claim (WAI 11)*. Wellington: Department of Justice. Minister of Health. (2002). *He korowai oranga Maori health strategy*. Wellington: Minister of Health.
- YouthLaw Tino Rangatiratanga Taitamariki, Blaiklock A, Paterson A, Tapp P, (1996) *Action for Children in Aotearoa 1996: The Non-Governmental Organisation Report to the United Nations Committee on the Rights of the Child*, YouthLaw Tino Rangatiratanga Taitamariki, Auckland.

Appendix Four

PACIFIC CHILDREN AND YOUTH

ACYA Working Group on Pacific Children and Youth

Please also see Appendix Eight: General Measures of Implementation; and Appendix Thirteen: The Health of Children and Young People.

Introduction

Lo, children are a heritage of the Lord: and the fruit of the womb is his reward. As arrows are in the hand of a mighty man; so are children of the youth. Happy is the man that hath his quiver full of them: they shall not be ashamed, but they shall speak with the enemies in the gate. (Psalm 127:3 – 5, King James Version)

Any programme of care and development must take on board the Spirituality of the Community. In this case the child is viewed as a symbol of God's 'gifting' to the nation. 'Behold, children are a **gift** of the Lord, the fruit of the womb is a **reward**, like **arrows** in the hand of a warrior' (Psalm 127:3). The word **gift** refers to a symbol of love and charity that is shared and assigned to people and government for nurturing and care. The term **reward**, conveys the idea of pleasure; something given as a tangible proof of appreciation. The children are never to be viewed as punishment or burden. They are God's very personal trophies of His love, His choice reward.

The symbolism of **arrow** conveys the idea that children are tools and resources for the community's engagements in life. They cannot fly straight and be on target by themselves. They need grooming and special attention. The Community directs and develops the paths and routes of the children's/arrows' flights.

Noticeably, the statement does not say 'some children' or 'most children,' but simply 'children,' implying all children. There are no accidental children. All children deserve care, love and appreciation so that they feel liberated to grow to pursue their potential destiny as planned by God.

Vision, principles and values

Critical elements to the design of any government initiatives are vision, principles and values that underpin an appropriate framework; intersectoral collaboration; and co-ordination. A holistic approach ensuring the collaborative integration of all agencies almost guarantees that nothing occurs in isolation.

The **vision** for Pacific children and youth in Aotearoa (New Zealand) is 'Healthy Pacific children and youth achieving their fullest potential'.

Principles guiding this include:

- Children are a valued gift from God
- Children are our assets, an investment in our future, our heritage
- Justice
- Fairness
- Trust.

Values guiding this include:

- Family (aiga, magafaoa, kopu tangata...)
- Church
- Culture
- Language
- Familiarity (context, surroundings, environment...)

Purpose and development of this paper

This paper to the United Nations Committee on the Rights of the Child provides a discussion on the key themes that arise for Pacific peoples, children and youth in New Zealand, and is a response to *Children in New Zealand*, the New Zealand Government's 2000 report to the UN Committee on the Rights of the Child (Ministry of Youth Affairs, 2000).

In light of the difficulties of bringing together Pacific peoples the authors of this paper are grateful to those who were able to contribute to the discussion herein.

The paper draws on discussions from two official meetings involving the following persons:

Ben Taufua	Meeting Facilitator, South Auckland Health
Moses Faleolo	Pasifika Healthcare, Youth Health Worker
Ruth Safole	Pasifika Healthcare, Youth Health Worker
Reverend Peniamina Vai	Dawson Road Church
Rosetta Simanu	Tupu Library
Alison Blaiklock	Action for Children and Youth Aotearoa
Philipa Biddulph	Action for Children and Youth Aotearoa
Mary Paitai	Pacific Health Unit, South Auckland Health
Maika Veikune	Pacific Health Unit, South Auckland Health
Teuila Percival	KidzFirst South Auckland Health Paediatrician
Melissa Lelo	Association of Adolescent Health and Development
Jackie Curry	Pacific Health Unit, South Auckland Health
Sailau Suaalii-Sauni	Department of Sociology, University of Auckland
Metua Faasisila	Meningococcal B Project, University of Auckland
Hilda Faasalele	Royal New Zealand Plunket Society
Marianne Pua	Registered Nurse
Helen Mavoa	Department of Anthropology, University of Auckland

The first meeting was held at the Pacific Health Research Centre, University of Auckland. The second meeting was held at the South Auckland Health Pacific Unit. Both were held in November 2002. The first meeting involved about seven people, and the second was able to draw on more. Many who were contacted were unable to attend these two meetings but were given the opportunity to input via e-mail. Because of time and cost constraints the two meetings were held in Auckland. However, feedback on the draft was sought via e-mail from existing Pacific networks across New Zealand. The paper also draws on current literature available to the drafters at the time of writing.

The paper is organised according to key theme areas. The theme areas were chosen in terms of expanding on what was currently provided for by Government in *Children in New Zealand (2000)* and what we saw as gaps in the same report.

The term 'Pacific'

We recognise the misleading effects of the term 'Pacific' used herein to describe the migrants or descendants of those seven different Pacific nation states of Samoa, Tonga, Fiji, Niue, Tokelau, Tuvalu and the Cook Islands (Ministry of Pacific Island Affairs). However, due to space constraints and in the interests of clarity, this paper is compelled to continue to use the term 'Pacific' to refer to all these different ethnic groups.

The growth of Pacific peoples in New Zealand

A feature of New Zealand society over recent decades has been the growth of Pacific peoples. The Pacific population in New Zealand grew from just 2,200 to almost 232,000 or 6.5 percent of the total population between 1945 and 2001. Most reside in the North Island, particularly in the Auckland area. Samoans are the largest Pacific group in New Zealand numbering 115,000 in 2001 making up half the Pacific population. Cook Islands people are the next largest group numbering 52,500 followed by Tongans (40,700), Niueans (20,100), Fijians (7,000) and Tokelauans (6,200). Over half (58 percent) the Pacific population in New Zealand were born in New Zealand (Statistics New Zealand, 1998).

As a group Pacific peoples are a young and rapidly growing group with nearly two in every five Pacific peoples being under 15 years of age. Pacific children make up 11 percent of the New Zealand child population. It is predicted that Pacific children will make up 21 percent of all children by 2051 (Statistics New Zealand, 1998)

Poverty

Pacific children and youth are one of the most disadvantaged groups in New Zealand with disparities in health, education and economics, which have, unlike other ethnic groups, continue to show no improvement. Many of the social changes seen in other New Zealand children, such as increased numbers of children living in single parent families, add to the burden of economic, educational and health disadvantage.

Household income

Pacific children are more likely to live in low income households. The annual personal income levels of Pacific peoples have continued to recover from the effects of the economic recession at the beginning of the 1990s. However, in real terms, the medial annual income of Pacific peoples in 2001 was still below that of 1986.

The real median annual income of Pacific peoples aged 15 years and over increased from \$NZ 13,400 in 1996 to \$NZ 14,600 in 2001. This is a recovery from the low of \$NZ 12,100 in 1991, yet still below the 1986 media of \$NZ 17,200. Sixty-one percent of the Pacific population received less than \$NZ 20,000 income in 2001 compared with 53 percent of the national population. Sixty-nine percent of Pacific peoples earning wages and salaries received less than the national median of \$NZ 14,000. The younger age structure of the Pacific population is a contributing factor, as young people tend to have lower incomes. Seven percent of Pacific peoples received over \$NZ 40,000 in 2001 compared with 18 percent of the national population (Statistics New Zealand June 2002)

Housing

Following a national trend away from home ownership, the proportion of Pacific peoples living in housing owned by a member of their household has decreased, while the proportion living in rental accommodation has increased.

Pacific peoples tend to have higher bedroom occupancy rates than the national population, although the proportion living in dwellings with more than two occupants per bedroom has been declining since 1986. The objective of measuring bedroom occupancy is not to label households as overcrowded but to provide an indication of the proportions of people who may experience crowded conditions.

Thirty percent of Pacific children now live in single parent families. In 2001, 21 percent of Pacific peoples were living in dwellings with more than two occupants per bedroom, a decrease of seven percent since 1986. In comparison, three percent of the national population were living in this situation in 2001. The proportion of Pacific peoples in the Auckland region who were living in dwellings with more than two occupants per bedroom declined from 33 percent in 1986 to 25 percent in 2001. For Pacific peoples living elsewhere in New Zealand, the equivalent proportion in 2001 was 13 percent. (Statistics New Zealand 2002).

Pacific peoples are less likely than the national population to live in households that have access to amenities such as a motor vehicle, a telephone or the internet. New Zealand-born Pacific peoples have slightly higher levels of access than the overseas-born Pacific population. Although the proportion of Pacific peoples living in households with access to a motor vehicle has increased from 74 percent in 1986 to 86 percent in 2001, it remained lower than the national level of 93 percent. In 2001, 82 percent of Pacific peoples and 95 percent of the national population were living in a household with access to a telephone. New Zealand-born Pacific people were more likely to have household access to a telephone than overseas-born Pacific people (84 and 80 percent respectively). Nineteen percent of Pacific peoples were living in households with access to the internet in 2001, whereas for the national population the equivalent proportion was 42 percent. New Zealand-born Pacific peoples were more likely to have household access to the internet than overseas-born Pacific peoples (22 and 16 percent respectively). (Statistics New Zealand 2002).

Social development

The Department of Work and Income New Zealand *Pacific Peoples Strategy*, which is incorporated into the Ministry of Social Development *Pacific Strategy*, outlined in its goals, a focus on reducing poverty levels for Pacific youth. Reducing the risk of Pacific youth becoming long-term unemployed by increased participation of Pacific peoples in education and training that leads to stable employment (Ministry of Social Development, 2002) is vital.

Increased responsiveness to Pacific peoples constitutes an investment for New Zealand as a whole. Demographic forecasts for the next 50 years show that, while New Zealand's population in general is ageing, the age structure of the Pacific population will remain relatively youthful for some time. Pacific young people will make up an increasing percentage of the workforce over the next 20 years. Over the next 50 years, there will be significant opportunities for New Zealand to gain economically and socially from a young and dynamic Pacific population who have opportunities to make maximum use of their potential. Through facilitating government responsiveness to Pacific peoples, Pacific strategies can help ensure that these opportunities are available (Ministry of Social Development, 2002).

The negative statistics speak for themselves in highlighting the needs of Pacific children in New Zealand and it is only with a combined effort between government and communities that we can resolve issues around poverty.

The Pacific Working Group therefore recommends that government continue to work with Pacific peoples in further development of robust intersectoral policies that address Pacific children's rights in the context of family, church and culture, ensuring the allocation of sufficient resources for the implementation of policies to address specific needs.

Definitions of child, young person and family

Children and young people

The needs of Pacific young people are not adequately addressed in the Government's report, *Children in New Zealand (2000)*, partly due to the fact that age group definitions conflict between different sectors and therefore gaps exist. The needs of young people in the 17 years age bracket upward requires special consideration as they often fall 'between the cracks'

The World Health Organisation defines adolescence as the period between the ages of 10 and 19 years; 'youth' as those persons aged between 15 and 24; and 'young people' to include everyone between the ages of 10 and 24 years (Ministry of Youth Affairs, 2002; Young, 1985). The way the term 'children', is used *Children in New Zealand (2000)* often fails to acknowledge the adolescent, youth or young person population groups as a distinct and definitive group in their own right.

The youth population in New Zealand is ethnically diverse and changing. New immigrants from Asia, Africa and Eastern Europe, together with increasing numbers of young Maori and Pacific peoples, contribute to the increasing diversity (Ministry of Youth Affairs, 2002).

Pacific parents would probably define youth as not being confined to an age group, rather, young until marriage – so if not married, individuals are regarded as youth. *Children in New Zealand (2000)* has not recognised ethnic-specific interpretations of those who have left their homelands to settle in New Zealand. The Pacific Working Group therefore recommends that this issue be addressed in the definition of children and young people.

New Zealand's young people (12 to 24 years inclusive) make up 18 percent (675,087) of the total population (3,737, 280): 16 percent of the New Zealand European are aged 12 to 24; 24 percent of the Maori population are aged 12 to 24 years; 24 percent of the Pacific population are aged 12 to 24 years; and 26 percent of the Asian population are aged 12 to 24 years (Ministry of Youth Affairs, 2002: p 40 cited from Statistics New Zealand, 2002).

Traditionally, New Zealand's health services have been identified as 'child' or 'adult' with an arbitrary cut-off at 15 years of age. This lack of clarity in definition has contributed to a lack of identification of need for, use of, and gaps in, current systems of healthcare and support for this age group (Watson, 2001). The establishment of youth-specific services such as Pasifika Youth Health Services (PYHS) (Dillon & Faleolo, 2002) in West Auckland and Centre for Youth Health (CfYH) (Counties Manukau District Health Board, 2002) in South Auckland is a response by New Zealand towards recognising the needs of its young citizens as opposed to children. Both these services, PYHS and CfYH, have a one-stop shop platform underpinned by a theoretical perspective, 'medical-sociology'.

The theory of medical sociology (Henderson, 1935; Parsons, 1951; Stern, 1927) is essentially applying sociological perspectives on bio-medical issues (Davis & Dew, 1999). In other words, young people receive

prescriptions for medical problems and a case management plan for their psychosocial needs. This holistic approach is empowering young people in New Zealand by enhancing their resiliency and protective factors. Youth-specific services are utilising tools such as a psychosocial risk assessment profile known as H.E.A.D.S.S (an acronym for Home, Education, Activities, Drugs, Sexuality, Suicide, Cohen, Mackenzie & Yates; Goldenring & Cohen, 1988; Shaw, 2001) to derive a case management plan for youth, based on protective factors rather than risk issues (Resnick, 2000).

A review of the delivery of these services in New Zealand may give some insight as to what works in addressing the rights of Pacific young people in New Zealand.

Family

Family (aiga) are usually the most important people in a young person's life. The central role of the family in the Pacific community is reflected in the high proportion of Pacific peoples who live in a family situation.

- In 2001, 82 percent of Pacific people were living in a family situation compared with 77 percent of the total New Zealand population.
- Twenty-nine percent of the Pacific population was living in an extended family in 2001, whereas for the national population the proportion was 8 percent.
- The average number of usual occupants for all households in which Pacific people were living in 2001 was 5.4 compared with 3.5 for New Zealand as a whole.

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*, *Family Start* and intensive home visiting seem to offer a Pacific friendly foundation for the implementation of services that wrap around families in meeting their needs. It is important that the review of these services is fed back to Pacific peoples in order to understand what has worked and what can be improved upon. The time given for these initiatives to be delivered must allow them the opportunity to prove their worth. Fly-by-night short-term initiatives are a set up for failure.

Key people such as, the Commissioner for Children, the Minister of Youth Affairs, the Prime Minister and the Ministers of Finance and Social Development need to know what each other are doing and work collaboratively towards a common goal, especially when the populations they are responsible for overlap. For example, support, funding and even timing of events like Youth Week, national celebration of our young people and Children's Day need to have some common links. Intersectoral collaboration on Government policies and initiatives can only serve to consolidate and strengthen families in providing for the rights of Pacific children and young people.

Cultural reference: Christian theology and Pacific mythology

Role of the church

Religion provides a vehicle for the expression of man's spirituality. Rituals, liturgies, creeds and ceremonies, all form part of the religious scene. For the majority of Pacific peoples being spiritual and religious are almost synonymous with being Christian. Because the Christian faith has enjoyed a privileged position for a long period, Pacific Island cultures have become well and truly Christian in orientation and content. Consequently Christian ministers occupy a very privileged and influential position in Pacific Island communities. As such they are inevitably considered to be role models to their communities.

Churches provide a reason for congregating or getting together. Whether for worship or fundraising or events celebration, there is much activity within Pacific churches. This regular gathering provides opportunities to focus on children and families e.g. Whitsunday (children's day) held in October of each year, Sunday/Sabbath School classes, language nests attached to churches, Boys Brigade, Girl Guides, Pathfinder groups, Youth Group/Choir.

Theological thoughts on child-care

Family, community and Government are agencies; divinely appointed, consciously or unconsciously acknowledged by them or not; to carry out the ministry of nurturing and developing of people. Undeniably,

people are the most valuable resources that God has gifted to communities. Hence, the understanding of children and care-giving towards them is vital.

A Pacific person views a child as an embodiment of the corporate personality of the community. A child/person is not a mere individual and independent entity; but a projection and extension of the personality of the community; family or village and nation. To illustrate this from a Samoan worldview, the word 'son' which is *atali'i*, means image, mirror, picture (*ata*), of his lord/father (*alii*). The word 'daughter' which is *afafine*, means half, image, projection, (*afa*) of the woman/mother (*fafine*). The child therefore represents the parents, the chiefly community and island or geographical area she or he hails from. To care and nurture that child then represents the development of the total community. The holistic embracing of the individual child, embraces the nation as well. No child therefore is unimportant, secondary, or outcast. Care of the child represents the care for the nation.

In the consideration of policies and programmes targeted at Pacific peoples, government would do well to remember the focus that churches have in the lives of Pacific peoples and consider the impact this has on decision-making policies.

Pacific configuration of family versus individual

The notion of human rights in relation to physical, social, mental, cultural, spiritual and emotional nurturance is generally undisputed across cultures. It is generally recognised that people require such nurturance in order to become and remain active and sound participants in their respective societies. What is disputed, however, particularly in the global governance arena, is the question of 'who defines what are the basic necessities and how?'

In most Pacific cultures it is not acceptable that 'the child who is capable of forming his or her own views has the right to express those views freely in all matters' (Article 12 of the *United Nations Convention on the Rights of the Child*) and decisions get made for children irrespective of their age or ability to form individual views. This is very important and needs lots of education for all concerned.

In Samoan discourse the rights of the 'aiga' or extended family group subsume the rights of the individual...Individual identity is 'part of' rather than 'separate to' the identity of the aiga or group, as is the case for mainstream New Zealand society. (Masinalupe, Samuelu & Suaalii-Sauni 2002).

These notions highlight the importance of Government continuing to work with Pacific peoples in developing robust intersectoral policies addressing children's rights in the context of family, church and culture and in the implementation of the Convention. Through the development of a strong sense of identity by way of their families, churches and school systems, Pacific children and young people will be well on the way to their rights being addressed appropriately.

Pacific children and young people and health

Health outcomes for Pacific children and youth still lag well behind those for other ethnic groups. In some cases they are deteriorating. Government has recognised this and the *Pacific Health and Disability Action Plan* (2002) includes priorities to improve outcomes.

Mortality

Child mortality rates in New Zealand have declined over the past few decades. Child mortality for Pacific children is higher than that of other New Zealand children. Infant mortality in New Zealand has declined from 10.3 (per 1000 live births) in 1989 to 5.4 in 1998 – but Pacific children consistently have higher infant mortality. There are difficulties in following trends over time because of changing definitions of ethnicity, but it appears that Pacific infant mortality has shown much less improvement than other groups.

Infant mortality rates per 1000 live births, 1998 (New Zealand Health Information Services)

<i>Pacific</i>	7.5
<i>Maori</i>	7.2
<i>Other</i>	4.1
<i>Total New Zealand</i>	5.4

Perinatal mortality rates (combined fetal and early neonatal death rates) are consistently higher⁴ for Pacific than any other group and may have actually worsened, perhaps reflecting poor antenatal and perinatal care.

Perinatal death rates per 1000 live births, 1998 (New Zealand Health Information Services)

<i>Pacific</i>	12.5
<i>Maori</i>	8
<i>Other</i>	7.7
<i>Total New Zealand</i>	8.3

Of concern with the high perinatal mortality rates is that the rate of obstetric intervention for Pacific women is less than that for all New Zealand women – which perhaps reflects, as suggested above, poor access to or ineffective maternity care.

Hospitalisation

Pacific children and youth experience higher morbidity. Pacific rates of hospitalisation are higher than other New Zealand children (Grant, 1999; Tukuitonga & Robinson, 2000):

Infectious diseases

Pacific infants have the highest rate of meningococcal disease. The rate in 2000 was over 500/100,000 – twice that of Maori infants and six times that of European infants (Ministry of Health). Rheumatic fever rates in Pacific children are twice that of Maori and 70 to 80 times that of European children (Ministry of Health)

Hearing

Pacific children consistently have higher rates of glue ear than any other group. Fourteen to fifteen percent of Pacific children fail hearing screening at school entry, which is consistently higher than any other group (National Audiology Centre).

Dental health

Dental health shows considerable ongoing disparity for Pacific children. Pacific children, like Maori, have higher rates of dental caries and missing teeth than other New Zealand children. Pacific children also access school dental health services less than other groups. (Public Health Advisory Committee, National Health Committee. Background paper Child Oral Health 2002, unpublished paper). In some areas Pacific children have worse dental health than Maori – for example, in urban Auckland.

Dental health status in 5 year old and Form 2 children. Waitemata District Health Board School Dental Service 2000 (Children in Form 2 are about 12 years of age)

	5 year olds		Form 2	
	% caries free	Numbers of decayed, missing or filled teeth	% caries free	Numbers of decayed, missing or filled teeth
<i>European</i>	74.7	0.79	57.1	1.02
<i>Maori</i>	44.3	2.16	48	1.53
<i>Pacific</i>	40.7	2.54	44.2	1.63
<i>Other</i>	55.5	1.85	44.1	1.52

Youth health

The health status of Pacific youth, including the Government's response to identified concerns, is comprehensively outlined in Ministry of Health (2002) document entitled, *Youth Health: A Guide to Action* launched in November at Manukau Youth Centre by Minister of Youth Affairs, Honourable John Tamihere.

As well as focusing on those areas of mental and physical health where young people's lifestyles make them particularly vulnerable, the Action Plan proposes ways of making health services more youth friendly and youth knowledgeable. It emphasises the need to gather better information about factors that affect young people's health and about 'what works' for young people.

There are six goals:

- A safer, more supportive environment for New Zealand's young people as their health is affected by what's happening in their families and with friends and in school (this means families, schools, communities, and local and central government agencies all have a role to play in improving young people's health and keeping them well).
- A measurable improvement in young people's mental health
- A measurable improvement in young people's physical health because taking risks and trying new things is integral to young people's lifestyles.
- Young people influencing health policy and programme development
- A greater level of knowledge about youth health and youth health services
- High-quality, youth-friendly, accessible health services.

Further to this, one of four population-specific goals in the Action Plan is to seek a 'measurable improvement in the health of Pacific young people'. The Pacific Working Group endorses *Youth Health: A Guide to Action* and the *Child Health Strategy*.

A healthy young person is more than a physical dimension; it includes being emotionally, mentally, culturally and spiritually healthy. When young people are secure in their particular cultural identity, and have the ability to express this without fear; when they have an appreciation of values other than the material; when they are able to accept the diversity of values and cultures of the people around them; when they have the opportunity to fully explore their own cultural and spiritual heritage; and are able to express themselves fully in a variety of artistic media, then they can be culturally and spiritually healthy. This is particularly true for Pacific youth.

Barriers to good health care identified by young people include financial, confidentiality, an absence of Maori or Pacific staff, a lack of cultural sensitivity, stigma associated with mental illness, pregnancy and disability, adults are authoritarian, judgmental and patronising, and insufficient counselling support.

Recommended action points for the improvement in the health of Pacific young people are as follows:

- Improve access to primary care for Pacific youth – for example, Pacific youth-specific healthcare services such as Pasifika Youth Health Services.
- Improve effectiveness of programmes and services for Pacific youth through three developments: Pacific youth service plan; monitoring and evaluation framework; and a research plan.
- Improve training and development of Pacific health and disability workers.
- Increase participation of Pacific young people in the design and development of health and disability services.
- Strengthen health promotion and education programmes.

Conclusion

Health is a key area of the Government's responsibility under the Convention. Article 24 'recognises the right of the child to the...highest attainable standard of health.' New Zealand's health system is failing Pacific children and the negative statistics show this. Therefore we recommend that Government ensure 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.

Pacific children and young people and education

Educational achievement

Pacific peoples are spending longer in formal education and attaining more qualifications than in the past. However, they still tend to have fewer formal qualifications than the total population.

- Pacific children tend to stay at school longer than others, with 64 percent of Pacific 14 year olds staying at school until age 17 in 2001. However, they tend to leave school with lower qualifications than others, with 26 percent leaving school with no qualifications in 2001.

- The number of Pacific peoples in tertiary education increased from 3,300 to 12,400 between 1990 and 2001. They now make up 4.4 percent of all tertiary enrolments but their participation rates are lower than those of the total population (15 percent compared with 32 percent in the 18 to 24 age group).
- The proportion of Pacific peoples with no qualifications fell from 54 percent to 36 percent between 1986 and 2001.

Percentage of school leavers without any qualification, Ministry of Education, School Leavers (Source: Ministry of Education)

	1993	1995	1997	2001
<i>Pacific</i>	24	24.3	26.2	24.8
<i>Maori</i>	33.5	35.4	37.7	33.4
<i>Asian</i>	10.8	14.7	8.8	8.0
<i>All New Zealand</i>	16.0	18.1	17.6	17.0

Early childhood education

Government must continue to support initiatives for language nests and other Pacific education facilities to operate. With a better understanding of their own culture children have a sense of identity and that is important for forming positive values, which in turn impacts on lifestyle and society. Having more Pacific teachers as role models with culturally appropriate teaching styles provides the opportunity to contribute towards improving Pacific student achievement and the fit between schools and Pacific peoples. This requires teachers 'adding value' to the culturally specific skills that children bring from home. While some good work has begun in these areas there is a need to sustain and enhance these important beginnings. The Pacific Working Group looks forward to the results of research on education patterns and removal of barriers for Pacific peoples planned for the 2000 – 2002 period to inform future policy making in this area.

Access

All children need access to education. As in health, there are Pacific children who are denied free education. Pacific children born in New Zealand of non-resident parents are denied access to education because of their parents' immigration status. Likewise access is denied Pacific children who are not residents or citizens of New Zealand. This is an aspect of access to education that the Pacific Working Group would like to see government address as quickly as possible. Pacific children in New Zealand for health reasons are often denied access to education unless they are in hospital, although even this has changed with time restrictions now being enforced, exposing them to poor educational achievement. This situation provides a clear example of the need for intersectoral policies to be mindful of the access barriers for Pacific children in being able to receive what is rightfully in their best interest. There needs to be some commitment to giving Pacific children skills and a sense of belonging, even if only for a short time.

The impact of globalisation and new technologies

Information sent globally through a wide range of media is reaching many more young people than in previous generations. Countries are now competing with each other for highly skilled labour. It is advantageous for young people and New Zealand as a whole that they harness opportunities and successfully adapt to the innovative and creative world in which they live (Ministry of Youth Affairs, 2002).

However, globalisation also brings significant problems for young people. Increasing rates of social change and competition for training and job opportunities increase the stress they experience. There will be implications when reviewing policies that encourage young people to stay in New Zealand, such as the Employment Strategy and policies relating to student loans (Ministry of Youth Affairs, 2002).

The impact on Pacific children and young people will be dependent on their educational achievement and the family's financial situation. Poor educational achievement limits their ability to participate in society and respond to globalisation positively. While student loans provide an answer to access issues, the repayment of these often drives young people overseas in order to be able to afford the repayments, or it becomes a 'millstone around their necks' driving them further into debt.

Employment opportunities

Pacific people with educational qualifications are less likely to be unemployed (rate at 7.4 percent compared with national rate of 4.1 percent) than those without qualifications.

Labour force participation and employment rates among Pacific peoples fell markedly as a result of economic restructuring and job losses in the 1980s and early 1990s but more recently there has been some recovery.

Unemployment is particularly high among young Pacific peoples, at 36.7 percent for 15 to 19 year olds and 21.5 percent for 20 to 24 year olds in 2001.

Pacific peoples born in New Zealand are less likely to be unemployed than overseas-born Pacific peoples of similar age, and unemployment rates for the overseas-born decline markedly the longer they have been living in New Zealand.

Pacific children and youth and justice

Human rights in the context of Pacific peoples

Fundamental human rights are about entitlements to the basic necessities of human life. Human rights in relation to physical, social, mental, cultural, spiritual and emotional nurturance is generally undisputed across cultures. What is disputed, however, is the question of who defines what are the basic necessities and how are they provided for.

The discussion of rights in the context of Pacific peoples must find balance between individual desires and the collective well-being – for example:

points of reference embodied in the va fealoaloa'i need to be recognized by mainstream international child rights discourse before any real dialogue around how to educate Samoan parents and children of their rights can begin...without recognition of this need, gaps in meaning occur.

This notion is explored in an unpublished paper co-presented at a Pacific History Association Conference hosted by the National University of Samoa Papaigalagala and the University of the South Pacific in December 2002 entitled 'Competing spirits of governing Samoan youth offenders.'

Immigration

Pacific peoples who have migrated 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. Because of their immigration status i.e. neither citizens nor residents, there is inequitable access to health, education and welfare services for some Pacific children and young people.

Children and young people from Samoa, Tonga and Fiji who are not citizens or permanent residents are treated differently from children who hail 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 the next hurdle for them is to prove residency within a certain time frame, as an additional requirement to having New Zealand citizenship status. This presents a delay in accessing health, education and welfare services for all Pacific children who are non-resident irrespective of their citizenship status.

Issues surrounding children who are citizens, versus their parents who are not, present more difficulties in attempting to access housing as well as income, health and education. Pacific peoples look forward to the Government's pledge in *Children in New Zealand (2000)* to the United Nations Committee on the Rights Of the Child to consider removal of this Reservation once it has identified possible difficulties in doing so and has considered options for addressing those difficulties.

Convictions

Pacific peoples experience higher rates of conviction and prosecution than the total population, particularly in the younger age groups.

- Rates of conviction are higher among the Pacific population than among the total population regardless of age. Those with the highest rates are 17 to 19 year olds, with 843 convictions per 10,000 Pacific peoples, compared with 698 per 10,000 in the total population.

- Pacific people accounted for 15 percent of convictions for violence in 2000. However, they were under-represented among convictions for drug offences, making up less than 4 percent of convicted drug offenders in 2000.

The Government recently launched the *Department of Corrections Pacific Strategy*. One of the Strategy's key initiatives Fautua Pasifika is that Pacific community leaders will have greater and easier access to Pacific inmates. The Strategy particularly targets Pacific young men. The Pacific Working Group look forward to reports on the progress of this community-driven strategy.

Because of the youthfulness of Pacific offenders the Pacific Working Group also recommend that Government extend youth advocacy services, given the importance of this service for Pacific youth, especially in terms of negotiating between parents and their children.

Other issues

Child and youth strategies

The UN Committee's concerns regarding the lack of a comprehensive national child policy to guide support services sparked a series of child and youth-specific policies such as *Agenda for Children* (Ministry of Social Policy, 2001) and *Youth Development Strategy Aotearoa* (Ministry of Youth Affairs, 2002). The Committee's concerns regarding the needs of single-parent families and youth suicide also relate to teenage mothers and Pacific youth mental health. Nevertheless, adolescence, youth or young people's development differs from child issues as highlighted in policies that target teenage sexual health behaviours (Ministry of Health, 2001, and, tool kits or policies that target youth mental health issues (Mental Health Foundation, 1997) including youth suicide (Beautrais, 2000; Lawson-Te Aho, 1998).

Other government initiatives include new Youth Development Programmes such as Young New Zealander's Challenge (part of the Duke of Edinburgh's Award in New Zealand), which is a youth development programme for 14 to 25 year olds. It is designed to engage young people in interesting activities that challenge them, grow their skills and help them contribute positively to their communities. To achieve the Award's different levels, participants complete a mix of community service activities, expeditions, physical activities and skills development (Ministry of Youth Affairs, 2002). From July 2002, Youth Affairs has been funded to support the Young New Zealanders' Challenge. A particular focus of their work will be extending the Challenge to young people least likely to undertake it, including Pacific young people (Ministry of Youth Affairs, 2002).

The *Youth Development Strategy Aotearoa* will manage issues that arise from the increasing diversity of New Zealand's youth population, and the special needs of groups such as Pacific young people (Ministry of Youth Affairs, 2002). The youth development approach of the *Strategy* has a particular interest in Pacific youth development. Pacific culture, values and practices are very strong in New Zealand. Young Pacific peoples need to develop their own identities among conflicting systems and two or more cultures. For young Pacific peoples this means: acknowledging the different Pacific communities; recognising Pacific young people in the context of their families, promoting opportunities for retaining language and culture; using appropriate methods and learning styles for engaging with Pacific young people; promoting and using mentoring programmes and role models; working alongside the strong church connections in Pacific communities; providing culturally appropriate services in schools; empowering Pacific young people with opportunities to participate in decisions affecting their lives; supporting Pacific community-based youth programmes; and increasing cultural understanding by non-Pacific peoples of Pacific culture and values (Ministry of Youth Affairs, 2002).

The Pacific Working Group emphasises that any strategies to address the rights of children and young people must focus on their strengths, not their deficits.

Language

It is crucial, that government recognises the importance of language within culture. The Pacific Working Group therefore recommends that Government provide translations of the *Convention on the Rights of the Child* into languages of the Pacific namely Samoa, Tonga, Cook Islands, Niue, Fiji, Tokelau and others.

Conclusion

It is encouraging to see that government recognizes the need for a consolidated work programme around the Convention and has developed the *Agenda for Children* and the *Youth Development Strategy Aotearoa* to provide a framework to inform policy development and research.

The next challenge is to ensure that the many government initiatives targeting Pacific children and youth are actively implemented with timelines, adequate and specific funding and regular reporting back to Pacific peoples on the achieved outcomes.

Though there are many initiatives and policy improvements being considered by Government, children continue to suffer. One of the challenges for government is to ensure that policy development, whilst taking into account a comprehensive framework and being inclusive of affected communities in striving for solutions, must also keep pace with immediate issues at the coal face.

It is critical that the design of any implementation strategy must incorporate key stakeholders such as family, church and culture, for these components are fundamental to the environment within which Pacific children must be understood.

In this discussion document we have attempted to arrive at some recommendations to government that will benefit and protect the rights of Pacific children in Aotearoa New Zealand. The notion of *rights* is a difficult one from a Pacific perspective. A more in-depth exploration of individual rights versus collective responsibility is required.

The proposed vision, principles and values, within a framework of intersectoral collaboration and co-ordination, are intended to lay a firm foundation to ensure that initiatives to protect the *rights of the child* do not occur in isolation. One of the dysfunctional mechanisms of implementation of past intersectoral initiatives is that the lead agency often carries the cost burden as well as the responsibility for co-ordination of services leading to less than satisfactory outcomes.

In conclusion, this document strongly recommends that government provide robust policies that provide a balanced and considered intersectoral worldview, taking into account *all factors* likely to impact on the child in the context of their family, *whatever the description of that family is (i.e. parents, extended family, aiga, fanau magafaoa, kopu tangata...)*.

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's 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 recognises and responds 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.

Acknowledgements

ACYA is deeply appreciative of Ben Taufua who co-ordinated this paper, Metua Faasisila, Moses Faleolo, Ruth Safole, Reverend Dr Peniamina Vai, Rosetta Simanu, Mary Paitai, Dr Maika Veikune, Dr Teuila Percival, Melissa Lelo, Jackie Curry, Sailau Suaalii-Sauni, Hilda Faasalele, Marianne Pua, Helen Mavoa, and others who contributed.

References

- Beautrais, A.L. (2000). Restricting Access to Means of Suicide in New Zealand: A Report Prepared for the Ministry of Health on Methods of Suicide in New Zealand 1977-1996. Wellington: Ministry of Health.
- Cohen, E., MacKenzie, R.G. & Yates, G.L (1991). 'HEADSS, a Psychosocial Risk Assessment Instrument: Implications for Designing Effective Intervention Programs for Runaway Youth'. *Journal of Adolescent Health* 12: 539-44.
- Counties Manukau District Health Board (2002). *Pacific Population Health Indicators*. South Auckland: Ministry of Health.
- Davis, P. & Dew, K. (1999). *Health and Society in Aotearoa (New Zealand) New Zealand*. Auckland: Oxford University Press.
- Dillon, L. & Faleolo, M.M. (2002). *Medical Sociology: A Pacific Youth Health Intervention*. West Auckland: Pasifika Youth Health Services (unpublished).
- Grant, C. (1999). Pneumonia in children: becoming harder to ignore. *New Zealand Medical Journal*, 112, 345-7.
- Gray, A. (1994). From counselling to cough mixture: Young people's views on health and disability support services. Wellington: Gray Matter Research Limited for Ministry of Youth Affairs.
- Goldenring, J.M. & Cohen, E. (1988). 'Getting into Adolescents HEADS'. *Contemporary Paediatrics* July: 75-90.
- Henderson, L. J. (1935). 'Physician and patient as a Social System'. *New England Journal of Medicine* 212: 819-823.
- Lawson-Te Aho, K. (1998). A Review of Evidence: Kia Piki Te Ora O Te Taitamariki The New Zealand Youth Suicide Prevention Strategy. Wellington: Te Puni Kokiri Ministry of Maori Development.
- Masinalupe, Tusipa Masinalupe, Samuelu, Tuli Fepuleai & Suaalii-Sauni, Tamasailau M. (2002). *Competing Spirits of governing Samoan youth offenders*. Department of Justice Samoa & Department of Sociology: University of Auckland New Zealand (unpublished).
- Mental Health Foundation (1997). Young People and Depression: A comprehensive resource for people working with youth. Auckland. Mental Health Foundation of New Zealand.
- Ministry of Education (2000). *Data Management Unit*. Wellington: Ministry of Education.
- Ministry of Health (1995). Effective health services for young people: Te Toiora O Toku Whanaketanga. Wellington: Ministry of Health.
- Ministry of Health (2001). *Sexual and Reproductive Health Strategy: Phase One*. Wellington: Ministry of Health.
- Ministry of Health (2002). *The Pacific Health and Disability Action Plan*. Wellington: Ministry of Health.
- Ministry of Health (2002). *Youth Health: A Guide to Action*. Wellington: Ministry of Health.
- Ministry of Pacific Island Affairs (2002). *Pacific Progress: A report on the economic status of Pacific Peoples in New Zealand*. Wellington: MPIA.
- Ministry of Social Development (2002). *Pacific Strategy 2002*. Wellington: Ministry of Social Development.
- Ministry of Social Policy (2001). *Agenda For Children*. Wellington: Ministry of Social Policy.
- Ministry of Youth Affairs (2000). *Building Resilience: Briefing to the Incoming Minister*. Wellington: Ministry of Youth Affairs.
- Ministry of Youth Affairs (2002). *Youth Development Strategy Aotearoa (New Zealand)*. Wellington: Ministry of Youth Affairs.

- Parsons, T. (1951). The Social System. Illinois: The Free Press.
- Public Health Commission (1994). The Health of Pacific Islands People in New Zealand. Wellington: Ministry of Health.
- Resnick, M.D. (2000). 'Protective Factors, Resiliency, and Healthy Youth Development'. Adolescent Medicine 11 (1): 157-164.
- Shaw, V. (2001). 'Clinical Skills for Improving Health Outcomes in Adolescents'. New Ethicals Journal May: 21-6.
- Statistics New Zealand (2002). 2001 Census of Population and Dwellings. Wellington: Statistics New Zealand.
- Statistics New Zealand (1998). New Zealand Now: Children. Wellington: Statistics New Zealand.
- Stern, B.F. (1927). Social Factors in Medical Progress. New York: Columbia University Press.
- Tukuitonga, C., & Robinson, E. (2000). Hospital admissions among Pacific children in Auckland, New Zealand, 1992-97. New Zealand Medical Journal, 113(1116), 358-361.
- Watson, P. (2001). 'Adolescent Health in New Zealand'. New Ethicals Journal, February: 23-6.
- WHO Final Report: Regional Working Group on health needs of adolescents. Cited in B.D. Young (1985). 'Young people and their health needs: a global perspective'. Journal of Adolescent Medicine 1: 1-14.

Appendix Five

ASIAN CHILDREN AND YOUNG PEOPLE

ACYA Working Group on Asian Children and Young People

Please also see Appendix Ten: General Principles of the Convention; Appendix Twelve: The Family Environment; Appendix Fifteen: The Education of Children and Young People; and Appendix Eleven: Civil Rights and Freedoms.

If you plan for a year, sow rice;
If you plan for a decade, plant trees;
If you plan for a lifetime, educate children.
- Chinese Proverb

Introduction

This paper is based on the experience and knowledge of the Asian community and people who work with 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. For example, most of the issues presented in this report have to be based on anecdotal accounts because statistical data is usually not available; the situation of Asian children and youth is not included in the New Zealand Government's report to the UN Committee on the Rights of the Child, *Children in New Zealand (2000)*; and the increased ethnic and language diversity of New Zealand is not reflected in the practices of government agencies.

Recently, one particular political party has challenged New Zealand's Asian immigration policy. Such challenges affect the well-being of Asian children and young people, who are already struggling to 'fit in', and compromises the spirit of unity in this country.

Discrimination

Asian children, young people and their families experience discrimination and sometimes feel 'second class citizens.'

They often have difficulty accessing services. Services for children, young people and their families appear to not recognise the existence of Asian people or respect Asian cultures and values. The dominance of western knowledge and cultural values means that ethnic specific knowledge and values are not appreciated. This raises issues about policies. As examples:

- There is no overall government strategy for Asian people in any sector.
- Services usually assume that the western nuclear family model is the norm and do not necessarily appreciate the importance of the extended family for Asian children and youth.
- Related issues which affect access to services for Asian children, young people and their families are the composition of the workforce – for example, the Child, Youth and Family Service employs only 13 full time equivalent Asian staff as social workers and psychologists – and the need for non-Asian staff to learn about Asian cultures and values.
- There are limited opportunities for Asian children and youth to learn and speak their mother tongue in a school setting. Some schools teach Japanese, Mandarin, and other Asian languages. There are some community language classes and activities established by the Asian communities.

- Racial harassment of children at schools and in the community may be overt – and at other times subtle, such as Asian children experiencing being ignored. 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.
- Some tertiary institutions have introduced entry restrictions into some courses for students who are not born in New Zealand are required to pass an English proficiency test to gain entry to some courses. There are concerns that this policy does not apply to all non-New Zealand students, and particularly affects Asian students.

Asian children and young people also experience discrimination because of their religious beliefs. For example, many schools and workplaces have dress codes that apply to everyone without exception and do not respect those who adhere to Islamic, Sikh & Hindu customary practice or contravene basic standards of decency for followers of various faiths (for instance, young Muslim women may have difficulty accessing employment if uniform exposes certain parts of the body). Asian employees may not be able to observe significant religious occasions such as Hindu New Year. Employers should be educated on different culture customs and are more culturally sensitive.

Asian children and youth experience discrimination from stereotyping. For example, there is concern from Asian youth that they are being stereotyped by the Police and becoming a target for Police monitoring road behavior. Also, there have been reports of young Asian women being targets of sexual attacks because of the perception that they will not report crime. Asians are considerably underrepresented in the Police force, which may be part of problem.

There are various mechanisms for complaints about discrimination. However these are usually predicated on Western forms of knowledge and disregard the cultural diversity of the population – including many of those who have important issues for redress. It has been very difficult to channel grievances and concerns through such frameworks because they have not appeared to be responsive to Asian means of resolution. The value placed by Asian people on harmony and unity is not recognised by such mechanisms.

Recommendation

- A plan of action be developed and implemented – with the participation of Asian children and youth, their families and communities – to ensure they are able to enjoy all their rights under the Convention without discrimination. Initial steps should include:
 - # Ensuring that Asian children and youth are included in statistical and qualitative information;
 - # Education of schools, tertiary institutions, other services and employers about cultural sensitivity towards Asian children and youth and non-discriminatory practices;
 - # Developing strategies to increase the numbers of Asian social workers, Police and other services;
 - # Developing strategies to increase the involvement of Asian parents in early childhood centres and schools;
 - # Developing existing complaints mechanisms so that they are responsive to Asian means of resolution of difficulties; and
 - # Promotion of Asian cultural successes highlighting the values held in common with tangata whenua (Maori) and other ethnic groups.

Families

Government policies and agencies assume that the norm of a family is the western nuclear family model. However for Asian people there is considerable value placed on extended families and the family is not necessarily seen as a finite group. Asian perspectives regard child rearing practices as involving family consultation, especially in family breakdown situations where the best interests of the child are regarded 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 – the children are usually teenagers and may be supervised by a relative

- '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 school and educational institutions in New Zealand as 'foreign fee paying students'. Their access to services such as healthcare needs special attention from the Government.
- Parents working very long hours – this may be because long hours are needed to make a living (for example, from a small family-owned business), or because migrant people may be reluctant to apply for benefits. Available out of school care tends to be in afternoons rather than the evenings meaning that children may be unsupervised at night.

In August 2001 there were about 1,823 foreign fee paying students in New Zealand primary schools and another 8,732 in secondary schools and 12,649 in state tertiary sector, 3,289 in private tertiary institutions, and 26,203 in English language school. Ninety-two percent of school foreign fee paying students, and 83 percent of public tertiary foreign fee paying students were of Asian citizenship. 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, 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 – for example, if a child is unhappy and wishes to change schools, the school may oppose this because they will lose the fee, and the child is not in a position to be able to advocate for themselves.

The effectiveness of the Code and guidelines on protecting the safety and rights of children and youth has yet to be established.

Recommendations

- Legislation, government policies and practices, and service provision recognise the importance of extended families and valuing of collective responsibility to Asian children and youth. The funding and provision of services should cater to different family profiles –including 'astronaut families', 'parachute kids', international students and parents' hours of work. The development of such services requires recognition of diversity and values held by families, consultation and needs analysis, sustainable management and funding, and ongoing evaluation.
- 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 who are in New Zealand as international students, with special attention being given to the situation of young unaccompanied children.

Education

Asian children and young people often experience difficulties in the education system. This is especially so for those whom English is a second language. Although schools receive extra funding to support these students, there are no policies in place in schools regarding monitoring and auditing the outputs from the funding.

Schools often lack policies and processes to prevent racial harassment or systems to support students experiencing racial harassment.

There are barriers to the families of Asian children and youth being involved in schools, because both schools and associations for parents may not cater for the needs of Asian parents. For example, parents may not have opportunities to learn how the New Zealand education system works and communications between schools and parents may be only available in English.

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. For example, there is very limited teaching of Asian history and culture within schools, there is a lack of support systems that respond to the linguistic and cultural needs of Asian students, and the value placed in Asian cultures on a holistic approach is often not recognised. For those who leave school early because of language difficulties there is little in place to support their transition to work.

Recommendations

- The Ministry of Education give urgent attention to assisting schools develop and review strategies for protecting children from racial harassment and bullying. This also requires ongoing evaluation of the effectiveness of such strategies.
- The Ministry of Education review the measures taken by schools to assist students for whom English is a second language (including what is done with the extra funding for those students) and make recommendations to the Minister of Education on what further actions are necessary to ensure that students receive help they are entitled to. Such a review must include input from Asian children, youth, families and communities.

Conclusion

The rights of Asian children and youth have not been addressed seriously and many have been disadvantaged as a result. It is time for the Government to redress this and meet its obligations.

Recommendations

- 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.
- There be more thorough and sensitive planning, preparation and integration of, as well as support for, Asian children, youth, families and communities.

Acknowledgements

ACYA is deeply appreciative of Vivian Cheung who co-ordinated and wrote this paper, and others who contributed.

Appendix Six

REFUGEE AND ASYLUM SEEKING CHILDREN AND YOUTH

ACYA Working Group on Refugee and Asylum Seeking Children and Young People

Please also see Appendix Eight: General Measures of Implementation and Appendix Eleven: Civil Rights and Freedoms.

Introduction

Children who are already traumatized by the refugee and asylum experience, have their resettlement, restoration and social integration put at risk across all aspects of their lives, when they experience neglect of any rights or access to provisions. A nation's commitment to the care and protection of all children is a critical indicator of their status in that society and of the priority afforded children in that society.

Laws and practices within a country should comply with *United Nations Convention on the Rights of the Child*. Articles especially relevant to children in situations of emergency (Articles 22,38,39), children deprived of their liberty including any form of detention, imprisonment or placement in custodial settings (Article 37) children belonging to minority groups (Article 30) children in situations of neglect including physical and psychological recovery and social reintegration (Articles 32 – 36) and children separated from their parents (Article 9),

This paper is based on the views of a diverse group of people with relevant experience and knowledge who are active in the NGO sector, and children and families from the refugee and asylum seeker communities.

The UN Committee's 1997 Recommendations

The Recommendations made by the UN Committee in 1997 that are directly relevant are:

Take steps to withdraw its reservations to the Convention (Paragraph 22).

The State party prepare and adopt a comprehensive policy statement with respect to the rights of the child, incorporating the principles and provisions of the Convention, that could provide guidance to all those involved in support services delivered or funded by Government (Para.22).

A further review of the system of data collection be undertaken, giving priority attention to the identification of appropriate disaggregated indicators...all groups of children particularly the most disadvantaged (Para. 25).

Appropriate mechanisms be established to ensure the physical and psychological recovery and social reintegration of children victims of such ill-treatment and abuse in light of article 39 of the Convention (Para.29).

All refugee children, including asylum seekers coming to New Zealand outside UNHCR-organised schemes be given the benefit of introduction assistance and Government delivered or funded support services (Para. 32).

The New Zealand Government has not fully complied with these major Recommendations made by the UN Committee in 1997.

The New Zealand Government report, *Children in New Zealand* (2000)

This paper does not attempt to review the adequacy of the Government report to the UN Committee, *Children in New Zealand*, (Ministry of Youth Affairs, 2000), beyond saying that the process of its development was transparent with children and young people and NGOs being given opportunity to comment on the first draft. Some reference is made in *Children in New Zealand* (2000) to issues raised by NGO submitters.

The Government report focuses on positives and gains but minimizes some significant problem areas. Sections of *Children in New Zealand* of particular relevance to this paper are the following sections:

- Part 5 Family Environment and Alternative Care (p. 69-96) including Children deprived of their family environment (p. 82) and Family reunification (p. 80) and Abuse and neglect; physical and social recovery and social reintegration (p. 86).
- Part 6: Basic health and welfare (p. 97-113).
- Part 7: Education (p. 117-141).
- Part 8: Special Protection Measures (p. 155).

New Zealand's acceptance of refugees

New Zealand has one of the most humanitarian policies in place in terms of acceptance of refugee peoples with high health needs for resettlement. New Zealand gives priority to people with medical conditions and disabilities. Ten per cent of our annual quota is allocated to adults and children in the medical/ disabled category. Additionally ten per cent of the annual quota is reserved for women-at-risk in refugee camps and their children who have high health needs.

The majority of refugee women-at-risk in need of resettlement have gone through particularly harsh experiences, not only of rape, but torture and multiple losses (Worth et al, 2001). Many refugees are single women who face the burden of caring for a large family without the support of the traditional extended family. There is often a high level of illiteracy and considerable marginalisation in New Zealand society. Inadequate parental supervision of male children in many cases results in school suspension. Most recently arrivals in New Zealand have included children from the Al Rafa camp in Saudi Arabia where families have lived for up to 25 years.

Entitlement to services

Children in New Zealand who arrive as refugees and asylum seekers are able to access publicly provided health, education and welfare services. Refugees arriving as part of the annual New Zealand quota of 750 United Nations mandated refugees are resident on arrival and therefore eligible for all New Zealand health, welfare, education, income support and other services publicly provided by the government. Similarly people seeking asylum in New Zealand are eligible for all publicly provided services when they make application for refugee status and while appealing rejection of their claim, if they are issued with an immigration permit.

The introduction of a routine detention regime in September 2001, has meant that asylum seekers on conditional release from detention are no longer issued with any immigration permit and therefore need to pay for any government health services accessed or used by their families. They can access the Refugee Health Clinic at Greenlane Hospital free of charge. Following the intervention of several NGOs, children of asylum seekers can now attend school. The New Zealand Immigration Service's definition of an asylum-seeker is someone who has applied for refugee status (New Zealand Immigration Service, 2000a; New Zealand Immigration Service, 2000b).

Eligibility for health services

Under section 25 of the *Health and Disability Services Act 1993*, the Minister of Health directed services that people who have refugee status or are in the process of applying for such status as eligible for publicly provided health services (Minister of Health, 2000). 'Eligibility' means the right to be considered for receipt of publicly funded services, but does not equate to an entitlement to receive those services.

Some refugee families are prevented from access to some services in the area of housing, welfare, and income support because of policy constraints. For example, Housing New Zealand have a two year stand down period for new New Zealand residents to make application for State rental housing. Quota refugees are exempt from this and receive state funded housing assistance on arrival, but families who arrive as asylum seekers or under family reunification policies are only eligible for this assistance two years after their refugee status claims are accepted.

Eligibility for education services

In 1993 the *Human Rights Act* acknowledged that race, gender, and ability are not grounds for discrimination including exclusion from mainstream schooling. The National Education Guidelines stipulate a legal requirement for all schools to:

- Ensure the highest standards of achievement through programmes which enable all students to realise their full potential as individuals and to develop the values needed to become full members of New Zealand society;
- Recognise the equal opportunities for all;
- Give particular consideration to those with special needs; and
- Encourage respect for ethnic diversity in New Zealand. (Ministry of Education, 1997)

Younger refugee and asylum seeking children may attend early childhood services. The *Education Act 1989* sets out legal requirements for Early Childhood Centres, regarding charters and ministry monitoring procedures. The *Education (Early Childhood Centres) Regulations 1998* detail licensing standards for all centres, and the *Education (Home-based) order 1992* sets out a code of practice for chartered care and education. These regulations and Desirable Objectives of 1996 set out in the implementation handbook, *Quality in Action* (1998) provide a framework for Early Childhood Education. Teachers in this sector also have a code of ethics and the Convention is an acknowledged part of this code. The development of a National Curriculum, *Te Whaariki: He Whaariki Matauranga mo nga Mokapuna o Aotearoa* (1996) provides a principled reference point for Early Childhood teachers' principles, beliefs and equitable practices.

The number of refugee and asylum-seeking children

There is no data collected by any government department identifying the numbers of children who are from refugee and asylum seeking backgrounds. A breakdown of the 1996 census figures by ethnicity and residence shows the number of persons under 18 years of age who have arrived in New Zealand within the previous 5 years. Where ethnic groups are selected from countries where there has been war or widespread political violence, the number of children under 19 years who had arrived in New Zealand between 1991 and 1996 totals 8573 (CCAFS, 1999). Most families from refugee backgrounds live in Auckland. The Mangere Refugee Resettlement Centre has estimated that one third of new arrivals to the centre are children (Reeve, 1997). The numbers of children and young people among the 500 people who arrive annually under the family reunification scheme are not however identified. Many services including Income Support, Child, Youth and Family services, general practitioner, Plunket (well child care), midwifery, disability services, and family violence centres do not have interpreters, language appropriate written information or people from ethnic minority communities employed in agencies.

National comprehensive resettlement and integration policy

Key Finding: There is no comprehensive resettlement and integration policy in place in New Zealand to meet the needs of refugee families, asylum seekers and their children.

There is no overarching national policy to provide principled and legitimised provision and co ordination of services. Such a policy would be a way of addressing the inequalities and disadvantage. Refugee populations represent an increasing group who are socially and economically marginalised and disadvantaged in New Zealand, partly because they are not included in any domestic policy or strategy. Refugees and asylum seekers are not a priority for targeted interventions in government strategies to tackle inequalities in health and education (Ministry of Health 1998a; 1998b; 1999a; 1999b; 1999c; 2000b; National Health Committee, 1998).

There is a paucity of information in health, welfare, housing and education sectors relevant to the needs of policy design and service planning and evaluation for refugee children in New Zealand. In part this is an artefact of the absence of reliable and accurate ethnic data collection. The *New Zealand Health Strategy, 2000* (Minister of Health, 2000a), for instance, identifies the Government's priority areas and aims to ensure that health services are directed at those areas that will ensure the highest benefits for our population. However, there is no focus in particular on tackling inequalities in the health and well being of refugee families.

There are more refugees living within the Auckland District Health Board's area than any other District Health Board. The Board has identified key issues in health care for new migrant families in the Auckland region in its *Proposed Strategic Plan for the Auckland District Health Board 2002–07* (Auckland District Health Board, 2002). New Migrants are defined as peoples from Asia, Africa, Eastern Europe and people of refugee origin. The Board currently has a \$NZ 72 million deficit requiring economies in staffing and services that mean that any short or medium term changes to health care for refugee children are unlikely.

Key issues identified by the Board attest to the lack of national policy and local integration of health and mental health services for refugee children. Families raised health and counselling concerns. An example is HIV testing

of everyone including children at the Refugee Centre. When the test is positive no counselling is given. Children especially need counselling when a parent dies of AIDS. Counselling services are inadequate and lack respect for cultural traditions regarding diagnostic information. The Refugee and Migrant Service only have funding to be systematic in following up on refugees for six months – thus support is often not available when it is needed most (Auckland District Health Board, 2002 p. 40- 44).

The Ministry of Education report *Interventions for Refugee Children in New Zealand Schools* (2001) highlighted that New Zealand has one of the lowest rates of post arrival support (p. 2). According to van Hees, not only language oriented educational assessments are required, but also social assessments relating to housing, health status and community must be part of sound educational provisions (1994, cited in Kennedy, S. & Dewar, S., 1997). *Interventions for Refugee Children in New Zealand Schools* concluded that:

Without Government support and the development of a national policy (refugee resettlement) it will be difficult to engage all major contributors in an integrated and efficient co-ordination of services (p. 49).

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.
- The Government ensures that, a comprehensive and constructive plan of action to target obstacles to equality for children in these groups, is devised in consultative and participatory process with these groups and the children.

Information

Key Finding: There is no standardised and reliable data collection for refugee communities and asylum seekers in New Zealand or any process of monitoring or evaluating the status of refugee and asylum seeker children and the services provided for them in New Zealand.

Data collection and disaggregation

In New Zealand population statistics, small ethnic populations such as Somali and Ethiopian groups are invisible. However in the Auckland region (the biggest metropolitan area), the refugee and migrant populations outnumber Maori and Pacific communities. They are concentrated in the central Auckland area and represent sizeable school populations, Housing New Zealand tenancies and health services use (Ainsworth & Johns, 2001).

Collectively services for ethnic minority groups in high density zones represent large increases in operational budgets in the education, housing, health, income support and welfare sectors. But there is considerable undercounting in official statistics and therefore under-funding of services. It has been argued that the disaggregation of ethnic data is too small to be statistically valid (Allan, 2001; Treliving, 2001). Combined aggregates of peoples from areas of the world where regional conflicts exist may provide better indicators of need for health, welfare, English language teaching, income support and housing services.

Not only are ethnic groups considered too small to warrant detailed statistical attention but also it is difficult for policy makers and researchers to obtain good information in regard to refugee children in New Zealand, as the quality of the data collected by many agencies on the status of ethnic minorities is absent or unreliable. For example:

- The Ministry of Social Policy only collects ethnicity data as part of specific research and evaluation projects. It does analyse data collected by agencies on ethnicity that deliver social services, such as the Departments of Work and Income, and Child Youth and Family (Lang, 2001) – however the Department of Work and Income does not collect ethnicity as a compulsory field on all registered unemployed persons and on people receiving social welfare benefits.
- Ministry of Education educational participation rates are calculated by ethnicity for census years only and ethnic inter-censal population estimates are not used, as it is believed that these estimates are not accurate due to the lack of ethnic data on external migration. The ESOL (English for Speakers of Other Languages) database set up in 1998 has data available on the language status of children enrolled in compulsory sector education settings only.

- Statistics kept by the Immigration Service are unable to identify all those coming to New Zealand from a refugee background. The arrival of asylum seekers and quota refugees are noted, but those arriving through family reunification policies are not.

Regional funding allocation in the Ministries of Health, Education, Social Services, Police and Justice are population-based with loading for factors in New Zealand such as rural isolation (Lang, 2001). Refugee populations are not represented in the census statistics and therefore population-based funding formulas do not recognise the size and growth rate of refugee and migrant populations such as in Auckland City. Refugee populations in Auckland have high unattended specialised health, disability and mental health service requirements, including long-term benefit support, and Child Youth & Family Services (ICRR, 2000; Lockhart, 2001). This lack of funding severely limits the ability of agencies to develop any services and programmes specifically for refugee families.

Age assessments

There is no agreed method for assessing the ages of children from refugee families and asylum seekers, on arrival in New Zealand. Sometimes the ages of children recorded on arrival documents when children enter New Zealand are incorrect. Despite many attempts to get the Immigration Service to change the supposed age, the Immigration Service steadfastly maintain that nothing can be done once people have arrived in New Zealand. Age assessment is a highly contested area and subject to much contention internationally. New Zealand has no agreed methods of assessing children's ages. Where medical methods are used such as bone density tests, this may be considered medical intervention without therapeutic purpose. The best interests of the child must prevail. By refusing to consider information to enable children to correct their records, New Zealand acts in the interest of the state and not in the interest of the child.

Recommendations

- Government establish a standardised nation wide system of disaggregated data collection on all persons under 18 years, including refugee and asylum seekers, and that this data, together with consultation with these groups be used to assess, progress and design policies.
- The Government acts in accordance with the best interests of the child, when collecting, verifying and applying data, and that the child is effectively involved in correction of his/her records.

Barriers to accessing services

Key Finding: Although eligible for services, children of refugee families face significant barriers to accessing social welfare, health care and education services. This is particularly so for those children of families who arrive as asylum seekers.

There is no comprehensive national refugee resettlement policy to ensure cross sector co-ordination which acknowledges the specialised nature of the socio-emotional, linguistic and educational support required for these groups.

Gender and cultural sensitivity of personnel is paramount, but there are few trained cross cultural staff available to work with children and families

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 they are eligible for many of the same services and support for health, education, welfare, employment or housing assistance (Upreti et al., 1999; Wansbrough, 2000).

Access to trained interpreters

Although refugee communities have high health and welfare needs, mainstream services have little cultural expertise, specialist knowledge of the management of trauma and the refugee experience. Many services do not have interpreters, language appropriate written information or people from ethnic minority communities employed in agencies.

Refugees and asylum seekers face considerable language barriers to accessing services. There are at least 40 languages and dialects spoken in the New Zealand refugee population. Providers in the sectors of primary health, housing and income support receive no additional funding to provide interpreting services. There are no interpreting services available to primary health care, disability services, and family violence centres. Limited access to trained interpreters is available within some levels of the health and judicial system only. Access to trained interpreters or translators in early childhood, primary or secondary education sectors is not available. The Child Youth and Family service are unable to provide adequate interpreting services for parenting skills courses, counselling, anger management and childcare services. Community organisations contracted for the provision of, for instance, disability services for children are unable to provide interpreters and therefore access to services is limited. Many mainstream services use inappropriate family or community members as 'interpreters' (ICRR, 2000).

Refugee families have expressed concerns that they are required to fill in forms without a correct interpretation of their language and which may appear contrary to their cultural values and beliefs, and are anxious about implications of what they are signing (for example, the definition of a family). Families have suggested that reunification papers could be completed some months later after refugees trust the New Zealand process, as there are too many pressures on families while they are at the Mangere Refugee Resettlement Centre. It is important to show respect for the journey people have been on.

Costs of services to families

Primary health care and medicines in New Zealand are costly. Many families living on income support and cannot afford to go to the doctor or to fill prescriptions. Refugee women have commented that the allocation of \$NZ 1,200 as initial financing is not enough for one person let alone families. If a husband arrives first he is given the \$NZ 1,200 while his wife and children receive nothing extra on their arrival.

The Auckland City Strengthening Families Co-ordinator reports that 15 percent of the families referred annually to the service are from refugee backgrounds and that numbers are increasing. The issues identified in inter-agency meetings generally include financial hardship, inadequate housing, domestic violence, disabilities, mental illness, truancy and youth offending. The Co-ordinator stated that:

For refugee families, many of these issues are made more complex because of language barriers, cultural issues, family composition, immigration status, concerns for family members overseas, lack of programmes and services to support their long term settlement needs; lack of expertise within agencies working with them; and lack of community resources & support (Jorgensen, 2001).

The Auckland Refugees as Survivors Centre point out:

There is a lack of parenting courses for the refugee communities offering support or guidance around parenting issues and New Zealand laws. It is not uncommon, under the 'women at risk' policy, that solo mothers arrive to the country with a big number of children. Without the support of a husband or the extended family, managing the children tends to be a difficult task (Auckland Refugees as Survivors Centre, personal communication, 2002).

There is a high level of family breakdown, mental health problems and financial difficulty in refugee families who have resettled in New Zealand. Often the linguistic, health and welfare issues within the resettlement process and the refugee experience overwhelms families' traditional parenting knowledge. However, parenting support services are not accessible to refugee families as there are no interpreting services and they are generally not culturally appropriate or acceptable.

Public transport systems in New Zealand are generally very limited. Families lack transport and childcare to get access to services.

Participation and access to early childhood education is dependent upon knowledge of services, knowledge of the customs and regulations, access to transport, not having constraints upon mobility of the caregiver of young children due to dependants, and knowledge of English (which is usually the language of communication, for consultation and instruction). Early Childhood Development currently has a contract from the Ministry of Education to provide opportunities for families and groups to access funding for communities to develop their own playgroup. However the requirements for applying for this funding do not recognise the need for specialised support for families who have a refugee experience. The issues relating to areas of difficulty for these groups were directly related to the absence of a national languages policy; a lack of funding and training support for teacher expertise, suitability of venue, resources and transport (Coker & Tereni, 1998).

Access to vital tutoring support for reintegration into an education system is under threat because of changes to the funding for the voluntary tutor scheme and co-ordination and specialised support in mainstream education settings. The voluntary tutor scheme was established in 1988 and fosters successful educational outcomes for secondary students from refugee families. This service is provided in the home of the student, and with changes in the funding for co-ordination of this scheme, students who are unable to access homework centres, because of gender role commitments in the home, transport problems and lack of peer solidarity, are now at risk (Auckland Volunteer Tutor Scheme, 2002). Targeted mainstream education funding for specialised immersion support programmes in schools is absent.

Recommendations

- The Government ensures that measures emerging from a legislative framework be taken to be specifically inclusive of all children of asylum seekers and refugees in their access to health care, welfare services, education and employment.
- The Government ensures there is development of and access to specialised, systematic and ongoing training for interpreters, health and welfare personnel, (including training in gender and age sensitivity), and teachers able to speak, read and write in two or more languages in early childhood education, schools and the tertiary sector.

Specialised recovery and reintegration services

Key Finding: There are no specialised services dedicated to supporting physical and psychological recovery and social reintegration for refugee children or young people in New Zealand.

Absence of specialisation

There are inadequate community based services providing essential early intervention and family support services in many communities and co-ordination of services is constrained by privacy and contractual competition issues.

Successive Governments must commit to a specialised, well-resourced refugee resettlement and integration system building mainstream cultural capacity within health, education and welfare services, and these must work in a fully co-operative way with the NGO sector, respecting the expertise that exists in that sector and in the communities and supporting the development and maintenance of the services that each group can provide.

Key operational issues requiring attention include significant improvements in assessment of children and young people's needs and respect for their needs. A paper from the Human Rights Foundation of Aotearoa New Zealand & Refugee Council of New Zealand gives an example:

There is evidence that children from aged 4 years are interviewed by Immigration Officers. Despite officers being generally friendly, asking a child the reasons that motivated his or her family to leave their home country may expose a child to unnecessary victimization. This could be traumatic for children who have experienced interrogations by Police in their home countries. How much additional information could the Immigration Officers obtain from a child whose parents have already been interviewed? What might the negative repercussion of the interrogation have on the child? (The Human Rights Foundation of Aotearoa New Zealand & Refugee Council of New Zealand, 2002).

Specialised therapeutic services for children traumatized by the refugee experience are inadequate. Services must be well resourced and more appropriate for children and youth.

Separated children

The support, protection and rehabilitation rights of separated refugee children are not adequately recognised and responded to in the case of some children without individual guardianship. New Zealand policy regarding the right to 'family reunification' for separated children is still in contravention of Article 10. Presently the separated children from the Tampa boat asylum seekers group must confront this policy.

In common with other child asylum seekers, the boys from the Tampa are anxious to be reunited with their families if at all possible. Without special directives initially they were not be able to sponsor their

immediate family members for residence under the Family Sponsored Stream as they do not meet the policy requirements of being over 17 years of age, having been a New Zealand resident for three years and able to provide accommodation, financial support and repayment of costs involved in applying. NZIS (the New Zealand Immigration Service) is now reviewing the Tampa cases and will make recommendations to the Minister for special directions to bring their family members to New Zealand. This however does not resolve the more general issue of how child asylum seekers, or other separated refugee children can bring their families to New Zealand; breaching the convention on the UN Convention Rights of the Child. (The Human Rights Foundation of Aotearoa New Zealand & Refugee Council of New Zealand, 2002).

Consideration of the social referencing and a realistic time frame for consolidation and development of trusting relationships and partnerships with health and education professionals in terms of support for social reintegration and transition is absent from Government services criteria (see Ministry of Education reports, 2001-02)

Issues of poverty

Many refugee and asylum seeker families live in poverty in New Zealand.

Asylum seekers and families are not able to access the same level of financial support as quota refugees; for example, families are not eligible to apply to Housing New Zealand state rental houses until they have been New Zealand residents for two years. This has a significant impact on those with large families.

In many cases refugee families are eligible for allowances, particularly disability allowances and special benefits. However Work and Income staff who do not have interpreters for non English speaking peoples may not identify the eligibility for these allowances. Health and Disability allowances for refugee families are often not applied for by general practitioners as they do not have interpreting services and often are unable to identify when a family requires a Disability Allowance.

Young people over the age of 16 years and adults are not eligible for the Invalid's Benefit unless they have been resident in New Zealand for ten years. Those unable to work through sickness are only eligible for an emergency benefit that is a lower rate of income.

Many refugees get into significant debt after arrival in New Zealand. Often this is related to supporting family left behind and money being set aside to sponsor family members from overseas.

Inadequate housing

Refugee families have raised concerns about practices employed by Housing New Zealand where they have had to sign tenancy agreements without sighting the property. In effect this means families have little choice in schooling or the communities in which they live. It is very difficult to access houses big enough for large families, particularly in the areas in which communities from refugee backgrounds wish to settle. An increasing number of refugee families live in overcrowded situations, – for example, having ten family members in houses that have been constructed for five. This is particularly difficult when new babies are born and more family arrive to join existing family. One common comment among adolescent refugees is that their houses are 'full of people' and that they cannot have quiet place to stay or study.

Many refugees have to rent privately in Auckland City and the limit on the Accommodation Subsidy available for housing leaves little money left for food clothing and other expenses. Older Housing New Zealand and private rental houses are often difficult to heat and are damp, leading to high power bills and health problems such as asthma and chest infections. Refugees from hot dry climates find it particularly difficult to adapt to New Zealand's climate.

Specialised and targeted education provisions

Children and families from the refugee quota and asylum seekers undergoing resettlement in New Zealand need access to specialised and targeted education provisions. The Ministry of Education has appointed Refugee Co-ordinators in all major centres of resettlement with a brief to advise and support all education sectors. The compulsory education sector has priority. The Ministry of Education has taken the lead in establishing initiatives, such as increase in ESOL funding targeted at refugee and asylum seekers, and the initiation of an Adult Literacy Co-ordinator, which will have some effect in the long term as women, and family members who have the role of

caregiver, will access support with literacy in English. This in turn will increase the possibility of informed choice about participation in early childhood education, and of effective partnerships with school services.

Targeted provisions for access to education for resettling families are accessed unevenly. Equity funding and ESOL intensive support is sought and negotiated by each centre and school with or without the staff, parent and refugee sponsor partnership. Interpreters, liaison and support experts must be accessed from the private sector at a cost to the individual families or centre/school. Sector professional development and access to trained professionals who have a sound knowledge of the refugee background issues, and the New Zealand education system and culture is an additional cost and difficult to access. School and centre professionals network, resource and access professional support often at a personal cost to themselves in an effort to meet their own ethical, philosophical and professional principles for best practice.

The intermittent access that there is to the few well qualified personnel in New Settlers Advisory Service, Refugee Co-ordinators or support agencies such as Refugee and Migrant Service, AUT Centre for Refugee Education Staff or the Refugees As Survivors Centre, is usually in response to crises.

In July 2000 the Ministry of Education recognised the special needs of refugee and asylum seekers through funds allocated within the Literacy and Numeracy strategy, and in the 2002 support for refugee students and children at risk strategies. This targeted funding for educational support and resources is allocated within Vote Education annually under the ESOL framework, and the criteria for funding is linked to English language assessment and competence.

Refugee children who arrive as asylum seekers and family reunification arrive at schools without health screening or educational assessment. Refugee funding within education is only for ESOL teaching and there is no targeted additional special needs funding. Refugee children attract funding of only \$NZ 1,100 for the first two years in primary school, \$NZ 1,700 for the first two years in secondary school and \$NZ 500 per year after that.

There is no standardised requirement for assessment in mother tongue or use of interpreters. Funding for bilingual and specialised support is the responsibility of the school/centre, however expertise available in this area is variable and often refugee children are supported in academic and language competence, by untrained teacher-aides. Access to specialised bilingual support and trained interpreters, is strongly recommended by the Ministry – but not possible as there is no pool of specialists established in this area.

The establishment of Refugee Co-ordinators is to be commended. However with limited trained personnel access is often in response to crisis rather than as a right for each child on enrolment. The lack of specialised pastoral support which is age, gender and culture sensitive extends and complicates the resettlement and integration process for children. Budgets in this area are set annually and are located within an economic paradigm rather than in a national refugee policy framework and/or the best interests of the child.

The following comments come from school staff:

A small number of children and adolescents from refugee backgrounds have had the experience of formal education while the majority start their schooling in New Zealand. These children and adolescents face special difficulties in the learning process, including learning social issues, teacher-student relationships and school rules. They are often expected to behave in appropriate ways for their age without considering their refugee background.

The emphasis is placed on ESOL programmes and English literacy but not social skills or activities that support integration at school. Some students have felt discriminated against by other students and school staff.

Adolescents from refugee backgrounds show higher levels of school changes than their New Zealand counterparts. Presenting behavioural problems can lead to suspension or expulsion or to withdrawal from school work. They are often teased and bullied by schoolmates.

Many refugee children with special needs do not fit the criteria for Special Needs 2000 funding. In particular this is a problem for 12 to 16 years olds. The New Zealand system is oriented towards the early identification of special needs in the younger age group and not during adolescence and yet for

adolescents, trauma and uprooting can hinder critical psychological, cognitive and psychosocial development.

Some adolescents are concerned that school teaching is too centred on academic learning. It will be difficult for them to gain access to tertiary studies because of their lack of education in the past especially when they have had no previous schooling. Refugee children with little or no literacy in their first language are having major problems when mainstreamed.

Many refugee children have also been victims of violence and multiple, traumatic loss. Parents' traumatic experiences also directly affect their children. Without specialised health and counselling support services, refugee children's identity development and learning processes are affected

Specialised and targeted health and well-being provisions

The children of refugee and asylum seekers probably represent the most vulnerable group of new arrivals in New Zealand (CCAFS, 1999). Currently there are few specific mental health services provided for the children of refugees or asylum seekers either in the NGO or government sectors. New Zealand is alone among the countries world wide that accept refugees for resettlement in not providing any guaranteed and specific assistance for the health and welfare of refugee children.

Refugee and asylum seekers have limited access to, and knowledge of, primary health services, including disability and mental health services in the community. There is limited access to written health promotion and prevention materials, which are linguistically and culturally appropriate. Health professionals across the sector have limited knowledge and skills to work with children from in refugee and asylum seekers groups in a culturally relevant way.

Disparities in levels of health and social service provision between asylum seekers and quota refugees are detailed in a report by the Ministry of Health (2001). At present there is no recognition or targeting of health care needs for refugees in national policy and health strategies, and this is compounded by poor collection of demographic data on quota refugees, family reunification groups and asylum seekers. Disease surveillance and monitoring of groups for other than those that are progressed through Mangere Refugee Resettlement Centre is offered by the Auckland Regional Public Health Service. It is estimated that there are up to 2000 asylum seekers annually, many of whom do not receive public health screening.

There is only one specialised service for refugees in the mental health area, Refugees as Survivors, which focuses specifically on counselling refugee survivors of torture and trauma. The service however is not funded to provide a priority service for asylum seekers. The service only has two autonomous centres, in Auckland and Wellington. There is no such service in Hamilton or Christchurch – the two other main centres where refugees have resettled.

Limited planning for long-term management of those with complex health needs, including HIV/AIDS and multi-drug-resistant tuberculosis is under way. Budgets in this area are set annually and are located within an economic paradigm rather than in a legislated framework and/or the best interests of the child.

Specific health and well-being issues

There are significant health issues, including the communicable diseases, tuberculosis and HIV/AIDS; disability; chronic illness; and poor mental health. These impact on all members of the family. While the utilisation of health, welfare and specialised educational services by children and adolescents from refugee backgrounds is not known, some data is available from the Community Child and Family Service of Auckland District Health Board mental health services. The Community Child and Family Service reports in the last three years, up to 75 new cases annually from refugee families. Other agencies in a survey carried out by the Service (including the ESOL service of the Ministry of Education, secondary schools and the Child, Youth and Family Service) report that some of the most serious and complex issues that come to their attention are in refugee populations (Community Child and Family Service, 1999). Community, Child and Family mental health services for children and adolescents have long waiting lists of refugee children from the Central Auckland area for conduct disorders; aggressive, violent and sexualised behaviours; post traumatic stress problems; and severe anxiety and depression. The Auckland District Health Board identifies the lack of specialised mental health services for young people who are refugees as a key issue (Auckland District Health Board, 2002).

Integration of strategies and initiatives

Local collaboration and joint planning between agencies is underway within the Auckland region (including Strengthening Families, Housing New Zealand, Ministry of Education, Ministry of Social Welfare, and refugee support groups). However an absence of long-term planning between Ministries at the policy level contributes to fragmentation of approaches and lack of funding, specialised resources and personnel to meet rapid population increases. There is a need for increased integration between the district health boards and between primary, community, secondary and tertiary health and education services as specialisation and cultural capacity is developed.

Recommendations

- The Government ensures that all 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; with targeted measures to reduce disparities in health and welfare status.
- The Government ensures that the integration system is a managed and planned resettlement process reflecting the partnerships between Government, NGO agencies and the refugee communities.
- 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.

Inequalities as a result of parental status

Please also see Appendix Eight: General Measures of Implementation of the Convention: New Zealand's Reservations to the Convention.

Key Finding: Children of parents who have made an unsuccessful application for refugee status are not eligible for publicly provided health, education and welfare services.

People who are over-stayers and their families are not eligible for New Zealand's publicly provided health and education services. Children are unable to attend schools or seek medical attention unless their parents are able to pay, or it is a medical emergency.

Many of these families are in significant debt after arrival and following legal application, and are unable to access money to pay for health or education. This has a significant impact on those with large families and creates an additional vulnerability for health and well being from before birth for children of these families.

Recommendation:

- That the Government withdraw its Reservation to Article 22 of the Convention and take immediate and appropriate measures to remove permanent exclusions and disparities in regard to access for all children to health, education and welfare services and apply Article 2 to ensure that all rights apply to all children no matter who they are.

Detention and placement of children

Key Finding: From September 2001 until late 2002 some families along with children who have arrived as asylum seekers were detained at Mangere Refugee Reception Centre, Auckland facilities.

Refugee procedures in New Zealand are not currently subject to legislation (Ryken, 1998). A number of changes in the New Zealand Immigration Service procedures for refugees have occurred since September 2001 without consultative debate taking place. Changes have been made to the *Immigration Act 1987* so that detention can occur for longer than 28 days.

The detention of children does not comply with Article 9 of the *Convention on the Rights of the Child*. The Mangere Refugee Resettlement Centre, a facility for the reception of quota refugees, became a detention facility for asylum seekers in September 2001. New refugee quota arrivals must still live in a designated detention facility for their first six weeks in New Zealand. A number of young children (pre-school and primary school children) along with their parents were regularly detained at Mangere. From September 2001 to March 2002, fifteen children under the age of 18 were detained at the Centre, as well as the 92 children and adolescents among the large group of asylum seekers from the Tampa ship. These people were detained for up to five months at the Centre until their immigration status was resolved. It took the intervention of a number of NGOs before the practice of detaining women and children was changed.

Of even more concern, was the detention of two teenage boys in the Auckland Remand Centre, a privately run remand prison. They were housed in the hospital wing of the prison. Staff have no knowledge of refugee issues or their mental health needs, although they are reportedly open to training.

The Human Rights Foundation of Aotearoa New Zealand reported that it may take up to 30 days to process security checks due to lack of Immigration Services resources. This implies a child may be detained for a month after entry to New Zealand. Changes made to the *Immigration Act 1987* mean that detention can occur for longer than 28 days.

There is still serious concern that mass arrivals of people who arrive as illegal migrants, including children, may be detained under national security measures. A national comprehensive refugee policy that could protect the rights of children in such emergencies is not in place.

Asylum seekers who do not provide details of the flights which brought them to New Zealand and their correct identity information are held in detention at Mangere Refugee Resettlement Centre – along with family members including children (Human Rights Foundation of Aotearoa New Zealand & Refugee Council of New Zealand, 2002).

The detention of children does not comply with Article 9 of the Convention. The practice of the detention and questioning of children on arrival here after traumatic puts these vulnerable children at further risk. The safety of unaccompanied adolescent girls and boys when separated out in this way is of particular concern. This detention of children justified on the grounds of national security contravenes the United Nations High Commission on Refugees guidelines which explicitly maintain that children should not be held in prison like conditions. Refugee and asylum seeking children must have the same rights as other children in New Zealand. The *United Nations High Commission on Refugees Guideline 6. Detention of Persons under the Age of 18 years* means that:

As a general rule, minors who are asylum-seekers should not be detained. During detention children have the right to an education, preferably outside the detention premises. Provision should also be made for recreation and play, which is essential to a child's mental development and to alleviate stress and trauma (Human Rights Foundation of Aotearoa New Zealand & Refugee Council of New Zealand, 2002).

The Human Rights Foundation also reported the following issues for the New Zealand Immigration service and the Department of Child, Youth and Family Services who were the Government agency legally in charge of these adolescents:

- The length of the immigration process – it took the Immigration Service almost three months to clear the identification information of the young asylum seekers. During this time the youth became anxious with depressions associated with uncertainty about their future and fear of being deported. The lack of family support aggravated their situation.
- After their permanent residence was granted they had to spend an extra two months in the Detention Centre as Child, Youth and Family had difficulty finding appropriate housing. Individual freedom was restrained and they could only venture out on organised activities.
- Although Child, Youth and Family have invested heavily in the care of the boys, almost all of them do not have individual guardians and are living in a group home, although this is no longer considered an appropriate option for other New Zealand children (Human Rights Foundation of Aotearoa New Zealand & Refugee Council of New Zealand, 2002).

Recommendations

- The Government desist from any form detention of children in compliance with Articles 37 and 9.
- The Government prevent the placement of vulnerable separated children in unsafe accommodation.

Acknowledgements

ACYA is deeply appreciative of Nola Harvey who co-ordinated this paper, the contributors from voluntary services, NGOs and specialists in international refugee issues, health, education, mental health and community service fields (Jenny Broome, Charlotte Robertson, Susan Elliott, Kaaren Frater-Mathieson, Robyn Gerrity, Marineke Goodwin, Benita Hedley, Begard Mohammed, Francesca Montedonico Annette Mortensen, Meg Moss, Beverly Voisin, and Angela Yatri), and especially the members of refugee and asylum seeker families who contributed through consultation meetings and who wish to remain unnamed at this time.

References

- Auckland District Health Board (March, 2002). *Hei Oranga Tika Mo Te Iti Me Te Rahi, Healthy Communities, Quality Healthcare: The Proposed Strategic Plan for the Auckland District Health Board 2002–07*. Auckland: Auckland District Health Board.
- Ainsworth, M. & Johns, K. (October, 2001). *Auckland Regional Migrant Settlement Services Centre: Draft Business Plan*. Auckland: Auckland City Council.
- Allan, J. (September, 2001). *Review of the measurement of ethnicity: Classifications and issues*. New Zealand: Statistics New Zealand. Available: <http://www.stats.govt.nz/ethnicity>.
- Coker, J. and Terreni, L.,(1998) bringing it all together: Supporting immigrant families in early childhood settings. Report on the role of playgroups presented to Early Childhood Development. Wellington: Early Childhood Development.
- Community, Child, Adolescent and Family Service (CCAFS),Auckland District Health Board(March, 2001). *Proposal for a specialised mental health service for children of refugees and migrants. Proposal to Health Funding Authority prepared by Child, Adolescent and Family Service, Auckland District Health Board*.
- Newell, P, Hodgkin, R. (2002) *UNICEF Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, New York.
- Human Rights Foundation of Aotearoa New Zealand & Refugee Council of New Zealand Inc. (2002) 'Freedom's ramparts on the sea': The detention of asylum seekers in New Zealand. May 2002 Occasional paper. Available <http://www.humanrights.co.nz>.
- Interdepartmental Committee on Refugee Resettlement (ICRR). (April, 2000). *Refugee Resettlement Policy in New Zealand: An Integrated Response*. New Zealand, Interdepartmental Response to the NGO Report.
- Jorgensen, P. (October, 2001). *Strengthening Families Auckland City presentation to the Interdepartmental Committee on Refugee Resettlement (ICRR), Tripartite Consultations on Refugee Resettlement*. Auckland: Strengthening Families, Auckland City.
- Kennedy, S. and Dewar, S. (1997), *Non- English –speaking Background students: A study of programmes and Support in New Zealand schools*. Ministry of Education Research and International Section. Wellington: Learning Media.
- Lang, K. (July, 2001). *Policy Perspectives Paper: Review of the Measurement of Ethnicity*. New Zealand: Social Policy Division Statistics New Zealand.
- Lockhart, A. (March, 2001). *New Initiatives in Migrant Settlement and Refugee Resettlement*. Paper presented at the meeting of the Vibrant Voices and Visions for Ethnic New Zealand Conference, Albany Campus, Massey University, Auckland, March, 2001. Wellington, New Zealand: New Zealand Immigration Service, Department of Labour.
- Minister of Health, (2000). *Health and Disability Services Eligibility Direction*. Wellington: Ministry of Health.
- Minister of Health. (2000a) *The New Zealand Health Strategy*. Wellington: Ministry of Health.
- Minister of Health. (2000b) *The Future Shape of Primary Health Care: A discussion document*. Wellington: Ministry of Health.
- Ministry of Education (1996) *Te Whaariki: He Whaariki Maatauranga mo nga mokopuna o Aotearoa: Early Childhood Curriculum*. Wellington: Learning Media.
- Ministry of Education (1997) *Governing and managing New Zealand schools: A guide for Boards of Trustees* Wellington: Learning Media
- Ministry of Education (1998) *Quality in Action – Te Mahi Whai Hua: Implementing the Revised Statement of Desirable Objectives and Practices in New Zealand Early Childhood Services*. Wellington: Learning Media.
- Ministry of Education reports (2000 – 2002) *Refugees empowered*. Education Gazette Vol.79:18 October 2000 *Refugee Work Education Gazette Vol.80:12 July 2001 ; ECE Equity Funding Education Gazette Vol.80:13 August 2001 ; Boat people settle Education Gazette Vol.81:02 February 2002 ; Refugee children to benefit . Education Gazette Vol.81:10 June 2002*
- Ministry of Education(2002) *Vote Education 2002 Budget initiatives*. 19 August .TeKete Ipurangi <http://www.minedu.govt.nz>.
- Ministry of Education (2002) *ESOL Refugee education policy . TeKete Ipurangi* <http://www.minedu.govt.nz>
- Ministry of Education (2001), *Interventions for refugee children in New Zealand schools: Models, methods, and best practice*. Consultants: Richard J.Hamilton, Angelika Anderson, Kaaren Frater-Mathieson, Shawn Loewen, Dennis W. Moore: research centre for interventions in Teaching and Learning(RCTIL), University of Auckland. TeKete Ipurangi <http://www.minedu.govt.nz>
- Ministry of Education(2002) *ESOL Refugee education policy* Ministry of Health. 1998a. *New Futures: A strategic framework for specialist mental health services for children and young people in New Zealand*. Wellington: Ministry of Health.
- Ministry of Health. 1998b. *Child Health Strategy*. Wellington: Ministry of Health.
- Ministry of Health (1999a). *Social Inequalities in Health*: Wellington, New Zealand Ministry of Health.
- Ministry of Health. 1999b. *NZ Food: NZ people. Key results of the 1997 National Nutrition Survey*. Wellington: Ministry of Health.

- Ministry of Health. 1999c. Our Health, Our Future: Hauora Pakari, Koiora Roa. Wellington: Ministry of Health.
- Ministry of Health, (November, 2001). Refugee Health Care: A handbook for health professionals. Wellington: Ministry of Health. Available: www.moh.govt.nz
- Ministry of Youth Affairs, (2000). Children in New Zealand :United Nations Convention on the Rights of the Child: Second periodic report of New Zealand. Wellington: Ministry of Youth Affairs.
- National Health Committee. 1998. The social, cultural and economic determinants of health in New Zealand: Action to improve health. Wellington: National Health Committee.
- New Zealand Immigration Service, Te Ratonga Manene (NZIS). (2000a). New Zealand: The right choice, Border Policy. (NZIS Publication 01/ 03/2000). New Zealand, N. Z. I. S. operational policy document, N. Z. Government website: www.immigration.govt.nz
- New Zealand Immigration Service, Te Ratonga Manene (NZIS) (2000b). New Zealand: The right choice, Refugees. (NZIS Publication 01/ 03/2000). New Zealand.
- Refugees as Survivors Centre(2002) Personal communication
- Reeve, A. M.(1997) Refugee Health. An Assessment of the Medical Screening Programme at the Mangere Refugee Resettlement Centre. :A dissertation in partial fulfillment of the requirements for the degree of Master of Public Health, University of Auckland, 1997
- Ryken, D. J. (May, 1998). Proposed Reforms to Legislation and Procedure – A Lawyer’s Perspective. Auckland: Auckland Refugee Council. Available Website: www.refugee.org.nz/council2.htm.
- Treliving, V. (July, 2001). Comparison of the measurement of ethnicity in Australia and New Zealand. New Zealand: Statistics New Zealand. Available:<http://www.stats.govt.nz/ethnicity>.
- UNHCR (2002), UNHCR Guidelines on the detention of asylum seekers, in Discussion paper No1 January 2002 UNHCR.
- Uprety, K. N., Basnet, U. Rimal, D. K. (1999). A Study On Needs Of Asylum-Seekers/Refugees for Early Intervention. New Zealand, Auckland Refugee Council website: www.refugee.org.nz/council2.htm.
- Wansbrough, T. (2000). Public Health: Needs of Asylum-Seekers. New Zealand Unpublished Report.
- Worth, H., Reid, A., Ackroyd, J. & Tamirata-Bowden, E. (2001). Silence and Secrecy: HIV Positive Refugees in New Zealand. Auckland: Institute for Research on Gender, The University of Auckland.
- Auckland Volunteer Tutor Scheme.(2002) Submission to review funding status of the Auckland Volunteer Tutor Scheme. Personal document.

Appendix Seven

CHILDREN AND YOUTH WITH DISABILITIES

ACYA Working Group on Children and Youth with Disabilities

Please also see Appendix Thirteen: *The Health of Children and Young People*, and Appendix Fifteen: *The Education of Children and Young People*.

Introduction

The process of compiling this report unveiled innumerable accounts of heartache, frustration and isolation experienced by children and young people with disabilities and their families. These people provided anecdotal evidence of widespread discrimination that is seen most clearly in the provision of education services.

Government policies

In 1997, the government introduced a policy called *Special Education 2000*. The policy stated three aims:

- To improve educational opportunities and outcomes for children with special education needs in the early childhood and school sector
- To ensure there is a clear, consistent and predictable resourcing framework for special education
- To provide equitable resourcing for those with similar needs irrespective of school setting or geographic location

However, since the introduction of *Special Education 2000*, many advocates, parents and educators have expressed concern that the policy has been a backward step and has been detrimental to the educational experiences of many children.

In 2000, the government released the Wylie report, *Picking up the Pieces*, which was a government commissioned analysis of *Special Education 2000*. The Wylie report was highly critical of the policy:

There is no doubt in the sector that a sizeable number of children with special needs are missing out on the support they need to participate as much in school and class life as any other child, and to make real gains from their time at school. (Wylie, 2000, p. 47)

In December 2000, a group of fourteen parents of students with disabilities challenged the legality of the policy, claiming that it failed to cater for their children's needs and breached their children's rights to equal education opportunities. The ensuing 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 (Minto, 2000, p. 1.). The Court of Appeal 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. The ruling 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.

Elements of government policies about children and youth with disabilities have been based on a medical model with an underlying philosophy that children with disabilities have something wrong and need to be 'fixed'. There is widespread criticism from people with disabilities that the structure and philosophy of special education is based on a non-disabled model of what it means to have a disability. They consider the term 'special needs' is a misnomer and comment that we all have the same needs. There are differences only in the way that individual needs are met.

However, in April 2001, the government released the *New Zealand Disability Strategy*, a document to guide government action to promote a more inclusive society. People with disabilities comment that the Strategy needs to be highlighted as a vision of where we should go, and if implemented fully would make an enormous

difference to children and young people with disabilities. Hence it is included at the end of this paper. The *Disability Strategy* includes fifteen objectives and is based on a social model, promoting attitudinal, societal and environmental changes.

New Zealand governments have a history of formulating strategies and documents that never reach fruition because of inadequate resourcing and ineffective implementation. There is serious concern that the *Disability Strategy* will be yet another of these documents. The government decision to appeal the High Court judgement leaves many people sceptical about their level of commitment to the *Strategy*. Objective 3 of the *Strategy* is to provide the best education for disabled people. The *Strategy* makes only brief mention of the *United Nations Convention on the Rights of the Child* and has not used the Convention as a framework for the process.

Segmented provision and lack of co-ordination between government services, in particular, health and education

The government fails to co-ordinate all departments and agencies responsible for the care and education of children and young people with disabilities. Fragmentation and lack of co-ordination continue to be serious concerns. Families express frustration and difficulty accessing information and support. There is an urgent need for clear guidelines on financial assistance and access to comprehensive information on support services and resources.

Parents of children and young people with disabilities are required to battle for information, and support and funding can be dependent on the strength of parent's advocacy. There are reports of providers telling assertive parents they are supporting their child well enough and the service should go to some other family.

A parent comments:

We have seen over the years SES (Special Education Service), Puketiro Centre for occupational therapy, SPELD, Kimi Ora School, private occupational therapists, private schools, public schools, special units, visiting teachers, counsellors, doctors etc. etc. We have frequently requested SES to give us a 'shopping list' of what B needs and where to go for them, but it has only been by trial and error that we have found appropriate therapies for special difficulties. Despite both myself and B's father being articulate, educated adults, accessing support for B has been like finding our way through a maze blindfolded (Wylie, 2000, p. 21).

Mainstream services have a chronic lack of expertise in regard to disability issues and disability services have a chronic lack of knowledge around issues such as child abuse and drug and alcohol abuse. This absence of services with a holistic focus leaves a huge gap for children with disabilities needing to access highly specialised support.

Fragmented provision is reflected in reported time lapses between diagnosis of a disability to implementation of support. Families in crisis situations, eligible for financial support, need assistance immediately. Currently, many families are waiting weeks before being reimbursed, with a number of families experiencing financial hardship as a result.

There are innumerable reports of children and young people being denied support and resources through inter-sectoral agencies not accepting responsibility. One young person, who was incontinent, was supplied with a helper who could shower her, but not wash the sheets.

Currently several different statutory bodies are structured to deal with matters of inequality.

The Human Rights Commission, the Health and Disabilities Commissioner are just two of the commissions available in New Zealand. The problem for disabled persons is being aware of which law complies with which commission and by not having a streamlined one stop process it can be confusing and frustrating if the system is not accessible (Hickey, 2001, p. 38).

Children in New Zealand (2000) discusses a strategy being formulated to improve inter-sectoral co-ordination and collaboration among services for children with high and complex needs. The government overlooks the necessity for effective collaboration among services for every child with a disability, regardless of significance. At present, government agencies are not structured to provide services to meet needs.

Most people who work with families know the best approach is to try and address the needs of the whole child and whole family. Despite this, we continue to see agencies trying to fragment the problems into bits that fit organisational structures. (Paediatric Society, 2002, p. 1).

The above quote also illustrates a predominant theme in New Zealand of organisations being of primary importance and children a secondary consideration.

Transition from school into employment or tertiary education

Students with disabilities are not receiving the education and training they require to promote independence and facilitate their active participation in the community.

Currently, there is an assumption that young people with disabilities will apply for a benefit when they leave school. There are few opportunities for further education or employment and few initiatives in place to support this transition.

Many parents express serious concern about their child's future once they leave school. Although some schools support students into community education and work placement, there are no government initiatives in place to ensure all students receive this support. The Wylie report (2000) stresses the importance of ensuring students with special needs are equipped with skills to become participating members of their communities.

Because of discriminatory practices in some schools, a number of students relocate to schools outside their community. This presents further problems with integration from school to community work.

Presently, funding supports students with disabilities to remain at school until they are twenty-one although their non-disabled peers are required to leave at eighteen. There is evidence that students with intellectual disabilities make progress until they are eighteen and benefit from having peer contact. When their peers leave school, they fail to progress and, in many cases, go backwards. There is a need for funding and extended development opportunities that support age-appropriate transitions.

Inadequate recognition of cultural needs and inappropriateness of services

There has been no progress in reducing discrepancies for Maori children and Maori are over-represented in the need for special education services. They have more difficulty accessing the *On-going and Reviewable Resourcing Scheme*, and a lower rate of application success than Pakeha children (Wylie, 2000). In fact, statistical evidence shows that Maori children and young people are over-represented in all negative indicators relating to special education needs (MacArthur and Gaffney, 2001).

In a research project involving eleven Maori families of children with disabilities, all whanau (family) involved, commented on being uninformed about government-funded provision for their children.

I think we actually missed out on the handicap allowance. I didn't know about that until he was about eleven years. Nobody had told me that we were entitled to that allowance (Wilkie, 2000, p. 2.).

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 (Wylie, 2000). They are also highly critical of support services and agencies. The Working Group was told:

The individualistic approach of Pakeha bureaucracy does not cater for the collective and holistic culture that is inherent in tikanga Maori.

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 is also detrimental to children and young people with disabilities from other ethnic groups. There is insufficient data for an accurate analysis but it appears that Pacific students with special needs are likely to receive less support than their Pakeha peers (Wylie, 2000). There are difficulties for many Asian and refugee families in accessing appropriate support.

Discrimination and exclusion

Children and young people with disabilities frequently experience discrimination and exclusion. *Children in New Zealand (2000)* recognises this as an area of great concern but neglects to portray the extent to which discrimination is a persistent and on-going issue for many children. Despite voicing their concern, the government has made no progress in addressing these issues since the first report to the UN committee.

The mother of a twelve-year old boy comments on a primary school her son attended:

It was a nightmare when I look back. It was just dreadful. They wouldn't let him stay till 3 pm, he had to go home at 2 and I had to take him home at lunchtimes. For swimming, I had to go with him and I was seven months pregnant. It was just a nightmare. The final straw was when the whole school went to the Blind Foundation to sing to the blind people... AJ had to stay at school and he was just desperately upset because he wanted to go with all the other kids and sing... (MacArthur and Gaffney, 2001, p. 55).

There are innumerable stories of children and young people with disabilities experiencing exclusion.

A number of children and young people with disabilities who require support to participate in recreation are being denied these opportunities because the support is not available. Youth Law reports occasions when young people with special needs are excluded from attending school camps. Schools argue that the one-on-one supervision required for the student with special needs jeopardises the safety of the other students. Examples are:

- At the North Island Secondary Schools Athletic Championships in March 2001 and March 2002, students with disabilities were not allowed to compete. Organisers justified the exclusion by saying their events would take too much time, take too much effort to organise and would destroy the timetable for the event.
- At some secondary school swimming championships, swimmers with disabilities are only able to compete in 25m distances although many are capable of swimming greater distances. Non-disabled students are able to compete in 50m distances and upwards.
- A secondary school student with an intellectual disability was not allowed to join the school kayaking group because of his disability.

Some schools have discriminatory practices. The Human Rights Commission and Youth Law are frequently contacted by parents of children and young people who are excluded from school for reasons relating directly or indirectly to their disabilities. There are many concerns from parents of children with disabilities who are refused enrolment, denied full participation or deliberately set up to fail by schools – for example:

- A school 300 metres from the home of a disabled boy refused to enrol him.
- A Principal decided a six year old child with Autistic Spectrum Disorder could go to school for only ten hours a week because the staff could not manage the child outside of the ten hours she was entitled to a teacher-aide.
- A primary school boy, diagnosed with ADHD was struck off the role after not attending for twenty-one days. His mother appealed the decision but was told her son had already used a lot of resources and they did not want him back.

There is a need for independent and effective complaints procedures in schools. Students with disabilities have no right to independent representation in regard to complaints procedures in schools. Schools use Ministry of Education employees to facilitate mediation processes. Parents report biased outcomes that fail to meet children's needs and best interests and fail to take the child's wishes into account when making decisions that affect them. Parents comment that the process continuously challenges their stamina.

The Ministry of Education records stand down (suspension) and exclusion (expulsion) rates in schools, categorising incidents based on the offence. Records fail to identify children who have disabilities despite serious concern that they are represented disproportionately in exclusions.

In a recent Government consultation, most of the young participants with disabilities spoke of being bullied, teased and picked on by the other students (Ministry of Social Development, 2001). Bullying often involved physical abuse. Research involving adults with disabilities who experienced bullying at school shows there are devastating and long-term effects (Ballard, 1998).

Parents of children with disabilities speak of differing responses from schools in addressing bullying. While many schools have an inclusive philosophy and respond positively to reports of bullying, other schools seem to perpetuate the issue by denying the problem, blaming the victim, dismissing the complaint or simply not

responding (MacArthur and Gaffney, 2001). There appears to be a higher incidence of bullying in schools that demonstrate a lack of commitment to a policy of no-discrimination.

A number of schools and public facilities fail to comply with accessibility standards. In some schools, children in wheelchairs have to venture to the other end of the school to access a toilet that will accommodate their needs. There are few inclusive playgrounds.

Lack of resourcing and inconsistencies in allocation

There are a number of inconsistencies in the present funding structure under *Special Education 2000*. Despite a substantial increase in government funding, a large number of children and young people have been left with less support than they had under the previous policy. The *On-going and Reviewable Resourcing Scheme* provides funding for students categorised with high and very high needs. Initially, the government indicated that the *On-going and Reviewable Resourcing Scheme* would be available for approximately two percent of students but this was subsequently changed to approximately one percent of the school population. The decision appears to be based on financial constraints rather than any consideration of the number of children with special education needs.

The funding criteria has seriously disadvantaged many students with moderate disabilities. A number of students who received support under the previous policy were excluded under *Special Education 2000*. A mother of three children with moderate disabilities tells of spending thousands of dollars on private help for her sons after the restructuring excluded them from funding (De Boni, 2002).

Under the present funding system, a student with an intellectual disability who displays violent and aggressive behaviour may receive funding, whereas another student with an intellectual disability who behaves in a more passive manner may be excluded because their behaviour doesn't meet the criteria.

Between July 1999 and June 2000, the overall success rate of applications for the *On-going and Reviewable Resourcing Scheme* funding was 37 percent for secondary school level and 50 percent at primary level (Wylie, 2000). The success rate is much lower for the lowest decile schools, kura kaupapa Maori and Maori and Pacific students (Wylie, 2000).

On-going and Reviewable Resourcing Scheme funding is the same for students receiving inclusive or segregated education with the result that there are inequities in provision. In segregated schools, where the majority of pupils qualify for the *On-going and Reviewable Resourcing Scheme* funding, there are significant benefits, whereas the funding is often inadequate to provide for students in inclusive settings (Bray and Gates, 2000).

The government provides funding in the form of the *Special Education Grant*, to cater for students with moderate disabilities. This is bulk-funded to schools based on the overall number of students in the school and the decile, rather than on the number of students with special needs. For schools with a low proportion of students with special needs, the funding is more than adequate whereas for schools with a high proportion, the funding is hopelessly inadequate.

At some schools, parents are expected to make a financial contribution to ensure their child receives necessary support. There are reported cases of parents paying up to \$NZ 100 per week to supplement their child's teacher-aide time, while a school down the road, with no special needs students has tens of thousands of dollars from Special Education Grant funding (QPEC, 1999).

Concerns are held that schools who turn students with disabilities away are being rewarded financially under the present funding system while schools with a no-discrimination policy are being punished (QPEC, 1999).

The inequities have also prompted criticism that a number of schools are using their funding inappropriately. A 1998 Ministry of Education survey found that over half the schools surveyed had not used their Special Education Grant funding for the purpose for which it was intended (QPEC, 1999). Despite this finding, the government continues to tolerate inappropriate spending. It is critical that funding is monitored, with parent satisfaction being a point of monitoring.

The insecurity of the funding structure has meant that 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 (Wylie, 2000).

Changes in the distribution of resources and the disestablishment of staffing positions under Special Education 2000 have been responsible for the closure of a number of disability units attached to schools. From 1998 to 2000, only two thirds of the schools with units attached remained open, a drop from 352 to 229 (Wylie, 2000). Special Education 2000 promised parental choice of school; however, the closure of units has removed this choice for many parents.

Although many parents prefer their child to be mainstreamed, a number choose segregated or unit provision because of the discrimination they experience at mainstream schools and the failure of these schools to meet their child's educational needs (Bray and Gates, 2000). Where units have closed, parents have had to look for alternatives, often at a considerable distance from their homes. Parents who change to mainstream education often comment on a deterioration in their child's education experiences (Wylie, 2000).

There is criticism that the allocation of teacher-aides to students with disabilities may not be an effective use of resourcing and may not be in the students' best interests. Professional development for educators in regard to Special Education 2000 is optional. Although some schools have made this a priority for teacher-aides, many are reluctant to pay for the training with a result that a number of teacher-aides working with students with disabilities lack skills and specialisation. For many students, the majority of their education is delivered by a teacher-aide, unlike their non-disabled peers who learn from a qualified teacher. The Wylie report comments that:

Not all schools are willing to accept their responsibility for student needs... and the knowledge and confidence to address their needs is not as widespread as it needs to be to ensure that students' needs can be met in any school (Wylie, 2000, p. 34)

There is a need for schools to become more creative in their use of teacher-aides. Both teachers and teacher-aides need to acquire skills on implementing outcome-based programmes. Teacher-aides need training to support effective relationships where they can provide intense one-on-one support when necessary as well as being available in a non-intrusive way to enable students to develop peer relationships.

There are concerns that the presence of a teacher-aide for all or most of the day can be detrimental to the development of peer relationships. Also, some students become over-dependent on their teacher-aide for help with tasks. A school comments:

The school is trying to cope with inclusion in a way that denies the special needs of the students. Placing teacher-aides with students does not solve the problems and in some cases, the outcome for the student is greater dependence than if they were educated in a unit. The least trained are working much of the time with some of the most difficult students (Wylie, 2000, p. 24).

Although there are some skilled and committed teachers working with children and youth with disabilities, there is still no compulsory disability awareness training for teachers. Often inappropriate teaching is not seen as a failure of teachers to teach students with a disability, but rather it a failure of the students to be taught and these students are perceived as a burden for their teachers.

There are relatively 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 remains a critical concern. The funding and administration structure has changed and the criteria for children eligible have narrowed to safety and mobility needs. Parents and educators have not received clear guidelines on entitlements and there are inconsistencies between regions. A lack of assistance with transport for families to access services is creating financial hardship for many, particularly in rural areas. A number of families have commented that they have declined treatment for their child due to transport difficulties and lack of support in this area.

Families of students with disabilities believe the transportation system colludes with discrimination in schools. Too many children need transport to access schools outside their area because they have been turned away from their local school.

Equipment provision is under-resourced. There are frequent reports of equipment not available for children or arriving too late to be of use. A family with a two year old, dependent on oxygen and unable to support himself or move voluntarily, had to wait six months for equipment to support him upright and provide a level of mobility. When the equipment finally arrived, it was no longer appropriate for the child's disabilities.

Conclusion

It is concerning to conclude that the experiences and outcomes for many children and young people with disabilities have become significantly worse since the first report to the UN committee. There is little evidence that the government has made a commitment to the implementation of the rights of these children and youth.

Children and young people with disabilities are not receiving their educational and social rights and do not enjoy equality of access to opportunities. Discrimination is a pervasive element in the experiences of many children and indigenous and minority groups are further disadvantaged.

The best interests principle is noticeably absent from policies and practices. Health and education services are not required to consider the best interests of the child, nor is this a guiding principle for policies and legislation.

Poor co-ordination between health and education sectors has serious implications for the quality and level of support and services available for children with disabilities and their families.

In a consultation project children and young people with disabilities made recommendations for change. These include:

- More appropriate facilities
- Improved services
- Improvements to schools
- Better understanding
- A buddy system for support and understanding
- More funding to help them participate in activities (Ministry of Social Development, 2001).

The *New Zealand Disability Strategy* is a welcome document that requires a commitment from the government for effectual development. The Strategy supports equity and has the potential to improve the provision of education and services for children and young people with disabilities. The *Disability Strategy* and the Convention should provide an integrated framework on which policies, legislation and services are structured.

Recommendations

- The Government to undertake all necessary measures to incorporate the principles and provisions of the United Nations Convention on the Rights of the Child within all policy and legislation.
- 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.

Acknowledgements

ACYA would like to especially thank Hilary Nobilo who co-ordinated this paper, Philip Patston (Diversity Works), Donna Hemi (Coalition of Parents for Special Education), James Arkwright, John Minto (Quality Public Education Coalition Inc), Huhana Hickey, Maureen Crawford, Kay Morris (health consultant), John Broadhurst (Sport Waikato), Effie Lokeni (YouthLaw), Lorraine Norris, Jenny Hansen, Jenny Carter, Chris Ellis (Awareness consultant) and others who contributed and commented.

Objectives of the New Zealand Disability Strategy

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

These Actions will inform the annual *New Zealand Disability Strategy* implementation work plans to be developed by government departments.

Objective 1: Encourage and educate for a non-disabling society

Actions

- 1.1 Develop national and locally based anti-discrimination programmes.
- 1.2 Recognise that it is disabled people who are experts on their own experience.
- 1.3 Recognise and honour the achievements of disabled people.
- 1.4 Include the perspectives of disabled people in ethical and bioethical debates.
- 1.5 Encourage ongoing debate on disability issues

Objective 2: Ensure rights for disabled people

Actions

- 2.1 Provide information for everyone about the rights of disabled people.
- 2.2 Provide education to ensure that disabled people understand their rights, recognise discrimination and are able to be self-advocates.
- 2.3 Educate agencies responsible for supporting children and families about the rights and abilities of disabled parents.
- 2.4 Review Human Rights legislation to ensure the ongoing enhancement and strengthening of the rights of disabled people.
- 2.5 Investigate, and if appropriate, support, development of a United Nations convention on the rights of disabled people.
- 2.6 Investigate the level of access that disabled people have to independent advocacy, and address any shortfall in service provision.
- 2.7 Evaluate New Zealand's performance on the rights of disabled people.
- 2.8 Consider disabled people whenever New Zealand's performance is being evaluated against international human rights obligations, for example, the Convention on the Elimination of All Forms of Discrimination Against Women, and United Nations Convention on the Rights of the Child.

Objective 3: Provide the best education for disabled people

Actions

- 3.1 Ensure that no child is denied access to their local, regular school because of their impairment.
- 3.2 Support the development of effective communication by providing access to education in New Zealand Sign Language, communication technologies and human aids.
- 3.3 Ensure that teachers and other educators understand the learning needs of disabled people.
- 3.4 Ensure that disabled students, families, teachers and other educators have equitable access to the resources available to meet their needs.
- 3.5 Facilitate opportunities for disabled students to make contact with their disabled peers in other schools.
- 3.6 Improve schools' responsiveness to and accountability for the needs of disabled students.
- 3.7 Promote appropriate and effective inclusive educational settings that will meet individual educational needs.
- 3.8 Improve post-compulsory education options for disabled people, including: promoting best practice, providing career guidance, increasing lifelong opportunities for learning and better aligning financial support with educational opportunities.

Objective 4: Provide opportunities in employment and economic development for disabled people

Actions

Planning and training for entering employment

- 4.1 Provide education and training opportunities to increase the individual capacity of disabled people to move into employment.

- 4.2 Enable disabled people to lead the development of their own training and employment goals, and to participate in the development of support options to achieve those goals.
- 4.3 Educate employers about the abilities of disabled people.
- 4.4 Provide information about career options, ways to generate income, and assistance available for disabled people.
- 4.5 Investigate longer-term incentives to increase training, employment and development opportunities for disabled people.
- 4.6 Ensure a smooth transition from school to work.
- 4.7 Investigate the requirements of the International Labour Organisation Convention on Vocational Rehabilitation and Employment, with a view to ratification.

Employment and economic development

- 4.8 Encourage the development of a range of employment options recognising the diverse needs of disabled people.
- 4.9 Ensure disabled people have the same employment conditions, rights and entitlements as everyone else has, including minimum wage provisions for work of comparable productivity.
- 4.10 Make communication services, resources and flexible workplace options available.
- 4.11 Operate equal employment opportunity and affirmative action policies in the public sector.
- 4.12 Investigate a legislative framework for equal employment opportunities across the public and private sectors.
- 4.13 Ensure disabled people have access to economic development initiatives.
- 4.14 Encourage staff and service organisations (for example, unions) to appoint or elect disabled people as delegates and members of their executives.
- 4.15 Ensure that the needs of disabled people are taken into account in developing more flexible income support benefits, to make access to work and training easier.
- 4.16 Review income support provisions to ensure they provide an adequate standard of living.

Objective 5: Foster leadership by disabled people

Actions

- 5.1 Encourage disabled people to take part in decision-making as service users, as staff in the delivery of services, and in the governance, management, planning and evaluation within all services that disabled people access.
- 5.2 Assist self-help initiatives, service provision and advocacy organisations run by disabled people for disabled people.
- 5.3 Model the inclusion of disabled people in leadership roles within government departments, in order to encourage leadership by disabled people within all organisations.
- 5.4 Support the establishment of a leadership development and mentoring programme for disabled people.
- 5.5 Establish a register of disabled people for government appointments.
- 5.6 Make information available to disabled people and their advocacy organisations about how to influence government policy.

Objective 6: Foster an aware and responsive public service

Actions

- 6.1 Develop mechanisms to ensure that all government policy and legislation is consistent with the objectives of the New Zealand Disability Strategy.
- 6.2 Adapt public sector training to ensure that service development and service delivery are consistent with the New Zealand Disability Strategy.
- 6.3 Ensure that all government agencies treat disabled people with dignity and respect.
- 6.4 Improve the quality of information available, including where to go for more information, the services available and how to access them.
- 6.5 Make all information and communication methods offered to the general public available in formats appropriate to the different needs of disabled people.
- 6.6 Ensure the locations and buildings of all government agencies and public services are accessible.
- 6.7 Work with territorial authorities to develop ways they can support the New Zealand Disability Strategy.

Objective 7: Create long-term support systems centred on the individual

Actions

- 7.1 Ensure that overarching processes, eligibility criteria and allocation of resources are nationally consistent, but that individual needs are treated flexibly.
- 7.2 Ensure that government agencies, publicly funded services and publicly accountable bodies co-operate to ensure that the disabled person is at the centre of service delivery.
- 7.3 Investigate the development of a holistic approach to assessment and service provision, that applies across agencies and funding sources.
- 7.4 Develop and maintain effective rehabilitation services.
- 7.5 Encourage equity of funding and service provision for people with similar needs, regardless of the cause of their impairment.
- 7.6 Identify unmet need and develop affordable solutions to fill these gaps.
- 7.7 Improve timeliness of service provision.
- 7.8 Develop a highly skilled workforce to support disabled people.
- 7.9 Ensure that disability services do not perpetuate the myth that disabled people are ill, while recognising that disabled people do need access to health services without discrimination.

Objective 8: Support quality living in the community for disabled people

Actions

Living in the community

- 8.1 Increase opportunities for disabled people to live in the community with choice of affordable, quality housing.
- 8.2 Support disabled people living in rural areas to remain in their own communities by improving their access to services.
- 8.3 Support the development of independent communication for disabled people.
- 8.4 Ensure disabled people are able to access appropriate health services within their community

Moving around the community

- 8.5 Require all new scheduled public transport to be accessible in order to phase out inaccessible public transport.
- 8.6 Encourage the development of accessible routes to connect buildings, public spaces and transport systems.
- 8.7 Develop nationally consistent access to passenger services where there is no accessible public transport.

Objective 9: Support lifestyle choices, recreation and culture for disabled people

Actions

- 9.1 Support disabled people in making their own choices about their relationships, sexuality and reproductive potential.
- 9.2 Provide opportunities for disabled people to create, perform and develop their own arts, and to access arts activities.
- 9.3 Educate arts administrators/organisations and other recreational and sporting organisations about disability issues and inclusion.
- 9.4 Support the development of arts, recreational and sports projects, including those run by and for disabled people.

Objective 10: Collect and use relevant information about disabled people and disability issues

Actions

- 10.1 Ensure that guidelines for research funding take into account the need for research on disability issues, include disabled people in the development and monitoring of the disability research agenda, and enable disabled people to put forward their own experiences in the context of the research.
- 10.2 Collect relevant and useful information about disability through all relevant surveys to inform the research programme.
- 10.3 Use disability research, and analyse disability data, including that from the 1996 and 2001 Disability Surveys, to contribute to policy work, service development and monitoring.
- 10.4 Undertake research focusing on disability issues for Maori and Pacific peoples.
- 10.5 Make disability research information available to disabled people in culturally appropriate and accessible formats.
- 10.6 Adopt ethical and procedural standards for disability research projects.
- 10.7 Appoint disabled people as members of ethics committees.

Objective 11: Promote participation of disabled Maori

Actions

- 11.1 Build the capacity of disabled Maori through the equitable allocation of resources within the context of Maori development frameworks.
- 11.2 Establish more disability support services designed and provided by Maori for Maori.
- 11.3 Ensure mainstream providers of disability services are accessible to and culturally appropriate for disabled Maori and their whanau.
- 11.4 Train more Maori disability service provider professionals and increase the advisory capacity of Maori.
- 11.5 Ensure that Government funded or sponsored marae-based initiatives meet the access requirements of disabled people (and encourage all other marae-based initiatives to also meet those requirements).
- 11.6 Support training and development of trilingual interpreters for Deaf people.
- 11.7 Ensure Te Puni Kokiri undertakes a leadership role in promoting the participation of disabled Maori.

Objective 12: Promote participation of disabled Pacific peoples

Actions

- 12.1 Increase access to, and quality of, both Pacific and mainstream service providers that deliver disability services to disabled Pacific peoples, their families and communities.
- 12.2 Support disability workforce development and training for Pacific peoples, by training Pacific peoples as providers of disability information and services for their local communities.
- 12.3 Encourage Pacific communities to consider disability issues and perspectives and further their own understanding of disability through the development of community-based plans for disability issues.
- 12.4 Support training and development of trilingual interpreters for Deaf people.
- 12.5 Ensure the Ministry of Pacific Island Affairs undertakes a leadership role in promoting the participation of disabled Pacific peoples.

Objective 13: Enable disabled children and youth to lead full and active lives

Actions

- 13.1 Ensure all agencies that support children, youth and families work collaboratively to ensure that their services are accessible, appropriate and welcoming to disabled children, youth and their families.
- 13.2 Ensure that the *Youth Development Strategy Aotearoa* recognises the needs of disabled children and youth.
- 13.3 Conduct anti-discrimination and education campaigns that are age-appropriate and effective.
- 13.4 Establish a process for including advice from disabled people on disability issues for children and youth within relevant government agencies and Commissioners' offices.
- 13.5 Provide access for disabled children, youth and their families to child, youth and family-focused support, education, health care services, rehabilitation services, recreation opportunities and training.
- 13.6 Improve support for disabled children and youth during transition between early childhood education, primary school, secondary school, tertiary education and employment.
- 13.7 Introduce ways of involving disabled children and youth in decision-making and giving them greater control over their lives.
- 13.8 Develop a range of accommodation options so that disabled young people can live independently.
- 13.9 Provide and evaluate educational initiatives about sexuality, safety and relationships for disabled children and youth.
- 13.10 Ensure the Ministry of Youth Affairs and Ministry of Social Policy undertake a leadership role in promoting the participation of disabled children and youth.

Objective 14: Promote participation of disabled women in order to improve their quality of life

Actions

- 14.1 Promote women's rights and provide opportunities for disabled women to achieve the same level of economic well-being and educational attainment as men.
- 14.2 Provide equitable, appropriate and welcoming access to services.
- 14.3 Support disabled women to live independent and secure lives in the environment and with the people of their choosing.
- 14.4 Ensure that criteria and considerations for the health and reproduction-related treatment of disabled women are the same as for non-disabled women.
- 14.5 Include the perspectives of disabled women in the development of all strategies.

- 14.6 Ensure the Ministry of Women's Affairs undertakes a leadership role in promoting the participation of disabled women, to improve their quality of life.

Objective 15: Value families, whanau and people providing ongoing support

Actions

- 15.1 Ensure needs assessment processes are holistic and take account of the needs of families/whanau as well as the disabled person.
- 15.2 Improve the support and choices for those who support disabled people.
- 15.3 Provide education and information for families with disabled family members.
- 15.4 Ensure that, where appropriate, the family, whanau and those who support disabled people are given an opportunity to have input into decisions affecting their disabled family member.
- 15.5 Develop a resource kit for professionals on when and how to interact with families/whanau of disabled people.
- 15.6 Work actively to ensure that families, whanau and those who support disabled people can be involved in policy and service development and delivery, and in monitoring and evaluation processes where appropriate.
- 15.7 Encourage debate around responsibility for caring, payment for caring and how to further recognise and value the caring role.
- 15.8 Provide families and those who support disabled people with information that is accurate, accessible and easily found.

References

- Ballard, K. (1998). Disability and discrimination: Law, ethics and practices. *Children's Issues* 2, (2), 27-30. Dunedin: Children's Issues Centre.
- Bray, A. & Gates, S. (2000). Children with disabilities: Equal rights or different rights? In Smith, A., Gollop, M., Marshall, K. & Naim, K. (2000). *Advocating for Children. International Perspectives on Children's Rights*. Dunedin: University of Otago Press.
- De Boni, D. (2002). Delight as court rules for special needs pupils. In *New Zealand Herald*. 5th April 2002.
- Hickey, H. (2001). *Persons with Disabilities in New Zealand: Objects of welfare or subjects of legal rights? Closing the gaps*. Dissertation.
- MacArthur, J. & Gaffney, M. (2001). *Bullied and teased or just another kid? The social experiences of students with disabilities at school*. Wellington: NZ Council for Educational Research.
- Ministry of Social Development (2001). *Agenda for Children. Submissions made by children and young people and by adults. A summary report*. December.
- Minto, J. (2002). Mallard shoves the burden back onto parents. *Quality Public Education Coalition (Inc)*. Media release. 30th April.
- Paediatric Society of New Zealand (2002). *Reserved Support*. Media statement. 17th June.
- Quality Public Education Coalition. (1999). *Special Education*. Paper for QPEC AGM. April 10th/11th.
- Wilkie, M. (2000). *Matauranga Motuhake – Special Education for Maori kaupapa Maori Research*. Presentation to the NZARE Conference. 2nd December.
- Wylie, C. (2000). *Picking up the Pieces. Review of Special Education 2000*. 31st July.

Appendix Eight

GENERAL MEASURES OF IMPLEMENTATION OF THE CONVENTION

ACYA Working Group on Implementation, Definitions and Principles

Please also see other Appendices, especially Appendices One to Seven.

Introduction

This paper provides an NGO perspective on the general measures taken by the New Zealand Government for implementation of the *United Nations Convention on the Rights of the Child*, including measures taken to harmonise law and policy with the Convention, mechanisms designed for the co-ordination of policies relating to children and youth and monitoring of implementation, international co-operation, and measures taken to make the principles and provisions of the Convention known.

Measures taken to harmonise law and policy with the Convention

Reservations

In its 1997 consideration of the New Zealand Government's initial report on the Convention, the UN Committee on the Rights of the Child expressed concern about the New Zealand Government's Reservations towards three Articles of the Convention. The Committee stated at paragraph 8:

The Committee is concerned about the broad nature of the reservations made to the Convention by the State party, which raise questions as to their compatibility with the object and purpose of the Convention.

In its following Recommendations, the Committee encouraged that the Reservations be withdrawn, in accordance with the *Vienna Declaration* and the *Programme of Action from the 1993 World Conference on Human Rights*, which urged State parties to withdraw all Reservations to the Convention. Despite the concern and pursuant recommendation of the Committee, the New Zealand Government continues to maintain its Reservations, subject to a planned review (paras. 23-24, 98 Govt. Report). It has been noted that the Reservations were formulated without being presented to Parliament for debate or open consideration (see Griffiths, 2002, pages 40-42). The Reservations relate to:

- Article 22: Children unlawfully in New Zealand
- Article 32(1): Protection of children in employment
- Article 37(c): Age-mixing in prisons

Article 22: Children unlawfully in New Zealand

Please also see Appendix Three: *Pacific Children and Youth*, and Appendix Six: *Refugee and Asylum Seeking Children and Youth*.

With regards to this reservation, *Children in New Zealand (2000)* states:

... by March 2001, the Government will see if the reservation can be removed once it identifies possible difficulties and considers option for addressing those difficulties.(para. 23)

Unfortunately the Government's stated intentions have not been matched by its actions. There is little evidence of any substantial progress on the issue of removing the Reservation, despite the recognition by the Government that immigrant children unlawfully in New Zealand may be receiving the standards of housing, welfare and education required under the Convention. (para 23, Govt Report).

New Zealand immigration policy has become arguably more punitive towards illegal immigrants over the time the Government has purported to review its Reservation to Article 22. The *Immigration Amendment Act 1999*, which came into force on 1 October 1999, amended section 47 of the *Immigration Act 1987*, removing the right of appeal for certain categories of immigrants who face removal orders. The amendment does not make any

provision to account for protection of children of immigrants who fall under the section, the welfare of whom would undoubtedly be impacted upon by the authorisation of a non-reviewable removal order. Immigrant children subject to a removal order under this provision cannot appeal a removal order on humanitarian grounds.

In addition, Government refugee policy in the wake of the 11 September 2001 terrorist attacks in the U.S., permits the detention of teenage refugees at the Mount Eden Remand Prison, despite there being no criminal basis for their detention. This practice of detaining refugees at the Remand Prison or the Mangere Detention Centre, without right to apply for bail, was ruled unlawful in a judgement of the High Court, regarding proceedings brought by the New Zealand Refugee Council and the Human Rights Foundation challenging the legality of the practice. The Court found that the practice breached provisions of the 1951 Refugee Convention (Refugee Council of NZ and Human Rights Foundation of Aotearoa/NZ v Attorney-General, Unreported, 18 June 2002 per Baragwanath J). The Government has appealed this decision.

Against this context, the Government's Reservation still stands. Accordingly there appears to be no urgency on the part of the Government to meaningfully review its Reservation. A joint report of the Ministries of Housing and Education and the Housing New Zealand Corporation on steps needed to withdraw the Reservation was due on 31 July 2002, but at the time of the writing of this Background Paper (October 2002) the report was still pending.

Article 32(1): Protection of children under labour law

Please also see Appendix Nineteen, Child Labour.

In its Report, the Government states that New Zealand has reserved the right not to amend or add to incumbent labour laws, in light of the Committee's concerns in this area, as it believes the existing law, 'adequately protects the rights of the child provided for in Article 32(1)'.

As this position begs the question that if the Government felt that New Zealand's employment laws provided children with the protection contemplated by Article 32(1), why does it continue to perpetuate this Reservation?

Children in New Zealand (2000) points to New Zealand's employment culture as a reason for its continuing Reservation to Article 32(1), citing 'a long established tradition' of children being employed in part-time or holiday work, such as newspaper rounds or fruit-picking, and the social benefits that have flowed from this tradition. This ignores the fact that children are accorded substantially less legal protection in the labour market than adults and are accordingly subject to far greater degrees of economic exploitation.

The most obvious indication of this is the omission of any statutory minimum wage for employees aged below 16 under the *Minimum Wage Act 1983*. Employers can thus legally employ a child for any wage that they are able to negotiate, regardless of how exploitative this wage may be, without the risk of being subject to a penalty for non-compliance with the Minimum Wage Act. Young people aged 16 to 17 are entitled to a minimum wage of \$NZ 6.80 per hour, the rate having been recently lifted to this level by way of the Minimum Wage Order 2002. Employers who breach this requirement can be subject to investigation by a Labour Inspector and fined up to \$NZ 1,000 for non-compliance.

Furthermore, despite the enactment of the *Employment Relations Act 2000*, which provides that written employment agreements be mandatory, young employees continue to be subject to verbal, 'casual' employment agreements and independent contract arrangements designed to obviate the employer's statutory responsibilities towards the young employee. These practices are not actively regulated and are widespread in the part-time casual employment markets serviced by children and young people.

There is no regulation of the child labour market in New Zealand, other than the prohibition of employment that interferes with compulsory school attendance (section 30, *Education Act 1989*). There has been no move by the Government to introduce a minimum age of employment or a comprehensive policy on child labour, other than its ratification of ILO Convention 182 and the establishment of an officials' group, in response to the Committee's concerns. Nor has there been any meaningful steps taken by the Government to clarify the minimum age for entry into employment, despite its statement at paragraph 24 of its report that such issues would be addressed by September 2001 (subsequently deferred to July 2002 and still pending).

The incumbent system thus falls a long way short of reaching the standards required for compliance with Article 32(1). The withdrawal of the Reservation and ensuing compliance with the Convention in this area would

require comprehensive legislative changes and does not appear to be part of the Government's labour policy agenda.

Article 37(c): Age mixing in adult prisons

Please also see Appendix Seventeen: Youth Justice.

This Reservation is rationalised in *Children in New Zealand (2000)* as being motivated by a need for 'flexibility' in order to accommodate 'troublesome' juvenile offenders separately from other juveniles. The Reservation is the result to a lack of adequate facilities to account for the number of juvenile offenders requiring secure care, a problem that has been evident for the past decade. The Report notes interim measures under consideration during the reporting period (paragraph 23iii).

The Government has addressed this issue with its enactment of the *Sentencing Act 2002*, which came into force on 1 July 2002. However, instead of addressing the issue of compliance with Article 37(c), the Act makes statutory provision for the incarceration of youth offenders in adult prisons.

The Act allows the Youth Court to remand young persons aged 15 years and over, to adult prisons while they await trial or sentence for a purely indictable offence. In such circumstances, young people awaiting trial may spend up to two months in an adult prison prior to their cases being heard. These provisions are subject to a sunset clause, whereby they expire after 30 June 2004, presumably to allow for the construction of facilities to house the desperately needed youth justice beds in Child, Youth and Family residences.

These measures introduced by the *Sentencing Act* are clearly inconsistent with Article 37(c) of the Convention. It is highly disappointing that the legislature has resorted to enacting provisions so obviously contrary to the Convention in order to address this long-standing problem. It is therefore difficult to see how the Government in the short term will adequately address the issue of removing this Reservation.

Recommendations

- The Government urgently review its position with regards to its Reservations to the Convention and undertake to withdraw its Reservations, pending implementation of the procedures required for compliance to the Convention.
- The Government set itself clear deadlines for the implementation of legislation and provision of resources required to ensure compliance with Articles 22, 32(1) and 37(c) respectively.

International agreements

Children in New Zealand (2000) notes New Zealand's active participation in developing both Optional Protocols to the Convention and its role in negotiating the ILO Convention 182 on the Worst Forms of Child Labour.

New Zealand ratified ILO Convention 182 on 14 June 2001 and accordingly established the Child Labour Officials Advisory Committee (CLOAC). CLOAC is chaired by the Department of Labour and consists of representatives from the Ministries of Foreign Affairs, Youth Affairs, Justice, Pacific Island Affairs, Social Development, the Department of Child, Youth and Family, Te Puni Kokiri and the Police. As part of its mandate to facilitate awareness and compliance with ILO Convention 182, CLOAC consults with Business New Zealand and the Council of Trade Unions.

In addition, as noted in paragraphs 102 and 103 of *Children in New Zealand (2000)*, both Hague Conventions on Protection of Children and Co-operation in Respect of Inter-Country Adoption and Civil Aspects of International Child Abduction have been incorporated into New Zealand's domestic legislation under the schedules of the *Adoption (Inter-Country) Act 1997* and *Guardianship Amendment Act 1991*, respectively.

Notwithstanding these positive developments, we consider that the priority for the Government, in terms of its compliance and participation with international agreements affecting children and young people, should be the removal of its Reservations to Articles 22, 32(1) and 37(c). In particular, its Reservation to Article 32(1), sits dissonantly against its ratification of ILO Convention 182.

We note that in its 1997 Recommendations to the New Zealand Government, the UN Committee on the Rights of the Child recommended at paragraph 31 that the Government consider ratifying ILO Convention 138 on the

minimum age of employment. The Government is yet to ratify ILO 138, the issue of which is not mentioned in its report. Given its stance on Article 32(1), ratification would appear very unlikely. 118 countries have ratified ILO 138.

The Convention provides the international benchmark for the establishment, promotion and protection of children's legal rights. We consider that only when the Government has withdrawn its Reservations to the Convention can it be said to have 'strongly supported and contributed to international efforts to strengthen human rights protections for children' as it claims at paragraph 99 of its report.

Recommendations

- The Government remove its Reservations to the Convention forthwith.
- The Government ratify ILO Convention 138 in accordance with the Recommendations of the UN Committee on the Rights of the Child.

Conformity of law and practice with provisions of the Convention

At present there is no uniform process that can be applied to government agencies to ensure compliance with the Convention. Government agencies are not periodically required to undergo audits for compliance with the Convention. Some Government agencies however, have incorporated relevant provisions of the Convention into their codes of practice, such as the Broadcasting Standards Authority, but this is by no means universal.

There is no legislative process to ensure that legislation is consistent with the Convention. This is particularly problematic when legislation is introduced that stands in *prima facie* breach of the Convention, such as the examples noted in paragraph 111 of the Government's Report. While public submissions can bring such matters to the attention of the legislature, the lack of any internal compliance mechanism means that inconsistent legislation can be enacted regardless of these considerations.

These systemic shortcomings are reflected by the Government's acknowledgement, at paragraph 112 of *Children in New Zealand (2000)*, that it needs to do more to ensure that the Convention's principles are proactively applied during the development of legislation, policy and, most importantly, the implementation and practice of law and policy. As the Background Papers to the overall NGO Report indicate, there is often a stark divergence between cosmetic compliance of much legislation and policy and the reality of its practice.

Recommendations

- The Government establish an executive administrative process whereby all proposed legislation, regulations and supplementary order papers are audited for consistency with the Convention.
- The Government accordingly establish a Cabinet Committee to facilitate the above recommendation.
- A Children and Youth Issues Select Committee also be established in order to monitor the development of all proposed legislation introduced to Parliament, charged with a particular responsibility to ensure obligations under the Convention are met.

Status of the Convention

As acknowledged in the Government's Report, New Zealand has not incorporated the Convention into domestic law. Therefore, while its ratified status provides that it is a 'very persuasive' document of international legal principles, it does not have constitutional parity with New Zealand's domestic legislation. At present, the Convention relies on the development of administrative case law as a means for establishing its legal application in New Zealand.

The Report is partially correct in noting that there are legislative examples that reflect the principles of the Convention, citing the *Children, Young Persons and their Families Act 1989* and the *Guardianship Act 1968* as examples. However, there remains much legislation that is inconsistent with the Convention, and the Government's recent consideration and enactment of legislation contrary to the principles of the Convention (the

Sentencing Act 2002 for example) indicates the lack of any governmental process to ensure legislative consistency.

Judicial decisions

The Courts have been generally forthcoming in providing for the application of the Convention in matters where it can be harmonised with existing domestic legislation. However, many pre-Convention decisions illustrate that the Court had not traditionally given much weight to the views of the child in such proceedings. The breakthrough case that established the Convention's legal weight in New Zealand's domestic jurisdiction was *Tavita v Minister of Immigration* [1994] NZFLR 97. In determining the application of Article 9(1), the Court of Appeal held:

If and when it became necessary to determine whether, when an Act is silent to relevant consideration, international obligations were required to be taken into account, it would be necessary to bear in mind that since New Zealand's accession to the Optional Protocol, the United Nations Human Rights Committee was in a sense part of New Zealand's judicial structure, in that individual's subject to New Zealand's jurisdiction have direct rights of recourse to it. A failure to give effect to international instruments to which New Zealand was a party could attract criticism.

The Courts have cited the Convention as having 'strong persuasive assistance' in its interpretation of a child's rights and interests in recent adoption cases brought under the *Adoption Act 1955* (re SJD [2000] NZFLR 193). Article 12 has been recognised as the Convention's 'linchpin' by the Courts and has accordingly been given much weight by the Courts when determining the views of the child in custody proceedings (*Hollins v Crozier* [2000] NZFLR 775).

In addition, the Courts have reduced the sentences of youth defendants on appeal where it has been found that the sentencing judge did not take into consideration the principles of Article 37(b) when passing sentence (*R v Mahoni* [1998] (CA) 15 CRNZ 428, *R v Titoko* [1996] CA 144/96).

However, while the Courts have been quite creative in their enforcement of the Convention's articles, they are necessarily bound to interpret the Convention within the parameters of existing legislation. Hence, while there has been no problem for the Courts when applying the Convention to New Zealand's family law legislation, with its existing focus on the best interests and welfare of the child, it is probable that the Courts would not find much room for its application in a matter where the Convention was in direct conflict with a statutory provision.

In addition, the Children Issues Centre's study of 1991, 1994 and 1998 Family Court cases, noted in paragraph 131 of *Children in New Zealand (2000)*, found that the Convention was mentioned in only 3.2 percent of those cases. This perhaps indicates a lack of reliance on (or lack of awareness of) the Convention by counsel, as much as it does any reluctance by the Courts to consider it.

Remedies in cases of violation: The Office of the Commissioner for Children

The UN Committee in 1997 suggested:

that the office of Commissioner for Children be strengthened and that further consideration be given to measures, which would give the Office, increased independence and make it accountable directly to Parliament (para. 24).

The Office of the Commissioner for Children is the only Government agency that provides a remedial service that specifically addresses complaints by children and young people. The Office has an important role in raising public awareness of children's legal rights under the Convention and domestic legislation.

At present, the Office of the Commissioner for Children is vested under section 411 of the *Children, Young Persons and their Families Act 1989*. Its functions include powers of investigation into matters pertaining to that Act (care and protection), under section 411(1)(a), and inquiry into matters affecting the welfare of children and young people, under section 411(1)(e). It has been suggested that the close connection between the Commissioner's role and the Department of Child, Youth and Family Services has been unduly restrictive, given

the Commissioner's overall functions. Former Commissioner for Children, the late Laurie O'Reilly stated in his Annual Report of 1996/97:

Given the broad range of activities and functions carried out by the Office I suggest it is disadvantageous to link the Office so prominently with one sector, namely welfare.

The Office of the Commissioner for Children received an additional \$NZ 700,000 over four years in the 2000 Government Budget for the establishment of an education advocacy service. The service provides young people throughout the country with advocacy in relation to school matters, such as Board of Trustees suspension hearings. The service has been, by all accounts, very successful to date.

In addition, the Government has introduced the *Commissioner for Children Bill* to Parliament, which, if enacted in its present form, will strengthen and clarify the role of the Office. The Bill purports to give the Commissioner additional statutory functions in order to give better effect to the Convention in New Zealand. The additional functions include:

- Raising awareness and understanding of the Convention
- Acting as an advocate for children and young people (but not before court or tribunals) and advancing and monitoring the application of the Convention by State and Crown agencies.
- Presenting reports to the Court (at the Courts request) if there are issues in proceedings relating to the Convention or children's rights and welfare issues generally.

The Bill also:

- Defines a 'child' consistently with the Convention, and
- Incorporates the Convention into its 2nd Schedule. However, the Bill's explanatory note states that this incorporation is for 'public information and reference purposes' and does not affect the present legal status of the Convention in New Zealand.

We welcome the Government's intent in strengthening the Office. However, the Bill still falls short of achieving full Convention compliance in certain areas, in particular:

- It does not require Convention compliance audits of the Office itself.
- It fails to include children and young people in the Commissioner appointment process. In addition, the Bill keeps the appointment process within the jurisdiction of the Minister of Social Welfare and does not include input from the Ministries of Maori Affairs or Youth Affairs.
- It fails to address the Government's partnership responsibilities under the Treaty of Waitangi, and the Commissioner's significant role in addressing the needs of Maori children and youth, who are disproportionately represented in negative social statistics.
- It fails to fully implement the Convention in domestic legislation and hampers the Commissioner's ability to initiate cases that would uphold a child's rights through the Courts.

It should also be noted that the Bill does not establish the Commissioner for Children as an office accountable to Parliament, despite the UN Committee's suggestion and contrary to what had originally been intended by the Bill's proponents. This is disappointing, as the establishment of the Commissioner as an office of Parliament would have fortified its independence from Government.

Recommendation

- The Government further strengthen the role of the Commissioner for Children, including providing the Commissioner with powers to bring proceedings against state agencies in instances where agencies have breached their Convention obligations.

National strategy

Since the publishing of *Children in New Zealand (2000)* in 2000, the Government has published both the *Agenda for Children* and *Youth Development Strategy Aotearoa*. These documents signify the formation of a framework from which government policies and services that affect children can be derived. As mentioned above, both documents are little more than a first step, in terms of implementation. Nevertheless, they signify a great advancement in terms of aligning government policy and legislative initiatives with the Convention.

The *Agenda for Children* focuses on children under 18 years. It names consistency with the Convention at the head of its ten principles. This is reflected by the *Agenda's* Action Area 7, which purports to develop a regular

report of indicators of children's well being to help New Zealand in reporting to the UN Committee on the Rights of the Child by 2005. Most importantly, the *Agenda* aims to put an end to child poverty. This action is imperative. The Ministry of Social Development estimates that 24 per cent of all New Zealand children and young people fall into this category (2001 – Distributions and disparity: New Zealand household incomes). The *Agenda* aims to do this through the following specific actions:

- Implementation of a 'programme of research on child poverty to guide policy work'
- Investigation into the viability of a longitudinal survey to provide information about children moving in and out of poverty.

It is notable that the *Agenda* does not go as far as recommending any concrete policy or funding initiatives as yet. The elimination of child poverty has not been set a deadline, as it has in the United Kingdom, for example. It is set by the *Agenda* as an 'ongoing' concern. It is suggested that while the action is laudable, the lack of a specific deadline does not provide the necessary impetus for the implementation of policy/legislation needed to end child poverty in the near future.

The *Youth Development Strategy Aotearoa* focuses on the needs of persons aged between 12 and 24. The *Strategy* comprises four components: an overall vision, six principles of youth development, aims and goals. It also acknowledges the needs and issues for specific groups of young people. Like the *Agenda for Children*, it was developed through consultation with young people and organisations and people who work with young people. Its implementation will be co-ordinated by the Ministry of Youth Affairs who will work with other central government agencies in the development of sector-specific youth policy initiatives. The *Youth Health Action Plan* and *Youth Housing Strategy* initiatives (from the Ministries of Health and Housing respectively) are examples of recent youth-focused policy initiatives.

Making It Happen

Making it Happen is the response of 14 NGOs to the *Agenda for Children*. While supporting the principles of the *Agenda*, it identifies a number of shortcomings. In particular it points out that the Government will have to contribute significantly more funding towards children and young people than it currently does, if the *Agenda's* principles are to be properly implemented and its goals realised:

There are a number of proposals that do involve increased spending by Government. This is something our children are entitled to. It is also perhaps the best economic and social investment in our future we can make. As a nation, we have allowed spending on children to fall behind. For example, the purchasing power of financial assistance to a low-income family with one child on three-quarters of the average weekly wage has fallen by 60 percent since Family Support was introduced in 1986. (Making it Happen, 2002, Introduction)

Making It Happen is an examination of what will actually be required of the Government if it is to give the *Agenda* the significance it purports to have, so that it does not become a window-dressing exercise without any real social policy impact. In doing so it quantifies specific objectives in each Action Area that are lacking from the generalized tenor of the *Agenda*. It also suggests a number of initiatives, including *inter alia*, the establishment of a Minister for Children so that the objectives of the *Agenda* can be implemented at the executive level in government.

Making It Happen is being sent with this report to the UN Committee as an accompanying document. The recommendations from *Making It Happen* are included at the end of this appendix.

Recommendations

- The Government reviews the *Agenda for Children* in light of the NGO response, *Making It Happen*, forthwith.
- The Government commit to specific processes, including both funding and research initiatives with specific deadlines, in order to give effect to the principles of the *Agenda for Children* and the *Youth Development Strategy Aotearoa*.
- The Government provides regular public reports on the implementation of the *Agenda for Children* and *Youth Development Strategy Aotearoa*, via a transparent public submissions and reporting process.

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

Co-ordination of policies affecting children

There has been much concern about the impact New Zealand's fractured social services are having on its children and young people.

The Commissioner for Children's 1999 report into the death of a four-year old Maori boy who was murdered by his stepfather, was extremely critical of the lack of systemic co-ordination in that case. The boy was involved with several government agencies and there were several clear risk factors that should have been apparent to those agencies prior to his death. The Commissioner made several recommendations aimed at improving co-ordination of government agencies and the community to prevent the likelihood of such a tragedy occurring again.

Judge Mick Brown's 2000 Ministerial Review of the Department of Child, Youth and Family Services also expressed great concern in regard to this issue. The Review recommended, *inter alia*, the establishment of a Child Welfare Commission and Community Councils attached to each Department of Child, Youth and Family Services site in order to strengthen the community/state agency partnership and better address the needs of young people in a manner consistent with their community environments. This recommendation reflected the findings of the Commissioner for Children, in his 1999 report, that there was little community/Maori input into agency decision-making processes. Recent Government policy documents, such as the *Youth Offending Strategy*, also identify the issue of improving co-ordination as one in need of great improvement.

The introduction of the *Strengthening Families Strategy* in 1998 was a positive step in improving co-ordination between agencies. However, in practice the *Strengthening Families Strategy* is designed to address individual cases. In this respect, it can be very effective, as meetings bring together agencies, led by a lead agency, that have relevance to and responsibility for the welfare and interests of the child in question. The child and the child's family, whanau and advocates are also present. The meetings are facilitated by a Strengthening Families co-ordinator who ensures that each agency commit to a specific course of action as part of a general plan designed to further the interests of the child.³¹

While Strengthening Families can be effective at addressing individual cases it does not however, address the wider problems of a lack of overall systemic co-ordination between services that deal with young people. This continues to be a problem and is not likely to improve until measures are actually implemented to compel agency co-ordination. At present, Action Area 5 of the *Agenda for Children* only requires the formation of a Child and Youth Development Leadership Group (comprising of 'senior public service' staff) to 'encourage' agencies to work together. This is insufficient if the Government is serious about improving co-ordination, as it does little to effect actual change to the incumbent processes used by agency case-workers who operate at the coal-face level.

Monitoring

Action area 7 of the *Agenda for Children* provides for the development of a regular report of indicators of the well-being of New Zealand children for the purposes of its periodic reporting to the UN Committee on the Rights of the Child. The time frame for the implementation of this report is for commencement in 2005.

As this report is yet to be implemented, monitoring of policies that affect children continues on an ad hoc basis, with the various agencies reporting to the Ministries they are respectively accountable to. As noted in *Children in New Zealand (2000)*, monitoring policies that impact on children can be problematic, as outcomes are not always easily measured against the implementation of the policy initiative. However, in light of the Government's obligations under Article 4 of the Convention, it is disturbing to find that *Children in New Zealand* lists 'cost' as a reason for possible deficiencies in monitoring.

³¹ The most recent Strengthening Families report for the month of August 2002 indicates that the Department of Child, Youth and Family is most often the lead agency in Strengthening Families processes, being an interim lead agency, for referral purposes in 27 percent of cases and the overall lead agency in approximately 14 percent of cases during that period. The majority of cases involve children aged between 6 and 12 (53 percent). Strengthening Families dealt with 122 cases throughout New Zealand during August 2002.

Children in New Zealand at paragraph 155, notes the development of the *Agenda for Children* as an important means of gathering views from children and young people and 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 in this respect, as they provide both government agencies and NGOs with a policy platform. Nevertheless the term 'monitoring' implies a certain amount of ongoing proactivity and intervention, the failure of which can lead to tragic results. There is a divergence between monitoring individual needs and monitoring statistical outputs. The former requires intervention where those needs are not being met, whereas the latter is a more passive, detached process designed to provide an abstract overview, which can be addressed through broader policy initiatives. At present, the *Agenda* fails to address how it plans to deal with this dichotomy, as its posited monitoring processes are drawn in such general, non-specific terms (Action Areas 5 and 7 in particular), that it is very difficult to guess how, and in what form, the processes will be implemented.

Government agencies that promote children's rights and monitor implementation

Ministry of Youth Affairs

The Ministry of Youth Affairs is the only Cabinet Office that is specifically charged with protecting and promoting the interests of young people. Despite representing the interests of over 25 percent of the population, it is one of the smallest and least funded Ministries. It has the responsibility of co-ordinating the Government's compliance reports to the UN Committee on the Rights of the Child, and accordingly published the Report, *Children in New Zealand* (2000).

It is therefore concerning that the Government has recently proposed to merge the Ministry of Youth Affairs with the Ministry of Social Development (October 2002). Under this proposed arrangement, the Ministerial portfolio of Youth Affairs would remain but the Ministry itself would cease to be a separate entity, and would instead become a subsidiary entity under the umbrella of MOSD. We consider that this proposal, if implemented, would constitute a significant setback for both the interests of children and young people in New Zealand and for future implementation of the Convention and compliance. At the general social and political level the interests of children and young people tend to be marginalised compared with those of adults (after all, children and young people cannot vote and are therefore not political constituents). The existence of a youth-specific ministry helps to counteract this through its Executive accountability to children and young people.

There is a danger that this accountability will be subsumed within the greater scope of MOSD and the interests of children and young people will again be marginalised at the highest political level. It is foreseeable that they will simply be de-prioritised alongside the more politically expedient responsibilities of MOSD. This means the Convention implementation and co-ordination will also be de-prioritised. It is difficult to see how the Government intends to effect its Convention obligations within this framework, as the proposal is in itself contrary to the spirit of the Convention and could also be seen as contradicting the principles of Articles 4 and 12.

Commissioner for Children

Conversely, the Office of the Commissioner for Children will be somewhat strengthened upon the enactment of the *Commissioner for Children Bill*.

However, 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 its role is complemented by the existence of a Cabinet Office with specific responsibilities towards children and young people, such as the Ministry of Youth Affairs or a Ministry for Children, as proposed by the Making it Happen NGO document.

Recommendations

- The Government withdraw its proposal to merge the Ministry of Youth Affairs with the Ministry of Social Development.
- The Government give priority to the Commissioner for Children Bill within the legislative programme.
- The Government consider establishing a Ministry for Children or, alternatively, Child and Youth Affairs.

- The Government adequately fund its Executive offices and agencies in adherence with its obligations pursuant to Article 4 of the Convention.

Data collection, indicators and complaints registration

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. It accordingly recommended that a further review of New Zealand's system of data collection be undertaken, with priority being given to the identification of appropriate disaggregated indicators – in particular complaint registration.

The 2001 census data that specifically concerns children, 2001 Census Snapshot 13: Children (Statistics New Zealand), provides a general statistical breakdown of demographics, diversity, home-life (including family incomes), access to telecommunications and housing. However, the census is an overview and does not provide information that is specific enough for an in-depth assessment of the Convention's implementation. In addition, this data does not provide an accurate gauge of the welfare of children and young people in New Zealand as it subsumes information about children into its general analysis of households.

The census also continues to collect data on children in aggregated sets, namely 0-4, 5-9, 10-14 and 15-19 years. *Children in New Zealand (2000)* states that disaggregated data on each age within this scope is available on request.³² However, there does not appear to be any move to amend these age sets or provide an overview that would result in the data falls within an the Convention template. The Convention does not appear to be mentioned anywhere within the written analysis of the data.

The Government however, has proposed improved data collection regarding children. Specifically, the *Agenda for Children* Action Areas 3 and 7 respectively propose:

- A longitudinal survey of children, to provide information about children moving above and below the poverty line (stated time frame 2002-03)
- The development of a regular report of indicators of children's well being for the Convention reporting purposes (time frame 2005).

Neither of these proposals appears to have been implemented at the time of the writing of this report. In addition to these proposals, the Youth Offending Strategy 2002 has also proposed that a more comprehensive youth justice database be established in order to more accurately identify youth offending trends and monitor individual high-risk young offenders.

In summary, there appears to be more quantitative information available about children than there was in 1997. However, the amount of disaggregated data on children is still deficient and, importantly, there is very little data available that corresponds to information needed to assess the implementation of the specific Articles in the Convention. There is no Convention based template for data collection, analysis and reporting.

³² *Children in New Zealand (2000)* mentions sector specific data collection initiatives, specifically the Te Heo Nuku Roa Project in relation to data on Maori children, the SWIS/CYRIS systems used by the Department of Child, Youth and Family, the Integrated Offender Management System used by the Department of Corrections and the Child Health Information Strategy (CHIS). Of these systems, only the SWIS/CYRIS system and CHIS solely collects data on young people. CHIS, in particular, was scheduled for implementation in 2000/2001. However, to date there does not appear to be any report available on the outcomes of the Strategy's implementation.

Recommendations

- A UN Convention based template be established for data collection by specific government sector agencies
- The national census use a Convention-based template for collecting and reporting aggregated and disaggregated data on children and young people.
- The proposed longitudinal survey and reporting of indicators on children, contained in the *Agenda for Children* be developed and implemented forthwith.
- Government research funding place a much higher priority on high quality research relating to children and youth.

Co-operation with civil society

The Government continues to be co-operative with NGOs in relation to children's issues. In addition to the examples listed in paragraphs 190-195 of its report, the following matters illustrate a developing working relationship between Government and NGOs:

- The development of the *Youth Development Strategy Aotearoa* and the *Agenda for Children*, which both purport to improve co-ordination with NGOs in order to provide a better environment for children and young people.
- The development of a Youth Housing Strategy by the Ministry of Housing made in consultation with NGOs through focus groups attended by NGO representatives.
- The development of Te Rito – New Zealand Family Violence Strategy involved considerable co-operation and development between government agencies and NGOs. NGOs will also be included on the National Executive overseeing implementation of Te Rito, scheduled for full implementation over 5 years from 2002. Some action areas have already been initiated by the Government in conjunction with NGOs.
- Government and NGO delegations attended the 2002 UN Special Session on Children held in New York. However, there has been very little active dialogue between the Government and NGOs since the UN Special Session.
- The implementation of the Local Mapping Project, co-ordinated by the Department of Child, Youth and Family, in which community organisations and government agencies collaborate locally to match services. Almost \$NZ 2 million has been allocated to this project under the 2002 budget.

The impact of consultation on Government policy is often difficult to gauge. The Government's reaction to the NGO report *Making it Happen* has been mixed. The report has been welcomed by the Government's junior coalition partner, the Progressive Coalition, and the Green Party, but the Minister for Social Services and Employment has not issued any formal statement on the Labour Party's (the major Government coalition partner) position on this report.

The Minister for Social Services and Employment has stated in post-election press releases (16 September 2002) that children are a 'key focus' for the Labour-led government. However, his position on the NGO recommendations in *Making it Happen* is unclear. A lack of a constructive Government response will be disheartening for NGOs who work with children.

Budget allocations relating to children

In paragraph 14 of its 1997 report, the UN Committee on the Rights of the Child noted its concern at the legacy of New Zealand's extensive economic reform and the impact that this has had on budgetary resources available for support services used by children and their families. It also noted its concern at the insufficiency of data available to quantify the situation of children (paragraph 13) It accordingly recommended in paragraph 26 that, with respect to implementation of Article 4 of the Convention, budgetary resources be allocated to the maximum extent of New Zealand's available resources and that priority attention also be given to identifying the appropriate disaggregated data needed to assess this implementation.

Unfortunately, while there 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 whether or not New Zealand has met its Article 4 obligations. The Government concedes in its report (paragraph 196) that budget

allocation for children and their families is included in general spending. As a result, there are no substantive means of tracking the allocation of funding to government agencies, to delivery of services to children and their families by those agencies.

One of the central aims of the *Agenda for Children* is the eventual elimination of child poverty in New Zealand. It is estimated that approximately 30 percent of New Zealand children are poor. Sole parents, in particular face difficulties in balancing work and family responsibilities. One of the legacies of New Zealand's deregulation of the employment market has been the lowering of wages, job benefits and job security, which has had drastic economic consequences for sole parent families. The New Zealand Living Standards 2000 Report found that 53 percent of all people in sole parent families suffer economic hardship. The UN Committee noted its concern at the difficulties facing sole parents and their children in its 1997 report and accordingly issued a recommendation that measures be implemented to counter the negative impact of this phenomenon on children. To date, the Government has implemented no additional measures in line with this recommendation.

General funding has increased incrementally in the sectors that directly affect child welfare, specifically:

- Social Security and Welfare – \$NZ 13,487 million allocated in 2002 budget compared with \$12,509 million in the 1998 budget.
- Health – \$NZ 7,713 million (2002) compared with \$NZ 6,001 million (1998)
- Education – \$NZ 7,124 (2002) compared with \$NZ 5,714 million (1998)

However, as noted above, it is very difficult to track the dissemination of this funding from Government coffers to its impact on the welfare of the individual child. Child poverty remains at an unacceptably high level, with many communities missing out on the benefits of these initiatives due to the lack of accessibility of many of these services and systemic barriers and breakdowns between government agencies in providing these services.

At present, there is no concerted funding strategy by the Government to factor its Article 4 obligations into its budget allocations. Much of New Zealand's budget surplus allocations are being diverted into the superannuation fund (currently at the rate of \$NZ 1.2 billion a year and planned to increase). 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 (Ministry of Health, 2000). The eventual distribution of this fund between Maori and non-Maori will be highly inequitable if currently available life expectancy statistics remain constant³³ Fifty percent of Maori children and 43 percent of Pacific children currently live in economic hardship (Ministry of Social Development, 2002). These children will never experience the privileges of free health-care, education and accessible housing that were accorded previous generations. Meanwhile, the generation who benefited from the extensive free social services of pre-1984 New Zealand will continue to benefit from Government benevolence in their old age.

The *Agenda for Children* purports to establish a longitudinal survey of children and a programme of research on child poverty in order to provide a basis from which to address these issues. However, both projects, like the *Agenda* itself, do not appear to have been crystallised into action as yet. A real assessment of the Government's Article 4 implementation is therefore almost impossible, given the extremely modest nature of many of its child-focused initiatives and the variables (namely funding levels and systemic coherence and cohesion, accessibility, social barriers) that need to be taken into account.

Recommendations

- The Government implement a framework into the annual budget allocations that accounts for its Article 4 UN Convention obligations.
- The Government direct a proportion of budgetary surpluses into a fund parallel to that of the existing superannuation fund, that will cater for services needed to eliminate child poverty and hardship in New Zealand.

³³ About 89 percent of new-born non-Maori girls can expect to reach 65 years of age, compared with 72 percent of their Maori counterparts. For new-born boys, 83 percent of non-Maori and 63 percent of Maori can expect to be alive at age 65 years. The chance of reaching 85 years of age is more than twice as likely for non-Maori than Maori (45 percent versus 21 percent for females and 26 percent versus 12 percent for males). (New Zealand Life Tables Reports, 1995-97, Statistics New Zealand, 2003)

International co-operation

Extension of the Convention to Tokelau

To date the Government has not extended the Convention to Tokelau, despite the UN Committee's 1997 recommendation that this measure be implemented.

Overseas aid

The Government has implemented various bilateral and multilateral international initiatives through the New Zealand Agency for International Development (NZAID). The NZAID administers the New Zealand Official Development Assistance programme mentioned in *Children in New Zealand (2000)* in paragraphs 217-221. NZAID's vision statement centres on the alleviation of poverty in developing countries.

However, despite the efforts of NZAID, it does not appear to have any specific policy regarding bilateral or multilateral UN Convention implementation initiatives. While much of its work in funding education, health, environment and welfare initiatives can be seen as having an indirect impact in terms of assisting the implementation and realisation of Convention principles in developing countries, the agencies lack of a Convention reporting mechanism makes it very difficult to assess New Zealand's participation in the Convention's international implementation. Nowhere in NZAID's vision, mission and policy framework is there a mention of any initiatives specific to children.

Furthermore the NZAID budget for overseas aid for 2000/2001 was approximately \$NZ 250 million – 0.27 percent New Zealand's Gross National Product (GNP). While this level purportedly exceeds the weighted average of the 22 DAC countries (New Zealand is 17th in terms of per capita aid), it still falls short of the UN requirement of 0.7 percent of GNP to be allocated to overseas development assistance. At its peak in 1975, New Zealand contributed 0.52 percent of its GNP. This steadily dropped, reaching a low of 0.21 percent in 1996. Since 1996 contributions have incrementally increased each year.

Recommendations

- The Government extend the Convention to Tokelau.
- NZAID include within its policy framework, a mission statement that specifically concerns children and acknowledges New Zealand's international obligations under the Convention.
- After implementation of this statement, NZAID periodically report on its progress in this area.
- NZAID funding continue to be steadily increased towards the UN guideline of 0.7 percent of GNP.

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

General awareness

Despite the measures noted in *Children in New Zealand (2000)* (paragraphs 222-245), there remains a considerable lack of awareness of the UN Convention among the general public, adults, children and youth. There is also a perception in New Zealand that international instruments are of little practical application to the domestic environment, to the extent where a columnist writing in New Zealand's most widely circulated newspaper, the New Zealand Herald, described the Convention as 'bureaucratic toilet paper' (NZ Herald, 18 January 2001). While this comment can be disregarded as being deliberately sensationalist, and was made in the context of an opinion piece attacking children's rights organisations in general, it reflects a social undercurrent in New Zealand that is both opposed to and mistrustful of any notion that children are entitled to 'rights'. This is perhaps perpetuated by the fact that the mainstream media in New Zealand have done very little to dispel these prejudices, and the Government continues to make little effort to use mass media to promote the Convention.

In the context of New Zealand's ageing population, where the proportion of young people is decreasing steadily, it is very important that the principles of the Convention and its reflection in legislation and policy be promoted widely, otherwise it is likely children's issues will be further misunderstood and marginalised.

Some proposed Government initiatives, if implemented successfully, might help promote the principles and provisions of the Convention. These include:

- The *Commissioner for Children Bill*. If the Bill is enacted in its present form it will empower the Commissioner's Office to actively promote the principles of the Convention. The Bill also includes the Convention in its Schedule, and while the Bill expresses that this does not amount to the statutory incorporation of the Convention, it will provide a copy of the Convention on the statute books for public reference for the first time.
- The *Agenda for Children*, if implemented properly, should raise public awareness of the Convention.
- The Human Rights Commission has initiated a *National Plan of Action* regarding human rights in New Zealand (October 2002), pursuant to its functions under section 5 of the *Human Rights Act 1993*. While this is not specifically aimed at the children's rights of the Convention, it should raise the profile of human rights principles in New Zealand and in doing so increase understanding of the principles contained in the Convention.

NGOs continue to be active in promoting the principles and provisions of the Convention through the promotion of initiatives such as *Making It Happen*. However, widespread public awareness of the Convention is ultimately reliant on the level of its implementation into Government policy and decision-making.

Children and young people's awareness of the Convention

Despite the measures raised in *Children in New Zealand (2000)*, children and young people's awareness of the Convention is still very limited (noted in paragraph 230). This is partly because there are few examples of the Convention being raised in media that are popular and accessible to them. Examples that do exist include:

- Publications and the website of Youth Law Tino Rangatiratanga Taitamariki (a community law centre providing people under 25 with a free legal service) which include specific information on the Convention.
- The Office of the Commissioner for Children publishes a bi-lingual (English and Maori) poster on the Convention. The Office's website provides links to other sites containing information on the Convention.
- The Ministry of Youth Affairs also produces a poster on the Convention. The Ministry's website also contains a significant amount of information about the Convention.
- Reference in youth publications such as Tearaway magazine and on youth web sites, such as URGE www.urge.org.nz

While these measures and those referred to in the Government's report have provided the Convention with some promotion amongst children and young people, the lack of any co-ordinated, high-profile campaign aimed at specifically informing young people of the Convention and its contents has meant that it has remained largely inaccessible. When one considers its lack of citation in our most child-focused court, the Family Court, it is not surprising that children in New Zealand are generally unaware of the Convention. Its profile may increase if the initiatives currently proposed by the Government are implemented effectively. How much so remains to be seen.

Recommendations

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

Acknowledgements

ACYA is deeply appreciative of John Hancock who wrote this paper, Larissa Wakim, Charlotte Isaac, and the staff of YouthLaw Tino Rangatiratanga Taitamariki, Robert Ludbrook, and others who contributed.

The Recommendations from Making It Happen

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

Action Area 1: Promoting a Whole Child Approach

- 1.1 The identification and implementation of a process at a central government policy-making, administration and executive level to ensure that the whole child approach is fully applied.
- 1.2 The establishment of child advocates within communities to develop and integrate services on the basis of a child's needs.
- 1.3 Expansion of home-based and centre-based parent and child education and support programmes on the basis of what works, for whom and in which circumstances.
- 1.4 A reliable national database and communication system with appropriate privacy safeguards which is managed to ensure that each child receives his or her entitlement to quality health care, care and protection, education and other services as needed.
- 1.5 Adequate provision of financial support, relief arrangements and information to all people who take care of children including foster and kinship caregivers.
- 1.6 Development of education opportunities training and resources to fully inform government and community organisations about the whole child approach.
- 1.7 A research programme based on the whole child to inform policy and practice with children.

Action Area 2: Increasing Children's Participation

- 2.1 A systematic review of all government/local government systems that involve children to ensure that their participation rights are being fully respected.
- 2.2 An active programme to promote children's right to participation within the Government and non-government sectors.
- 2.2 The development and promotion of education resources, guidelines and other tools to assist organisations involve children in decision-making and information giving processes.
- 2.3 The development of processes to monitor and report on implementation of children's participation rights.
- 2.4 In compliance with articles 13 and 17 of the United Nations Convention on the Rights of the Child, promoting the development of non-violent, quality children's media which facilitates children's participation and citizenship development.
- 2.5 The development of processes to hear children's complaints about failure to ensure that they can access / fully participate as they are entitled to.

Action Area 3: Ending Child Poverty

Required immediately

- 3.1 Extend the Child Tax Credit of fifteen dollars per child per week to all low-income families. (Cost: around \$250 million).
- 3.2 Adjust Family Support and the income levels from which Family Support starts to reduce, to cost of living changes of the past decade. (Cost: up to \$250 million).
- 3.3 Place an obligation on the IRD (Inland Revenue Department) to ensure families access their tax credits.
- 3.4 Give all children under 18 access to free health and dental care including after-hours services and prescriptions.
- 3.5 Index all family-related payments, including health subsidies.
- 3.6 Adopt the 60%, after-housing costs, equivalised household disposable income as an official measure of poverty.
- 3.7 Monitor poverty on a regular basis to ensure progress is being made to eliminating child poverty.
- 3.8 Raise the threshold that can be earned by each beneficiary before losing their benefit almost dollar for dollar, from \$80 to \$130 dollars to compensate for inflation.

Required in the medium term:

- 3.9 Make part of Family Support a universal payment to recognise targeting inevitably leads to low levels of assistance and high clawback rates.
- 3.10 Begin a major increase in state house acquisition to at least 1000 houses per year.
- 3.11 Institute a programme of state-backed lending to low-income families, including state house tenants to enable them to own their own homes and reduce state house waiting lists.
- 3.12 Provide lending or loan guarantees to third sector housing providers such as housing trusts, housing co-operatives and iwi based housing agencies to enable them to offer further housing alternatives to low income families.
- 3.13 Evaluate all monetary and fiscal policies in terms of the impact on families and young people, not just their impact on inflation, debt, and annual growth of GDP.
- 3.14 Monitor and report on changes in poverty levels and poverty incidence.

Action Area 4: Addressing Violence in Children's Lives

- 4.1 Quality implementation and evaluation of Te Rito: The New Zealand Family Violence Prevention Strategy.

This includes putting in place:

- 4.1.1 Outcome-focused, community-building initiatives to prevent violence against children.
 - 4.1.2 Further early intervention programmes and services including parent education and support.
 - 4.1.4 Child intervention services to ensure that children witnessing domestic violence have their needs addressed.
 - 4.1.3 More early childhood education and school-based violence prevention and family support services and programmes.
 - 4.1.5 Evaluation of programmes to learn what works, for whom, and in what circumstances.
 - 4.1.6 Extending professional education about family violence and ensuring that those working with family violence are well supervised and supported.
- 4.2 Increased support for children traumatised by violence and neglect.

This includes:

- 4.2.1 Family Services so that highly skilled social workers have the time to respond to neglect as well as incidences of abuse, and can sustain relationships with abused and neglected children, their siblings and their carers for as long as is necessary.
 - 4.2.2 Increased support for quality carers, to ensure that children are safe from being abused again and are helped to recover from abuse.
 - 4.2.3 More specialised therapeutic services available for traumatised children.
 - 4.2.4 Culturally appropriate quality services to meet the needs of tamariki Maori and their whanau.
- 4.3 Repeal of Section 59 of the Crimes Act to discourage parents from using physical punishment to discipline children and ensure that children have the same rights to protection from assault in law as adults. A well-resourced, widespread education programme to promote positive parenting should accompany this. This could include extension of the CYF 'Everyday Communities' programme.
- 4.4 Reduce children's exposure to violence on television, other media and computer games.

This would include:

- 4.4.1 Extending the monitoring requirements of the Broadcasting Standards Authority.
- 4.4.2 Requiring TVNZ and NZ on Air to develop guidelines on use of violence for producers and programmers, and encouraging TV3, SPADA, and Sky TV to also adopt these guidelines.
- 4.4.3 Providing parents with information about guiding their children's watching of videos and playing videos games.
- 4.4.4 Promoting information about safe use of the internet.

Action Area 5: Government Structures and Processes

- 5.1 Identify options for the establishment of a central structure within Government that ensures that children's interests are routinely considered and protected.
- 5.2 A Minister for Children in Cabinet of sufficient seniority to carry policies and programmes forward.
- 5.3 A comprehensive policy for children which cuts across traditional sector boundaries to include education, health, development, income support, housing etc.
- 5.4 Extending the monitoring requirements of the Broadcasting Standards Authority and establishing an independent 'children's media group' (from child advocacy, relevant research and parent groups) to be pro-active on media issues impacting on children.
- 5.5 An all party select committee on children, which monitors the development of children's policy.
- 5.6 A Cabinet Committee on children chaired by the Minister for Children.
- 5.7 Child impact assessments to routinely accompany policy options and proposals.
- 5.8 Annual reporting on the state of children using a range of indicators backed by an active programme of research and data gathering.
- 5.9 An ongoing programme of monitoring Government's compliance with the 1989 UN Convention on the Rights of the Child requiring reporting by Ministries and Departments to enhance the effectiveness of the 5-yearly reporting process required under the Convention.
- 5.10 Strengthening and maintaining the independence of the Office of Commissioner for Children, increasing its authority, and avoiding its absorption into a Commission for the Family or the Human Rights Commission.

Action Area 6: Improving Local Government and Community Planning for Children

- 6.1 Government and Local Government NZ leadership in encouraging and supporting local authorities to develop local strategies and policies for children.
- 6.2 Government guidance and support to assist local authorities work with their community's organisations to develop policies and programmes, which best respond to identified needs.
- 6.3 Local Authorities to carry out SWOT analyses on their own communities to determine how well they are planning for and meeting the needs of children
- 6.4 A network of Child Friendly Communities be developed through UNICEF in consultation with Local Government New Zealand, Ministry of Social Development, Department of Internal Affairs, Ministry of Youth Affairs and local authorities.
- 6.5 Strong networks of community organisations, working closely and collaboratively with local and central government.
- 6.7 Regular meetings of local and central government politicians with community groups to discuss trends, issues and planning for children.

Action Area 7: Enhancing Information, Research and Research Collaboration Relating to Children

- 7.1 The establishment of an independent organisation to monitor and support research with children. This should include both government and non-government members, as well as representatives of user groups. Its responsibilities should be:
 - 7.1.1 To monitor the broad progress of Action Area 7.
 - 7.1.2 To advise government and funding agencies about priorities for research.
 - 7.1.3 To facilitate the engagement of researchers in policy formation.
 - 7.1.4 To facilitate the dissemination and implementation of current research findings. This will include the management of an accessible database of research findings and regular conferences (of policy makers, practitioners and researchers) to promote evidence-based policy and practice with children.
- 7.2 The Social Policy Evaluation and Research Committee needs to be extended to include independent researchers so as to avoid duplication and facilitate exchange of information (particularly in policy priority areas where research is needed).
- 7.3 The Foundation for Research, Science and Technology needs to re-write its Strategic Portfolio Outlines to align with the goals of the Agenda for Children and ensure that research relating to children's rights and well-being is given much higher priority. The amount of funding set aside for research related to children should be greatly increased.
- 7.4 In the next round of the Centres of Excellence applications, high priority should be given to funding a research group working on a research theme related to children. This would help to provide incentives to encourage university researchers to conduct research of relevance to children.

References

- Belgrave M, Blaiklock A, Davenport E, Hassall I, Kiro C, Low W, (2002) When the Invisible Hand Rocks the Cradle: New Zealand Children in a Time of Change, Innocenti Working Paper 93, UNICEF, Florence.
- Brown, Judge M (2000) Ministerial Review of the Department of Child, Youth and Family Services: Care and Protection is about Adult Behaviour, Ministry of Social Development, Wellington.
- George G (2001), Children's Rights? No, just burdens, New Zealand Herald, 18 January 2001, p A13, Auckland.
- Griffiths, D (2002), Reservations; The End of Executive Accountability? Masters of Laws thesis, University of Auckland, Auckland.
- Hodgkin R, Newell P (1998), Implementation Handbook for the Convention on the Rights of the Child, UNICEF, New York.
- Institute of Public Policy, UNICEF New Zealand and Children's Agenda. (2002) Making It Happen. 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.
- Ludbrook R, (2000) Victims of Tokenism and Hypocrisy: New Zealand's Failure to Implement the United Nations Convention on the Rights of the Child in Advocating for Children p 109-125, ed. Smith, Gollop, Marshall, Naim, University of Otago Press
- Ministry of Foreign Affairs and Trade (2001) Towards Excellence in Aid Delivery: A Review of New Zealand's Official Development Assistance Programme: Report of the Ministerial Review Team, www.nzaid.govt.nz.
- Ministry of Health (1998) Child Health Strategy, www.moh.govt.nz.
- Ministry of Health (2000). Our Health, Our Future - Hauora Pakari, Koiora Roa - The Health of New Zealanders 1999, Ministry of Health Wellington.
- Ministry of Justice (2000) Discussion Paper: Re-evaluation of Human Rights Protections in New Zealand, Ministry of Justice, Wellington.
- Ministry of Social Development (2002a) Agenda for Children, Ministry of Social Development, Wellington.

- Ministry of Social Development (2002b) The New Zealand Living Standards Report, reported pg1-2 MSD News No. 5, Ministry of Social Development, Wellington.
- Ministry of Youth Affairs (2000) Children in New Zealand: Second Periodic Report of New Zealand, Ministry of Youth Affairs, Wellington.
- Ministry of Youth Affairs (2002) Youth Development Strategy Aotearoa, Ministry of Youth Affairs, Wellington.
- Office of the Commissioner for Children (2000) Final Report on the Investigation of the Death of James Whakaruru, Institute of Public Policy, UNICEF New Zealand and Children's Agenda, Wellington.
- Statistics New Zealand (2001) Census Snapshot 13: Children, www.stats.govt.nz.
- Statistics New Zealand (2003) New Zealand Life Tables Reports 1995-1997, www.stats.govt.nz.
- Tapp P, Henaghan M (2000) Family Law: conceptions of childhood and children's voices – the implications of the United Nations Convention on the Rights of the Child, p 92-106, Children's Voices: Research, Policy and Practice, Smith A, Taylor N, Gollop M (ed), Longman, Auckland.
- The Law Commission (2000) Report 65: Adoption and its Alternatives: A different Approach and a New Framework, Law Commission, Wellington
- The Law Commission (2002) Family Court Dispute Resolution, PP47, Law Commission, Wellington.
- United Nations Committee on the Rights of the Child (1997), Concluding Observations of the Committee on the Rights of the Child: New Zealand. 24/01/97, CRC/C/15/Add.71

Appendix Nine

THE DEFINITION OF THE CHILD

ACYA Working Group on Implementation, Definitions and Principles

Please also see other Appendices, especially Appendices One to Seven.

Introduction

In 1997 the UN Committee on the Rights of the Child noted in regard to New Zealand legislation, its concern at the disparity of age cut-offs in defining a child. It stated, in paragraph 10 of its report:

The Committee notes with concern the lack of conformity of relevant domestic laws with the definition of the child under the Convention, particularly with regard to the minimum age for charging a child with serious offences and the minimum age of access to employment. The Committee further notes with concern the appearance of a wide range of age cut-offs – which do not appear to be necessarily consistent – under legislation administered by various government entities for eligibility for different types of government support.

The Committee accordingly made the following recommendation at paragraph 23:

The Committee recommends that the Government pursue the process of bringing existing legislation into line with the principles and provisions of the Convention. In this regard, the Committee suggest that the minimum age for being charged with very serious criminal offences and for access to employment be reviewed as a matter of priority.

Despite the above concern and subsequent recommendation of the Committee, so far there has been no change. Nor has there been any significant review by the Government of the age thresholds regarding serious criminal offences or access to employment. This is acknowledged in paragraphs 246-252 of the Government's Report, *Children in New Zealand (2000)*.

Age thresholds

New Zealand currently has a plethora of differing age thresholds regarding the definition of the child. These include, *inter alia*:

- A 'minor' is defined as a person aged from 0-19 years (*Age of Majority Act 1970*).
- A person may be tried as an adult, for the purposes of the criminal justice system, at the age of 17 years.
- A person may be charged with any criminal offence from the age of 14 years.
- A person may be charged with murder or manslaughter from the age of 10 years.
- 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*. Accordingly, 17 year-olds are excluded from the principles and protections of the Act.
- Children aged from 0-16 are entitled to free court-appointed legal counsel in Youth Justice and Family Court proceedings. Children aged 17 are excluded from these entitlements.
- Children can give their informed consent to a medical procedure from the age of 16 years, though no age restriction applies in relation to abortion – sections 25, 25A of the *Guardianship Act 1968*. However, flexibility exists in the common law for an under 16 year old to give informed consent to medical procedures, following the *Gillick* precedent. The *Health and Disability Code of Consumer's Rights* also follows the *Gillick* competency approach in its application to children.
- Children aged under 16 years are excluded from the protection from age discrimination of the *Human Rights Act 1993*.
- There is no minimum age for access to employment. Minimum wage protection is available only to those aged 16 years and over from the *Minimum Wage Act 1983*.
- Children aged from 15 years are able to be held on remand, and sentenced to adult prisons under the *Sentencing Act 2002*
- Unmarried persons aged under 20 may not change their name without parental consent or the leave of the Court.

- Persons are prohibited from selling alcohol or tobacco to persons aged under 18.
- Persons aged under 18 may not vote in the general or local elections.

This list is by no means exhaustive. There are many other divergent age thresholds in New Zealand legislation that accord adult autonomy and responsibility. In addition, the *Commissioner for Children Bill*, currently before Parliament, purports to define 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 (in that it is inclusive of children aged 17) than the child welfare or youth justice systems.

The inconsistency between the scope of the *Children, Young Persons and their Families Act 1989*, which establishes New Zealand's child welfare and youth justice systems, and the *Convention on the Rights of the Child* is the most serious failure in compliance with Article 1. The exclusion of 17 year olds from the principles and protections of the Act is a *prima facie* breach of the Convention and the concerns and Recommendations of the UN Committee in 1997, and has undergone no review or development from the Government since its ratification in 1993. This has led to the Government's Reservation to Article 37(c) of the Convention, concerning age mixing in prisons. As noted in *Children in New Zealand (2000)* (paras 251, 908) prisoners aged 17 who are not assessed as 'vulnerable' are not eligible for housing in Specialist Youth Units in prison.

Children in New Zealand (2000) states at paragraph 44 that the issue of extending the youth justice protections in the *Children, Young Persons and their Families Act* to 17 years olds was due for consideration by the Ministry of Social Policy in 2002. This has not happened. *Children in New Zealand* also fails to account for any review of the scope of the *Children, Young Persons and their Families Act's* child protection scheme.

Significantly, *Children in New Zealand (2000)* fails to provide any statement that justifies or explains the reasons for the *Children, Young Persons and their Families Act's* non-compliance. One can therefore reasonably and accordingly comment that the Government has shown no commitment to meeting its UN Convention obligations in this crucial area.

The UN Committee's Recommendations

Minimum age for charging a child with a criminal offence

The law concerning the minimum age of criminal liability has not changed since the UN Committee made its recommendations in 1997. The varying age thresholds are noted above.

Children in New Zealand (2000) notes a public debate as to the possible lowering of the age of criminal liability. This issue has been particularly prevalent in 2002 following a spate of 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.

In addition, the enactment of the *Sentencing Act 2002* provides that defendants as young as 15 may be remanded to an adult prison to await trial or sentencing for an indictable offence. Prior to the enactment of the *Sentencing Act*, the *Children, Young Persons and their Families Act* (section 238(d)) provided that young people in that situation be held in the custody of the Department of Child, Youth and Family Services. In exceptional cases, the Youth Court could order that the young person be held in Police custody (section 238(e)). The exceptions were those where the young people were likely to abscond or be violent, or where there were not suitable Child, Youth and Family Services facilities to house them.

The prolific use of the latter exception over the last ten years, owing to the paucity of Child, Youth and Family Services facilities, has led to the above provisions of the *Sentencing Act*. Young people were being locked up in Police cells (where conditions are worse than in prisons) for periods of up to six weeks as a result of the lack of available Child, Youth and Family Services accommodation. The provisions of the *Sentencing Act 2002* are subject to a sunset clause, whereby they will expire on 30 June 2004. We would hope that suitable Child, Youth and Family Services facilities are available by that date. In the meantime, the *Sentencing Act* will have the effect of more under 17 year olds being held in adult prisons. It is lamentable that the Government resorted to a law that so blatantly breaches the Convention for the purpose of temporarily resolving a problem they were aware of for over a decade prior to its enactment.

Minimum age of access to employment

There is no minimum age for access to employment. The Government has failed to remove its Reservation to Article 30 of the Convention and has not followed the UN Committee's 1997 recommendation that it ratify ILO Convention 138.

There has been one change to age thresholds in employment since *Children in New Zealand (2000)*, albeit outside the jurisdiction of the Convention. The Minimum Wage Order 2002 provides that 18 year-old employees are eligible for the adult minimum wage, thus reducing the previous adult wage age eligibility of 20.

Section 30 of the *Education Act 1989* still provides that children aged under 16 cannot be employed during school hours. Attendance at school is compulsory in New Zealand until the student reaches the age of 16. However, students aged under 16 can be authorised exemption from attendance at school by the Ministry of Education, which allows them to find full-time employment. These students have often been excluded from school for disciplinary reasons and have failed to find re-enrolment in another school. Anecdotal experience suggests that in many cases the Ministry of Education appears to prefer to issue the exemptions than direct state schools to enrol such students. The last Ministry of Education Report on Stand-downs, Suspensions, Exclusions and Expulsions (April 2002) indicated that 14 percent of excluded students had left school via exemption or were unaccounted for on any school roll.

Wide range of age cut-offs

As noted above, there remains a wide range of diverse age cut-offs that apply to young people. The lack of consistency and the seemingly arbitrary nature of these limitations do not coherently recognise the evolving capacities of children and young people. Instead they send young people confusing messages about their place in society.

The concern and confusion surrounding this issue is acknowledged in paragraph 252 of *Children in New Zealand (2000)*, which refers to the booklet *Does Your Age Need A Limit?* published by the Ministry of Youth Affairs as a guide to policy-makers to ensure consistency of age limitations in different state sectors.

However, notwithstanding this, there has been no significant move by the Government to rectify the current incoherent definitions of what constitutes a 'child' in New Zealand.

The Commissioner for Children Bill

The *Commissioner for Children Bill*, if enacted, will provide some symbolic harmony with Article 1 of the Convention. However, it does not provide an overarching definition able to be applied to inconsistent jurisdictions. This will undoubtedly have an impact on the Commissioner's ability to enforce UN Convention obligations in welfare and justice matters concerning 17 years olds, as the law treats them as adults, with no statutory regime of principles or requirements consistent with their rights under the umbrella of the Convention.

The Intellectual Disability (Compulsory Care) Bill

In addition, proposed legislation appears to perpetuate the problem of applying the Convention to 17 year olds, particularly the *Intellectual Disability (Compulsory Care) Bill*. The Bill allows for persons with an intellectual disability to be placed in compulsory care where they pose a significant risk to public safety. In its present form the Bill does not apply to under 17 year olds unless they have committed 'very serious offences' and are thus outside the scope of the Children, Young Persons and their Families Act. However, the Bill does not offer the same protections to 17 years olds, who do not have to be a 'very serious offender' in order for the Bill to apply. This again highlights the glaring inconsistency of New Zealand's youth justice definitions compared with those of the Convention.

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 adhere to the recommendation of the UN Committee on the Rights of the Child that the minimum ages of criminal liability for very serious offences under the Crimes Act be reviewed to ensure consistency with the Convention.

- The Government adhere to the recommendation of the UN Committee on the Rights of the Child to ratify ILO Convention 138 and review its position in regard to minimum age for access to employment.
- The Government, via the office of the Attorney General, or alternatively, Cabinet Committee or Select Committee, audit proposed legislation, regulations and order papers that affect 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.

Acknowledgements

ACYA is deeply appreciative of John Hancock who wrote this paper, the staff of Youth Law Tino Rangatiratanga Taitamariki, Robert Ludbrook and others who contributed.

References

Ministry of Youth Affairs (2000) Children in New Zealand: Second Periodic Report of New Zealand, Ministry of Youth Affairs, Wellington.

Appendix Ten

GENERAL PRINCIPLES OF THE CONVENTION

ACYA Working Group on Implementation, Definitions and Principles

Please also see all other appendices.

Introduction

The General Principles encapsulated in Part 3 of the *United Nations Convention on the Rights of the Child* form the backbone of the Convention, its rights and protections deriving from the central tenets of non discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival and development (Article 6) and respect for the views of the child (Article 12).

Children in New Zealand (2000) notes a number of legislative and administrative measures that it purports comply, or are consistent with, the general principles of the Convention. It does acknowledge, however, concerns that much more could be done to properly implement the principles in Part 3. In its 1997 Report the UN Committee raised a number of concerns relating to the general principles, in particular:

- New Zealand's fragmented approach to child's rights (paragraph 9);
- The impact of New Zealand's economic reforms of the mid-1980s on the well-being of children and their families (paragraph 14);
- The lack of any concerted strategy addressing the needs of children in single-parent families (paragraph 15);
- Section 59 of the *Crimes Act 1961* which authorises parents and guardians to discipline their children with physical force (paragraph 16);
- The high rate of youth suicide in New Zealand (Article 17); and
- Insufficient measures undertaken to address the welfare issues and needs of Maori children (Article 18)

While the situation for children in relation to some of these above issues has improved since the UN Committee's Report, there remain considerable inconsistencies and omissions in terms of Part 3's implementation in New Zealand.

Non-Discrimination (Article 2)

The Human Rights Act

The human rights framework in New Zealand has changed significantly since the last report to the UN Committee on the Rights of the Child in 1996, through the 2001 amendment of the *Human Rights Act 1993*.

The amendments were brought about to expand the scope of the Commission's functions and increase its efficiency. The impact of these changes on children is debatable. The increase in the coverage of the *Human Rights Act* to include Government agencies has undoubted benefits for child complainants who have been discriminated against by entities such as schools, the Police, Government ministries and so forth. The improved accessibility of mediation services and litigation avenues also may have possible benefits for child complainants and their representatives.

However, the *Human Rights Act* remains fundamentally a discriminatory document, as it continues to restrict persons aged under 16 from protection against discrimination on the basis of their age (section 21(i)). The amendment of the Act gave the Government a good opportunity to rectify this situation but, for reasons that have not been made clear, it has chosen not to. This issue was not discussed in any significant detail in the Ministerial Discussion Paper and Summary of Public Submissions that led to the drafting and enactment of the amendment in 2001, despite the Summary acknowledging (on page 57) that this issue had been raised in public submissions. These documents were part of the re-evaluation alluded to in paragraph 263 of *Children in New Zealand (2000)*.

It is acknowledged that it is generally in the best interests of children to be subject to restrictions that protect them from damage to their health and well being. It is also important that parents and guardians have

corresponding rights to control their child in a manner consistent with their child's best interests, its general welfare being the primary consideration. This is already reflected in legislation such as the *Children, Young Persons and their Families Act* and the *Guardianship Act 1968*. Section 23 of the *Guardianship Act* prescribes that the Court must hold the welfare of the child as the paramount consideration in any decision it makes.

There is however no reason why this should limit the protection of age discrimination to those aged 16 and over. Any other general principles or legislative examples that allow differential treatment of people must be justified by the incorporation of these factors in the Act and have a sound basis in established affirmative action policy or have a cogent practical social basis. Matters where it is sensible to have legal age restrictions could have been written into the *Human Rights Act* as exceptions without fettering the overall right of children and young people to be free from all forms of discrimination. The Act already lists many exceptions regarding its application in certain circumstances without limiting the general grounds for discrimination. Nor would broadening the grounds of age discrimination affect any legal thresholds as they apply to the functions of public entities as pursuant to section 20L(2)(b). Any complaint of discrimination on this ground is subject to the test of justified limitation per section 5 of the *New Zealand Bill of Rights Act 1990*.

It is therefore highly disappointing that children and young people aged below 16 continue to be precluded from a human rights protection accorded to persons of all other ages in New Zealand. As a result of this continuing restriction, New Zealand's human rights framework remains inconsistent with Article 2 of the Convention, in that it does not protect children from discrimination on the basis of their age. This restriction arguably breaches Article 2 of the *International Covenant on Civil and Political Rights* as well.

Recommendation:

- The Human Rights Act be amended so as to account for complaints regarding discrimination on the basis of age by complainants under 16 for the purpose of compliance with UN Convention.

The Human Rights Commission

It is difficult to gauge from the Human Rights Commission's 2002 Ministerial Report what proportion of inquiries and complaints received came from children and young people. This is somewhat concerning in light of the UN Committee's 1997 recommendation that priority attention be given to the identification of disaggregated indicators in the field of complaint registration. As *Children in New Zealand (2000)* indicates, children are not precluded from lodging a complaint with the Commission (unless that complaint is on the basis of age, as discussed above). The Commission's services are formatted for the general public and do not include a specific child or youth focused appendage, specifically for young complainants. However, this is most likely intended to avoid a doubling-up of its service with that of the Office of the Commissioner for Children, despite the quite distinct functions of these respective entities.

Discrimination suffered by young people in New Zealand

There remains much systemic discrimination towards young people in New Zealand. As was commented in *Action for Children in Aotearoa 1996*, the first NGO Report, it is somewhat naïve to assume that the legislative measures listed in *Children in New Zealand (2000)* can alone counter discriminative practices against young people. Many of these practices are socially and legally entrenched. Examples are listed below.

Employment

New Zealand's employment law remains inherently discriminatory in its application to young employees. Employed children under the age of 16 are not entitled to a minimum wage and thus the Department of Labour has no jurisdiction, under the *Minimum Wage Act 1983* to prosecute employers who pay exploitative wages to under 16 year olds.

Welfare and tax

The selective application of the Child Tax Credit (CTC) discriminates against children whose parents are beneficiaries. The Child Tax Credit is a tax credit paid to low-income parents on behalf of children. It is only available to parents in paid employment. Parents who receive a benefit are not eligible. This includes parents who are pensioners, full-time students, ACC recipients or sickness beneficiaries, unemployed, widowers, or recipients of the Domestic Purposes Benefit. Conversely, families on a low-income wage are entitled to access the Child Tax Credit on behalf of each child they have.

Therefore, children whose parents are beneficiaries are clearly discriminated against as a result of the employment status of their parents. They are powerless to change this situation, the effect of which is directly detrimental to their welfare. There are 300,000 children in New Zealand whose parents receive a benefit and are so affected.

In addition, children aged below 18 years, face restrictions in accessing benefits. This has the effect of discriminating against children who are in circumstances where they cannot rely on parental contributions to maintain their welfare. As mentioned above, parental obligations towards their children generally start to cease once the child turns 16. Children aged below 16, whose parents are not providing financial support, are not entitled to any state benefit. Instead, a non-parental caregiver may apply for an Unsupported Child Benefit. The young person does not have any entitlement to the Unsupported Child Benefit, and therefore has no control over their caregiver's use of the income. Children aged 16 and 17 can apply for an Independent Youth Benefit, where they are living away from home. However, the threshold for the Independent Youth Benefit is extremely high, requiring that young applicants be able to prove that it is unreasonable or impossible for their parents to financially support them, due to a family breakdown or otherwise. Applicants must undergo a psychological assessment by a Group Special Education psychologist and be enrolled at an educational establishment. Young people who are not enrolled at school or a training course are not eligible for the Independent Youth Benefit, regardless of their personal circumstances.

Housing

Housing New Zealand has recently changed its internal policies to exclude holders of work permits under the October 2000 Transitional policy from eligibility to state housing, regardless of whether the permit-holders have children who are New Zealand citizens. It is anecdotally understood that exceptions are made for permit-holders who have a New Zealand citizen as a spouse. This policy is clearly discriminatory in its application to children who are New Zealand citizens and affected by it, as it discriminates against them on the basis of their parents' immigration status. They have fewer rights to state housing than refugee children, despite their citizenship status. This policy has and will continue to have an extremely detrimental impact on the welfare of the children affected by the policy. In this respect, it does not appear to be consistent with the Government's stated intention to eliminate child poverty in New Zealand under the 2002 *Agenda for Children*.

Section 59 of the Crimes Act

Section 59 of the *Crimes Act 1961* permits the use of 'reasonable force' by adults to discipline their children, providing a defence to parents who commit what would normally constitute an assault if perpetrated against an adult. Accordingly, adults who have used force against their children violent enough to warrant Police prosecution have been acquitted in our Courts as a result of section 59.

Despite the 1997 recommendation of the UN Committee that this section be repealed in order to bring New Zealand law in line with the Convention, this section remains standing. The Government has recently signalled (NZ Herald, 2 December 2002) that it does not consider the repeal of section 59 to be a priority, preferring to focus on promoting alternative means of disciplining children. It appears to some that this decision has been made for political reasons, given the level of public (adult constituent) opposition to the repeal of section 59. This is very disappointing when one considers the overwhelming opposition of young people to the use of corporal discipline, collated in the 2002 *Agenda for Children*, purportedly the Government's central child policy document.

The perpetuation of section 59 is accordingly a saddening illustration of the minimal political status of children in New Zealand.

Racial discrimination

Since *Children in New Zealand* was published in 2000, the Office of the Race Relations Conciliator has merged with the Human Rights Commission, creating a new position of Race Relations Commissioner within the Commission. It will remain to be seen whether this change will have any impact on what appears to be systemic disadvantages experienced by Maori children in the fields of education and justice. The situation has not changed significantly since the last NGO Report in 1996:

- Maori students comprise 47 percent of all school suspensions, while making up 21 percent of the total school population (Ministry of Education Report on Stand-downs, Suspensions, Exclusion and Expulsions – April 2002).

- Maori children and young people comprise about half of all youth apprehended by Police, having a youth justice Family Group Conference or being prosecuted in Court.
- Anecdotal accounts accumulated by the Ministerial Taskforce responsible for drafting the Youth Offending Strategy, indicated that that in some regions Maori youth consisted of 80 to 90 percent of youth offenders. These reports were verified by Youth Court statistics which indicate that in some areas young Maori comprise up to 92 percent of young people before the Court (Ministry of Justice Youth Offending Strategy 2002, pages 11, 12).

Immigrant and refugee children also face difficulties in accessing educational and welfare resources disproportionate to that of non-immigrant/refugee children. The Government's continuing Reservation to Article 22(1) of the Convention may be seen as underpinning this situation. To a large extent the situation remains the same as that documented in *Action for Children in Aotearoa 1996*, the first NGO Report (pages 34,35). In addition, the political climate towards immigrants and refugees in New Zealand has become more hostile as of late, particularly in the wake of the terrorist attacks on the USA on 11 September 2001.

Discrimination against children and young people with disabilities

Paragraphs 264-269 of *Children in New Zealand 2000* illustrate that discrimination against children and young people with disabilities and special needs is a major concern at present. This issue is of particular relevance in terms of access to education, with regards to:

- Enrolment refusal – many special needs students cannot enrol at their local school.
- A lack of funding/resources available for special needs students in schools (particularly students with behavioural disabilities, such as ADHD)
- The suspension and exclusion of special needs students from school as a direct or indirect result of their disability.

New Zealand law is, on the surface, non-discriminatory in its application to students with disabilities. Section 8(1) of the *Education Act 1989* states:

... people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not.

Special education is also accorded a broad application in its definition in section 2 of the *Education Act 1964*:

Special education means education for children who, because of physical or mental handicap or of some educational difficulty, require educational treatment beyond that normally obtained in an ordinary class in a school providing primary, secondary, or [continuing education].

However, despite the accommodating tone of the Education Acts and the broad coverage of the *Human Rights Act 1993*, students with special needs continue to face disproportionate difficulties. Students with mild to moderate learning and behavioural needs are particularly disadvantaged as they are usually excluded from accessing any of a schools bulk-funded SEG grant, as they are generally not considered by their school to be enough of a priority to justify SEG resources, and are not eligible for individual ongoing funding (entitled Ongoing Reviewable Resource Scheme [ORRS] funding) as they do not fit the narrow eligibility criteria for this funding. In fact the extremely narrow application of ORRS (developed to apply to only 1 percent of the school population) has caused some students with very high-level intellectual disabilities to miss out on accessing any additional resourcing over and above that available to non-disabled students.

Without adequate resources, these students struggle at school and, as a result, often end up leaving school early, voluntarily or due to exclusion brought about by behavioural problems directly caused by this institutional neglect. The Education Review Office (ERO) has confirmed this in a recent report (reported NZ Herald, 28 November 2002). ERO found 'serious weaknesses' in the provision of specialist therapy and training programmes of special needs children in mainstream classrooms including:

- Inadequate access to specialists who can assess children's needs, measure their progress and redesign therapies
- Inadequate time available to train teacher aides and teachers who are expected to deliver these programmes
- Inadequate supervision and monitoring of their work.

These issues were recently addressed by the very significant decision of the High Court in *Daniels v Attorney General*. The case was brought by a group of parents of special needs children seeking judicial review of the Special Education 2000 (SE2000) policy brought about under the previous Government. SE2000 brought about the disestablishment of specific special needs facilities in favour of catering for special needs within the mainstream school environments. The plaintiffs' successfully argued that SE2000 was unlawful, as it was inconsistent with the incumbent education legislation and failed to adequately cater for their children's needs.

In his decision, the Hon Justice Baragwanath, found that elements of SE2000 were indeed contrary to law and had contravened the Crown's obligations with regard to certain provisions of both the 1964 and 1989 Education Acts. With regard to the issue of discrimination, the judge found:

- Children with special educational needs have the same rights as other children to receive an education.
- That children with differing special needs require different treatment and the Court will accordingly enforce the provision of assistance required proportionate to the child's individual need.
- That while the Crown does not unlawfully discriminate against students with special needs by providing the same services to all students, in doing so it will breach the Education Acts in that those statutes provide that differential treatment is required to achieve equitable access to education between disabled and non-disabled students.

The Crown has appealed against the High Court decision in *Daniels*, citing reasons concerning wider public policy ramifications. The Court of Appeal recently heard the matter, and 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.

In addition, the Ministry of Health's definition of 'disability' for the purposes of eligibility for Disability Support Services, noted at paragraph 267 and 268 of *Children in New Zealand (2000)*, has not been amended to date, despite the Ministry's purported intention to review it. This perpetuates the associated difficulties for children and their parents acknowledged in *Children in New Zealand*

Age discrimination

Paragraph 270 of *Children in New Zealand (2000)* notes the 2000 Police Yellow Triangle scheme, an issue that polarised the public as to its appropriateness. The scheme involved the Police providing yellow, triangular stickers to participant motorists aged 25 years or over, to indicate that a person under 25 is not meant to be driving their vehicle. The Police could therefore stop a car with one of these stickers if an under 25 year old appeared to be driving it.

Complaints were made to the Human Rights Commission on the grounds that the Police Scheme was discriminatory on the grounds of age for the purposes of the provision of a service. These complaints were upheld by the Commission, but for the section 151 'sunset clause' exempting the Police from compliance until 31 December 2001. The Commission released their decision on the matter just before Christmas 2000 and the Police agreed to drop the scheme. Unfortunately the matter was no longer newsworthy in the context of the Christmas period, and the Commission's decision received very little media attention in proportion to the attention the scheme had received earlier.

Sexual harassment

Paragraph 271 of *Children in New Zealand (2000)* notes the development of sexual harassment resources for schools. Most schools and educational establishments have comprehensive sexual harassment policies and procedures in place. However, it should be noted that students have less direct recourse under the *Human Rights Act* against a school that neglects to deal adequately with a sexual harassment complaint than they would against an employer. Whereas section 68 of the *Human Rights Act* specifically provides for both the vicarious liability of employers for actions of their employees in these matters, and a corresponding defence where adequate procedures are invoked, the Act is silent on this issue in relation to the vicarious liability of schools and educational establishments for the actions of its students.

Gay, lesbian and transgender youth also face problems of prejudice not experienced by heterosexual youth. Not only do they face social barriers and discriminatory practices, an example being that of some schools preventing same-sex partners of students attending school balls (irrespective of whether the relationship is platonic or romantic), they also face potential family upheaval and ensuing emotional hurt. As a result gay, lesbian and

transgender youth can have an inordinate risk of suicide, a tragic phenomena that is recognised by the government in the *New Zealand Youth Suicide Prevention Strategy*. Australian studies indicate alarming levels of suicide attempts amongst gay youth (see <http://www.sws.soton.ac.uk/gay-youth-suicide/03-gay-bisexual-suicide-australia.htm>)

Non-governmental support services work hard counter these issues. For example, Rainbow Youth is an organisation dedicated to supporting gay, lesbian and transgender youth and provides support and education services (www.rainbowyouth.org.nz). It runs workshops which fit into the current school Sexuality Education curriculum, which aim to decrease homophobia and create safe learning and working environments for gay, lesbian and transgender youth. Christchurch-based organisation Pink Health also provides support and referral services including a referral directory, the Pink Pages (www.mentalhealth.org.nz/focus/archive/focus_queer.asp)

Recommendations

- The Minimum Wage Act be amended to provide employees aged under 16 with an enforceable minimum wage entitlement.
- The Child Tax Credit be made available to all low-income families, regardless of the social security status of parents or guardians.
- The provision of benefits to under 18 year olds be made more flexible in a manner compatible with the individual circumstances of each applicant. In particular youth applicants, who are not enrolled in an educational course, should be entitled to meaningful welfare assistance aimed at assisting them to enter the workforce or education systems.
- Housing New Zealand policies be assessed in order to ensure that they do not discriminate against New Zealand children on the basis of their parents' immigration status, and are consistent with the principles of the Convention.
- Section 59 of the Crimes Act be repealed as soon as possible.
- The Government take meaningful steps to ensure that children with disabilities are able to access their education in a manner consistent with their entitlement under the Education Act.
- The Government amend the Human Rights Act in order to place a greater onus on educational establishments to implement sexual harassment prevention policies and complaint procedures.

Best interests of the child (Article 3)

Article 3 establishes the best interests of the child as a primary consideration in all matters concerning children. The principles and requirements expressed in the Article are not restrained by budgetary considerations. While it does not override the other provisions in the Convention, it is a general, fundamental requirement that is of particular significance in matters where more specific Articles do not apply (UNICEF Implementation Handbook, p 37).

Children in New Zealand (2000) purports to affirm New Zealand's continuing adherence to the principles of Article 3, while raising the issue brought about by public submissions that the best interests concept is not, in fact, given paramount consideration in the formulation of public policy (paragraph 272). *Children in New Zealand (2000)* notes that the development of the Children's Agenda document would address this concern.

The publication of the *Agenda for Children* strategic document in 2002 does provide a framework for achieving a comprehensive best interests approach. Action Area 1 of the *Agenda* emphasises the promotion of a 'whole child approach'. This is largely analogous to the principles contained within Article 3. However, as has been mentioned elsewhere in this Report, the *Agenda* is yet to be implemented and, importantly, does not outline in specific detail, the courses of actions needed to achieve its goals. The *Making it Happen* NGO response addresses the *Agenda's* failings in this regard and lists recommended measures that need to be taken to properly implement the *Agenda*.

In its assessment of the *Agenda's* 'whole child' approach, *Making it Happen* makes the following observation:
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, i.e. there

will be no whole-child approach. In the case of community service provision any agency working with children would need to ensure that a person with authority has responsibility for co-ordinating the care of each child to see that every aspect of their life and development is addressed as required (a child advocate).

Current legislation

In its review of state parties compliance with Article 3, the UN Committee on the Rights of the Child has indicated that the best interests principle should be reflected in all relevant legislation, in a manner that allows it to be raised before the Courts. As *Children in New Zealand (2000)* states (paragraphs 273, 274), two pieces of New Zealand legislation, the *Guardianship Act 1968* and the *Children, Young Persons and their Families Act 1989* both codify as paramount the welfare and interests of the child in custody, access and guardianship matters and care and protection matters respectively. However, as noted in the Report, the majority of the *Guardianship Act* deals with the rights of parents in regard to custody and access. Despite the Government's initiation of a review process in this area (see paragraph 273), to date there have been no amendments to legislation to update the Act and bring it more closely into line with the Convention (nevertheless, it is understood a proposed *Care of Children Bill* is due for introduction soon).

What is in a child's best interests is not always clear, especially in family law matters. However, in accordance with Article 12 of the Convention, it should follow that the child's wishes should be the deciding factor in cases where 'best interests' are not obvious. Adult participants in the Family Court – judges, counsel and parents – should be prepared to acknowledge the child's perspective even where it may not be considered consistent with an adult-orientated 'best interests' approach. However, there continues to be a lack of accountability back to children within the family law system, which is still largely an adversarial forum designed to facilitate the resolution of disputes between adults (Tapp and Henaghan).

In addition, the best interests principles encapsulated in the above statutes are focused on the needs of the individual child in matter of custody and welfare and apply solely to the jurisdiction of the Family Court. There are no other examples of the best interests principle being expressly extended to other jurisdictions, such as employment, education, health or social security, which have a direct impact on the livelihood of children. Article 3 is not limited to the interests of the child in matters of individual welfare; it is extended to 'all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'. The UN Committee has underlined the expansive nature of the provision in its review of state parties compliance (see UNICEF Implementation Handbook p 43).

Accordingly there are many examples that have been highlighted throughout the Summary and Background Papers to this report which indicate that there is fair way to go before New Zealand can claim full compliance with the requirements of Article 3. Examples of our failure to apply the paramountcy principle include:

- Housing New Zealand's refusal to provide state housing to New Zealand citizen children whose parents are immigrants. The consequences of sub-standard housing are seen in poor health and educational outcomes for these young New Zealanders.
- The discriminative criterion for eligibility to the child tax credit, which excluded children of beneficiaries from the benefits of the tax credit.
- Children with disabilities are frequently unable to access an education that is in their best interests: one that assists them to reach their full potential (supra). The Government's policy for funding children with disability in the school system ('Special Education 2000') has been very unpopular with many parents and children. The Ministry of Education is co-ordinating an advisory group on the educational needs of children with *physical* disabilities. The educational needs of children with mental health problems require investigation urgently. However, it is submitted that the primary reason children with disabilities are frequently unable to access an effective education is that the Government is not prepared to pay for it.
- The Government agency responsible for children's welfare (the Department for Child, Youth and Family Services) has undergone an in-depth review (the Judge Mick Brown Report) since New Zealand's last UN Convention compliance report was submitted. However, despite this there continues to be great concern at the under resourcing of the Department. The results for children can be catastrophic. Some are abused in foster homes, while others are placed in the care of family members who injure or even cause their death. These situations can arise when social workers balance the 'best interests' principle against protection of the family, rather than awarding paramountcy to the child's best interests. In addition, there continues to be insufficient appropriate out-of-family placements for children.

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. 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. It is hoped that the *Agenda for Children and Youth Development Strategy Aotearoa* documents will develop to provide an influential framework for promoting children's interests in a manner consistent with the Convention across the various relevant fields of policy and jurisdiction. However, there is much work to do by the New Zealand Government if this is to be the case.

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.
- Full administrative implementation of the *Agenda for Children and the Youth Development Strategy Aotearoa* be deemed a matter of priority by the Government, and that accordingly the cost of implementation be written into the *Annual Budget* in sufficient, accountable allocations.
- The Ministry of Social Development scrutinises health, housing, education and social security policy to establish whether or not they operate in children's best interests.
- The Government recognises the special educational needs of children with psychological and psychiatric disabilities, and commits to properly funding an effective education for all disabled children within an acceptable time frame.
- The Government resources the Department for Child, Youth and Family Services so that it is able to carry out its full range of functions under the Children, Young Persons and their Families Act 1989.
- In matters where there is conflict over what is in the child's best interests, the wishes of the child should be the deciding factor, so long as these can be ascertained.

The right to life, survival and development (Article 6)

Please also see Appendix Thirteen: *The Health of Children and Young People*.

Children in New Zealand (2000) asserts that 'New Zealand continues to affirm the right to life as a civil and political right of children' (paragraph 278).

This, of course, is technically correct. Section 8 of the *New Zealand Bill of Rights Act 1993* confers this right upon all New Zealanders. In addition, the principles of child welfare encapsulated in sections 5 and 6 of the *Children, Young Persons and their Families Act 1989* and section 23 of the *Guardianship Act 1968*, entrenches the welfare of the child as the paramount consideration in any proceeding concerning children.

Case law, as indicated in *Children in New Zealand (2000)*, has also supported the right of a child to life as an over-riding consideration. This has been particularly apparent where there has been a conflict between the administering of medical procedures to a critically ill child and the religious beliefs of the child's parents. In these cases, the Courts have deemed the right of a child to life to over-ride considerations of parental consent.

However, the right to survival and development is intrinsically linked with the right to life. It is in this area that there continues to be considerable problems.

Youth suicide

Children in New Zealand (2000) recognises that youth suicide remains a significant problem. While the latest available figures show a decrease in youth suicide (15-24 year age bracket), with 96 suicides for the year 2000 (compared with 120 in 1999 and 140 in 1998) being the lowest number since 1986, New Zealand still rated second highest in the OECD for per capita youth suicides. The 2000 figures were released by the Associate Minister of Health on 15 October 2002. In 1999, New Zealand had the highest rate of youth suicide in the OECD.

In its 1997 Report on New Zealand the UN Committee on the Rights of the Child expresses its 'serious concern' at the rate of youth suicide in New Zealand and recommended that priority be given to studying the possible causes and characteristics and implementing additional support and intervention services.

The previous Government responded with the *New Zealand Youth Suicide Prevention Strategy*, released in March 1998, which purports to monitor progress in addressing the UN Committee's concerns. The framework of the Strategy is outlined in paragraphs 76-78 and 284-295 of *Children in New Zealand (2000)*. The Strategy is made of two components:

- *In Our Hands*, which is focused at the general population.
- *Kia Piki te Ora o te Taitamariki* which is specifically for Maori youth and their whanau, hapu and iwi.

The marked decrease in youth suicide from 1998 to 2000 is encouraging, and the Government should accordingly be acknowledged for its implementation of the Strategy, which has appeared to coincide with this positive trend.

However, it is still concerning that New Zealand's youth suicide rate continues to remain at an unacceptably high level, particularly when compared with other OECD countries. In particular, certain positive developments have been offset by a lack of progress for young males, and in the case of young Maori males, there has been an increase in suicides:

- Youth suicide deaths for both Maori and non-Maori females have significantly decreased (from 37 in 1999 to 15 in 2000). This represents a per capita drop from 18.7 deaths per 100,000 to 7.4 for Maori females, and from 13.1 to 5.4 for non-Maori females.
- Youth suicide deaths of males, however, have remained relatively static (from 83 in 1999 to 81 in 2000). The per capita rate of young Maori males has increased to 43.5 in 2000 (from 42.4 in 1999), with non-Maori decreasing slightly (from 27.7 in 1999 to 26.4 in 2000).
- Maori youth suicides continue to be higher than those of non-Maori by a significant proportion (25.7 per 100,000 for Maori as opposed to 16.2 per 100,000 for non-Maori).

The statistics indicate that male youth remain extremely vulnerable. However, the positive trends are encouraging and part of this can be attributed to pro-activity on the part of the Government, its agencies, such as SPINZ (funded by the Ministry of Youth Affairs) and NGOs in countering the frequency of these tragedies.

Child health

The Child Health Strategy, published by the Ministry of Health in 1998 outlines a plan of action to improve child health in New Zealand through to 2010. The Strategy has accordingly identified Maori tamariki, Pacific children, as well as children with disabilities and children from disadvantaged socio-economic circumstances, as priority populations. The Strategy also notes the relevant Articles of the Convention in the formulation of its goals. The Strategy notes positive historical developments such as a general decline in infant mortality.

However, the Strategy lists many concerning factors. For example, Maori children are more likely to be hospitalised than non-Maori. Pacific children are significantly over-represented in cases of respiratory illnesses and infectious diseases such as measles and meningococcal disease.

As the Strategy implies, social and economic deprivation are critical factors in negative child health statistics in New Zealand. A recent report commissioned by UNICEF, *The Invisible Hand that Rocks the Cradle* (July 2002), addresses the impact of the 1984-1999 market reforms in New Zealand on the well-being of the child population and indicates that these reforms had a disastrous effect on the overall welfare of our children and young people. The report notes, inter alia, the following outcomes:

- The percentage of persons aged 0 to 14 living in areas of deprivation is markedly more than that of persons aged 65 and over, based on 1996 figures. Fourteen percent of infants live in an area of deprivation as opposed to six percent of over 65 year olds.
- Of the 105,000 children living in the most critical areas of deprivation, approximately 55,000 of these children are Maori, and over 24,000 are Pacific children.
- While household incomes for two-parent families rose from \$NZ 29,500.00 per annum to \$NZ 32,900 per annum from 1982 to 1996, household incomes for one-parent families declined from \$NZ 23,100 to \$NZ 20,600 over the same period.

As part of the 2002 *Agenda for Children*, the Government has pledged to eliminate child poverty (though notably does not specify a particular date that this goal is to be achieved by). The elimination of child poverty is fundamental to ensuring that New Zealand's Article 6 obligations are met in the manner intended by the Convention. It is hoped, therefore, that an enduring commitment by the Government will see this goal eventually come to fruition. However, against this context, it is disappointing that the Government has failed to respond to the UN Committee's recommendation that it study the projected needs of children in single-parent families and implement appropriate measures accordingly.

Recommendations

- The Government give priority attention to countering youth suicide, and in particular Maori male youth suicide.
- The Government, through its implementation of the Child Health Strategy, prioritise health funding in order to counter the disproportionate health problems experienced by Maori and Pacific children.
- The Government follow the recommendation of the UN Committee to study and take appropriate measures to ensure that the needs of children in single-parent families are adequately met.
- The Government implement adequately funded cross-sector initiatives with a view to eliminating child poverty in New Zealand by 2010.

Respect for the views of the child (Article 12)

Children in New Zealand (2000) (paragraphs 297 – 342) lists a number of initiatives and projects that purport to indicate an increased level of participation by children and young people in legislative, judicial and administrative processes that affect them. While it is acknowledged that there has been undoubted progress in this area since the Government's last report of 1996, there are still areas where the views of the child are not being accorded the recognition intended by Article 12 of the Convention.

Involvement in Government/Parliament

Children in New Zealand (2000) 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 likely to be very minimal. The Youth Parliament continues to be a successful periodic enterprise and would probably be a rewarding and interesting experience for those young people fortunate enough to be involved. The profile and influence of the Youth Parliament may be enhanced if it were held more regularly, for example annually or bi-annually, instead of every three years, as is the case at present.

The present status of the Prime Minister's Youth Advisory Forum is unclear. There is no reference to it on the websites of the Office of the Prime Minister or the Ministry of Youth Affairs. It is disappointing that this project appears to have been discontinued.

The Ministries of Social Development and Youth Affairs should be acknowledged for the respective efforts they have made in providing children with opportunities to contribute to the formation of the *Agenda for Children* and *Youth Development Strategy Aotearoa* documents, which both hold child and youth participation in policy development as a central objective. However, these documents are at an embryonic stage in terms of implementation and therefore it is difficult to measure their success in terms of outcomes (for more information see pages 7-9 of this report) In addition, the Commissioner for Children's Office is developing strategies to assist it to consult with children, which includes the establishment of a child advisory team with whom the Commissioner will consult on relevant issues.

Youth Councils

Despite the existence of youth councils within some local government infrastructures, local councils are free to make decisions without considering the views of children and young people. In addition, the continued existence of youth councils is tenuous. For example, it is noted with regret that Christchurch City Council's Youth Council, specifically cited in *Children in New Zealand (2000)* as a successful model of youth participation in local government (paragraphs 311-314), has recently been disbanded, against the wishes of its youth members.

Participation at school

Children in New Zealand attend school for significant periods of time and school impacts considerably on most children's lives. As noted in *Children in New Zealand (2000)* the *Education Act 1989* has been amended to require all secondary school Boards of Trustees to have a student representative. However, the legislative support for children's views to be taken into account in the school system continues to be limited. As it is required that only one student representative sit on a Board of Trustees, the position is somewhat isolated from that of parent and staff representatives and, accordingly, the input from children is limited.

In addition there is no legislative requirement for adult mentoring of the role. Although good schools will mentor student representatives to assist them to participate fully, others see the role as a token only. It should also be noted that student participation in Board of Trustees' decision-making processes is limited to secondary schools (Year 9 and over). At primary and intermediate schools, children have no rights to be on their school Boards or to have specific adult advocacy within the Board structure. The age of these students should not be seen as a barrier to participation, as some intermediate-age children are mature enough to be directly involved in Board processes, and at primary school there are many ways that children can have their views listened to and these views reported to their school Board.

Suspended students of all ages, however, are entitled to representation, whether by a legal advocate or otherwise, at suspension hearings, presided over by the Board's Disciplinary Sub-Committee. The requirement of section 13 of the *Education Act 1989* that these hearings be held in a manner consistent with the principles of natural justice also, on the surface at least, entitles students to a fair hearing and to have their views given due consideration by the Board. However, in practice Boards often appear to be confused by the concept of 'natural justice' and its application at suspension hearings, possibly owing to a lack of legal understanding or training in such matters. This has a negative impact on the right of suspended students to have their situations adequately heard and fairly considered. This can lead to defective decision-making by the Board, which, in the case of a decision to exclude, can have a lasting detrimental impact on the student's future educational and employment prospects.

The Youth Affairs Student Representatives in Schools Scheme (outlined paragraphs 315-319 of *Children in New Zealand (2000)*) provides another participation element for students aged 12 and over at school. The role is to provide a link with the Ministry of Youth Affairs, in order to inform the Ministry of youth concerns and of issues at school. It is not part of the administrative structure of a school. The most recent Summary Report of the Ministry in the Scheme indicates that students have had some success in influencing certain school and community policies. However, the young people surveyed (119 in total from 44 participating schools) were still concerned that their views were not often given sufficient consideration by adult administrations (such as local councils and schools).

Young people in youth units

Paragraph 336 of *Children in New Zealand (2000)* states that the Department of Corrections consulted with youth offenders about what services and amenities would be suitable for youth units. Despite the good intentions stated, there have been no new youth units established since the writing of *Children in New Zealand (2000)*, with the new Sentencing Act 2002 allowing for the remand of youth offenders in adult prisons to account for the resulting backlog. Young people in youth units are entitled to an internal grievance procedure which would allow their grievances to be forwarded to a grievance panel, and to advocacy during these procedures under clauses 15 and 16 of the *Children, Young Persons and their Families (Residential) Care Regulations*. Advocacy is not required, however, as the Manager of a unit only has to ensure that procedures are such that a youth inmate has reasonable access to arranging an advocate, whether that is a Youth Advocate or otherwise. In addition, there is no legislative avenue of appeal to any independent tribunal or authority should the young person wish to challenge the decision of the panel. However, young people could make complaints to the Commissioner for Children if they weren't happy with processes or decisions. The Commissioner may exercise his or her discretion to investigate accordingly. In summary, while there is a procedure for young people in youth units to have their grievances heard, it is limited to an extent that possibly falls below the threshold required by Article 12 of the Convention.

Young people in employment

While *Children in New Zealand (2000)* (paragraphs 337-338) purports to outline consultation and evaluation measures taken by OSH and the ERS to inform young workers of their employment rights, there is little evidence of any outcome. While producing excellent general resources, the ERS does not provide any specialist

services or publications to young employees. OSH, to its credit, does produce a website specifically targeted at youth workers. In reality young people are excluded from having any influence at all in the employment sphere. This is confirmed by the Government's unwillingness to amend New Zealand's labour laws so they conform with the Convention. Had they made any contribution at all to New Zealand's labour policy, it is highly unlikely that young workers aged under 16 would have agreed to the current situation whereby they are not entitled to any minimum wage protections.

Recommendations

- Government consider increasing the frequency of the Youth Parliament from every three years to annually or bi-annually.
- The Prime Minister's Youth Advisory Forum be revived and adequately promoted and resourced.
- 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 the board; and
 - # a requirement that two or more student representatives sit on secondary school boards
- The Ministry of Education be required to produce 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.
- The Children, Young Persons and their Families Regulations be amended to accord young people in youth units a more transparent grievance procedure that ensures advocacy for a complainant who wants it, and allows for the complainant to seek leave to appeal to an independent authority or tribunal.
- The Department of Labour undergo a public high profile survey of the views of young employees in regard to their views concerning entitlements and protections in the workplace.

Participation in the legal system

In relation to the above issue, *Children in New Zealand (2000)* focuses almost exclusively on the accessibility of the Family Court to children and the role and function of the Counsel for the Child – lawyers who are appointed by the Family Court to represent children aged 16 and under in Family Court proceedings.

In addition to the points raised in the Report (paragraphs 327-334) it should be noted that there have been recent Law Commission reviews of the functions of the Family Court (*Family Court Dispute Resolution* PP47 January 2002) and of the overall court system in New Zealand (*Striking the Balance* PP51 and *Seeking Solutions* PP52). However, to date there has been no legislation drafted in response to these discussion documents.

Family Court Proceedings

While the Family Court procedure does allow children to have participation in proceedings through Counsel for Child representation, there remain a number of gaps in the system and overall systemic failures that fetter this participation. As the Law Commission's discussion paper PP47 notes, Article 12 establishes the right of the child to participation in judicial and administrative processes that affect them. At present, children might not receive the benefit of representation at Family Court mediation to ensure their views are given proper consideration prior to any determination regarding their future. This could be considered inconsistent with the requirements of the Convention and the statutory requirements concerning the welfare of the child under the *Guardianship Act* and the *Children, Young Persons and their Families Act*. It is the child's well being that is paramount in Family Court processes and at the very least, children deserve to have the opportunity to have their views given proper consideration (Tapp, Henaghan, p 106). The Law Commission discussion paper has raised the issue of non-legal child advocates being made available at the Family Court to represent children in these matters. However, there has been no move by the Courts or the legislature to introduce such measures to date.

It is also important to note that children subject to Family Court proceedings do not have any input into the appointment of their Counsel for Child. Hence, children can end up with a Counsel for Child that they feel uncomfortable with, or have difficulty communicating with. This does not enhance their level of participation in

Court. In addition, it is extremely difficult for children to have their Counsel for Child removed if they are not happy with their representation, as they must have the permission of the Court to do so – permission that is unlikely to be granted without additional advocacy justifying the child's position. If a new Counsel is appointed, there is still no requirement that the child have input into the appointment.

Criminal Justice Proceedings

Young People aged under 17 who are subject to criminal proceedings against them in the Youth Court or the High Court, are entitled to free legal representation under the *Children, Young Persons and Their Families Act* 1989. The lawyers who provide this representation are appointed from the Youth Court list once charges have been filed in Court. While this service provides young defendants with a guarantee of full legal representation in such matters, it does not cover pre-Court procedures such as the initial Family Group Conference, where the majority of cases are resolved. In these cases young defendants can be vulnerable to admitting allegations without the benefit of prior legal advice or advocacy. The young person will then accordingly be required to fulfil certain conditions in consideration for diversion from the charge.

Lack of access to court advocacy for 17 year-olds

The most fundamental anomaly in terms of the New Zealand legal system's consistency with the Convention, in terms of Article 12, is its failure to extend Counsel for Child and Youth Advocate representation to children aged 17. 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. As a result 17 year-old children must fund their own legal representation if they are unable to qualify for legal aid. For most 17 year-old criminal defendants the provision of criminal legal aid is unlikely regardless of their financial status, because to qualify they must be facing likely imprisonment. As most young defendants are charged with minor offences and have not amassed a criminal record they generally fail to obtain criminal legal aid despite the impact a conviction may have on their future prospects and their corresponding inability to afford to pay for a private counsel. This excludes them from effective and just participation in the criminal justice system. Likewise, 17 year-old children subject to Family Court procedures are generally excluded from Counsel for Child representation, which greatly fetters their ability to have their concerns advocated for in matters that may directly affect their welfare. The exclusion of 17 year-olds from these entitlements constitutes a basic flaw in terms of New Zealand's Convention compliance and should be amended. However, to date there has been no indication from the Government that this issue is being given any serious consideration.

Notwithstanding the above concerns, it must be noted that in recent cases the Family Court has made comments that appear to underline its commitment to give Article 12 of the Convention its due significance in Family Court matters (cf. Implementations Background Paper pp 12-14). For example, the judgement of Judge Doogue in *Hollins v Crozier* [2000] NZFLR 775 expressed Article 12 as being the 'linchpin' of the Convention and in doing so emphasised just how important it is that children's views be given meaningful consideration in such matters, quoting family law scholar Pauline Tapp and Law Lord Butler-Sloss in support of this position. This may indicate that, in the Family Court at least, there has been a significant development in judicial recognition of child participation in Court processes since ratification of the Convention. However, this observation is tempered by the low frequency with which the Convention is referred to in Family Court judgements (see page 14)

Recommendations

- The Government urgently amend the Children, Young Persons and their Families Act 1989 to provide that 17 year-olds be covered by the youth justice and child protection jurisdiction.
- 17 year-olds subject to Family Court proceedings be entitled to Counsel for Child representation.
- Children involved in procedures, such as Family Group Conferences and mediation meetings that occur prior to the filing of proceedings in the Youth and Family Courts, be entitled to access free advocacy services.

Legislation

The Guardianship Act 1968

There continues to be concern for the lack of progress by the Government on updating important pieces of legislation to bring them into line with the Convention. A good example is the *Guardianship Act 1968*, which, in establishing the foundation for the law relating to custody, guardianship and access, fails to provide for

consultation with children. The Act holds the welfare of the child as the paramount consideration in any matter relating to a child's custody or guardianship. However, section 3 of the Act allows guardians full powers to make decisions about crucial matters such as upbringing and education without any consultation with the child. The only section of the Act that grants children under the age of 16 any degree of autonomy is section 25A which provides that young people may give informed consent to an abortion without needing the consent of their parents or guardian. The Government has been promising to update this Act for some time; consultation is underway and submissions were requested and received in 2000. It is understood that a proposed *Care of Children Bill* is to be introduced soon.

The Adoption Act 1955

Similarly the Adoption Act 1955 is in need of amendment and insufficient regard is being given to prioritising this task (see paragraphs 11-19 of the Civil Liberties Background Paper). This is despite a comprehensive Law Commission Report, *Report 65, Adoption and Its Alternatives: A different Approach and a New Framework*, which referred the matter to a select committee. The Law Commission's report and recommendations for legislative change to New Zealand's adoption laws is encouraging. However the lack of any adequate select committee and Government response to the report is very disappointing. Under the present Act, children and young people below the age of 20 have no participation rights relating to accessing information about their birth parents or the circumstances of their adoption. In addition, the Act and the Family Protection Act excludes children adopted by way of customary Maori whangai adoptions from their respective jurisdictions, which greatly impacts on the rights of whangai children to an interest in the estate of their adopted parents.

Recommendation:

- It is recommended that legislation be introduced into the House as soon as practicable to update the Guardianship Act 1968 and the Adoption Act 1955 in order to bring these important pieces of legislation into line with the Convention.

Summary

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 voices heard and opinions acted on. While the development of *Agenda for Children* and the *Youth Development Strategy Aotearoa* are positive developments as they sketch out a framework for greater child participation in society, children continue to be extremely vulnerable to the whims of political expediency. Politicians do not respond to children's views if the opinions expressed do not appeal to adult voters. While implementation of the *Agenda for Children* will hopefully help precipitate increased participation by children in matters that affect them, there are still many social prejudices that will have to be overcome before it can be said that Article 12, the 'linch-pin' of the Convention, is credibly adhered to in New Zealand.

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 that the findings of the consultation be presented to the select committee.
- In accordance with the views of children and young people, the Crimes Act 1961 be amended so that:
 - # Section 59 (which allows parents to use 'reasonable force' to discipline their children) is repealed; and
 - # There be a delay of one year between the commencement date of the new legislation and it receiving the Governor-General's assent.
 - # That a public education campaign be started immediately to lead up to the legislative amendment coming into force.

Acknowledgements

ACYA is deeply appreciative of John Hancock who wrote this paper, Clair Trainor, Larissa Wakim, Charlotte Isaac, the staff of YouthLaw Tino Rangatiratanga Taitamariki, Robert Ludbrook and others who contributed.

References

- Belgrave M, Blaiklock A, Davenport E, Hassall, I, Kiro C, Low W, (2002) When the Invisible Hand Rocks the Cradle: New Zealand Children in a Time of Change, Innocenti Working Paper 93, UNICEF, Florence
- Brown, Judge M (2000) Ministerial Review of the Department of Child, Youth and Family Services: Care and Protection is about Adult Behaviour, Ministry of Social Development, Wellington
- Hodgkin R, Newell P (1998), Implementation Handbook for the Convention on the Rights of the Child, UNICEF, New York
- Institute of Public Policy, UNICEF New Zealand and Children's Agenda. (2002) Making It Happen. 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.
- Ludbrook R, (2000) Victims of Tokenism and Hypocrisy: New Zealand's Failure to Implement the United Nations Convention on the Rights of the Child in Advocating for Children p 109-125, ed. Smith, Gollop, Marshall, Nairn, University of Otago Press
- Ministry of Foreign Affairs and Trade (2001) Towards Excellence in Aid Delivery: A Review of New Zealand's Official Development Assistance Programme: Report of the Ministerial Review Team, www.nzaid.govt.nz
- Ministry of Health (1998) Child Health Strategy, www.moh.govt.nz
- Ministry of Justice (2000) Discussion Paper: Re-evaluation of Human Rights Protections in New Zealand, Ministry of Justice, Wellington
- Ministry of Social Development (2002) Agenda for Children, Ministry of Social Development, Wellington
- Ministry of Social Development (2002) The New Zealand Living Standards Report, reported pg1-2 MSD News No. 5, Ministry of Social Development, Wellington
- Ministry of Youth Affairs (2000) Children in New Zealand: Second Periodic Report of New Zealand, Ministry of Youth Affairs, Wellington.
- Ministry of Youth Affairs (2002) Youth Development Strategy Aotearoa, Ministry of Youth Affairs, Wellington
- Office of the Commissioner for Children (2000) Final Report on the Investigation of the Death of James Whakaruru, OCC, Wellington
- Statistics New Zealand (2001) Census Snapshot 13: Children, www.stats.govt.nz
- Statistics New Zealand (2003) New Zealand Life Tables Reports 1995-1997, www.stats.govt.nz
- Tapp P, Henaghan M (2000) Family Law: conceptions of childhood and children's voices – the implications of the United Nations Convention on the Rights of the Child, p 92-106, Children's Voices: Research, Policy and Practice, Smith A, Taylor N, Gollop M (ed), Longman, Auckland
- The Law Commission (2000) Report 65: Adoption and its Alternatives: A different Approach and a New Framework, Law Commission, Wellington
- The Law Commission (2002) Family Court Dispute Resolution, PP47, Law Commission, Wellington
- United Nations Committee on the Rights of the Child (1997), Concluding Observations of the Committee on the Rights of the Child: New Zealand. 24/01/97, CRC/C/15/Add.71

Appendix Eleven

CIVIL RIGHTS AND FREEDOMS

ACYA Working Group on Civil Rights and Freedoms

Please also see Appendix Six: Refugee and Asylum Seeking Children and Youth; Appendix Twelve: The Family Environment; Appendix Fifteen: The Education of Children and Young People; Appendix Sixteen: The Right to Play, Leisure, Recreation, Artistic and Cultural Activities; Appendix Seventeen: Youth Justice; Appendix Eighteen: Protecting Children from Violence and Neglect (Care and Protection); and Appendix Nineteen: Child Labour.

The right to a name and nationality (Article 7)

Right to a name – Article 7.1

New Zealand has an efficient system for registration of a child's birth. Since 1995 the child's surname (family name) and at least one other name must be registered at birth. Registration of a child's birth is the responsibility of his or her guardian. If no guardian of the child registers the child's birth some other person can be authorised to do so. Although nearly all children born in New Zealand have a registered name there are some situations in which the child's right to a name is not fully assured.

Where birth of a New Zealand born child is not registered

It happens from time to time that the birth of a child who is born in New Zealand is not registered. Registration of a child's birth can be effected within two years of birth or even after two years with the approval of the Registrar-General. If the child's parents and family members fail to register the child's birth the child can be without a birth certificate and will not have any registered names. There are a few children in this situation and it is a cause of difficulty and embarrassment on enrolment at school, obtaining a passport or taking out life insurance. There is no longer a requirement in law that hospitals and persons present at the birth of a child notify the authorities of the date and place of birth and the name of the mother.

Where birth is registered but no forenames are registered

Under the *Births, Deaths and Marriages Registration Act 1955* it was not obligatory to register names for the child. A birth could be registered but no names recorded. There are children in New Zealand whose birth certificate shows no registered forenames. While the child will usually acquire a name through usage, problems arise when the child is enrolled at school, is needing a passport or in other situation where some documentation is required.

New Zealand born children adopted in New Zealand

Under New Zealand's adoption laws the adoptive parents can change the child's surname and forenames and only the new names appear on the child's birth certificate. The change of name is effected as part of the adoption order, but the Court has no power to refuse a change of name even in the case of an older child who knows of and uses the names by which s/he has been known prior to adoption. As an adoption order can be made in respect of anyone under the age of 20 years and as the consent of the child to the adoption is not required it is quite possible that the name of a child (even a 17 year old) can be changed without the child's knowledge or consent. This breaches the child's right to a name granted by Article 7 of the *United Nations Convention on the Rights of the Child*.

Overseas born children adopted in New Zealand

The same applies to overseas born children adopted in New Zealand. Without their agreement their birth name can be changed to a name which may be inappropriate in terms of the language and culture of the country of their birth.

Birth parent adopting own child

Under New Zealand law it is possible for the biological parent of a child to adopt his or her own child. This rarely happens today, but a parent can change the names of a child (even a 17 year old) without the agreement of the child as part of the adoption order.

Children are not able to change their names

A child in New Zealand is unable to change his or her registered name even if s/he is living independently of his/her parents and is working full time. A child can informally adopt a name other than his or her registered name but this creates problems when completing official documents such as passport and visa applications. The right to a name assured in Article 7 must include the right for a child to choose a new name when s/he is of sufficient age and capacity to weigh the implications of a name change (see Article 5).

Children required to bear surname of estranged parent

If a child's parents are living apart but the child's surname is registered as that of, say, his/her father the child is required for official purposes to use the father's surname even though the child is estranged from the father and does not wish to bear his name. This is the case even though the parent whose surname the child bears has abused the child and/or is legally denied any contact with the child. While it is open to the child's other parent or primary carer to apply to the Family Court for a direction changing the child's name the Family Court is not required to take into account the child's wishes and often give little weight to the child's views (Butterworths Family Law para 6, 404). The child has no independent right to apply to the Family Court or to the birth registration authorities for a change of name: s13 Guardianship Act.

Refugee and immigrant children

Refugee and immigrant children face additional difficulties. Unless they are adopted by New Zealand parents their name is not registered in this country. Details of their birth and the names given them at birth may not be available from their country of birth.

Recommendations

- The Government take greater steps to ensure that all children born in New Zealand have their birth and a surname and forename registered and that special procedures be established whereby children whose birth and names have not been registered can themselves apply for late registration.
- The Adoption Act be amended to ensure that the informed consent of every child be secured after appropriate counselling to any proposed change of name pursuant to the making of an adoption order.
- The Births, Deaths and Marriages Registration Act be amended to require that the consent of children (who are of sufficient age and capacity to understand the implications) always be obtained to any change of their names, and to allow children over that age to apply to the Family Court and/or the Registrar of Births to change their own name(s).
- When making decisions about children's names the Family Court be required to ascertain and take into account the child's wishes and that the views of a parent who is estranged from the child and/or is not involved in the child's day to day care should carry minimal weight.
- Consideration be given to introducing a system of local registration of the births and names of children born overseas who do not have information about or are unable to access official records about their birth and names.

Right to a nationality - Article 7.1

New Zealand citizenship is no longer automatically conferred on children over the age of 14 years who are adopted overseas by New Zealanders. The cost involved in application for citizenship of such children is considerable and they may not acquire citizenship because of their parents inability to pay the fees involved.

Refugee children are entitled to apply for citizenship after three years residence, but again the costs are considerable and children remain stateless because parents cannot afford the fees.

Recommendations

- The Government review the laws that deny children aged 14 or older who are adopted overseas automatic New Zealand citizenship in the light of the Articles 2.1 and 7.1 of the Convention.
- If the current law is maintained the costs of obtaining citizenship for refugee children and children adopted overseas be adjusted according to the means of the parents.

Right to know and be cared for by parents – Article 7.1

Children of unmarried parents

Under the *Status of Children Act* the father of a child is only a legal guardian of that child if he was married to the mother of the child or was living with her at the time of the child's birth. If the father is not a guardian, he has no right to a say in the child's education or upbringing and no right of custody of or contact with the child unless he obtains a court order.

Where a child is born to unmarried parents the father's name and details will appear on the birth certificate only if the mother agrees and produces an acknowledgement of paternity and consent to registration of his name signed by the father.

If the father wishes his name and details to be recorded as the child's father and the mother will not agree he will have to apply to the High Court for a declaration of paternity or to the Family Court for a Guardianship Order. This involves expense and delay and few fathers take this step. They may also be discouraged by the fact that court adjudication of their paternity may render them liable to pay child support for a child with whom they have no contact. If the mother wishes the father's name and details to be recorded on the birth register and he refuses, she will have to obtain a paternity order in the Family Court or a Declaration of Paternity in the High Court. Again there are disincentives for her to take this action – it may involve giving intimate details of their relationship in Court and the risk that he may demand contact with the child.

The information captured on a child's birth certificate is important to child's rights to know where they come from (whether this be related to whakapapa/identity or genetic/medical issues) and to seek information and a relationship with their birth parents. With a range of Artificial Reproductive Techniques available and adoption arrangements practiced at present, these issues are of concern under the incumbent law, including access to the security of a legal relationship for children with same-sex parents.

It was estimated that, in 2000, 14,000 women seeking the domestic purposes benefit (payable to sole parents) had declined to name the father of their child and that the number of women failing to name the father has increased from 8,700 in 1994. There are many hundreds of thousands of New Zealand born children who have no father identified in law. This breaches their right to know both parents.

Under New Zealand law a man alleged to be the father of a child cannot be required to undergo a blood test or provide a DNA sample to establish or disprove his paternity. In a recent case the Family Court refused to make a wardship order as a means of authorising the taking of a blood sample or buccal swab from a child in order to establish the child's paternity.

At birth a blood or forensic sample is taken from every child born in a hospital and held in a central database. The sample is known as a Guthrie Card. The mother of a child is known to have obtained and destroyed a copy of the Guthrie Card for her child in order to prevent the man claiming to be the child's father from proving his fatherhood.

New Zealand law is strongly weighted in favour of parents rights as opposed to children's rights in respect of the child's right to know his parents and is thus in breach of Article 7.1.

Children offered for adoption

An unmarried mother who chooses to place her child for adoption is under no obligation to advise the father of the child (or members of the father's family) of the birth of his child or of her intention to offer the child for adoption. The Court will only require an unmarried father's consent to adoption if it considers it 'expedient to do so': s7(3)(b) Adoption Act.

In practice, the consent of many fathers is not obtained to the adoption and the child has no means of obtaining information about his or her biological father from the Court adoption file. The child has no opportunity in such cases to be cared for by his or her father.

Adopted children's access to details of their birth parents

Under the *Adult Adoption Information Act 1985* no adopted person under the age of 19 years can obtain information about his or her birth parents. The birth mother of the child can put a veto on the release of information and some children will never have access to this information.

If an adoption placement breaks down there is no legal requirement that the birth parent(s) be invited to take care of the child in preference to the child being placed with strangers.

Recommendations

- The Government legislate to give itself the powers to take reasonable steps to establish the paternity of every child where no information of paternity is available from the birth registration records or through a court order
- Legislation be passed to require the mother and putative father of a child to give a forensic sample to facilitate the identification of the child's biological parents.
- A law be passed to prevent the parent of a child requiring that a child's Guthrie card be handed over and that it be an offence to destroy a Guthrie card
- The Adoption Act be reformed to require that the consent of the father of every child offered for adoption be obtained where the father can reasonably be identified
- The Adoption Information Act be amended to permit adopted children at any age to request information about their biological parents and that they provisions which allow a birth parent to impose a veto on the release of information be removed.

Preservation of identity (Article 8)

Adoption

Adoption law in New Zealand give little recognition of the child's individual and family identity. On the making of an adoption order the child ceases to be a child of his or her biological parents and ceases to have a family relationship with siblings, uncles and aunts, cousins and grandparents traced through the biological parents.

Children are quite commonly adopted by a grandparent or aunt and this causes 'genealogical bewilderment' or a disruption of normal family relationships. The child's birth mother may become the child's legal sister and the child may become an aunt to his or her siblings. The Law Commission undertook a comprehensive review of adoption law but none of the recommendations in its September 2000 report have been passed into law.

Current adoption law discriminates against Maori families in that it fails to recognise Maori custom whereby children are often cared for by aunts, uncles, grandparents or other members of the child's extended family and gives family members no say in adoption decisions. A whangai child continues to have contact with his or her biological parents throughout life. The provisions of the *Adoption Act* encourage secrecy and a clean break of the child from the birth parents and family of origin. Despite the efforts of adoption practitioners to promote open adoption the Act places limits on the opportunities for open adoption arrangements.

An adopted child may not know of the tribal affiliation of his or her birth family and be denied opportunities to enjoy his or her own culture (Article 30). The personal and family identity of Maori is closely linked with tribal associations (whanau, hapu and iwi) and with genealogical links with living and deceased family members (whakapapa). Adoption cuts these links and therefore denies the child his or her personal and family identity. Pacific children who are adopted may not have access to information about the island or village from which their parents and family originated. If they are adopted by non-Maori or non-Pacific parents they may also lose their indigenous language. Adopted children may not only experience deculturation. They may also lose opportunities available to other Maori or Pacific children such as the right to enrol on the Maori electoral roll, the right to scholarships offered by iwi and the right of inheritance of Maori land.

Children have virtually no say in adoption matters. Their consent to any proposed adoption is not required (unlike many Australian laws which require the consent of any child aged 12 or older). There is no power for the Court to appoint a lawyer to represent the child in adoption proceedings. There is no requirement along the lines of Article 12 that the views of children shall be ascertained and given due weight. The only way in which the

child's views can be put before the Court is through the report of a government social worker, but even this weak method of presenting the child's views is not available in step-parent adoptions which account for the majority of all adoptions.

Non-recognition of Maori family child rearing patterns

Recent court decisions establish that whangai (children brought up by family or community members) cannot claim from the estate of the person who cared for them unless they were legally adopted. They are entitled to share in freehold Maori land through orders of the Maori Land Court but under the closed system of adoption information may not be available on which the Maori Land Court can make such orders.

Children conceived by assisted reproductive technology

There are now a number of methods of human assisted reproduction, ranging from 'basic' artificial insemination to complex procedures such as embryo intra-fallopian transfer (which involves the implantation into the womb of a woman of an embryo, derived from an ovum produced by another woman and donor sperm). Complex 'family' relationships result from the use of assisted reproductive techniques and any accompanying surrogacy arrangements. The current legal framework does not provide adequate protection for children conceived by assisted reproductive technology.

At present, a child conceived by assisted reproductive technology will always have a deemed mother, being the woman giving birth to the child (that woman, of course, may not be the child's 'genetic' mother). In contrast, a child conceived by assisted reproductive technology has no legal father if the birth mother is either single or is married, but her husband has not consented to the procedure. A person who is *only* a donor of genetic material (ie ovum in the case of a woman, or sperm in the case of a man) has no legal rights or responsibilities towards the child. Section 5(2) of the *Status of Children Amendment Act 1987* removes 'rights and liabilities' of the donating person in this respect.

The *Status of Children Amendment Act 1987* was enacted to provide children born by way of assisted human reproductive techniques (such as through sperm or ovum donation) with a framework for determining legal parentage. However, the Act does not make any reference to the best interests or the perspective of the child.

A child conceived by assisted reproductive technology has no legal right to be informed of the method of conception or to information about genetic heritage. However, the issue of a donor's rights to establish their legal standing as a parent has recently been considered by the High Court in *P* (High Court, Auckland, 20 December 2002, AP 84-SW 02 per Priestly and Heath JJ). In its decision, the Court removed the jurisdictional obstacle to guardianship through direct reference to and application of Article 7(1) and 9(3) of the Convention, granting the donor parent the opportunity to make an application for guardianship in the Family Court.

Two Bills, the *Human Assisted Reproduction Technology Bill 1996* and the *Assisted Human Reproduction Bill 1998*, are currently before the Health Select Committee. *Children in New Zealand (2000)* discusses these Bills at paragraph 347 and outlines some of their major features. The Health Select Committee is due to report back to the House on 27 November 2002. It is proposed that children who are born as a result of assisted reproduction have access to donor information once they reach the age of 18 years. The proposal grants those children a lower age of access to the information, and access to a greater amount of information, than that to which an adopted child may have access to. This, in turn, highlights the need for an additional amendment to the *Adoption Act* to provide consistency concerning access to information for both adopted and assisted reproduction children.

It is arguable that the threshold for children to access such information should be lowered so as to achieve consistency with the thresholds of autonomy provided by the *Privacy Act 1993* and New Zealand child custody law. A child can, without fetter, access information about themselves at the age 16 and live independently of their guardians at the age of 16, notwithstanding any serious risks to their welfare. It follows that access to information about their adoption or their assisted reproduction should be made available to children at 16 (or younger, based on the capacity of the child seeking the information) in order to allow for greater consistency with both domestic law and the Principles of Articles 8 and 16 of the Convention.

Children born by way of a surrogate biological mother and subsequently adopted are subject to the same legal requirements as adopted children when trying to access information about their birth parent. The *Adoption Act* is silent on the matter of surrogacy, an issue which has been noted by the Family Court over ten years ago as needing the attention of Parliament (*Re P (adoption: surrogacy)* [1990] NZFLR 385 per Judge McAloon). Given that a surrogacy usually involves an agreement and the payment of maintenance by the adoptive parents to

the surrogate mother, it is a more open arrangement than a conventional adoption. A child of a surrogate parent may therefore be more likely to be aware of their biological origins than a conventionally adopted child. Notwithstanding this observation, however, a child of a surrogate parent still has no legal right to be informed or to access information about their biological parent or the arrangement that led to their birth.

Recommendations

- The Government amend the Adoption Act as a matter of urgency to remove the provision that adoption severs all legal links between the child and his or her birth parents and family of origin and to require that consent of children to their adoption be obtained wherever the child has the capacity to understand the implications of an adoption order and the available alternatives (for example, guardianship).
- The Government, without further delay, introduce legislation that will incorporate the recommendations of the Law Commission Report *Adoption and Its Alternatives* and, in particular, adds a new requirement that the best interests of the child shall be the paramount consideration (as required by Art. 21).
- Changes in the law be effected to give whangai children equal rights of inheritance and succession as are enjoyed by adopted children.
- The Government amend the Adoption Act to give recognition to the views and rights of the adopted child, in a manner consistent with Article 8 of the Convention and other domestic legislation, and that children born using assisted reproduction technology, via a donor, be accorded the same rights as other adopted children.

Freedom of expression (Article 13)

The New Zealand Bill of Rights Act

Children in New Zealand (2000) (paragraph 361) implies that the rights of children to freely express themselves are provided adequately by section 9 of the *New Zealand Bill of Rights Act 1990*. Indeed, New Zealand is ostensibly a free and democratic country and accordingly the *Bill of Rights Act* provides an unfettered right to free expression irrespective of age, notwithstanding the limitation provisions of sections 4 and 5.

However, in reality the lack of social recognition of the rights of children and young people to exercise free expression means that it is difficult for young people to exercise these rights with the scope accorded to them under the Convention, which provides this right 'regardless of frontiers' (Article 13(1)).

In addition, the *Bill of Rights Act* is a relatively weak statutory code of civil rights. It is not entrenched legislation and is accordingly subject to limitations under sections 4 and 5 therein. These limitations provide that the rights contained in the *Bill of Rights Act* do not act to supersede any other expressly conflicting statutory provisions (s4) and can be limited in the event that the limitation is reasonably justified (s5).

Restrictions

While Article 13(2) provides that the rights of children to free expression are 'subject to certain restrictions' based on respect for the rights and reputation of others and issues of national security, public order, public health and morals, these qualifications are no more prohibitive than the restrictions on free speech that New Zealand law places on an adult. Children, on the other hand, face more social and systemic restriction to their expression than the Convention contemplates.

Freedom of expression in schools

One area where the restrictions are apparent is in the school environment. The tension between the legal right of a school Board of Trustees to pass by-laws regulating uniform and appearance requirements and the right of a student to freely express themselves by way of their appearance under the *Bill of Rights Act*, has been a topical issue as of late. Unfortunately there have been no Court determinations regarding this issue so the exact legal position is unclear. The most recent case concerning this issue in New Zealand is the High Court decision in *Edwards v Onehunga High School Board and Another* [1974] 2 NZLR 238 which was made in 1974 and precedes the *Bill of Rights Act*.

It is likely, however, that a Court would not find it difficult limiting a student's right to free expression in such circumstances through the application of section 5 of the *Bill of Rights Act* (Trainor, 1999). At present, as was the case in 1973, a large majority of New Zealand secondary schools have fairly restrictive uniform and appearance guidelines, which prohibit 'unconventional' hairstyles, such as dreadlocks, and adornments such as body piercing and jewellery.

This has, on occasion, led to students being stood-down, suspended or excluded from schools on the grounds of continual disobedience (under section 14(1)(a) of the *Education Act 1989*) for breaches of school uniform and appearance requirements. It is concerning that this issue has led to such measures being taken.

In addition, there have been examples of students with cultural or religious appearance requirements (for example, Muslim male students with facial hair, Hindu students with facial piercing, Christian students with crucifixes and Maori students with taonga) who have been disciplined by the school for breaching its uniform requirements.

Free expression and participation/self-determination rights

The right to freedom of expression is inextricably linked to the rights to participation conferred by Article 12 of the Convention. Historically, due to a general lack of social, administrative and legislative recognition of these rights, it has been difficult for young people in New Zealand to have their views and expressions acknowledged or taken seriously by adult society. However, both the *Youth Development Strategy Aotearoa* and the *Agenda for Children* documents, if implemented meaningfully, may go some way to providing a framework for systemic recognition of the right of children and young people to express themselves and participate in decision-making. The Commissioner for Children also plays an important role in facilitating the public promotion of the views of children and young people and has recently established a Youth Advisory Group with whom the Office will consult in carrying out its functions.

Freedom of expression is a fundamental right in a free and democratic society like New Zealand. It provides the foundation for both our political and legal systems. It is therefore important that children and young people in New Zealand be informed about this right, including its parameters and purpose, and accordingly be allowed to exercise it in a manner consistent with their evolving capacities as contemplated by the Convention.

Freedom of religion, thought and conscience (Article 14)

Freedom from religious discrimination

As commented in paragraph 364 of *Children in New Zealand (2000)*, freedom of thought, religion and conscience is protected by section 13 of the *Bill of Rights Act*. In addition, section 21 of the *Human Rights Act 1993* protects a religious practitioner from discrimination on the basis of their religion. Neither the *Bill of Rights Act* nor the *Human Rights Act* have any age thresholds regarding the application of the above mentioned sections.

Limitations – parental guidance

However, section 364 of the Report notes that parents may offer their children guidance in terms of their enjoyment of this right. Indeed, section 3 of the *Guardianship Act 1968* confers the right of a guardian to control the upbringing of their child. 'Upbringing' is defined under the Act as encompassing both religion and education. It is therefore difficult for a child to practice a different religion to that of his or her parents, in the event that there is conflict over this issue.

This has become problematic in situations where a child is being forced by their parents into arrangements such as an arranged marriage or religious education, despite the child's unwillingness to comply with such arrangements. In these situations, the child often faces a difficult choice between compliance with something they do not agree with and possible ostracism from their family.

The issue of parental control of a child's religion was also raised in *Action for Children in Aotearoa 1996* in relation to the *Penal Institutions Regulations 1961*, which provided that the parents of an inmate aged under 20 years can determine which religious services their child shall attend while incarcerated. However, this has been amended by the *Penal Institutions Regulations 2000*, which states that a penal institution must ensure that

adequate and appropriate provision is made for the various religious and spiritual needs of inmates regardless of age or parental direction.

Freedom of religion in state (secular) schools

In addition to the above issues, there have been instances where a school's uniform and appearance policy has conflicted with a student's right to identify themselves with a particular religion, as noted above. State schools are legally required to be secular in terms of both their administrative and academic structures and are prevented by the *Human Rights Act* from practices which detriment students with particular religious needs. Participation in religious classes or practices at school is not compulsory (section 79, *Education Act 1964*). While the student may seek redress via a complaint to the Human Rights Commission under *Human Rights Act*, this process can often be beyond the means and resources of a young person without the help of their parents or an advocate.

Section 25A of the *Education Act 1989* (as amended by section 10 of the *Education Standards Act 2001*) provides that a student aged 16 or above, or the parents of a student (aged below 16) can ask the principal to release that student from a particular class or subject on religious or cultural grounds. The principal must be satisfied that the religious or cultural reasons are sufficiently genuine and that the student will be supervised if they are released outside the school grounds. In making their decision the principal must take all reasonable steps to find out the students point of view on the matter and take these into account (subject to the maturity and understanding of the student).

Sex education in schools

Sections 25AA and 60BB of the *Education Act 1989* regulate sex education in New Zealand state schools. As with religious and cultural practices in schools, these laws have been subject to recent amendment by section 11 of the *Education Standards Act 2001*. Under these laws, student participation in decision-making processes regarding sex education at their school is very limited. Parents can have their children excluded from sex education classes (section 25AA), without any input from their child. In addition, the Principal must consult with the school community about the teaching of sex education every two years. Notably, students are not included in the definition of 'school community' (see section 60BB(2)(b)), although the principal can, at his or her discretion, treat students as part of the school community for the purposes of this consultation: s60BB(2)(c). In summary, children have no right to receive or opt out of sex education at school, nor are there any requirements that their views be ascertained or taken into account for these purposes.

Freedom of thought/conscience

Children and young people in New Zealand also face barriers concerning their right to exercise their freedom of conscience. As children and young people are excluded from any participation in the voting process it is extremely difficult for them to have their own political voice, other than that provided by children's interests groups run by adults. In general, adult society gives little recognition to the political and social beliefs and wishes of its young people. When young people in New Zealand do speak out and express points of views contrary to those adults with authority over them, they are often met with a disproportionate reactionary response. However, as noted above the Youth Strategy and Children's Agenda documents, if implemented effectively at a systemic level, may go some way to creating an environment where the thoughts and ideas of young people are given due consideration. In addition, regional Youth Councils operating at local government level and, within the school environment, Student Councils (consisting of senior students) can provide young people with avenues for expressing their point of view. However, their actual impact of influencing policy is very minimal, with local councils and school boards free to make decisions without considering the views of children and young people.

Freedom of association (Article 15)

Freedom of association is provided by way of the *Bill of Rights Act*, and applies to children and young people as well as adults. In this respect, like the civil liberties examined above, New Zealand law complies with the Convention on the issue of freedom of association. However, while there have been positive developments in this area since *Action for Children in Aotearoa 1996*, the first NGO Report, the requirements of Article 15 have not always been reflected in practice.

Freedom of association in employment

The ability of a young worker to freely associate with an employee's union has been restored through the repeal of the *Employment Contracts Act 1991*, and the enactment of the *Employment Relations Act 2000*. As mentioned in *Action for Children in Aotearoa 1996*, the *Employment Contracts Act* was found by the ILO Committee to be

incompatible with *ILO Conventions* 87 and 98 concerning freedom of association and the right to organise and collectively bargain. However, the enactment of *Employment Relations Act* has allowed unions to move back into a central role in the employment sector by requiring all collective employment agreements to be bargained by a registered union on behalf of the employees. In addition, as was the case under the *Employment Contracts Act*, an employer is prohibited from discriminating against an employee on the basis of union association.

While young people are accorded more protection under the *Employment Relations Act*, with respect to both their employment rights (the right to a written agreement for example) and their freedom to associate with a union, young employees remain inherently vulnerable compared to their experienced adult colleagues. This is largely due to the nature of their employment, which tends to be part-time, temporary or 'casual'. As a result their employment agreements with their employers are often verbal (despite the fact that this contradicts the requirements of the *Employment Relations Act*) and therefore difficult to enforce and open to exploitation. The impact of the gradual reintegration of unions back into the work environment and standardisation of the agreement process brought about by the *Employment Relations Act* should, over time, phase out the use of casual contracts. However, unions have been slow in providing young people with accessible services. As a result, many young people are unaware of their options concerning union membership or representation.

Youth curfews

The issue of curfews in public places, aimed at preventing young people from associating in town after a certain time at night in order to prevent crime, was raised in *Action for Children in Aotearoa 1996*, the first NGO Report. The Report cited an example of a curfew of 10pm imposed on teenagers by the local Police in Te Kuiti. The Report also mentioned a complaint made by YouthLaw in relation to this practice to the Police Complaints Authority, whereby the Authority confirmed 'the only curfews that can be lawfully imposed are those which are set in place as part of bail conditions or by Family Group Conferences'. *Children in New Zealand (2000)* makes mention of the issue of youth curfews in paragraphs 366 and 377 of its Report, referring to Police guidelines produced in 1997 which clarified the position that curfews and 'blanket sweeps' of young people are illegal.

Notwithstanding the legal position acknowledged in *Children in New Zealand (2000)*, YouthLaw has received many anecdotal accounts from young people who perceive that they have been arbitrarily targeted by Police officers for apprehension, while associating with friends in town at night. Often this practice has led to young people being arrested and charged after the initial apprehension by the Police,

It is also important to note that under section 48 of the *Children, Young Persons and their Families Act*, the Police have the authority to uplift a person aged 16 years or younger unaccompanied by a parent guardian or caregiver from a situation that is considered to pose a risk of impairment to that young person's physical or mental health. In such a situation the Police must take the young person back into the custody of their parent or guardian, or, if that option is unavailable, into the custody of the Chief Executive of Child, Youth and Family.

Council By-laws

In addition, examples of more indirect methods of restricting the movements and activities of young people have occurred, such as local council by-laws limiting the enjoyment and movements of a large number of young people in the local community, through the prohibition of skateboards and other recreational transport used by young people. This tends to polarise young people from their local authorities and, in turn, fosters feelings of disrespect and resentment, attitudes that can provide a catalyst for anti-social behaviour (see McBride, 2000). In addition, young people are generally precluded from consultation prior to the implementation of such policies.

Trespass Notices

Young people continue to be frequently issued trespass notices under the *Trespass Act 1980* by retailers and proprietors of shopping malls in relation to instances or allegations of shoplifting or misbehaviour. While New Zealand law allows a retail proprietor an almost total discretion to serve a trespass notice on whom they choose, in particular where they believe that person has, or is likely to, break the law, our anecdotal experience suggests that on many occasions young people are served these notices as a result of prejudice on the part of the retailer, rather than either of the above conditions. In this respect, the position with regards to this issue remains the same as it was stated in *Action for Children in Aotearoa 1996*, the first NGO Report.

Recommendations

- The Government expand the Action Areas of the *Agenda for Children* to include a mass media national promotion of children's civil liberties under Articles 13, 14 and 15 of the Convention.
- Action Area 2 of the Agenda is implemented forthwith so as to increase the participation of young people in administrative processes, so as to allow school students to have more input into uniform and appearance requirements at school with a view to minimising suspension and expulsions due to uniform breaches.
- Sections 25AA and 60BB of the Education Act 1989 be further amended to accord students a right of participation in decisions regarding the teaching of sex education at school, in a manner consistent with Article 12 of the Convention.
- The proposed National Plan of Action for Human Rights to be undertaken by the Human Rights Commission include the specific promotion of children's rights to free expression, religion, thought, conscience and association.

Right to privacy (Article 16)

The Privacy Act 1993

As noted in paragraph 368 of *Children in New Zealand (2000)*, the *Privacy Act*, with its information privacy principles, is the basis for the protection in New Zealand. The disclosure provisions listed in the Act are intended to form a code, restricting permissible disclosure to those situations listed therein. There is no age threshold for enjoyment of the rights under the *Privacy Act*. It accords children and young people the same privacy protections as it does adults, although the Act permits an agency to refuse to disclose information to a person aged under 16, if disclosure of that information would be contrary to the interests of the young person requesting it.

Privacy protection in schools

Drug testing

Privacy protection in schools remains a significant issue. This issue was highlighted as a concern in *Action for Children in Aotearoa 1996*, the first NGO Report. Of particular concern are issues surrounding drug testing, random searches by school staff and disclosure of information. Drug testing and searches (which are dealt with below with regards to Article 37(b)) are becoming commonplace in New Zealand schools. Involvement with illegal drugs is the highest category of suspension in New Zealand schools (32 percent of all suspensions – Ministry of Education Report 2002). Students suspended for drug allegations often have to accept drug testing as a condition of reinstatement. In the current legal vacuum caused by a lack of case law concerning the drug testing of a school student, drug testing requirements differ from school to school, with some schools requiring periodic testing of the suspended student, others random testing and so on. However, it is clear from case law regarding drug testing in employment (where random testing is only permitted in high-risk work environments) that random drug testing is an unreasonable intrusion into the privacy of the young person concerned. Despite this, some schools continue to require that students suspended for drugs undergo random testing. This is a concern, particularly in the context of the Ministry of Education *Drug Education Guidelines for Principals and Boards of Trustees* which warns that drug testing students may constitute a breach of the student's legal rights and recommends that schools seek legal advice prior to making such a decision.

Disclosure of information

The disclosure of students' personal information by schools is an area in need of improvement both in terms of disclosure to the student concerned and disclosure to third parties. There have been examples of certain schools being unwilling to disclose information to students requesting personal information held by the school, without parental authorisation. In one reported case (NZ Herald, 22 and 30 August 2002) a school principal refused to release information about a student to the student citing an additional ground of refusal due to the alleged 'vexatious and trivial' nature of the request. The student referred the matter to the Privacy Commissioner, who ruled that the school was in breach of the *Privacy Act* in refusing to disclose the information to the student and recommended that the school release the information to the student.

Disclosure of information to third parties has also been problematic with respect to dialogue between schools concerning the enrolment of an excluded student. In some cases, information prejudicial to an excluded student's chances of being re-enrolled has been disclosed by the excluding school to a potential enrolling school, which has, in turn, resulted in the student's enrolment application being rejected by the school receiving the

information. This can have a negative impact on a student's ability to get their education back on track after being excluded.

Disclosure to parents

The issue of disclosure of personal information to parents, without the consent of the student, has continued to be problematic for students affected by such disclosure. Schools have duties under the *Education Act* (section 76) to report to parents on their child's progress at school and to notify parents of any problems their child is having sufficient to jeopardise his or her progress. However, this duty becomes more complicated where a student's parents are divorced or separated, and in particular where one of the parents does not have custody. As a result, most schools require custodial guardians to inform them of the custody and access agreement that exists over their child, so that the risk of disclosure to a parent who does not have any access rights to his or her children is avoided. In addition, the Ombudsman has recently considered that a non-custodial parent has no rights to their child's school report without the consent of the child concerned.

School staff, particularly counsellors, also face a quandary when in receipt of information from a student that the student does not want to have disclosed to their parents. This is particularly the case with respect to students seeking information or help about contraception or an abortion. While there appears to be no legal basis for requiring that staff member to disclose the matter to the student's parents, many staff members fear legal action from the student's angry parents should the student's actions be contrary to their wishes. We consider that there is a need for clear guidelines for school staff concerning this issue, in order to prevent disclosure without the student's permission. While there exists a guidance counsellors' code of ethics that only allows for unauthorised disclosure (to Child, Youth and Family or the parents) where there is a serious risk to the student or others, there are no guidelines for general staff. Disclosure of such information to parents or third parties without the consent of the student can result in a serious breach of trust occurring between the student, the school and the parents and accordingly subject the student to enormous emotional detriment. Clear guidelines, developed under the auspices of the Convention, could reduce the risk of this occurring.

Employment issues

The privacy issues that young people face in school are mirrored outside of the school environment. There have been concerns that employers have been requesting prospective employees to disclose details about whether or not they have received Police diversion in relation to any previous charges they may have faced. The Police diversion scheme is a private process between the Police and a first-time offender that involves the Police offering to drop the charge in consideration for the offender's admission of liability and willingness to pay a donation to charity. The scheme's purpose is to allow first-time offenders to avoid a conviction and the stigma associated with it, which can seriously jeopardise a young person's employment prospects. Police diversion information is private and cannot be disclosed to a third party without the consent of the person concerned.

Private drug search services

Another concerning development has been that of private companies offering parents services such as private drug dog searches and forensic equipment, such as chemical sprays for finding drug residue, in order to find evidence of suspected drug use by their children. These services are often marketed directly at parents who are worried that their child may be experimenting with drugs and as such can be read as exploiting parental fears for commercial gain. While it is undoubtedly reasonable that parents be concerned if they have reason to suspect that their child is involved with illicit drugs, the underhand nature of such measures could risk alienating their child and destroying any trust that may have previously existed. The services also indicate a general disregard, or perhaps more accurately mistrust, that exists in adult society for the right of young people to some privacy outside the sphere of parental influence.

Health information

In the area of health care, the *Health Information Privacy Code* complements the Privacy Act. It contains a set of privacy principles specific to the sector and relevant to issues of collection, use, disclosure and personal information. The criteria for disclosure of health information without the consent of a person aged under 16 is provided briefly in paragraphs 369, 370 and 371 of *Children in New Zealand (2000)*. It is largely framed around the common law principle formulated by the House of Lords in *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, whereby a medical practitioner's subjective analysis of a child's maturity and understanding is determinative in the ability of an under 16 year old to give informed consent to a medical procedure. This is referred to indirectly in paragraph 370. The Code does not, however, establish requirements or procedures that specifically relate to children. This could raise problems in matters involving care and protection

issues where the welfare and best interests of the child are of paramount consideration. Such matters are of sufficient distinction from those affecting adult patients to warrant a specific Code regarding the health information privacy rights of children and young people.

Access to appropriate information (Article 17)

Depictions of young people in the media

Currently the media are exempt from the *Privacy Act*, although they are subject to other enactments and provisions with regards to their responsibilities concerning the depiction of children and young people and the provision of appropriate information to children and young people. There exists, however, a significant difference between the standards and obligations governing print media and broadcast media. The former are subject to the Press Council jurisdiction, which comes with a voluntary code of ethics and a complaints procedure without penalties. The latter are subject to the Broadcasting Standards Authority with jurisdiction over mandatory privacy principles and the power to impose significant sanctions (including fines and compensation). Standard 9 of the Broadcasting Standards Authority's *Code of Broadcasting Practice* covers children's interests. Appendix 3 of the Code also incorporates Articles 3(1), 13, 14, 16 and 17 of the Convention into its guidelines.

Article 17 provides the basis for 'the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being'. The codes mentioned in the previous paragraph go some way to providing this. However, the lack of a universal standard for all media still gives room for shortcomings in media practice with regards to their depictions of young people. Examples include:

- A complaint to the Press Council by Youth Law over the publication of a photograph of an 11-year old involved in an offence. The photograph, taken shortly after the commission of the offence, was of a close up of the child's face and was displayed very prominently on the front page of the *New Zealand Herald*, New Zealand's highest circulating newspaper. The editors had made insufficient effort to obscure the child's identity, with only a very thin black line covering the child's eyes. This was in stark contrast to the complete pixelation of a photograph the paper published around the same time (late 2000) of a prominent United States businessman under District Court name suppression who had been charged by Police with importing illegal drugs into Auckland during the America's Cup. The Press Council upheld the complaint, requiring the newspaper to publish its findings.
- A Broadcasting Standards Authority decision relating to a television news article depicting the interview of the 10 year old son of a recaptured prison escapee and convicted murderer. The mother of the boy complained to the BSA on the grounds that the station had not sought her consent (which she said would not have been given) either before its depiction or before it was broadcast. The station argued that the boy's grandfather had given permission *in loco parentis*, despite the fact that he was not the boy's guardian. However, the Authority upheld the mother's complaint, saying that given the sensitive nature of the subject matter and the potential for adverse effect on the child, the station breached his privacy in conducting the interview without parental consent (*JJ v Television New Zealand* BSA No: 1999-170).
- The recent depictions in the media of a 12 year-old defendant, the youngest New Zealander ever to be convicted of a homicide offence, has been concerning. He was part of a group of young people who robbed and killed a pizza delivery worker and was sentenced to seven years imprisonment upon his conviction for manslaughter. Due to his exceptionally young age and demeanour, he was given an overwhelming amount of media attention, greatly disproportionate to that accorded his co-defendants, attention that has continued since his conviction.

Advertising standards

With respect to paragraph 377 of *Children in New Zealand (2000)*, the Advertising Standards Authority has included reference to Article's 3, 13 and 17(e) of the Convention in the introduction of its *Code of Advertising Standards for Children*, with particular note of the 'best interests' requirement of Article 3. The reference to the Convention constitutes an acknowledgement rather than incorporation of the Convention's requirements. There are concerns that in practice the advertising industry uses Article 17 to interpret the Convention narrowly and justify continued advertising aimed at children.

Access to appropriate information

The responsibility of state parties to provide young people with access to appropriate information under Article 17 can be seen as a necessary fetter to the right to freedom of expression conferred under Article 13. As information technology gets increasingly sophisticated and children's ability to access and utilise this technology concurrently develops, their vulnerability to exploitation (economic, sexual, psychological) will also increase.

The Government will face an ongoing challenge in this area. The examples of responses relating to the Internet and to Broadcasting Standards provided in *Children in New Zealand (2000)* indicate this. However, it is important that initiatives designed to protect children and young people from inappropriate information be balanced with acknowledgement and encouragement of their right to express themselves and make their own informed decisions in a manner consistent with their evolving maturity and understanding.

Recommendations

- The Privacy Commissioner develop a Privacy Code for Schools so as to clearly delineate the privacy rights of students in a manner consistent with Article 16 of the Convention and the functions of school administration in dealing with information about students.
- The Health Information Privacy Code be amended to include specific provision for the privacy rights of child patients in a manner consistent with Article 16 and the principles of the child welfare under the Children, Young Persons and their Families Act.

The right not to be subject to torture or cruel, inhuman or degrading treatment or punishment (Article 37a)

Section 23 of the *Bill of Rights Act* prohibits torture and cruel and degrading punishment or treatment. However, while our municipal law purports to provide such protection, instances still remain where young people are being punished or treated in degrading and disproportionate manners. *Children in New Zealand (2000)* on this Article examines three areas: residential care regulations, Police searches of schools with dogs and voluntary student drug testing. We consider that there also exist concerns in relation to the treatment of young people by Police.

Treatment in Residential Care and under Care and Protection

Children in New Zealand (2000) on residential care focuses solely on the area of search and seizure regulations. As the Report states, the search and seizure regulations stop short of authorising internal searches due to the fact that such an authorisation would constitute a breach of the *Bill of Rights Act*. However, young people in residences are able to be subject to scanner searches, pat-down searches, Police dog searches and strip searched under sections 384A, B, C, D and E of the *Children, Young Persons and their Families Act*. These provisions apply to all young people in residential care aged under 17, irrespective of whether they are there because of care and protection concerns or as part of a youth justice requirement.

It is of great concern that although there are detailed regulations to protect the rights of children in Child, Youth and Family Services residences, the residences have consistently failed to comply with the standards. The 2001 Audit Report on Child, Youth and Family Residences reports that, on eight out of ten criteria, there had been a significant regression in the degree of compliance with the Regulations. In particular, in three of the six residences, children (or their rooms) were routinely searched while the Regulations allow search only for reasonable belief that the child has some harmful or unlawful item concealed (see page 8). In one residence children were subjected to 250 strip searches in the year to June 2002. In another large residence there was only one strip search. One of the items which children are searched for is *money* – it is difficult to see how money poses a danger to children or staff. The report also questions whether the criteria for holding of children in secure care (where they are locked in) are being correctly applied in some residences (see page 9). Disturbingly, at one residence children are admitted through the secure unit, a practice that was condemned by the Human Rights Commission over 20 years ago and led to the passing of the Regulations. In two Centres grievance procedures were not operating effectively (page 11).

The Audit also raises several concerns relating to the inspection of residents' mail (pages 11, 12), withdrawal of telephone use for youth displaying non-compliant behaviour (page 11), and restrictions on visits by local family and friends of residents (page 11).

In addition, a long-standing chronic shortage of available beds has led to situations where young people, who have been uplifted under the *Children, Young Persons and their Families Act* due to an immediate risk to themselves or others, have been placed in Police holding cells for extended periods, sometimes weeks. This practice, while invoked as a last resort, is undoubtedly distressing and humiliating for the young people involved, as the cells are clearly not of sufficient standard to house any alleged offender, let alone a young person, for a long period of time. The most recent report of this practice (NZ Herald, 16 July 2002) where two young people

(aged 15 and 16) facing serious criminal charges, were held in Police cells for over a week due to a lack of available Child, Youth and Family Services facilities to house them, led to a call by the Commissioner for Children for a report on the situation. The newspaper report stated that between 1 March and 30 May 2002, 107 youths spent 279 nights in Police cells, ranging up to eight nights at a time in some cases.

Of additional concern are provisions of the new *Sentencing Act 2002* (sections 161, 162, in amendment of sections 238 and 239 of the *Children, Young Persons and their Families Act*), which provides that defendants as young as 15 years old can be remanded in an adult penal institution while on remand, either awaiting trial or sentence, for a purely indictable charge. The sections are subject to a sunset clause set to expire on 30 June 2004 (section 163 of the Act) ostensibly to provide for the building of the youth residences required to house young offenders. These provisions are the result of the long term failure of the New Zealand Government and Child, Youth and Family Services to provide adequate funding for a sufficient number of beds and residences able to house young people under these conditions. It is inexcusable that this problem, evident for over a decade, has been addressed by patchwork amendment that arguably breaches the requirements of the Convention itself.

The *Intellectual Disability (Compulsory Care) Bill*, introduced to Parliament in 1999, initially contained provisions that allowed for adults and young people with intellectual disabilities to be subject to compulsory care procedures even in the event that they were non-offenders. Thankfully, the Health Select Committee has reported back on the Bill and revised it so that non-offenders are not subject to the Bill's jurisdiction. In addition, the Committee has removed children and young people covered by the *Children, Young Persons and their Families Act* from the scope of the Bill. The Committee has recommended that the Bill only apply to young people (under 17) whom have committed 'very serious offences' and are thus outside the scope of the *Children, Young Persons and their Families Act*. The Committee's report notes that the Bill, as it now stands, would apply to 'about' three young people if enacted. However, the Bill does not offer the same protections to 17 years olds, who do not have to be a serious offender for the purposes of the Bill, highlighting the inconsistency of New Zealand's youth justice definitions alongside the Convention. Therefore the Bill, in its current form, arguably breaches Article 37(b) in its application to 17 year olds.

Voluntary student drug testing

Drug testing in schools, noted in paragraph 387 of *Children in New Zealand (2000)*, is far from 'voluntary' for a student suspended for drug allegations. The condition of drug testing is usually imposed upon the student, i.e. if they do not agree to be tested then they will be excluded or expelled. This hardly constitutes a voluntary choice with regards to a procedure that constitutes an invasive intrusion into a student's privacy.

Drug dog searches in schools

Drug dog searches in New Zealand schools continue to occur, despite there being no official Police policy on such matters (as noted in *Children in New Zealand (2000)*). Such searches are usually instigated by the school authorities for deterrent purposes designed to send a strong message to students regarding the consequences of drug possession at school. The lack of case law in this area and the absence of any codified policy on the part of the Police or the Ministry of Education with regards to drug dog searches, has led to the unchecked proliferation of this practice. Such searches present a number of concerns, in particular:

- Under the *Misuse of Drugs Act* the Police have a broad power of warrantless search and are able to conduct 'blanket' searches in schools either with or without warrants. This affects all students at the school, for whom attendance is compulsory.
- The power of Police to search without a warrant where they have a 'reasonable ground for believing' a controlled drug is present on a premises is extremely broad in definition, particularly in its application to the school environment.
- The Police may make decisions based on the judgement of school administrators rather than using their own discretion when administering such searches.

There has also been a reported instance of a Police strip-search of students upon school premises, during school hours (NZ Herald, 30 June 2001). This is of concern. It is noted that while drugs are causing undoubted problems in New Zealand schools, it is important that the policing of this problem is balanced with consideration for the legal rights of the students concerned. Strip searches are amongst the most invasive practices that the state can apply to the civil liberties of its citizens. The case law on the power of the Police to strip search suggests that the threshold for the legitimate use of such a search is high. It follows that this should especially apply when dealing with young people, particularly within the school environment and Article 28 of the Convention. The

Law Commission is currently inquiring into Police search and seizure powers and has accordingly called for submissions.

Treatment of young people by Police

There have been recent reported instances of concerning treatment of young people by Police. These include:

- A newspaper report of March 2002 (Sunday-Star Times, 4 March 2002) reported a scheme for repeat youth offenders in Napier run by Police Youth Aid which, according to the report, uses degrading shaming procedures on the youths involved, such as cleaning Police cells with their own spit, in an attempt to deter the young offenders from future offending. The scheme appeared in the report to draw support from different sectors as it was credited with causing a drop in youth crime in the area.
- Various recent reports of alleged mistreatment of young people by Whangarei Police, including: The findings of a judge that it was 'highly likely' that a Police officer threatened to uplift a suspect's 6-year old daughter unless the suspect confessed to the allegations facing him (reported NZ Herald, 28 August 2002); Unjustified arrests of young suspects to robbery charges in breach of the *Children, Young Persons and their Families Act*, leading to judicial criticism and costs awarded against the Police (NZ Herald, 15 February 2002); The findings of the Court that two young people were justified in using force to protect themselves against an unwarranted assault by Police (NZ Herald 28 August 2002).

A recent unpublished research (Ellison & Hall, 2000) indicates that a significant proportion of young people who have had experiences with the Police, have found these experiences to be negative. The paper, produced as part of a wider, ongoing project co-ordinated by YouthLaw with the co-operation of the Police, community organisations and young people, collated the experiences of 34 young people from four focus groups, two from high schools, and the other two from correctional and youth justice institutions. While there were both positive and negative accounts by these young people, 73 percent of the young people reported negative experiences with the Police.

As acknowledged in *Children in New Zealand (2000)* (paragraphs 39-43), there has been much social concern about rising crime, particularly youth crime, of late leading to public calls for tougher treatment of youth offenders. This has arguably been enhanced by recent high profile murder/manslaughter offences involving young defendants and reflected in a hardening of attitudes of Police towards young offenders, indicated by a marked increase in the number of young people prosecuted by Police (from 2,735 in 1991 to 4,024 in 2000, Ministry of Justice 2002).

However, notwithstanding this, youth crime rates have remained static. The Youth Offending Strategy, published by the Ministry of Justice in 2002, notes that Police apprehensions of under 17 year olds as a proportion of all offender apprehensions have remained 'relatively stable', at around 21 percent to 23 percent since 1991.

Recommendations

- The Human Rights Commission be asked to undertake a broad inquiry into whether the treatment of children in Child, Youth and Family Services residences complies with the Regulations and with the requirements of the Covenant on Civil and Political Rights and the Convention on the Rights of the Child.
- That the Government fund the establishment of new youth justice residential centres as a matter of urgent priority, and amend the Sentencing Act 2002 to reflect this accordingly.
- That the Government amend the Intellectual Disability (Compulsory Care) Bill so as to afford 17 year olds the same protections as under 17 year olds, in accordance with the scope of the Convention.
- That the Government draft and implement comprehensive guidelines, outlining the formal requirements for the drug testing and searching of school students and ensure that these guidelines are consistent with the principles of 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.

Acknowledgements

ACYA is deeply appreciative of John Hancock, Robert Ludbrook, James Gardiner-Hopkins, Anthony Trenwith, other staff at YouthLaw Tino Rangatiratanga Taitamariki, and others who contributed.

References

- O'Brien, C (Managing Editor) et al, (1993) Butterworths Family Law in New Zealand, Butterworths, Wellington.
- The Law Commission, (2000) Report 65, Adoption and Its Alternatives: A different Approach and a New Framework, Law Commission, Wellington.
- Hamilton R.J, Anderson A, Frater-Mathieson K, Loewen S, Moore D.W, (2001) Interventions for Refugee Children in New Zealand Schools: Models, Methods and Best Practices, Ministry of Education, Wellington.
- Trainor C, (1999), Outrageous and Rebellious: Legal Issues Affecting Students' Dress and Appearance, ANZELA Annual Conference Papers, pp 285-303, Auckland.
- YouthLaw Tino Rangatiratanga Taitamariki, Blaiklock A, Paterson A, Tapp P, (1996) Action for Children in Aotearoa: The Non-Governmental Organisation Report to the United Nations Committee on the Rights of the Child, YouthLaw Tino Rangatiratanga Taitamariki, Auckland.
- Ministry of Youth Affairs, (2000) Children in New Zealand: Second Periodic Report of New Zealand, Ministry of Youth Affairs, Wellington.
- McBride, T (2001) New Zealand Civil Rights Handbook, Auckland.
- Ministry of Education (2002) A Report on Stand-Downs, Suspensions, Exclusions and Expulsions, Ministry of Education, Wellington.
- Ministry of Education (2000) Drug Education: A Guide for Principals and Boards of Trustees, Ministry of Education, Wellington.
- Hodgkin R, Newell P, (1998) Implementation Handbook for the Convention on the Rights of the Child, UNICEF, New York.
- Department of Child, Youth and Family (2001), Audit Report: Residential Care Regulations Audit 2001: Child, Youth and Family Residences (Internal Audit), Department of Child, Youth and Family, Wellington.
- Ellison M, Hall A (2000) Young Peoples Experiences with Police, Facilitation of Four Focus Groups of Young Peoples Perceptions and Experiences with the Police, Unpublished, YouthLaw Tino Rangatiratanga Taitamariki, Auckland.
- Ministry of Justice (2002) Youth Offending Strategy, Ministry of Justice, Wellington

Appendix Twelve

THE FAMILY ENVIRONMENT

ACYA Working Group on the Family Environment

Please also see Appendix Three: Maori Tamariki and Rangatahi; Appendix Four: Pacific Children and Youth; Appendix Five: Asian Children and Youth, Appendix Eight: General Measures of Implementation; Appendix Eleven: Civil Rights and Freedoms, and Appendix Seventeen: Protecting Children from Violence and Neglect (Care and Protection).

Introduction

The Government's recognition of the important role of family or similar group is one of the many positive aspects of *Children of New Zealand: United Nations Convention on the Rights of the Child: Second periodic Report of New Zealand* (Ministry of Youth Affairs, 2000). The Government acknowledged the role of family in a number of places, including the Government's response to;

- The concerns of the Committee;
- Budget allocation relating to children (p. 35);
- Parenting education and family support (pp. 70-73);
- Separation from parents (p. 76-78);
- Family reunification (pp. 79-80);
- Children deprived of their family environment (Article 20 -pp. 82-83); and
- Adoption (Article 21 -pp. 83-84).

The Family Environment Working Group considered the following issues;

- Indigenous children,
- Choices beyond the nuclear family,
- The government's response to shared parenting effect on changing household demography; and
- Support for the family.

The Family Environment Working Group was concerned that, other than the parent(s), the interest of the people surrounding the child were rarely considered in *Children in New Zealand (2000)*. Where the Government's response mentioned the needs of Maori, the needs of Maori were described in terms of the Treaty of Waitangi (and there was in the main part, a positive view of Maori as Treaty partner) or in terms of equity where Maori were identified as being disadvantaged.

The family

Although there is no single definition of family, for many people the concept of their own family holds fond memories, something many wish to replicate when they have children of their own. The meaning of family is as broad as the types and forms the family takes³⁴ (Gilling, 1988). Durie described the institution of whanau in an address to the annual conference of the Public Health Association in Palmerston North (M. Durie, 1994). Durie described the whanau as:

an extended family network, a whanau is a diffuse unit, usually based on a common source of descent, within which certain responsibilities and obligations are maintained (M. H. Durie, 1998)

This group of people, the family and/or whanau, shares resources and carries out roles such as the care of children and maintenance of the home. Unlike the house or car maintenance, the care of children involves the specific transmission of culture that is reinforced by the fostering of lifestyle and the development of identity (Buck, 1950; M. Durie, 1994; Firth, 1973). In order to do this and access cultural resources and the people who have this knowledge, the intergenerational transmission of wisdom may be undertaken as part of childcare (Buck, 1950; Rangihau, 1977). Most families and/or whanau (extended family) achieve this through contact with parents, whanau or other resource people. Where the family and/or whanau are unable to meet the basic needs of

³⁴ Gilling described family as taking a number of forms including nuclear families, extended families, solo parent families, adoptive families, traditional families, and reconstituted families.

the child or children the Government has a mandate to intervene. The Government has a number of programmes designed to assist families and whanau with the care of children, and if need be, the protection of children.

Whanau

While there may be no single definition for family however, there is some understanding of the notion of whanau. Pere (Pere, 1982) and Durie (M. H. Durie, 1998) described whanau as a critical part of understanding Maori health and well being. Pere went on to describe the function of whanau and the process of maintaining relationships within and between whanau, whanaungatanga, as vital a component of health and well being for Maori and the whanau itself. Whanaungatanga is a process by which whanau ties and responsibilities are strengthened 'based on the principle of both sexes and all generations supporting and working alongside each other' (Pere, 1984). Support is a critical function of whanau, a characteristic and vital component of the ability of whanau to respond to the needs of members. Durie noted that this is not without risk saying that:

Flexibility, a characteristic of whanau, is both a strength and a weakness. By being always available it offers an ongoing source of assistance but without support to itself, the potential for nurturing others is diminished (M. Durie, 1994; p. 1).

Whanau do take many forms as described by Metge (J Metge, 1995);(J. Metge, 1999) however, whanau remains central to the growth and development of many children, a critical place in the landscape of Maori society. The whanau has a special place in the culture of Aotearoa/New Zealand by virtue of the Treaty relationship between Maori and the Crown, a place that warrants the protection of the Government. For this reason whanau is used to describe the family group that is reliant on whanaungatanga, and therefore a notion that sits alongside the term family (family and/or whanau) as an explicit alternative to a generic approach to the notion of family.

Whanau, families and the State

The role of the family and/or whanau in the care of the children cannot be divorced from the influence external forces such as change in the international and domestic economy, epidemic disease, housing, Government policy and discrimination. The relationship between the family and/or whanau and the Government is uncertain because of lack of agreement about the relative roles of each other (M. Durie, 1994). Without a mutual understanding, the gaps between the wants and needs of family and/or whanau and the resources of the State inevitable lead to unmet need, neglect or poverty, and with this the child suffers.

The view taken by the Government in *Children in New Zealand (2000)* of Maori is one that Maori children experience a variety of family and whanau settings that appears to focus on the household. Paragraph 391 of *Children in New Zealand* says:

Maori are more likely than non-Maori to live in extended families, this indicates the continuing importance of the traditional whanau. Maori adults most commonly live in two-parent families with children. Maori are considerably more likely than non-Maori to live in households containing two or more families.

The focus on the household overlooks the contact Maori children (by the process of whanaungatanga) are expected to have with other people (including relatives) as they participate in New Zealand society. Hodgson & Birks (2002) said that the development of social policy by the Government was reliant on distorted data. Both reports identify the essential relationships within a broader family structure often located in multiple households.

Hodgson and Birks (2002) indicate that the distortions arise from the use of the single household as the unit of analysis arises from the participation of people (including children) in multiple households. The distortion arises because this level of participation and transactions undertaken are invisible in the statistics collected using the single household as a unit of analysis. Government policy targeted at children in need will be inadequate where the policy does not include the relationships between caregivers, parents and children that extend beyond the single household and beyond the immediate parent/child relationship. Where the transactions include the transmission of behaviour and knowledge supplementary to the State supported education system, or reliant on access to cultural resources of other family members, the single household as a unit of analysis fails to describe the variety and scope of whanau relationships that may synergistically support a Maori child, or as is most often portrayed, the lack of such resources (Hodgson & Birks, 2002).

Children in New Zealand (2000) appears to confuse family with whanau and the Maori institutions of whanau, hapu and appear as an add-on component. This perspective of whanau is quiet understandable given the dearth of literature describing and analyzing whanau, and the shortage of Maori policy advisors in Government (Wetere, 1995). However it creates uncertainty when expectations are not met by either Treaty partner.

For example, the Government has undertaken to train people to work specifically with family/whanau groups (paragraph 436). The Government has not made the distinction between family and whanau and the facilitating whanaungatanga when appropriate.

Maori (Ihimaera, 1998) and non-Maori writers (J Metge, 1995; J. Metge, 1999) of the family have observed the whanau in contemporary times and have recorded the experiences of Maori who have recalled their life and experiences growing up as a Maori. 'Extended families' are described by Metge as whanau in a variety of settings (J. Metge, 1999). In more recent times the Government has engaged with some Maori to develop principles around the Treaty of Waitangi (M. H. Durie, 1998) and the rights of the child (Te Komoko, 2002).

Te Komoko, a Maori training and support unit within Early Childhood Development-Nga Kaitiaki Kohungahuna (therefore part of the Government), published the proceedings of approximately two years of consultation and development with sixty nine people and groups (many of whom were Maori) with an interest in early childhood development for Maori children. Te Komoko took the view that 'Maori children require specific and positive focus on their well-being as descendants of Iwi Maori (ibid, p 3).' The scope and nature of the report by Te Komoko is exceptional because the framework provided by Te Komoko is reported in two languages, English and Maori, and provides a self validating analysis.

The report by Te Komoko was used by the Family Environment Working Group to develop a set of principles and shaped the Working Group's family-based view of *Children in New Zealand (2000)*. The well-defined expectations captured by Maori when providing an understanding of whanau, a concept and a group of people, draws into contrast the interchangeable approach by the Government's use of family and whanau in *Children in New Zealand (2000)*. Both of these terms relate to similar but different institutions.

Recommendations

- The Government promote and advocate for indigenous models of family.
- The Government be consistent in the use of the terms family and whanau, in legislation and policy.

Development of the Family Environment Working Group's Principles³⁵

The Family Environment Working Group considered apply principles proposed by Te Komoko (Te Komoko, 2002) and the Royal Commission on Social Policy (Royal Commission on Social Policy, 1988) while producing this report. The use of the Royal Commission's principles was premised on their durability and the Treaty-based relationship Maori have with the Government. Maori have a special relationship with the Government that also offers a unique view of child rights. Although not all children are Maori or chose to be identified as Maori, these principles offer an analysis relevant to all children in Aotearoa/New Zealand. A second issue was that a rights-based approach for a group of people (Maori) recognised to bear a disproportionate burden of disadvantage may serve as a useful model for other groups who experience similar disadvantage.

The Royal Commission on Social Policy's Treaty of Waitangi principles are:

- Active protection,
- Partnership, and
- Participation (Royal Commission on Social Policy, 1988).

The Family Environment Working Group considered the principles developed by Te Komoko because these principles reflected a contemporary agreement between a department of State and a group of Maori. The four principles of Te Mana o te Tamaiti Maori are:

- Whakamana
- Kotahitanga
- Whanaungatanga
- Nga Hononga (Te Komoko, 2002)

³⁵ The inclusion of te reo Maori, in brackets, offers insight into Maori values and notions of family and wellbeing. The explanation, in italics, describes the principles outlined.

Te Komoko expanded their set of principles by considering the genesis of Maori children's right using the following five concepts:

- Mana Atua
- Mana tangata
- Mana whenua
- Mana reo
- Mana Aoturoa (Te Komoko, 2002)

An analysis of the principles and concepts of Te Mana o te Tamaiti Maori regarding the rights of a Maori child are presented at the end of this paper. The analysis of the principles and concepts provided by Te Komoko and The Royal Commission on Social Policy gave rise to three principles that underpin the analysis provided by the Family Environment Working Group. In the context of the family and/or whanau these principles are:

- Manaakitanga -the child's well-being is important,
- Manamotuhake –giving effect to the child's needs, and
- Rangatiratanga -unfettered access to cultural assets and the benefits of society.

Applying the Family Environment Working Group's Principles

The three principles adopted by the Family Environment Working Group were applied to the State's response in *Children in New Zealand (2000)*. Members of the Family Environment Working Group agreed upon four general topics during the initial stage of developing this report;

- Indigenous children,
- Choices beyond the nuclear family,
- The Government's response to shared parenting effect on changing household demography, and
- Support for the family.

The Family Environment Working Group agreed that an understanding of the demography and the variety and needs of the contemporary family and/or whanau in New Zealand was required to address these four topics. Although little information was available to address these issues directly, the issues provided reference points for considering the rights of a child within this broader context of the family and/or whanau. The Family Environment Working Group also considered the rights of indigenous children in New Zealand because of the pre-existing treaty-based relationship between the Government and the indigenous people of New Zealand, the notion of whanau and the acknowledged disadvantages experienced by Maori children (tamariki).

As identified by Te Komoko (Te Komoko, 2002) an important aspect of the Maori world is te reo Maori (the Maori language). Te reo Maori (the Maori language) offers insight into the Maori world, a world that is unique. Te reo Maori offers not only an insight into how the needs of the Maori child may be described, but also providing new options for the child in similar circumstances. Also acknowledged in The Draft Charter of the Rights of the Maori Child –Te Mana o te Tamaiti Maori is the language and diverse culture of other peoples (Te Komoko, 2002; p. 10).

Parental guidance and the child's evolving capacity

When addressing Article 5 of the *United Nations Convention on the Rights of the Child* about parental guidance and the child's evolving capacities, *Children in New Zealand (2000)* recognised that the child is dependant on the parents, caregivers, but the Government gave little recognition to other people who may or may not be related by birth or those relationships denied by adoption.

Children in New Zealand (2000) reflects on the State's role in the delivery of welfare and social services as well as making changes to legislation. The primacy of the parent(s) role and responsibilities for the care of the child/children is clear, however the role of other people who have an interest in the care of the child becomes an issue when the parent(s) are unable or no longer wish to care for the child. It is in these situations that the Government's legislation hinders the maintenance of care between a caregiver/parent and a child after this relationship is disrupted. The subsequent avoidable negative consequences, as represented by the failure of foster care, on-going abuse and in some cases the death of child, are a sad but repeated reminder of the lack of consistency within and amongst the policies of the Government and the inconsistent application of these policies.

Left to deal with systems failures are relatives and whanau who have little or no legislatively recognised authority and therefore no legal mandate to carry out a moral mandate inflicted by circumstance. The risk to Maori was identified by Durie (M Durie, 1994) who said that 'without support to itself [whanau], the potential for nurturing others is diminished', highlighting the frailty of care available to child members of whanau where support may be limited or moderated by external forces such as unhelpful legislation and exacerbated by poverty, poor housing, illness or unemployment. The reality for many Maori has been higher rates of dependence on social assistance, associated unemployment and poor housing. Child health statistics tend to support the compounding effect of risk factors associated with lower socio-economic status.

Parental responsibilities

Issues similar to those mentioned in relation to Article 5 arise in Article 18. The duties of parents and others who have a responsibility and duty of care for a child (or children) are clear, but what is not is the response of the State. The law gives effect to the status of those family or whanau members who have legal guardianship of the child.

This casts the balance of influence onto those who have legal guardianship after consideration of the some interests of the child. The balance of interests of the child, to those who have a responsibility but not guardianship (the whanau, the family were both institutions may have an interest in the child, the parent(s), the guardian(s)), is unclear while the *Guardianship Act (1968)*, in its amended 1995 form, remains in place.

Assistance in child rearing is also provided by the Government in the form of tax rebates (Child Tax Credit) and therefore disadvantages family and whanau who are unable to work. The State provided assistance for paid leave for child birth however this support is only available to family members who work, again to the disadvantage to those unable to work. This situation disadvantages family and whanau members unable to find employment. Vivian Ulrich, in a paper to the seminar 'At Least two Parents'³⁶ noted when considering the financial circumstances of separated parents that, 'there is virtually no encouragement for two parents to continue their involvement. It is a viable option only for wealthier families and may be mere rhetoric for poor families (Ulrich, 2002)'. Effectively policies of Government do not encourage some parents to remain involved in the care and development of their children.

One-parent families and their children

Providing children living in one-parent homes with adequate support will assist parents to care for their children well and promote the children's positive development (Ministry of Youth Affairs, 2000), p 15). Aotearoa New Zealand) has a significant proportion of children living in one-parent families. While the proportion of one-parent families increased 20% in New Zealand in the last decade, the capacity of New Zealand to meet their needs reduced. For example, Birthright has been reduced from 28 to 22 affiliated agencies throughout New Zealand. Children in one-parent families are much more likely to live in poverty, especially where both parents are reliant on state assistance. A recent study indicates children growing up in one parent families have been significantly affected by the reforms of the early 1990s (Blaiklock et al., 2002).

The Domestic Purposes Benefit (DPB) is the Government's principal support for children living under the care of one parent which is provided as a minimum level of support for the care giving single parent. Ulrich provided a useful analysis where separated parents capacity to care for their child or children is moderated by 'administrative rules':

Only one parent can receive the DPB. A shared care arrangement is not supported by the State. A non-resident parent (the liable parent) must pay child support calculated on her/his income but at a minimum of \$663 per year whether she/he is receiving a benefit or an [earned] income. If the liable parent wishes the children to stay overnight she/he must pay for that accommodation and food etc out of her/his income with no reduction to the benefit received by the other parent and no reduction in the amount of child support he or she is required to pay unless he or she has the children more than 40% of the time (Ulrich 2002).

Where the other parent who shares the care of the child or children is also reliant on State assistance or earns an income less than the DPB, the child or children whose care is shared in different households effectively lives in State prescribed poverty. It is for these reasons that the situation of children whose parental support is provided

³⁶ A series of seminars organised for people working in The Family Court, August 2002, Auckland, Wellington and Christchurch –proceedings to be published 2004.

by more than one household requires urgent attention. While this situation is allowed to remain, many children will continue to live in poverty, and a significant proportion of these children will be Maori. This is not surprising given the multiple household nature of whanau.

To date, despite its importance in terms of understanding children's needs within single parent families, no study has been completed to assess this. What we do know is that children in one parent families form a disproportionately large part of the lowest income level, suggesting they experience more poverty despite State assistance. It is estimated three out of ten children live in poverty which profoundly affects the realisation of their rights. Social assistance provisions discriminate against some groups of children. Children's access to health and education is limited by family poverty and fees. Schools charge fees – school camps are often prohibitively expensive for disadvantaged families and whanau. The Government has promised to end child poverty but not said when or how. Whatever study is undertaken on the needs of children within single parent families, special attention must be drawn to the needs of multiple household families and whanau.

There is a high correlation of child poverty with single parent families (Blaiklock et al, 2002). Adult employment, health, and drug/alcohol problems impact negatively on children, further reducing opportunities in all areas of life (including school, sports, academic, and/or vocational). These are all stressors within families which may place children at risk, not to mention reduce significantly their opportunities in life to grow into healthy well-balanced adults. Poverty is not limited to single parent households however. Also at greatest risk are those in large families.

The Government needs to review incentives for single parent families. Single parents are encouraged to seek employment while they care for their children at home. Present day work-related policies mean that high quality care is not affordable, workplaces are not usually family friendly, tax breaks are insufficient as is support for retraining or saving for retirement. Policy that resulted in a choice to work and affordable child care would be a positive option that benefits society and ensures a child's safe upbringing. This also has implications for children re-establishing contact with their family and/or whanau after separation from parents (see next section).

Disadvantage is created by the Government's inconsistent implementation its own policies for support. For example, Work and Income New Zealand policies are not consistently applied throughout New Zealand. The effect for children in some cities is disadvantage when a single parent applies for a special needs grant or special benefit such as the disability allowance.

Recommendation

- 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 family and/or whanau.

Separation from parents

Children should not be separated from their parents, family and/or whanau against their will (with exception of judicial review and where the best interests of the child are served). When separation does occur, that personal relations are maintained and that essential information is supplied to family, whanau and other interested parties without prejudice – again this remains unclear while the *Guardianship Act* is under review.

The Independent Youth Benefit helps support children who have to live independently of the family and/or whanau. When children return to family and/or whanau their allowance is cut and this may put the children into an unsafe situation if they subsequently have to leave. In some cases this removes the option of continuing post primary education. In one case a just seventeen year old student had their Independent Youth Benefit cut and was not available again after an attempt to return home to start again for a short period. Living at home was unsuccessful with this person saying that 'if it was safe she/he would return' demonstrated the difficulty faced when trying to access support from the State when family cannot or do not. This person was subsequently forced to work rather than continue their education which is an entitlement up their 18th birthday, because this person cannot afford to continue their education without State support.

Where imprisoned caregivers and parents are nearing the end of their sentence, their rehabilitation is important for the ongoing care and support of children. When an imprisoned caregiver is eligible for home detention, the

quality of care the caregiver is able to supply will be less than ideal where housing is unaffordable or unsuitable for the terms of home detention. This makes it more difficult for those without suitable housing, or whose only choice is already overcrowded housing to access the option of home detention. There are few options for caregivers and parents faced with poor or unsuitable housing. The disadvantage for families is further compounded by the location of women's prisons, the lack of support for imprisoned caregivers and parents to maintain contact with children and be part of their lives. The final indignity for most children is that they have not voice in this process.

The Government has started to address the issues of engaging the family/whanau in working through the issues of home detention. In paragraph 436 of *Children in New Zealand (2000)* the Government has made a commitment to up-skilling Probation Officers however, while there is commitment to understand how to work with different family/whanau, the Government has not acknowledged or addressed the fundamental issue of making a distinction between family and whanau. This distinction is important where the process of dealing with whanau may involve skills and processes unique to whanau, whanaungatanga.

Family reunification and illicit transfer and non-return

The response of the New Zealand Government to family reunion demonstrates reluctance to ensure that the rights of these children are maintained with regard to maintaining contact. The Hague Convention specifies processes by which contact can be maintained. The obligation the Government has to children separated from one or more of their parents and family is to ensure that access is maintained. Where a child is the victim of trafficking or removed from their country of habitual residence, the Government has undertaken to ensure the child's rights are upheld. The Government's change in immigration policies to remove the humanitarian category for permanent residence will cause a great deal of anguish for whanau and families who do not fit the tight criteria and have to face never reuniting with whanau and family members.

If the child's needs are adequately addressed the children of migrants will continue to settle and thrive as they have in the past, and become New Zealand citizens who contribute positively to society. New Zealand is a country that has a chequered history when welcoming new migrants. Today, New Zealand welcomes and nurtures refugees and migrants, celebrates diversity, promotes resettlement and rehabilitation and ensures that children's rights are observed and that the same rights apply all children. Humanitarian concerns and needs influence decisions about policy on refugees and migrants. The special needs of migrants are compounded by the trauma many have experienced. All refugees and migrants face significant adjustment issues such as rehabilitation from trauma and adjusting to new roles, a different culture, and a new language (also see the report by Te Komoko, 2002) because migrants (especially refugee children) often arrive in New Zealand overwhelmed by life experiences that should not be part of any child's life. Successful resettlement of children in these circumstances is severely undermined if they are separated from significant whanau and family members.

Children deprived of their family environment

Adoption and Maori cultural values

Adoption law in New Zealand is governed largely by the *Adoption Act 1955* and reflects attitudes which prevailed nearly 50 years ago. While The Law Commission released an excellent discussion paper in 2000 proposing major reform of adoption law no amending legislation has yet been drafted and it is unlikely that new adoption laws will be in place before 2004 at the earliest.

It has often been said that adoption is antithetical to deeply held Maori values in that it severs the child's legal and family relationship with his or her parents and members of his or her whanau, hapu and iwi. The *Adoption Act 1955* has for some time created much resentment for Maori and forms the basis for a claim before the Waitangi Tribunal. The Act fails to recognise Maori concepts of whanau, and the obligations of whanau members to provide care and guidance for the child as well as the rights of children to share in their heritage. The severance between child and whanau is viewed as unhealthy by Maori, even though whanau may have no difficulty accepting that children can be cared for by persons other than their biological parents. The complete severance between child and whanau is viewed as unnatural and culturally offensive by Maori. (Durie, 1994).

Until the 1980s information was not collected about the whanau, and iwi of Maori children who had been adopted and older adopted children sometimes have no way of finding out their tribal identity. This can have negative practical as well as emotional consequences.

The *Adult Adoption Information Act 1985* provides a process by which adult Maori who have been legally adopted can have access to their original birth certificate and thus establish the names a registration details of their birth mother and sometimes their birth father. However such information is denied to anyone under 18 years of age and frequently by the time the information is accessed the birth parent has died or his or her whereabouts cannot be traced.

Major defects of current adoption law

The welfare of children is not the paramount consideration as required by Article 21 of the Convention. The welfare and interests of the child are just one of the issues that the Court must take into consideration before making an adoption order. The Courts have tried to import into the law a best interests principle but the law in this regard is patchy and inconsistent. A recent Court of Appeal decision held that a birth mother who had given consent to adoption but whose circumstances had since changed and was available to care for the child cannot put forward her claims that the child's welfare would be best advanced by being in her care. Adoption severs the child's legal and family links with the biological parents and relatives traced through the parents therefore having signed the consent to adoption the mother is out of contention as a caregiver for the child.

The identity of children can be compromised because they have no right to obtain information about the names or other details about his or her biological parents. Information is available only when children reach the age of 19 years and even then a veto can be placed by the birth parent(s) preventing the release of information. A child's names can also be changed by the court at the request of the adoptive parent(s) even though the child has known another forename from birth and even though the child may have used the surname conferred at birth for many years. Children have no say in the matter of the change of names.

The *Adoption Act 1955* still permits privately arranged adoptions that do not require any form of accreditation. Lawyers, doctors and community groups can and do introduce birth mothers to adoptive parents. While basic checks are carried out on the adoptive parents and a social worker's report is required, the remaining requirements of official adoptions (arranged through Child Youth and Family) cannot be imposed. Individuals and organisations that arrange private adoptions cannot be paid. The welfare of the child is relevant only in the artificial sense that the mother has chosen to place the child with private adoptive parents and no other options for the placement of the child have presented themselves.

Unlike all other family law proceedings involving children there is no power in adoption to appoint a lawyer to represent the child. The courts sometimes appoint a lawyer to assist the court with a direction to report the child's views but this is a different role than that of representing the child's views.

Children do not have to give their consent to adoption. An adoption order can be made against a child (even a 17 year old) without his or her agreement. There is no channel established by the *Adoption Act* for the views of the child to be ascertained and taken into account. In practice, the child's views are likely to be sought by a Child, Youth and Family social worker and relayed to the court in a report, but in step-parent adoptions there is no legal requirement for a social worker's report to be prepared so even this weak provision for obtaining the child's views is vague.

The making of an adoption order not only gives parental rights to the adoptive parents, it also extinguishes the child's legal and family relationship with his or her birth parents and all other relatives traced through the birth parents. Adopted children live with the legal fiction that they are the biological children of their adoptive parents. Older children lose legal and family links with their birth parents and siblings, grandparents, uncles and aunts even though they may have grown up to know and love these relatives. While adoption practice now favours open adoptions there is no legal means by which an open adoption arrangement can be enforced after an adoption order is made. Under New Zealand law it is still possible for a birth parent to adopt his or her own child thus dispatching the other birth parent into legal oblivion. This means that the child is unable to maintain personal relations and contact with his or her birth parents in breach and Maori wishes to maintain the process of whanaungatanga. The Law Commission has recommended that this provision be abolished.

The father of a child who is not married to the mother and who was not living with the mother at the time of the child's birth has no right to be informed of the child's birth. His consent to adoption is only required in limited circumstances and so if an adopted child in later life wishes to find out who her biological father is, s/he may not be able to gain this information

Recommendations

- Adoption law be changed as a matter of urgency to make it clear that the welfare of the child shall be the paramount consideration in all adoption decision-making
- The child's consent to an adoption order and any proposed change of name be required where the child has the capacity to understand the matters in issue. Before giving consent, children should receive counselling and information suitable to their age and understanding as to the effect of adoption and the alternatives to adoption
- The recommendations of the Law Commission as to reform of adoption law be implemented as a matter of urgency and in particular any inconsistencies with the Convention (as detailed above) be addressed
- Children of any age be given a right to access to information about their birth parents and that the law be changed to ensure that open adoption agreements can be enforced or varied in accordance with the child's wishes and welfare
- Adoption law be altered to remove the provision that adoption extinguishes the child's legal and family relationship with the birth parents and members of the birth family and that members of the child's whanau, hapu, iwi or extended family be recognised as important family members in adoption proceedings and have a right to be heard and to address the Court on matters concerning the child's welfare
- The Government review existing legislation to ensure that the child has the opportunity to enjoy their right to know both parents

Best interests of the child a primary consideration

The *Guardianship Act 1968* has as its overarching principle that the welfare of the child is the paramount consideration when decisions are made about children. The *Children, Young Persons and their Families Act* sets out a number of guiding principles but states that in the event of conflict between principles the welfare of the child shall be the paramount consideration.

However other family legislation does not require that the child's welfare be the paramount or even a primary consideration. The *Child Support Act 1991* makes the recovery of the domestic purposes benefit paramount. Another example of mixed priorities appears within the *Mental Health (Compulsory Assessment and Treatment) Act 1992*. When applications for compulsory treatment are made, the family and/or whanau's views are given consideration however; there is limited opportunity for families to participate in decisions to discharge patients to their care. The welfare of the child is not a relevant consideration in the division and distribution of property under the *Family Property Act 2000*

Involvement of family/whanau in decision-making

The *Children, Young Persons and Their Families Act 1989* allows for families, whanau and iwi to be involved in decisions about care, protection and youth justice processes but the proceedings are sometimes dominated by Department of Child, Youth and Family Services officials, procedures and regulations. The Family Group Conference provides an opportunity for participation in decision-making by members of the child's family, whanau, hapu and iwi. According to Metge (1991) the development of family plans and the provision for iwi input go some way to meeting Maori aspirations. However, in attempting to balance the rights of children with the rights and obligations of whanau, as the Act requires, Child, Youth and Family Services have been – and still are – frequently criticised for 'an obsession with keeping children in their home or whanau at virtually any cost' (McLoughlin, 1994).

Family dispute resolution

New Zealand has a separate Family Court which deals with a wide range of family matters including disputes over guardianship, custody and access to children. While the Family Court system has many positive aspects it fails to meet the requirements of the Convention in a number of respects.

While the *Family Proceedings Act 1980* provides free counselling by trained counsellors for spouses or domestic partners who are experiencing relationship difficulties, children have no access to free counselling despite the recognition that parental separation can be traumatic and damaging to children. There is research evidence that

parents often fail to tell their children about imminent separation and the reasons for it and the children feel they are denied information and their views are not taken into account (Pryor & Rodgers, 2001). It is only where children have been victims of family violence that counselling is available under the Family Violence Act. While a lawyer (counsel for the child) is appointed to represent the child in all disputed guardianship, custody and access disputes the current official guidelines are not clear that the role of the child's legal representative is to take instructions from the child and argue for the outcome which the child wants. Counsel for the child often attempt a hybrid role advising the Court of the child's wishes but making submissions to the Court that the child's wishes should not be granted. Only in rare situations do children have the opportunity to express their views directly to the Judge. The current situation does not meet the requirements of the Convention which requires that the child's representative will express and support the child's views.

The current system is adult-centred in that counselling, mediation and adjudication processes largely exclude the child and focus on the views and demands of the adults involved. Only at the end of the process do the child's views hold any sway and they are often reported to the court in a weak or diluted form.

The family law system is based on a litigation model and this serves to heighten ill feelings between the people arguing over the children and to exacerbate the animosity arising from their separation. Large amounts of public funds are paid to lawyers representing the parties and to counsel for the child. To some extent this means that the State is subsidising the litigation which in itself adds to the distress of the children involved and diminishes the opportunities for a post-separation arrangement which will best meet the child's needs. The system should be altered so that the needs and wishes of the child are the starting point and the adults concerned should have to participate in child-centred counselling or mediation processes to resolve their differences in a way that will ensure the best possible outcome for the child. The courts should be seen as a means of resolving interpersonal disagreements only where public interest issues (such as domestic violence or serious allegations of child neglect or child sexual or physical abuse) arise. Intractable family disputes can result in prolonged litigation which heightens the child's sense of anxiety and prevents the child from returning to a state of normality. The parents can become so hooked into the litigation that the needs of the child are secondary and often forgotten. In many of these cases the litigation itself becomes a form of systems abuse.

Children have no right to initiate proceedings to seek or to vary guardianship, custody or access orders. They are treated as objects of concern rather than people with rights who will be affected by court decisions. Research carried out by Children's Issues Centre in New Zealand (which confirms overseas research) shows that children feel excluded from decision making after separation and that they find this confusing and hurtful.

In administrative processes and legal proceedings concerned with child support and the division of family property the welfare of the child is not a relevant consideration.

Recommendations

- The emphasis of family law be changed from a litigation model to a model where parents and others concerned with the care and upbringing of children are encouraged and assisted to give due weight to the wishes of the children and to resolve their differences in a way which will best meet the child's needs and welfare. The entry to the system should be through counselling and mediation services and access to the Courts should be restricted to those cases where there is a public interest element.
- If the current litigation model of family dispute resolution is retained, children should have a right to free counselling and the counsellor should be authorised to help the disputing parties to focus on the child and the child's needs rather than on their angry feelings and the legal proceedings.
- Measures be taken to ensure that children are able to express their views directly to the Court, and the role of counsel for the child be clarified so that the lawyer's task is to ascertain and represent to the Court the child's views and wishes
- Changes to the law be made to ensure that the welfare of the child is a primary consideration in property disputes, income support assessments and all other administrative or judicial decision making in respect of family issues.

Care and protection issues as relating to families

Please also see Appendix Eighteen: Protecting Children from Violence and Neglect (Care and Protection).

Child protection services whether delivered by Child, Youth and Family Services or NGO providers like Barnardos and Open Home continue to be under funded and remain under-resourced. This reduces their ability to meet the needs of children in a timely manner. The under funding and under staffing of Child, Youth and Family Services results in social workers being overworked (with unmanageable caseloads) frequently leading to burnout. The result continues to be high staff turnover, a common situation for staff in Child, Youth and Family Services offices throughout New Zealand. High turnover of staff means families are often faced with new social workers leading to a lack of consistency with families. Child, Youth and Family Services social workers, already under significant and chronic work pressure, have little time available for training and personal professional development. The issue of inadequate training of social workers remains unresolved throughout New Zealand.

As a result of Child, Youth and Family Services being under staffed and under funded, families and whanau are confused, understandably upset by unacceptable delays in responding to calls and unacceptable delays to responding referrals of suspected or alleged to abuse. For example:

- Although Child, Youth and Family Services now have in place a centralised call centre (in Auckland) to which all new notifications are directed and those making a referral hear back sooner now, contact by the local office and an evidential interview is sometimes weeks later. Another effect of the under funding of Child, Youth and Family Services are delays in meeting the needs of children in custody.
- Funding restrictions mean that a duty of care is not always fulfilled because children do not receive the required services/assistance – such as personal or family therapy.
- Lack of comprehensive oversight by Child, Youth and Family Services has led to children being placed inappropriately with family members or foster parents where there is a lack of comprehensive screening of proposed carers or foster parents. Children are placed at unnecessary risk of abuse or neglect and may end up going through multiple foster homes.
- It is not unusual for young people approaching their sixteenth birthday to be put in limbo by an apparent policy of delaying intervention until they reach their seventeenth birthday. When a child reaches their seventeenth birthday the responsibility of Child, Youth and Family Services under the *Child, Youth and Their Families Act 1989* lapses, and the child in their care can be discharged. There is no follow-up support for youth once out of Child, Youth and Family Services care.
- Apparent rationing of funding is evident by limiting the number of sessions that provided, in some cases it can result in treatment stopping midstream – undoing and undermining all progress made. When a psychological assessment is sometimes requested by Child, Youth and Family Services the subsequent brief is reduced to meet funding issues in order to fund the initial assessment. Psychological assessments also face funding restrictions, to the point where the brief fails to adequately assess issues involved. There are very few facilities or placements for the care and treatment of children or youth with sexual problems with specialised problems (for example, sexual problems) when no other options are available within family and/or whanau.

Too many of our children have fallen are falling through the cracks, with some children (approximately seven each year) dying from injuries sustained through child abuse. The Government cannot ignore these statistics, nor the serious inadequacies of the Child, Youth and Families Services. In finding solutions we must also not to ignore the potential for the inclusion of family and/or whanau when considering issues of care and protection.

It is for these reasons the Family Environment Working Group makes the following recommendations:

Recommendations

- 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 child protection and welfare services including the Child, Youth and Families Service.
- The Government act to ensure that 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 volunteered until no longer required.
- There be provided sufficient funding to meet the Government's obligations set out in the Child, Youth and Their Families Act 1989 to provide adequate therapeutic services for children.

Tamaiti and children's health issues relating to families

Attending to the health and developmental needs of tamaiti/children contributes to their improved physical and mental health, education and welfare outcomes. This in turn assists families and/or whanau who would otherwise carry the burden of undue stress and hardship as a consequence of preventable illness and unmet poor health of children.

Children in one-parent families also suffer disadvantages in other ways relating to physical and mental health needs. Children with a single parent who are more likely to experience poverty are at increased risk of poor health care because of related costs such as health professional fees, and prescription fees. Where mental health services are required it is often difficult for children of single parent families because of they have to make a choice between prohibitively high costs and long waiting lists. Child/adolescent services at hospitals are free but often have long waiting lists (perhaps six weeks or more). Therapeutic services for sexual abuse are part-funded by the Accident Compensation Corporation, but the surcharge to the therapist can be too costly for some families.

There are strict criteria that appear to be inconsistently applied. Similarly, there is limited funding available for therapeutic services to children. The burden of part charges or private fees associated with the ill health of our tamaiti/children over the age of six years falls unfairly on the poorer groups in our society. The provision of sufficient levels of parent education and support, such as well-child care and intensive home visiting services are vital to improving the well being of all children.

A disability allowance, sometimes abused by caregivers, is funded by the Department of Work and Income for parent/children assistance. There are strict criteria that appear to inconsistently applied. Similarly, there is limited funding available in CYFS or OHF for therapeutic services to children.

Discussion

The majority of children in Aotearoa New Zealand are well cared for within their families and/or whanau – the well being of children is important in Aotearoa New Zealand. Statistics show us that a growing proportion of children are not faring so well and that a very high proportion of these children are from low income families or disadvantaged ethnic minorities. Such families are more likely to be dealing with additional stressors such as unemployment, costly or inadequate housing, mental or physical health problems, all of which impact negatively upon children growing up in those families.

Maori and others have expressed concerns that family statutes are prejudiced against other family members and/or whanau, and more general concerns that the family is often disadvantaged by policies in other sectors. The impact of policy and legislation on the rights of children requires more careful consideration of its implications. In *Children in New Zealand (2000)*, the Government signalled an intention to address some of the issues that affect families/whanau and give effect to the child's needs. This approach assumes the needs of family and whanau are interchangeable, suggesting a generic approach. There is an expectation from Maori that there will be specific whanau-based strategies that recognise whanaungatanga, a necessary process that maintains and nourishes whanau. Many Maori are no longer interested a generic approach when a choice should be available.

The circumstances in which many families and/or whanau find themselves, especially when in difficulty, are often more complex than that those experienced by the parent(s) when they were children. The circumstance a family and/or whanau in difficulty may find itself is complicated by the frequency by which children encounter separation (some many times over). When separation is combined with multiple house moves, loss of friends, multiple changes in schools, new partners, new brothers and sisters, and loss of step-fathers/mothers, the effect on children is a sense of loss. Loss is a huge issue for many of our children, especially with sole parent families or underprivileged families who have little or no capacity to address the consequences of separation and poverty. In addition to parental separation and poverty many children experience other losses or changes leading to constant psychological readjustment. Many children are dealing with multiple losses, something that can be moderated by access to a caring extended family and/or whanau as well as ensuring the child has unfettered access to their cultural assets.

Maori and others have expressed concerns that family statutes are prejudiced against other family members and whanau, and more general concerns that the family and/or whanau is often disadvantaged by policies in other sectors, requires more careful consideration of the impact of policy and its implications. The Government has signalled an intention to address issues that affect families and whanau and provide unfettered access to the benefits of society.

The Government has reported much progress on in implementing the Convention in New Zealand and it is satisfying that NGOs such as AYCA are able to respond to the efforts of Government. There have been, to the credit of the Government, many new initiatives to assist families and children such as Family Start, the Early Start programme in Christchurch, some parent mentor programmes (for example, Naku Enei Tamariki, Hutt Valley), Strengthening Families, phone line services for children youth and parents, and a new abuse centre recently opened in Auckland. However, agencies, Departments and NGOs cannot be effective without adequate funding and resources.

The mixed, and at times, confusing use of whanau and family by the State indicates the potential for assimilation of the needs of Maori who are Treaty partners and indigenous people. Any assimilation that denies access to Maori resources and attenuates Maori aspirations is unwelcome. Aotearoa/New Zealand is an inclusive society where children in families and/or whanau should be able to exercise their rights and have the same opportunities of their peers, irrespective of the type or composite of family or whanau. Most children can exercise their rights in Aotearoa New Zealand from within a caring and nurturing family and/or whanau.

The role of the Government as partner with Maori under the terms of the Treaty of Waitangi has brought about much change in the legislation and policy that affect Maori. The action of the Government has provided a precedent for other indigenous people. The Government continues to act in good faith and has described plans for further the positive changes to policy and legislation that would bring welcome relief to Maori.

In some aspects of Government's child-related policy development the Government recognises the vital role of family and/or whanau. In response to the Convention and domestic political developments, the Government has undertaken to establishment of a Commission for The Family, a commission that will bring the voice of the child closer to the development of policy and give effect to the rights of the child. The Government still has much to do that will improve the status and circumstances of some of the children in Aotearoa/New Zealand. *Children in New Zealand (2000)* signals important changes to legislation. The Government has achieved success in supporting many families through family-specific policy initiatives such as Strengthening Families. The Government is committed to fully implementing strategies such as the Child Health Strategy and the Agenda For Children. This can be achieved by ensuring that timelines and milestones are agreed and set with the appropriate departments of state, sufficient resources are set in place and monitoring is carried out to ensure that progress continues to be made without threatening existing services.

Like the family and whanau, the child-related policies of Government are works in progress, therefore it is fitting to conclude that with clear expectations and objectives the Government will be able to fulfil its obligations under the Convention. We are duty bound as advocates for children to ensure that that State does its duty for our children.

Recommendation

- The Government promote and advocate for indigenous models of family.

Acknowledgements

ACYA is deeply appreciative of John Waldon who co-ordinated this paper, Gillian Taylor (Registered Psychologist, Nelson), Deborah Moore (Clinical Psychologist, Nelson), Shiona Frengley (Social Worker, Nelson) and Robert Ludbrook (Auckland), as well as helpful comments and support from Emma Davies (AUT, Auckland), John Hancock (YouthLaw Tino Rangatiratanga Taitamariki) and Stuart Birks (Massey University, Palmerston North).

John Waldon's work is supported by the following grants from Health Research Council of New Zealand HRC 99/498, HRC 98/410, and HRC 02/285.

References

- Blaiklock, A., Kiro, C. A., Belgrave, M., Low, W., Davenport, E., & Hassall, I. B. (2002). *When the Invisible Hand Rocks the Cradle: New Zealand children in a time of change*. Florence: UNICEF.
- Buck, P. H. (1950). *The coming of the Maori* (2nd ed ed.). Wellington: Maori Purposes Fund Board.
- Durie, M. (1994, July). Whanau, family and the promotion of health. Paper presented at the Annual Conference of The Public Health Association, Palmerston North.
- Durie, M. H. (1998). *Whaiora Maori health development* (2 ed.). Auckland: Oxford University Press.
- Firth, R. (1973). *Economics of the New Zealand Maori* (2nd ed.). Wellington: Government Printer.
- Gilling, G. (1988). Family. In *The April Report* (Vol. IV, pp. 598-600). Wellington: Royal Commission on Social Policy.
- Hodgson, R., & Birks, S. (2002). *Statistics New Zealand's Definition of Family, its Implications for the Accuracy of Data and Effectiveness of Policy Targeting*. Palmerston North: Centre for Public Policy Evaluation, Massey University.
- Ihimaera, W. (Ed.). (1998). *Growing up Maori*. Auckland, N.Z.: Tandem Press.
- Metge, J. (1995). *New growth from old -the whanau in the modern world*. Wellington: Victoria University Press.
- Metge, J. (1999, 16 April). Changing whanau structures and practices. Paper presented at the Te Hua o te Whanau.: Whanau health and development conference, Te Putahi-a-Toi School of Maori Studies, Massey University, Palmerston North.
- Ministry of Youth Affairs. (2000). *Children of New Zealand: United Nations Convention on the Rights of the Child: Second periodic Report of New Zealand*. Wellington: Ministry of Youth Affairs.
- Pere, R. (1982). *Ako: Concepts and learning in the Maori tradition*. Hamilton: Department of Sociology, University of Waikato.
- Pere, R. (1984, March 1984). *Te oranga o te whanau (The health of the family)*. Paper presented at the Hui Whakaoranga -Maori health planning workshop, Hoani Waititi Marae, Auckland.
- Pryor, J., & Rodgers, B. (2001). *Children in changing families : life after parental separation*. Malden, MA: Blackwell Publishers.
- Rangihau, J. (1977). Being Maori. In M. King (Ed.), *Te Ao Hurihuri: The world moves on: Aspects of Maoritanga* (pp. 183-189). Auckland: Hodder and Stoughton.
- Royal Commission on Social Policy. (1988). *The April Report*. Wellington: The Royal Commission on Social Policy.
- Te Komako. (2002). *A Draft Charter of the Rights of the Maori Child -Te Mana o te Tamaiti Maori*. Wellington: Early Childhood Development: Nga Kaitiaki Kohungahunga.
- Ulrich, V. (2002, August). *The Legislative Framework; the theory and the practicalities*. Paper presented at the At Least Two Parents; a series of seminars organised for people working in The Family Court, Auckland, Wellington, Christchurch.
- Wetere, K. (1995). Opening Address: Hui Taumata – Hui Whakapumau -Ten Years of Maori Development. In Department of Maori Studies (Ed.), *Kia Pumau Tonu: Proceedings of the Hui Whakapumau: Maori Development Conference* (pp. 11-14). Palmerston North: Department of Maori Studies.

Appendix Thirteen

THE HEALTH OF CHILDREN AND YOUNG PEOPLE

ACYA Working Group on Health

Please also see Appendix Three: Maori Tamariki and Rangatahi; Appendix Four: Pacific Children and Youth; Appendix Six: Refugee and Asylum Seeking Children and Youth; Appendix Seven: Children and Youth with Disabilities; Appendix Ten: General Principles of the Convention; Appendix Twelve: The Family Environment; and Appendix Fifteen: The Education of Children and Young People; and Appendix Seventeen: Youth Justice.

New Zealand has wonderful and beautiful children and young people. Sadly we also have appalling health statistics. However, statistics do not reflect the capabilities of our youth who perform positively on the world stage in all spheres of life, including education, sport, music, and dance.

The young people whose lives are described in these negative statistics – such as those among the high rate of teenage pregnancies – are the same young people who may run a household, care for their child or children, go to school, play a sport and dance, sing and skip their way into a positive future. Their participation in decision-making about their individual and collective health issues is paramount to upholding their rights to health.

Introduction

The health and well being of children and youth are vital to ensure that they can reach their full potential in all domains of life. Health is determined by a large number of influences, particularly those that lie outside the health sector itself. The complex inter-relationships between these factors, and the precise causal mechanisms are yet to be fully characterised. However there is substantial evidence that health is related to socio-economic status (such as parental education and income), ethnicity, housing conditions, neighbourhood factors, and the wider socio-economic and political situation. Health status can be considered a sensitive indicator of the implementation of the *United Nations Convention on the Rights of the Child*.

This report was developed from referenced documents and submitted brief reports from 30 individuals and groups knowledgeable in their field.

The following Recommendations made by the United Nations Committee on the Rights of the Child in 1997 are integral to the health of children and youth:

- Withdrawal of Reservations and extension to Tokelau;
- Prioritise the economic, social and cultural rights of children;
- The development of a comprehensive policy statement for children;
- Review of legislation to ensure consistency with the Convention and bring existing legislation in line with the Convention;
- Examining the effects of economic reforms on children;
- Work on closing the gap between Maori and non-Maori;
- Review of data collection;
- Studying the needs of one parent families;
- Action on youth suicide;
- Review of law on physical punishment of children within the family; and
- Review support services for refugee and asylum seeking children.

The state of health of New Zealand's children and youth

New Zealand is a society that has significant health disparities between rich and poor, among different ethnic groups.

Health outcomes are consistently worse for Maori and Pacific children and children living in disadvantaged socio-economic circumstances. The seriousness of the extent of inequality for indigenous children is illustrated by the difference in life expectancy. A newborn Maori girl can expect to live 8.4 years less than her Pakeha (European) counterpart, and a newborn Maori boy 7.2 years less. (Ministry of Health 2002a). Maori children and young people are more likely to suffer the adverse effects of socio-economic disadvantage, but are also potentially exposed to the effects of racism and colonisation, all of which may be manifested in negative statistics in mental health, physical health, drug and alcohol abuse.

Overall, New Zealand continues to face a significant challenge to improve on many health statistics, and to reduce the inequalities that are so pervasive throughout these statistics. New Zealand has particularly high rates of communicable diseases, injuries, Sudden Infant Death Syndrome (SIDS, cot death), youth suicide (especially among young Maori males), and births to teenage mothers. Additionally, New Zealand has low rates of immunisation compared with similar countries. Mortality rates are much higher for Maori and Pacific children, and for children from socio-economically disadvantaged families (Ministry of Health, 1998c; Blakely, Kiro, Atkinson, Blaiklock & D'Souza, 2003). Maori and Pacific children also have higher rates of injuries, pneumonia, meningococcal disease, tuberculosis, rheumatic fever, and hearing loss at school entry. (Ministry of Health, 1998c; Greville, 2002).

Of particular concern are the high rates of communicable disease, much of the burden being carried by Maori and Pacific children. There are especially high rates of rheumatic fever and meningococcal disease among Maori and Pacific children, and there has been a re-emergence of tuberculosis, and regular epidemics of measles and whooping cough (Calder et al., 2000; Martin, 2000; Ministry of Health, 1998a; Ministry of Health, 1998b). The continuing serious epidemic of meningococcal disease particularly affects young children, disproportionately more Maori and Pacific children. Meningococcal disease is strongly associated with overcrowding (Baker, Martin, Kieft, Jones, & Lennon, 1999; Baker et al., 2000).

New Zealand has high rates of injury deaths and hospital admissions among children and young people compared with similar countries (Ameratunga, Alexander, Smith, Lennon, & Norton, 1999; UNICEF, 2001). New Zealand evidence has suggested that the higher rates of pedestrian injury among Maori and Pacific children and youth may be because of differential exposure to unsafe environments (Roberts & Norton, 1994).

According to OECD Health Data 2002, infant mortality rates in New Zealand rank 18th lowest for infant mortality per 1000 (the latest year recorded in 1999) and are continuing to lag behind other OECD countries. SIDS deaths, a key component to the infant mortality rate, whilst declining overall in the last decade, remain substantially higher for Maori and Pacific infants. (OECD, 2002).

Nutrition is an area of increasing health concern. The impact of poverty and the affordability of healthy food are reflected in such conditions as iron-deficiency, and the growing epidemic of obesity among children and young people (New Zealand Network Against Food Poverty; Tyrrell et al., 2001). Obesity is aggravated by advertising aimed at children (Wilson & Mansoor, 1999) and the lack of opportunities for physical activity (please also see Appendix Sixteen: *The Right to Play, Leisure, Recreation, Artistic and Cultural Activities*).

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. The suicide rate rises rapidly at the school-leaving age of 16 to 18 years and there is a background of a rapid rise in suicidal ideation in this age group (McGee & Nada-Raja, 1999). There has been a recent decline in suicide rates among young men, however this is not occurring for young Maori men and young women (New Zealand Health Information Service, 2000). It is unclear whether the change is due to the effects of community, health service and government interventions, changing social circumstances (such as the improvement in youth employment rates) or a cohort effect as the youth of the 1980s entered an older age group (Blaiklock et al., 2002).

Poor mental health is a significant problem for many New Zealand children. It has been estimated that approximately one in twenty of the child and youth population have 'serious, ongoing and disabling mental illness' requiring specialist intervention. Moreover 15 percent of the youth and child population have chronic lower level mental health problems (Mental Health Commission, 1998).

A UNICEF study has found that New Zealand has the third highest rate of births to young women aged 15 to 17 years, among 28 OECD countries. The rate is much higher among Maori woman. (UNICEF, 2002). The study suggested that the variation between countries might be explained by two factors. One was how far a country

had moved away from traditional values together with how well it has prepared young people for such changes. The second factor is the extent to which teenagers have a sense of being included in society and of well being and hope. UNICEF assessed this by using measures of income inequality and teenage participation in education. Again New Zealand was near the bottom of the league: third from bottom for both income inequality and in the proportion of 15 to 19 year-olds not in education (UNICEF, 2002).

New Zealand research shows a movement to greater sexual activity in young people, with a decrease in the age of first intercourse and an increase in the number of sexual partners. A recent study (Fenwicke & Purdy, 2000) of over 600 teenage students (median age 14) reported that almost 40 percent of students had had sex/intercourse – and of those who were sexually active three in ten had been so by the age of twelve years and one in eight and two thirds had more than one partner. Some New Zealand research also shows a high level of regret about early first intercourse (Dickson, Paul & Herbison 1998). Also of concern are New Zealand's relatively high rates of sexually transmitted infections.

There are also environmental health problems. For example, children are particularly vulnerable to the effects of air pollution. In the Auckland region where one third of the population live, Auckland Regional Council air quality monitoring shows that vehicle emissions account for 80 percent of air pollution, and levels of particulates and nitrogen oxides exceed World Health Organisation guidelines at some monitored sites several times a year.

Alcohol and other drugs

Alcohol related health problems are increasing in New Zealand. A national survey of drug use among New Zealanders conducted in 1998, found that alcohol was the most commonly used drug among young people (Field and Casswell, 1998). Among people aged 15 to 17 years, over the past twelve months 77 percent had used alcohol; 36 percent had used tobacco; and 24 percent had used marijuana. The use of other drugs was considerably lower: five percent had used hallucinogenic mushrooms in the past 12 months, three percent had used LSD, two percent had used solvents, two percent had used homebake, one percent had used morphine, one percent had used ecstasy and one percent had used tranquillisers (Field and Casswell, 1998).

National surveys of alcohol use were conducted in 1995 and repeated in 2000. During that time policy changes led to the increased exposure of young people to alcohol advertising, and legislative changes lowered the age to buy alcohol from 20 years old to 18 years old. The surveys show some significant changes in the patterns of drinking among people younger than 18 years old:

- The average quantity consumed by males aged 14 to 15 years on a typical occasion increased from approximately three drinks (each drink equivalent to one can of beer) in 1995 to five drinks in 2000. For 16 to 17 year-old males the quantities rose from approximately five drinks in 1995 to eight drinks in 2000.
- Women aged 16 to 17 years also showed increases in typical drinking amounts, from four drinks in 1995 to six drinks in 2000.
- The proportion of 16-17 year olds who consumed enough alcohol to feel drunk at least once per week increased from 10 percent in 1995 to 17 percent in 2000. (Habgood et. al, 2001).

Alcohol is widely advertised. Many advertisements about alcohol appear to be directed at young people, despite breaching the advertising and broadcasting codes. Alcohol companies sponsor many child and youth sport and recreational activities.

The negative impact of drug and alcohol use on children is substantial and can be lifelong. The use of cannabis may have detrimental effects on children's learning at school and precipitate the development of mental illness in some predisposed young people. Drug and alcohol abuse treatment services for children and young people are very limited in their availability, and there is instead a reliance on mental health services. These services are somewhat compromised by the serious shortage of adequate and appropriate mental health services for children and youth (Mental Health Commission, 2002, Jackman, 2000.). There has been public debate around the decriminalisation of marijuana.

The prevention of illness and the promotion of health

The health of New Zealand children is seriously affected by harmful social conditions including poverty, inequality, discrimination and violence. These issues are described in other sections of the ACYA report. 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 as laid out in the *UNICEF/WHO Baby Friendly Hospital Initiative*. There is poor implementation of the *WHO International Code on the Marketing of Breast Milk Substitutes*. The *New Zealand Infant Formula Marketers' Association Code of Practice*, adopted on a voluntary basis, does not include the marketing of follow-on formula, feeding bottles or teats, and applies only to members of the New Zealand Infant Formula Marketers' Association (Public Health Association, 2002).
- 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. That immunisation coverage is low is particularly concerning considering New Zealand's high rates of communicable disease (National Health Committee, 1999). Pacific and Maori children suffer a higher rate of vaccine-preventable disease than other ethnic groups (N. Turner, personal communication, July 2002). New Zealand has no national data system for assessing coverage rates, but rates are estimated to be about 70 percent at the age of two, and likely to be considerably lower for Maori and Pacific children. The most recent immunisation coverage data for Maori and Pacific children in 1995/6 indicated that 47 percent of Maori children and 53 percent of Pacific children were fully immunised at the age of two (North Health, 1997). Some of our Pacific neighbours, with few resources and low national income achieve up to 98 percent immunisation rates among their children (N. Turner, personal communication, July 2002).
- Exposure to second hand smoke, mothers smoking during pregnancy and high rates of smoking among teenagers continue to be serious health problems, disproportionately affecting socio-economically disadvantaged families. In 2001, one in four adults smoked and 16 and 22 percent of male and female secondary school students respectively were at least weekly cigarette smokers. Second hand smoke contributes to deaths from SIDS, meningococcal disease, fire, and other causes. It also causes much morbidity, such as over 500 hospital admissions of children under two, almost 15,000 episodes of child asthma, and more than 27,000 visits by children to their family doctor for respiratory problems. It may also seriously impact on the budget of poor families who smoke thus worsening poverty. Although the Government has spent much more on tobacco control and supporting cessation recently, this expenditure is less than three percent of the estimated costs of tobacco use – and less than three percent of the revenue to government from tobacco taxation. (Thomson, O'Dea, Wilson, Reid, & Howden-Chapman, 2001.).
- While the sexuality education component of the Health and Physical Education Curriculum is well regarded by health workers, the opportunity exists for parents to remove their children from sexuality classes under *the Education Standards Act 2001*. There is no system 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 (King, 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 (Chambers et. al, 2001. Dickson, et.al 2001).

Access to health care

There continue to be significant barriers, financial and other, to children receiving adequate health care in New Zealand. Unlike many similar countries, New Zealanders have to pay a fee for service from their family doctor. There is a government policy of free primary care for children under six years of age, but many doctors may still charge a fee, especially for visits after hours (Child Poverty Action Group, 2001). Furthermore, an additional barrier exists if there is a family debt (incurred for older children and family members) at the general practice. Although government has a policy of young children under six years old being entitled to free well child care, the services are not funded sufficiently for all children to benefit from this entitlement.

While hospital level care is free at point of contact, families with children in hospital also may face significant hurdles. There may be financial and geographical barriers, such as costs incurred for transportation, particularly for children from rural and socio-economically disadvantaged areas. Some parent and caregivers may not receive much support to stay with their children, for example, minimal provision of food for caregivers (including breastfeeding mothers), although some hospitals have improved care of families in the last several years.

Entitlement to health care depends on residency status which means some children, youth and pregnant mothers miss out. 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. Children, young people and pregnant mothers who are not entitled to treatment on the same basis as other New Zealanders may be treated without charge if they become seriously ill but treatment is only to stabilise their condition. Refugees and asylum seekers who have made an application for asylum may not know of their entitlements.

Access to age-appropriate healthcare services is also an area where improvements could be made. The needs for those young people in the transition from childhood to adulthood are not being adequately met currently, with few healthcare facilities and health professionals specifically geared towards the specific needs of adolescents. In hospital, adolescents are often placed in children's wards, where they are subjected to the routine set for young children, or they are placed in adult wards where sharing rooms with much older people makes them vulnerable to stress and unhelpful advice and comment. An advocate for young people with chronic illness and complex needs (including cancer, renal failure, haematological diseases, cystic fibrosis, asthma, and diabetes) comments:

These young people are inappropriately provided for, in that staff are rarely trained in adolescent health, facilities are not 'youth friendly', nor are support services 'youth friendly' or co-ordinated. The power differential between the medical establishment and themselves is such that they feel unable to voice their concerns. However, in very recent time, we have achieved a couple of important milestones, in our efforts for acknowledgment of their special needs, which are over and above those 'well' adolescents in growing up.

Co-ordination and funding of services

Families and professionals report that 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. Various Government documents, including the *Agenda for Children (2002)*, *Youth Development Strategy Aotearoa (2002)*, *Child Health Strategy (1998a)*, *Youth Health: A Guide to Action (2002b)*, the *New Zealand Health Strategy (2000)* and the *New Zealand Disability Strategy (2001b)* state the importance of the co-ordination of services for children and youth across all sectors of government, including health, education, social welfare and justice. But the experience of families, and those providing services, is that improvements in co-ordination are slow.

The well-regarded *New Zealand Child Health Strategy* was launched in 1998, but implementation has been very delayed. 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. District Health Boards have the responsibility to fund and/or provide services to protect and improve health for a defined geographical population. Many Boards have substantial budget deficits, which places much tension between their requirements to provide services and to remain within budget. The move to the new Population-based Funding Formula is intended to provide more equitable needs-based funding to Boards. However this will not influence the total amount of government healthcare spending, nor increase the amount of resources dedicated to child health.

Examples of the impact of funding problems on children and youth include:

- Maori and Pacific providers run primary health care services parallel to mainstream services, but are sometimes inadequately resourced. The reduced numbers of well child care staff, public health nurses, school nurses and schools may mean that Maori and Pacific providers provide these services by default. The lack of long-term contracts prevents staff from becoming experienced and does not encourage them to stay.
- There are serious concerns about the lack of mental health services for children and young people. Although there has been a substantial growth, the provision of child and youth community mental health services is around 63 percent of what is required and much less in some parts of the country. Maori and Pacific children and young people access services at lower rates (Mental Health Commission, 2002). Children and youth in some communities have to use adult services or, for their own safety, have sometimes been confined in Child, Youth and Families Service institutions instead of health facilities. There is an urgent need for increased resources and for co-ordination and co-operation among sectors to make access easier for children, youth and their families. New Zealand has the capacity to develop mental health through using cultural

knowledge for its children and youth (Anae, Moewaka Barnes, McCreanor & Watson, 2002). Resources are needed to promote mental health rather than just treat problems associated with mental illness.

- The lack of adult services in mental health can impact on children. There is a shortage of maternal mental health services and little specific support for children whose parents have mental health problems. A professional working in maternal mental health services explained that most of their clients had a history of abuse in their own childhood and one or both parents had a mental health illness:
So we are continually working with some very seriously disabled clients who have extremely limited skills. The impact on children is the need to assist parents to break these cycles and develop skills required. This work is extremely time consuming and is multi agency given. We need more resources to be able to provide this care. One important gap is lack of facilities that focus on clients with significant mental health difficulties – families with paranoid disorders or personality disorders – where they could stay in a programme for a lengthy period of time.
- There is tension between providing specialist facilities for children and young people and wider pressures to contain costs. Many children and youth are being cared for in services where child and youth trained staff are not available. For example, there are very few youth-specific services in the community and when in hospital they are usually placed in children's wards, where they are subjected to the routine set for infants and young children, or in adult wards where sharing rooms with much older people makes them vulnerable to stress and unhelpful advice and comment. An example is what has happened with the building of a new adult hospital in Auckland on the same site as New Zealand's largest children's hospital. The new hospital replaces one in another suburb that had provided cardiac services for children and adults. The children's hospital staff worked out how to consolidate cardiac and intensive care children's services together in the children's hospital to gain most efficiency and improve the quality of care for the sickest children. But children needing cardiac services will not be moving into the children's hospital. Instead they will be cared for in the adult facilities. This is despite strong advocacy from parents and professionals and the fact that a major inquiry into heart surgery for children in Bristol made it absolutely clear that it was inappropriate for children with heart conditions to be treated in an adult institution (Public Inquiry into Children's Heart Surgery at the Bristol Royal Infirmary 1984-1995, 2001).

There are problems with co-ordination between health and other sectors. Examples from the health and education sectors are:

- The health education curriculum in schools has the potential to make a difference but implementation is left to individual schools. This may lead to further inequity for those children from lower socio-economic communities.
- Poor resourcing for special education services negatively impacts on many children with special needs. Under-resourcing of both the health and education sectors impacts on the effective co-ordination between these sectors. The high prevalence of hearing loss at school-entry is one example where such co-ordination is crucial.
- The rights of children and youth with cancer and other chronic illnesses to an education similar to their peers is not assured because of the problems in co-ordination between the health and education sectors. For children with multiple needs, greater partnership between the health, education and welfare sectors is necessary if skill development and appropriate service provision is to be properly addressed
- School nurses are employed at minimal rates as funding comes from the education sector and not from health. Furthermore, government youth health strategies do not acknowledge the important role of school nurses in improving and promoting health.

The health workforce

Health sector restructuring and the lack of workforce planning over the last decade have seriously affected the workforce. (Health Workforce Advisory Committee, 2002) Workforce development is indicated to be a government priority in the child and youth health strategies, and government has promised more will be done to support the general development of the health workforce. However, action has been slow.

Mainstream services are sometimes not sufficiently responsive and skilled with helping the children, youth and families of Maori, Pacific and other cultural groups. Health professionals working with children and young people require expertise about child and adolescent health issues, the ability to liaise with other relevant services and sectors, including Maori and other ethnic groups, and the ability to work in multi-disciplinary teams. However, the expertise of health professionals about the special needs of children and young people varies widely and there are limited continuing educational opportunities for child/youth health care workers to develop the skills and knowledge to be more responsive to the diverse needs of children and youth.

Issues in establishing a stable and skilled child and youth health workforce are that:

- Parents and family members contribute significantly to the child health and disability support service workforce. They have a need for support, information and education.
- National standards of practice and education should be developed, and their implementation, monitored and reviewed, to ensure consistency and quality.
- The planning of education programmes for professionals should include consultation with children, youth, families, communities, and workers. This would assist in the development teamwork in health and other sectors and culturally safe and effective mainstream services
- Staff need realistic workloads to ensure high quality of care, as well as the ability to further professional development.
- There are few Maori health professionals or Maori within key professional positions, particularly in the child and youth health sector. There are also very few education programmes that focus specifically on tamariki (children) and rangatahi (youth) health couched within the culture of Maori with whanau (family) being basic to the health of Maori children. Maori workforce development should be seen as the process of ensuring the continued recruitment, retention, utilisation and development of a quality tamariki Maori health workforce that is linked into local communities of iwi (tribe), hapu (subtribe), and whanau, thereby providing appropriate services.
- Pacific peoples are significantly under-represented in most areas in the health workforce. Resources are needed for Pacific peoples to be recruited and trained. Primary care, medical, nursing and community health worker education are priorities for the Pacific workforce and management and policy advisors are also needed.
- A major concern is the serious shortfall in the mental health workforce to work with children and their families.
- The lack of a trained workforce available to meet the ongoing needs of children and youth with particular difficulties and needs, means that multidisciplinary hospital and community-based teams are in short supply. This is especially so in mental health, disability, and youth services. Specialist health care teams and outreach workers are needed to take services into homes, schools, and communities.

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 (1998a), Youth Health: A Guide to Action (2002b), and the Sexual and Reproductive Health Strategy (2001a) 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 gives 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.
- Increased priority be given to research that improves the mental and physical health of children, young people and their families.

- The Government take all necessary measures to protect children and young people from harm related to alcohol, tobacco, marijuana and other harmful substances. This should include:
 - # 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.
- 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 Health and Physical Education 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.

Acknowledgements

ACYA is deeply appreciative of Diana Grant-Mackie who co-ordinated this paper, with Alison Blaiklock, and Adrian Field, Amanda D'Souza, Andrea Ryan, Anne Greville, Beth Wood, Beverly Morris, Bronwen Hannay, Cathy Kern, Charlotte Robertson, Clare Connell, Debbie Hager, Denise Kivell, Flo Wanoa, Jane Ewing, Jenny Carter, Jeni Pearce, Jo MacKay, Gil Greer, Kay Morris, Melani Anae, Moewaka Barnes, Tim McCreanor, Nikki Turner, New Zealand Nurses Organisation Auckland Child Health Nurses, Olivia Boyd, Peter Shuttleworth, Ruth DeSouza, Sally Jackman, Wayne McDonald, and others who contributed.

References

- Anae, M., Moewaka Barnes, H., McCreanor, T. & Watson, P. 2002. Towards promoting mental health in Aotearoa/New Zealand: Holistic "houses" of health. *International Journal of Mental Health Promotion*, 4. Pt 3. 5-14.
- Baker, M., McNicholas, A., Garrett, N., Jones, N., Stewart, J., Koberstein, V., & Lennon, D. (2000). Household crowding a major risk factor for epidemic meningococcal disease in Auckland children. *The Pediatric Infectious Disease Journal*, 19(983-990).
- Baker, M., Martin, D., Kieft, C., Jones, N., & Lennon, D. (1999). The evolving meningococcal disease epidemic in New Zealand. *New Zealand Public Health Report*, 6(6), 57-61.
- Blaiklock, A. J., Kiro, C., Belgrave, M., Low, W., Davenport, E., & Hassall, I. (2002). *When the Invisible Hand Rocked the Cradle: New Zealand children in a time of change (93)*. Florence: UNICEF Innocenti Research Centre.
- Blakely, T., Kiro, C.A., Atkinson, J, Blaiklock, A.J., D'Souza, A. (2003) Child mortality, socio-economic position and one-parent families: Associations by sex, age, cause of death and multiple socio-economic factors. In press, *International Journal of Epidemiology*.
- Calder, L., Hampton, L., Prentice, D., Reeve, M., Vaughan, A., Vaughan, R., Harrison, A., Voss, L., Morris, A., Singh, H., & Koberstein, V. (2000). A school and community outbreak of tuberculosis in Auckland. *New Zealand Medical Journal*, 113, 71-74.
- Chambers, ST., Heckert, KA., Bagshaw, S., Ussher, J., Birch, M., & Wilson, MA. (2001). Maternity care providers' attitudes and practices concerning HIV testing during pregnancy; results of a survey of the Canterbury and upper South Island region. *New Zealand Medical Journal*, 23,114, 513-6.
- Child Poverty Action Group. (2001). *Our Children the priority for policy*. Auckland: Child Poverty Action Group.
- Dickson, N., Paul, C. & Herbison, P. (1998). Where young people with multiple sexual partners seek medical care: implications for screening for chlamydial infection. *Sexually Transmitted Infection*, 74(6), 445-7.
- Eberhart-Phillips, JE., Dickson, NP., Paul, C., Herbison, GP., Taylor, J., & Cunningham, AL. (2001). Rising incidence and prevalence of herpes simplex type 2 infection in a cohort of 26 year old New Zealanders. *Sexually Transmitted Infection*, 77(5), 353-7.
- Fenwicke, R. & Purdy, G. (2000). The sexual activity of 654 fourth form Hawkes Bay students. *New Zealand Medical Journal*, 113, 460-4.
- Field, A., & Casswell, S. (1999). *Drugs in New Zealand: A National Survey 1998*. University of Auckland: Alcohol & Public Health Research Unit.
- Greville, K.A. (2001). *Hearing impaired and deaf people in New Zealand; population numbers and characteristics*. Greville Consulting report, October 2001
- Habgood, R., Casswell, S., Pledger, M., & Bhatta, K. (2001). *Drinking in New Zealand: National Surveys Comparison 1995 & 2000*. University of Auckland: Alcohol & Public Health Research Unit.
- Health Workforce Advisory Committee. (2002). *The New Zealand health workforce: Framing future directions discussion document*. Wellington: Ministry of Health.
- Jackman, S. (2002). *Cannabis as a public health issue*. Presentation to a forum at the National Library, on cannabis law reform and harm reduction organised by the New Zealand Drug Foundation.
- King, A. (2001). *Sexual and Reproductive Health Strategy*. Wellington: Ministry of Health.

- McGee, R., & Nada-Raja, S. (1999). Youth suicide in New Zealand. *New Zealand Medical Journal*, 112, 304.
- Martin, P. (2000). Tuberculosis in New Zealand: Why do we have twice as much as Australia? *New Zealand Medical Journal*, 113, 68-69.
- Mental Health Commission. (1998). Mental Health Commission, 1998. *Blueprint for Mental Health Services in New Zealand*. Wellington: Mental Health Commission.
- Mental Health Commission. (2002). *Report of the Mental Health Commission*. Wellington: Mental Health Commission.
- Ministry of Health, (1998a). *Child Health Strategy*. Wellington: Ministry of Health.
- Ministry of Health. (1998b). *Our children's health. Key findings on the health of New Zealand children*. Wellington: Ministry of Health.
- Ministry of Health. (1998c). *Progress on health outcome targets, Te haere whakamua ki nga whaingā hua mo te hauora, 1998*. Wellington: Ministry of Health.
- Ministry of Health. (2000). *The New Zealand health strategy*. Wellington: Ministry of Health.
- Ministry of Health. (2001a). *Sexual and Reproductive Health Strategy*. Wellington: Ministry of Health.
- Ministry of Health. (2001b). *The New Zealand Disability Strategy: Making a world of difference: whānui oranga*. Wellington: Ministry of Health.
- Ministry of Health. (2002a). *Health of Older People in New Zealand*. Wellington: Ministry of Health.
- Ministry of Health. (2002b). *Youth Health a Guide to Action*. Wellington: Ministry of Health.
- National Health Committee. (1999). *Review of the wisdom and fairness of the Health Funding Authority strategy for immunisation of 'hard to reach' children*. Wellington: National Health Committee.
- Ministry of Youth Affairs. (2002). *Youth Development strategy Aotearoa*. Wellington: Ministry of Youth affairs.
- Ministry of Social Development. (2002). *New Zealand Agenda for Children*. Wellington: Ministry of Social Development.
- New Zealand Health Information Service. (2000). *Youth Suicide Facts*. Wellington: New Zealand Health Information Service.
- New Zealand Network Against Food Poverty. (1999). *Hidden hunger. Food and low income in New Zealand*. Auckland: New Zealand Network Against Food Poverty.
- OECD Health Data. (2002) (<http://www.oecd.org/xls/M00031000/M00031359.xls>).
- Public Health Association policies (2002). *Policy on Breastfeeding*. Wellington, New Zealand.
- Public Inquiry into Children's Heart Surgery at the Bristol Royal Infirmary 1984-1995. (2001). In: *Learning from Bristol*. London: HMSO.
- Roberts, I., & Norton, R. (1994). Auckland children's exposure to risk as pedestrians. *NZ Med J*, 107, 331-3.
- Thomson, G., O'Dea, D., Wilson, N., Reid, P., Howden-Chapman, (2001). *Some financial impacts of tobacco use for child poverty in New Zealand*. Presentation at the Health and Services and Policy Research Conference, Wellington 3 December 2001.
- Tyrrell, V., Richards, G., Hofman, P., Gillies, G., Robinson, E., & Cutfield, W.S., C. (2001). Obesity in Auckland school children: a comparison of the body mass index and percentage body fat as the diagnostic criterion. *International Journal of Obesity Related Metabolic Disorders*, 25(2), 164-9.
- UNICEF. (2001). *A league table of child deaths by injury in rich nations (Innocenti Report Card 2)*. Florence: UNICEF Innocenti Research Centre.
- UNICEF. (2002). *A league table of teenage births in rich nations (Innocenti Report Card 3)*. Florence: Innocenti Research Centre.
- Wilson N, Q. R., & Mansoor O. (1999). Food ads on TV: a health hazard for children? *Australia & New Zealand Journal of Public Health*, 23(6), 647-50.

Appendix Fourteen

THE LIVING STANDARDS OF CHILDREN AND YOUTH

ACYA Working Group on Living Standards

Please also see all other appendices 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*.

Introduction

This paper gives a non-governmental perspective on New Zealand's compliance with the *United Nations Convention on the Rights of the Child* in the area of poverty and the standards of living of children and youth. It reports on the period between January 1997 and the present.

The Convention includes a range of rights which are of significance in relation to questions of poverty and economic standards of living. Article 4 sets out a general right about the responsibility of the state to act 'to the maximum extent of the available resources' in protecting and promoting economic, social and cultural rights. Article 6 states that every child has the right to life, and the government is obliged to make sure of their survival and development. Article 26 states that: children have the right to social security, including benefits (depending on the circumstances) while Article 27 says that children have the right to a standard of living that is adequate for their physical, mental, spiritual, moral and social development. Article 18 notes that while parents have the main responsibility for the development of children, the government has a key role in ensuring that parents can meet those responsibilities. Furthermore, in the context of New Zealand policy in relation to relief and prevention of poverty among children, the requirement not to discriminate is of significance when it is noted that one of the major policies which provide assistance to families with children – the child tax credit – is discriminatory.

These broad rights can be reflected in a range of policy measures and equally neglect of these rights and negation of them will also follow from policy measures and from failure to pursue particular policies. The consequences of these policy decisions are particularly significant in relation to children because the consequences for children are immediate, long-term and pervasive in that they extend to such fundamental areas for children as health and development and educational progress and opportunities. In exploring New Zealand's obligations under the *Convention on the Rights of the Child*, policy decisions, non-decisions and outcomes of policy need to be reviewed in the light of the Conventions requirements. While there are some specific policy measures which clearly have consequences by either alleviating poverty or increasing poverty among children, there are also a range of poverty outcomes from other policy areas which increase levels of poverty or make it more difficult for children to escape from poverty.

In 1997 the United Nations Committee on the Rights of the Child in its report on New Zealand 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).

The Committee 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).

The recent report commissioned by UNICEF highlights the effects of government economic policy on children over the last fifteen years (Blaiklock et al., 2002). Those reforms created and contributed to significant poverty among children and young people both directly and indirectly. The effects of those policies will continue to have an important effect on those children for a number of years. The report provides a very good example of how a range of policies in such fundamental areas as employment, taxation and housing create and/or exacerbate poverty among children. Poverty does not just occur because of direct actions. It also arises as a consequence of decisions taken in other areas.

While there are important obligations faced by governments, there is also a substantial role played by non-state organisations in providing services that assist in meeting the rights of the child. Alongside these direct services, an increasing number of advocacy groups have developed, articulating the rights of the child and arguing for improved programmes and services for children. Examples include Child Poverty Action, Children's Agenda, and Action for Children and Youth Aotearoa. Such groups act either as advocates themselves or as umbrella groups for a range of individuals and organisations (St John et al., 2001).

Implementation of the rights described in the Convention will be reflected in a range of policy measures. Equally neglect and negation of these rights will also follow from policy measures and from failures to pursue particular policies. Some elements of this are reflected in the UNICEF report referred to above. The consequences of these policy decisions are particularly significant in relation to children because the consequences for children are immediate, long-term and pervasive in that they extend to such fundamental areas for children as health and development and educational progress and opportunities. A recent report from a University of Otago research team who have followed a cohort of New Zealand children from birth to adulthood clearly illustrates the ways in which poverty in childhood is linked to later adult health and well-being (Poulton et al., 2002).

The Child Poverty Action group have recently published the second edition of their report, *Our Children: the priority for policy*, which makes recommendations about what can be done to end child poverty. *Our Children: the priority for policy* accompanies this Report to the UN Committee. Recommendations from *Our Children: the priority for policy* are at the end of this appendix.

Employment and taxation

The most obvious issues with significant implications for levels of poverty are in employment policy. Because of the significance of employment in determining levels of income for families with children, decision-making about employment and economic policy which impacts on both levels of employment and wage levels has substantial consequences for child poverty. There are no signs or indications that the rights of children or the well-being of children are directly or indirectly incorporated into the employment and economic decision-making processes. One further area where such considerations are equally critical is around questions of taxation and taxation policy. Here too, the recent review of taxation legislation paid no attention at all to children or to issues of child poverty. The levels of taxation and questions such as child tax credit (discussed more fully below) have important implications for child poverty and their omission from the review represents a significant gap and illustrates the ways in which child poverty and the rights of children fail to figure in key policy issues.

The significance of employment and taxation policy and legislation for the rights of children can be clearly seen in such areas as working hours for families and the costs of childcare, to use two illustrations. There are few signs that the rights of children or their well-being are directly or indirectly incorporated into the employment and economic decision making process.

Social security

The impact of the benefit cuts in 1991 is now well documented (Blaiklock et al., 2002; Jackman 1993; Kelsey 1995; O'Brien and Wilkes 1993; Ward 1991). The dramatic increase in poverty that followed from those cuts has continued in the sense that the cuts have not been restored with the result that levels of poverty have not reduced. While there has been some improvement for those beneficiaries living in public housing (known as state housing), this is limited to a small proportion of all those children who live in rental accommodation. 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. Housing costs are one of the major causal factors, with high rents contributing significantly to poverty and no protection for those renting in the private market.

Benefits continue to be inadequate. Increases have simply met part of the cost of living. While they have been adjusted in line with general inflation costs, the general inflation costs which have been used mask the ways in which the costs of food in particular significantly exceed the overall inflation rate. Thus, for beneficiaries and those on lower incomes reliant on some form of state support increases in benefits and in state support generally have not kept pace with the increased costs faced by these households. The use of food banks has not changed. Recent work indicates that debts to government through benefit advances is one of the major reasons for people's use of foodbanks (Howell 2001). The creation of this debt and the resultant repayment policies result in significant hardship for children and young people.

Income distribution

New Zealand has no official poverty line. However all the available research suggests that approximately one-third of children live in poverty, a figure currently acknowledged by the government (Krishnan et al., 2002). In 1996 26 percent of all children were living in households in the lowest income quintile (fifth), with 23 percent in the next lowest quintile. The Ministry of Social Policy figures for child poverty show that 23 percent of the population are poor using figures net of housing costs. The proportion of sole parents below this threshold rose from 18 percent in 1988 to 53 percent a decade later. 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. By 1998, average real incomes had fallen for the bottom eight deciles while the top decile had an increase of 36 percent (Ministry of Social Policy 2001). 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).'

Nearly 70 per cent of sole parent were in the two lowest quintiles. However, because overall there are more two parent households, there are more children (measured in actual numbers) in two parent families in each of the bottom quintiles. Poverty, then, is not limited to sole parent households. Poverty is also unevenly distributed, based on ethnicity. Poverty is experienced most heavily among Maori, Pacific Islands and Asian children, although the actual numbers in poverty are greater for Pakeha children because they form a proportionately higher number in the population. In 1996, Statistics New Zealand reported that 13 percent of Pakeha children were in the lowest income quintile, while 34 percent of Maori and 34 percent of Pacific children and 28 percent of Asian children were in the lowest income quintile.

While the focus of much of the attention around issues of child poverty has concentrated on those children living in households which are reliant on social security benefit, the research evidence indicates that poverty among children living in households where there is an income from paid work are also at risk of poverty. Indeed, Easton's research work, which has been sustained for a long period of time, leads to the conclusion that those at greatest risk of poverty are children in larger families (families with three or more children) (Easton 1995). One policy response to the position of these families led to the introduction of the child tax credit for families in work. It is, however, limited to those families where neither parent is on a social welfare benefit. It is, therefore, discriminatory against those children whose parents are reliant on superannuation payments, a social security benefit, an accident compensation payment or a student loan.

The Briefing Papers for the Minister of Social Development, produced following the 2002 general election, identified child poverty as one of the major priority areas for the incoming government (Ministry of Social Development, 2002). However, it did not specify either policy actions or timeframes for policies aimed at reducing the levels of child poverty. Using a scale of living standards developed for the research, a recent study on New Zealand Living Standards identified one-third of New Zealand children living in either restricted or somewhat restricted living standards (Krishnan et al., 2002).

Outcomes

The effects of poverty on children are now well established. Studies have identified difficulties in affording visits to obtain the necessary medical treatment for children and/or to meet the costs of medication following a visit to the doctor. Families report difficulty in meeting regular household bills (Waldegrave 1999). A 1999 study found that 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 (New Zealand Network Against Food Poverty 1999). One study which examined household living standards found that more than 60 percent of those interviewed had been unable to buy what they defined as their six most essential food items at least once in the previous three months because they had insufficient money. Half of those interviewed were unable to provide a proper meal at least once in the previous three months while for more than a quarter of the households in the study this had happened four times at least in the last three months (New Zealand Network Against Food Poverty, 1999).

Other studies have reported difficulties for children in participating in social and recreational activities and difficulties faced by parents in meeting the costs associated with public examinations have also been reported. For example, poverty can mean that children are unable to participate fully in such educational activities as school camps because they cannot afford the fees, or may be unable to participate fully in recreational programmes because they cannot afford the fees or the equipment. Families also report difficulties in ensuring

that children have adequate and appropriate clothing to ensure that they are able to withstand the demands of winter. In all of these areas government could take active policy measures which would be consistent with the requirements of the Convention and which would make a significant difference to levels and experiences of poverty for children (Povey 2002).

The study by Krishnan et al. (2002) reported above identified children living in restricted or somewhat restricted households as being twice as likely to postpone doctor and dentist visits or not have suitable wet weather clothing. The report went on to note that:

It is also twice as likely that books (including school books) will go unbought, computers or internet access will be unavailable at home, school outings will be skipped, cultural lessons and sports involvement forgone and childcare services will go unpurchased (Krishnan et al., 2002:119).

Furthermore, children are sometimes unable to keep hospital appointments because their families cannot afford the travel costs and there are anecdotal reports of children being unable to attend school or early childhood education facilities in bad weather because their families could not afford appropriate, safe clothing such as a raincoat. All of the dimensions identified in this section reflect ways in which policy and provision in New Zealand is in breach of the *United Nations Convention on the Rights of the Child*.

Targeting and Family Support

There has been a persistent move in New Zealand's support for children for many years towards greater use of targeting through a range of income tests. Inevitably, these overlap and interact in confused and confusing forms creating significant take up and abatement issues for families and exacerbating levels of child poverty. The Child Tax Credit provides a good example. Family Support was introduced in 1986 to provide financial support to all families. It 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.

Developed initially to provide support for families, Family Support has not increased since the Budget of 1996, when it was last adjusted, particularly for specific family groups. The maximum Family Support for a one child family has risen only 11.9 percent since 1986. Today's maximum of \$NZ 47 would be \$NZ 72 if adjustment for inflation had been made. A one child family earning three-quarters of average weekly earnings in 1986 would be entitled to \$NZ 23.60 due to the effects of the clawback of Family Support from low income levels. Family Support for second and subsequent children was increased in 1993 and again three times between then and the 1996 Budget. Nevertheless a three child family has also suffered a significant loss in purchasing power even when the Child Tax Credit is included.

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 for the Child Tax Credit. Children in those households 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. It is discriminatory on the basis of a child's income source, not on the basis of the needs of 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 user pays charges for education for older children. The failure to raise the threshold for abatement reduces the advantage of the Child Tax Credit for middle income families.

Current budget forecasts show that there are no planned increases in family tax credits for the next four years. Giving those children living in households reliant on social security support the maximum entitlement to the Child Tax Credit would significantly improve the position of those children. The cost of this has been estimated to be approximately \$NZ 250 million. While government has frequently identified child poverty as an important issue requiring attention, there have been no substantive policy changes to address the extent and depth of poverty.

For those on most social welfare benefits the level of income that can be earned before the benefit is lost almost dollar for dollar has remained almost unchanged since the late 1980s. Although there has been some

improvement in the abatement provisions for sole parent families, this has not been dramatic. After paying tax at 21 percent and losing 25 percent of the accommodation supplement only \$NZ 43.20 is retained from the first \$NZ 80 earned. The next one hundred dollars will net only NZ\$49 after-tax and loss of benefit at 30 cents in the dollar. Given the low hourly rates and the time involved for sole parents to earn \$NZ 180 a week, the likelihood of earnings at this level is unlikely to be high. They will retain little over half of this sum.

Housing

Housing costs are one of the main contributors to child poverty. While there has been some relief for those families living in public rental housing (known as state housing), the position has deteriorated for many families. The targeted Accommodation Supplement (the source of financial assistance for those faced with high housing costs) has been inadequate in meeting the needs of families and children. It has certainly reduced the effects that poverty would have if the Supplement was not in place, but the relief it provides is inadequate and the targeting complications referred to above are well illustrated in the operation of the Supplement. It has been calculated that 164,000 households were receiving the Accommodation Supplement in December 2001 (Child Poverty Action Group, 2002). While not all of these are households with children, the vast majority will have children living in them.

The effects of the increasing cost of rentals is reflected in the following quotation from a recent Backgrounder prepared by the Child Poverty Action Group:

The growth in expenditure on the Accommodation Supplement is due to increases in the number of households claiming the subsidy and increases in the average amount being paid to each of these households. Both types of increases are probably due to the declining position that perhaps 25% of New Zealand households are facing in the labour and housing markets. For the lower quartile of households, their market based incomes have declined in the face of declining demand for unskilled labour especially outside of Auckland. These households are being squeezed in the housing market, especially in Auckland, where house prices have risen in response to continuing immigration. These house price increases are driving down rental housing supply and hence driving up rents.

In June 1996 there were 162,000 households claiming an Accommodation Supplement for their rent. This figure included around 50,000 state tenants. By December 2001 164,000 households were claiming the Accommodation Supplement for rent assistance while a further 51,000 state tenants were receiving income related rents from Housing New Zealand. This means that the number of private sector tenants reliant on the state for assistance rose nearly 50 percent in five and a half years. Alternatively the number of extra families requiring state assistance through the Accommodation Supplement during the period June 1996 to December 2002 is the same as the number of families now receiving income related rents as state tenants. A recent Child Poverty Action Group paper estimates that one in ten households are reliant on the Accommodation Supplement (Johnson, 2002:3). The percentage will be much higher for households with children. Child Poverty Action Group is currently completing a paper which illustrates the extent of transience among low income families in South Auckland, as demonstrated by the extent of turnover in school rolls. Housing costs are a critical factor in this transience. The level of transience identified has profound consequences for children's education and social development.

Government policies and the Convention on the Rights of the Child

In its 2002 *Agenda for Children* the Government promised 'an end to child poverty' as a key action area and made a commitment to 'put in place a programme of research on child poverty . . . (to) . . . inform the development of effective policies.' However the *Agenda for Children* did not set a timeframe and made no commitment to any other new or changed strategies to ensure the end of child poverty. The priority statements from the current Government following the election in 2003 placed the elimination of poverty at the top of the priorities for the Ministry of Social Development. Similarly, the Briefing Papers for the Minister of Social Development (which provided the opportunity for officials to give their independent advice) identified reduction of child poverty as the first priority area (of ten) for the incoming government in 2002. However, in both instances no timetable or specific action plan.

Current policies in New Zealand are in breach of Article 26 in that not every child has the right to benefit from social security, using that term in its widest sense to refer to state assistance to children. The limitation of the Child Tax Credit to those children living in households where there is an adult in paid work is in breach of this

Article. This is also in breach of Article 2 which states that 'state parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind'.

Article 27 requires member states to provide every child with a standard of living adequate for their development. This is clearly not the case in New Zealand given the large proportion of children living in poverty, a proportion that has remained persistent throughout recent years. The effect of this is seen in the daily lives of children and in the myriad areas where children are unable to participate fully in educational, social and recreational activities because of inadequate resources. It is seen too in the tragic deaths of children in houses where the levels of poverty mean that there is no electricity and fires occur as a result of the use of candles and matches. It is evident too in the poor nutrition levels of many children and in the rise of the diseases of poverty. As noted above, this effect persists into adulthood (Poulton et al., 2002)

The 1997 report of the United Nations Committee on the Rights of the Child referred to the impact of the benefit reforms on children and families and expressed concern that the measures necessary to ensure the full realisation of the rights of children had not undertaken. These concerns are strongly echoed by the report to UNICEF (Blaiklock et al., 2002). Since that report there have been no new concrete measures to protect and enhance the interests of children in response to the Committee's concern. The current government has identified child poverty as its highest priority area for action but has not yet taken any concrete steps to operationalise this priority.

That 1997 report also recommended that there be a study of the impact of the economic reforms and of unemployment on children and families, requesting in particular that special attention should be given to the most disadvantaged groups. That study has not been undertaken by Government but was done in the UNICEF report (Blaiklock et al., 2002).

Recommendations

- The Government take all necessary measures to implement the Recommendations made by the UN Committee in 1997 about the need for action in relation to the position of families, particularly the recommendations about children belonging to the most disadvantaged groups and budgetary allocation for services to children.
- The Government take urgent action to meet its obligations under the Convention (especially its obligations under Articles 2, 3, 4, 6, 18, 26 and 27) and take all practicable steps to end child poverty and thus to fulfil its promise made in the Agenda for Children to 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.

Acknowledgements

ACYA is deeply appreciative of Mike O'Brien who co-ordinated this report, Child Poverty Action Group, and others who contributed.

Recommendations from Our Children: The Priority for Policy

Taken from: Child Poverty Action group (2003). *Our Children: The priority for policy (Second edition)*. Child Poverty Action Group: Auckland.

Chapter One: New Zealand children and poverty

1. Eradicate child poverty in New Zealand by 2010.
2. Adopt an official measure of poverty and monitor regularly.

3. Focus policy development on the needs of *all* children, not just specific groups.

Chapter Two: Why child poverty in New Zealand matters

1. Implement the Agenda for Children.
2. Ensure the rights and needs of children and young people are grounded in policy and law.
3. Eliminate food poverty by 2005.

Chapter Three: Why are children poor?

1. Monitor whether economic policies improve living standards for all, especially children.
2. Balance the Fiscal Responsibility Act and the Reserve Bank Act by including the goal of fair social outcomes.
3. Continue high excise taxes on “social hazards” to protect and discourage use by young people.
4. Raise basic benefit levels to reduce reliance on supplementary benefits, and levels of debt amongst beneficiaries.
5. Adjust the bottom threshold for tax to \$13,000.
6. Redress the inequities of tax changes in the 1990s.

Chapter Four: Targeting versus universal support for children

1. Immediately extend the Child Tax Credit to ALL children of low-income families.
2. Abandon all discriminatory aspects of the Family Plus package of benefits.
3. Adjust all family assistance payments for past inflation, and index.
4. Place an obligation on the IRD to ensure families access their tax credits.
5. Implement a mixture of universal and targeted provisions, with a focus on children, to minimise the trap of high Effective Marginal Tax Rates (EMTRs).
6. Make a significant universal child benefit part of medium term policy.
7. Encourage public discussion about inter-generational issues and income distribution.

Chapter Five: Changing structures: families and work

1. Amend the Child Support Act to ensure that children receive some direct benefit from the liable parent contribution.
2. Increase support for the transition into paid work for beneficiaries and review the current punitive EMTR clawback regime.

Chapter Six: Housing

1. Commit to build 1000 new state houses a year.
2. Soften the abatement of the Accommodation Supplement and income related rent subsidies.
3. Introduce assistance for home ownership including subsidised interest rates, reduced deposits, and sweat equity options.
4. Encourage and assist third sector housing initiatives for families on low incomes.

Chapter Seven: Health

1. Make health and dental care for under 18 year olds universal and free.
2. Inflation index all child health subsidies for children.
3. Extend Primary Health Organisation (PHO) development to all regions.

Chapter Eight: Education

1. Fund early childhood education to a level which ensures all young children are able to access quality, affordable programmes regardless of where they live, or their parents' income.
2. Increase funding for low and middle decile schools and eliminate subsidies for private schools.
3. Focus policy development on teacher quality to improve student achievement levels, especially in low decile schools.
4. Increase investment in schools to address student health problems and the effects of social exclusion.
5. Abolish fees for compulsory national qualification exams (NCEA, Bursary).
6. Computerise records of school attendance and provide well-resourced specialist programmes for chronic truants and other students in need.

Chapter Nine: Social services for children at risk

1. Investigate a *Sure Start* style of programme in New Zealand.
2. Enact legislation to ban the physical punishment of children, implement positive parenting programmes, and immediately repeal Section 59 of the Crimes Act.
3. Provide educational services for children with disabilities on the basis of the needs of the children, not solely on the basis of school rolls.

Chapter Ten: Social hazards

1. Encourage local initiatives to ban/eliminate pokie machines.
2. Increase contributions from gambling operators to cover social costs of problem gambling.
3. Campaign to make smoking tobacco and cannabis socially unacceptable in front of children.
4. Increase investment in smoking cessation programmes, especially those targeted at low-income families.
5. Continue with efforts to change prevailing attitudes towards excessive drinking patterns, and extend these efforts to other social hazards.
6. Raise the minimum legal age for the purchase of alcohol to 20 and ensure enforcement.

References

- Blaiklock, A., 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*. Florence, Italy : UNICEF. Innocenti Working Papers no.93.
- Easton, B. 1995 'Poverty in New Zealand: 1981-1993', *New Zealand Sociology* 10,(2): 181-213.
- Howell, G. 2001 'The Saga of the Special Benefit: a story of chronic social policy failure by the Department of Work and Income', Wellington: Victoria University.
- Jackman, S. 1993 *Child Poverty in Aotearoa/New Zealand. A Report from the New Zealand Council of Christian Social Services*, Wellington: New Zealand Council of Christian Social Services.
- Johnson, A 2002 *The Accommodation Supplement*. CPAG Backgrounder June 2002. <http://www.cpag.org.nz/Backgrounders>.
- Kelsey, J., M.O'Brien 1995 'Setting the Record Straight', Wellington: Angoa.
- Krishnan, V., Jensen, J., Ballantyne, S. 2002 *New Zealand Living Standards 2000 Nga Ahutanga Noho o Aotearoa*. Wellington: Centre for Social Research and Evaluation, Ministry of Social Development.
- Ministry of Social Policy 2001 'The Social Report', Wellington: Ministry of Social Policy.
- Ministry of Social Development 2002 *Improving well-being for all New Zealanders*, Briefing Paper to the Incoming Minister
- New Zealand Network Against Food Poverty 1999 *Hidden Hunger. Food and Low Income in New Zealand*, Wellington: New Zealand Network Against Food Poverty.
- O'Brien, M. and Wilkes, C. 1993 *The Tragedy of the Market*, Palmerston North: Dunmore Press.
- Poulton, R., Caspi, A., Milne, B., Thomson, W., Taylor, A., Sears, M., Moffitt, T. 2002 'Association between children's experience of socioeconomic disadvantage and adult health: a life-course study' in *The Lancet*, Vol.360, 1640-1645. November 23.
- Povey, D. 2002 *How Much is Enough? Life Below the Poverty Line in Dunedin 2002*. Dunedin: Presbyterian Support.
- St John, S., Dale, C., O'Brien, M., Blaiklock, A., Milne, S. 2001 *Our Children. The Priority for Policy*, Auckland: Child Poverty Action Group.
- Waldegrave, C., King, P., Stuart, S. 1999 'The Monetary Constraints and Consumer Behaviour in New Zealand Low Income Households', Lower Hutt: Anglican Family Centre.
- Ward, K. 1991 'Hard Times' Pilot Study, Wellington: New Zealand Council of Christian Social Services.

Appendix Fifteen

THE EDUCATION OF CHILDREN AND YOUNG PEOPLE

ACYA Working Group on Education

Please also see Appendix Four: Pacific Children and Youth; Appendix Five: Asian Children and Young People; Appendix Seven: Children and Youth with Disabilities; Appendix Ten: General Principles of the Convention; Appendix Eleven: Civil Rights and Freedoms; Appendix Thirteen: The Health of Children and Young People; and Appendix Seventeen: Youth Justice.

Introduction

The *United Nations Convention on the Rights of the Child* has had relatively little impact on education law, policy and practice in New Zealand. There is a tendency to view schools as sheltered enclaves, separate from mainstream social and cultural life and subject to their own rules and disciplinary procedures. The notion promoted in Articles 28 and 29 that school students have independent rights is not well established in New Zealand. In some respects, students are denied basic rights that adults take for granted. The idea that children have a right to education tends to be interpreted as meaning that there will be a government school available for every child rather than that all children shall be educated to their full potential regardless of the economic and social circumstances of their parents and family.

Education is often viewed by schools and teachers as a privilege rather than a right – a privilege that can be withdrawn if the student does not conform with the rules of the school or behaves in a manner that is disapproved.

Teachers and parents remain the strongest influence in the development of curriculum, teaching approaches and education policy and administration. There are of course many teachers, school trustees, parents and adults throughout education who do all they can to respect the rights of children and young people – but such is not always easy. Students have historically had little say in school decision-making and there is no legal requirement or established processes that give them the right and opportunity to express their views freely in school and education matters. Their views are seldom taken into account when decisions are made which affect them. The lack of consumer feedback from students has resulted in a system dominated by the attitudes and values of adult educationists. Little research has been carried out in New Zealand on how students feel about the subjects they are taught and teaching methods. Australian research shows many students are critical of curriculum, teaching methods and paternalistic and patronising attitudes: see for example *Declining Rates of Achievement and Retention: The perceptions of adolescent males*.

Unlike other social legislation in New Zealand, the *Education Act 1989* does not set out general principles which apply to education. There has been no attempt to incorporate the education rights in the Convention into New Zealand law.

Recommendations

- The text of Articles 28 and 29 of the Convention be incorporated in New Zealand education law
- The Education Act 1989 be amended to include an introductory section including basic principles to be applied in the interpretation, administration and implementation of the Act, and with an overriding principle that students have a right to express their views freely on all matters to do with schools and their education.

Child's right to education (Article 28.1a & b)

Education through government schools is offered to all New Zealand children from the age of five years until the age of 19 years. However, the 'right to education' required by the Convention is not always delivered in practice.

The child's right to education is broader than there being schools available for children to attend. Education must be of sufficient quality to ensure that the aims of education set out in Article 29 are realised. This involves suitable physical facilities and equipment, adequate staffing levels, small class sizes, sufficient trained teachers and teaching styles and school cultures conducive to effective learning. The sad reality is that New Zealand has a lower rate of teenagers in education than most other industrialised countries. In 1998, 28 percent of New Zealand children in the 15 to 19 age range were not in education. Only Turkey, Mexico and the United Kingdom had a higher rate of teenagers not in education (G. Brown personal communication, 2002). There may be a link between the low school participation rate of New Zealand children and the high youth suicide rate although there is not yet research to confirm this link.

The current Government is to be commended on its commitment to raise participation and achievement levels for underachieving students. There remain significant disparities within New Zealand in core literacies, school attendance, attainment of qualifications and progression to tertiary education. The attainment of school leavers is highly correlated with the income level of the parents. In 2001, 42 percent of high decile (higher parental income) school leavers left with a university entrance qualification compared with 10.2 percent of low decile school leavers. Conversely, seven percent of students from high decile schools and 30 percent from low decile schools left school with no formal qualification, or with less than 12 credits on level 1 of the national qualifications framework.

The recent UNICEF report *Educational Disadvantage in Rich Nations* (Innocenti Research Centre Nov 2002) shows that New Zealand ranks 11th out of 24 OECD countries in educational disadvantage (based on five surveys measuring reading, maths and science literacy). New Zealand rates behind Canada, Australia and the United Kingdom. More disturbing is the fact that New Zealand ranks second to last of 24 OECD countries in terms of educational inequality (based on the difference in achievement between children in the middle and at the bottom of this country's achievement range). New Zealand can and should do better.

Teaching in New Zealand schools has often been disrupted as a result of either a shortage or over-supply of teachers and it has often been necessary to recruit teachers from overseas. While such teachers may have adequate teaching skills they are likely to lack knowledge of Maori and Pacific history, language and culture which places them at a disadvantage.

Little research is available on the qualities which enable teachers to engage with students in their class, to keep them interested in learning and to motivate them to improve their knowledge and skills. What research is available in New Zealand and Australia is a cause of concern. Australian researchers (Trent & Slade, 2002) showed that many boys found school boring, repetitive and irrelevant and complained that teachers treated them like young children. They were also concerned that their school did not offer courses they wanted – particularly courses that would lead to employment opportunities.

Poor student behaviour can be a response to boredom, the perceived irrelevance of what is being taught and anger felt by older boys at being treated like a young child. It was said in *Quality Matters: Revitalising Teaching: critical times, critical choices*, a report of a New South Wales Review of Teacher Education, that '(w)hen students find the pedagogy engaging and the curriculum relevant they behave and learn. Lack of interest and motivation cannot always be blamed on students'.

Maintenance of many New Zealand schools was deferred during the 1990s and only schools with increasing rolls received support. These were not low decile schools. The Education Review Office has reported on the poor state of facilities and buildings in some of these schools in contrast to schools with high quality learning programmes. (QPEC)

While a right to primary and secondary education is conferred by section 3 of the *Education Act*, the Act does no more than place a responsibility on parents to enrol their children at school from the age of six years and to ensure their attendance at school. There is no statutory responsibility on the government to provide quality education for all New Zealand children. While there is an obligation on parents to ensure that their children attend school, this is rarely enforced. It is most unusual for a parent to be prosecuted for failing to ensure regular school attendance. Some schools have been known to place barriers in the path of students whom the school perceives to be non-achievers.

Some children in the care of the Department of Child Youth and Family Services, New Zealand's child protection authority, do not receive adequate education. Children are often moved between residential facilities

in different urban centres because of an overall shortage of beds and this is disruptive to their educational progress. A private prosecution has been initiated against the chief executive of Child, Youth and Family for the Department's failure to meet its obligations to ensure the attendance at school of children under the Department's care. Children leaving care are sometimes stigmatised by schools because of their history and there are instances where they have been refused enrolment. On some school days, children in the 'secure care' unit at Northern Residential Centre (Auckland) have no teacher and are given work sheets. Their work is overseen by staff who are not trained educators. Vocational training opportunities are limited in some residential centres (Brown, 2001).

Recommendations

- The Education Act be amended to state that all children and young people in New Zealand have a right to good quality education.
- Realistic staffing levels be provided in schools with significantly higher staff to student ratios in schools which serve lower income communities and schools which have a disproportionate number of indigenous, cultural minority and refugee students, children with special needs and children in institutional care.
- There be forward planning to ensure that there is a steady flow of trained teachers available to ensure adequate coverage and to allow a reduction in class sizes. Overseas teachers should be required to undertake a course in Maori and Pacific culture.
- Further funds be allocated to improving the physical environment of government schools to ensure that every school environment is safe, healthy, congenial and conducive to learning.
- Financial incentives be offered to attract good teachers to lower income schools and teachers in such schools should be given quality professional development opportunities.
- A greater effort be made to find out what courses and areas of study students are interested in and developing curricula, courses and materials to meet their needs.
- Schools be required to obtain regular feedback from students on the positive and negative aspects of their school experience.
- Research into the quality of education received by children in care (and particularly children in residential care) be undertaken and policies and procedures be put in place to ensure their educational needs are adequately met.

Primary and secondary education to be free (Article 28a & b)

While the major cost of education at primary and secondary level is met by the government, increasingly schools are under pressure to find additional funds in order to provide good quality education for students.

Parents are asked to make a contribution each semester towards school funds and a specific amount is specified. This contribution is often presented as a 'fee' or 'levy' rather than a 'donation' and schools put pressure on parents (and sometimes on students) to ensure the money is paid. In some cases students have been threatened with punishment or removal of educational entitlements or excluded from participation in extra-curricular activities because their parents have not paid the 'fees'. Parents are sometimes asked to pay 'fees' in advance to be assured of a place for their child in the school. In other cases children have been identified in class and embarrassed or humiliated because their parents have not paid. Some schools have been known to refer unpaid 'fees' to debt collection agencies.

Ministry of Education Guidelines (1998/25) interpret the right to a free education to be the right to delivery of the school curriculum. This means in practice that teaching is provided but there is no obligation to provide free of cost materials necessary for teaching and learning. Parents of children in government schools are asked for payment for teaching materials. Subjects such as art, design, technical drawing require students to have specific materials. In other subjects field trips are part of the teaching programme. A requirement that payment be made for materials or field trips will deter some students from taking such courses. Students whose parents cannot pay may be denied the educational opportunities that other students enjoy. Schools have been known to ask for payment for photocopied course materials and some schools charge for course materials in core subjects such as

English or Mathematics. These unauthorised demands for payment from parents erode the right to free school education assured by section 3 of the *Education Act* and the Convention.

It is difficult to monitor the amounts claimed by schools from parents. National reporting standards do not require schools to show separately in their annual financial statements money collected from parents and money received from other sources. It has been calculated that the amount collected by government schools in donations, activity fees and fundraising increased 48 percent after adjustment for inflation between 1994 and 1999, and that New Zealand parents now pay approximately \$NZ 30 million each year in donations alone, before paying activity and materials fees (Latimer, 2002).

Recent surveys have shown that children from lower income households drop out of courses because their parents are unable to pay the \$NZ 150 fee for each level of the National Certificate of Educational Achievement (NCEA) exams. While a reduction can be given in cases of hardship the process of applying for a hardship reduction has been described as an 'administrative nightmare'.

There are insufficient facilities for education of children of refugees or recently arrived immigrants whose first language is not English. It is left to individual schools to provide special support for such children but this is often not provided.

The failure of funding for government schools to keep pace with the cost of providing quality education has meant that there has been a significant move of students away from government schools to fee-paying private schools. While there is a place for private schools, they should not be supported in a manner which is likely to lead to a diminution in quality of education in government schools.

Recommendations

- A process be established by which parents and students can challenge government schools which demand or require payment for the cost of materials, study trips and other activities are integral to their core education
- Children from low income families automatically be exempted from paying fees for the NCEA exams
- Children whose first language is not English be provided with special support to ensure that the benefit from the education provided in government schools
- Funding for private schools be more tightly tied to quality of education offered and not be at a level that continues to encourage a move from the public to private sector.

Early childhood education

The government has shown its commitment to Early Childhood Education by issuing an Early Childhood Education Strategic Plan. However there are problems with unavailability of services for lower income families, quality staffing, centre management, and for families with high risk background.

While New Zealand has a commendably high rate of participation in Early Childhood Education, participation rates overall dropped between 2000 and 2001 and participation rates for Maori and Pacific children are still significantly lower than for European/Pakeha children. At least 14 percent of Maori children and 23 percent of Pacific children reached school without having attended any Early Childhood Education Service (Ministry of Education 2001). One of the problems is the lack of early childhood education teachers fluent in Maori or Pacific languages and there is a need to recruit and train people with the necessary knowledge of these languages.

There are many lower socio-economic areas which lack Early Childhood Education Centres. Private (for profit) Centres are unlikely to set up in such areas. While grants are available, there are less likely to be people with the time and capital to set up Centres in poorer areas. Lower income families may not have a car available to take their children to more distant Centres. Government subsidies meet about one third of the cost of full day childcare and this places a strain on low income families. Seventy-three percent of children from high income families participate in early childhood services but only 52 percent of children from lower income families (Smith, 1999).

Teachers in early childhood education are paid poorly in comparison with teachers in primary or secondary schools. This creates problems attracting good quality teachers and retaining qualified and experienced teachers.

Education Review Office reports disclose a distressing number of Pacific early childhood centres being criticised for poor management. Additional funding is not provided to meet the cost of management and support staff attending meetings or professional development courses.

Families where children are at risk make less use of early childhood education and tend to use lower quality centres. Centres in lower income areas have to charge lower fees to remain viable and are under pressure to take more children. They make more use of untrained staff (Smith, 1999).

Recommendations

- The Government increase its efforts to attract more fluent speakers in Maori and Pacific languages to work in Early Childhood Education as a means of increasing the availability of Early Childhood Education for Maori and Pacific parents.
- Subsidies towards the cost of Early Childhood Education be increased for lower income families and families identified as high risk to improve the rate of participation of children from such families in Early Childhood education.
- Management support services be made available to Centres that are struggling and additional grants be available for management and workers to attend professional development courses.

Measures to encourage attendance and reduce drop out rates (Article 28e)

Many complex and interrelated factors combine to result in intermittent or prolonged student absences from school which have a direct bearing on educational achievement. Transience is a huge issue in lower decile schools in New Zealand. Data in Census 2001 is supported by a Child Poverty Action Group survey of South Auckland primary schools which showed that nearly one third of children in decile one schools were likely to change schools in any given year. This was twice the rate of transience in schools which are decile three or higher and appears linked to housing tenure (Child Poverty Action Group, 2003). Apart from the disruption to children's learning, frequent movement of students places strains on the classroom and adds to the administrative costs of the school.

The Board of Trustees of each government school is under a legal obligation to take all reasonable steps to make sure that their students go to school. For a variety of reasons many students are away from school without permission. Many students do not attend school. This may be from student reluctance, lack of parental encouragement or because the school has made it clear that the student is unwelcome at school. Other factors have been identified such as peer pressure, school rejection, suspension or expulsion, children required to work to support the family, violence and abuse in the home, alcohol and drug abuse, parental mental health and criminal activities. Staying home to complete overdue assignments, exhaustion, boredom, teacher relationship problems and finding a subject difficult are reasons why some children do not attend school (Loo & Trainor, 1999).

Schools sometimes refuse to enrol a student, even though the student qualifies for enrolment at that school and it is unlawful to refuse enrolment. Some schools have refused enrolment to students who are perceived as 'non-achievers' or 'troublemakers' or who have come to the notice of other government agencies. A school can lawfully refuse to enrol a student who is either excluded or expelled. While the law has been tightened in this area, there are still cases where children who have been excluded from one school are not offered alternative educational opportunities or are offered correspondence lessons when the family lack the ability to supervise the child's learning.

The present system encourages a culture of blame with students being labelled unruly or disruptive and as a result being denied educational opportunities. Students who refuse school or have been excluded from mainstream schools often perform satisfactorily in more relaxed, less rule-bound, more culturally relevant educational settings.

There are no formal requirements for school principals to follow in meeting their obligation to find another school for an excluded student. Although the Ministry of Education has the power to direct a school to enrol a student, it rarely uses this power. The Ministry tends to accept unquestioningly the school's assessment of the student's behaviour which resulted in exclusion. Ministry delays mean that students can be out of school for months and fall further behind with their education or drop out of schooling altogether.

Non-Enrolment Truancy Service (NETS) is a government agency whose job is to track students who have dropped out, and help get their education started again. They can help in attempting to get the student back into a mainstream school or into alternative education, or to get an exemption allowing them to enter paid employment. NETS does good work but is under-resourced.

Recommendations

- A centralised national database be established to monitor school enrolment and attendance with consistent follow-up to identify accurately the source of the difficulty and to liaise effectively with non-attending students, their families and their teachers
- Effective programmes be set up to enhance the learning of chronic truants and transient students and to facilitate positive relationships between teachers and these students and their families
- Early intervention be extended in order to identify children at risk so as to prevent behavioural problems escalating into school refusal or suspension and expulsion. Support should be integrated – they are too often fragmented. The process of arranging alternative education for school refusers and excluded students should involve the child, the family, school support staff and the Ministry of Education. Excluded students should have access to education advocates to help them find alternative educational opportunities which will meet their needs.
- The Ministry of Education work more closely with the Ministry of Housing to address housing issues that contribute to transience, school drop out and poor school performance
- Policies and procedures that identify and assist children at risk of school failure be developed by all Boards of Trustees. The policies and procedures should include: systems of early identification, a range of options for addressing the student at risk including the development of school based programmes and individual interventions
- School principals and the Ministry of Education should have greater accountability in arranging suitable alternative education for excluded students. Mandatory policies and procedures should be developed. for principals to assist them in placing excluded students in another educational setting. It should be recognised that some children will learn in more relaxed, less rule-bound, more culturally relevant educational settings and a range of educational settings should be made available.
- More resources be provided to school attendance services to reduce the extent of absenteeism and to find alternative educational settings for non-attending students.

School discipline (Article 28.2)

New Zealand's state education system is highly decentralised with schools being self-governing in most operational areas. Each school is governed by a Board of Trustees which has the power (subject to certain statutory requirements) to regulate its own procedures and to make bylaws it considers necessary for the control and management of the school.

Physical punishment of children was banned in government and private schools and in pre-school centres by an amendment to the *Education Act* in 1995. However while the *New Zealand Bill of Rights Act 1990* prohibits punishments which are cruel, inhuman or degrading there have been instances of students being required to stand in an uncomfortable fixed position for hours as a means of punishment, being isolated from other students for a lengthy period or being subjected to humiliating or degrading punishments.

New Zealand has a very high rate of students excluded from school for bad behaviour. Stand-downs, suspensions, exclusions and expulsions all involve students being officially excluded, as a disciplinary measure, from the school they normally attend.

A student can return to school after a stand-down expires. In contrast, a suspension places the student's education at risk because the Board of Trustees has the option to terminate the student's education by an exclusion (if a student is under the age of 16 years) or expulsion (if the student is over 16 years of age).

It is generally agreed that exclusion or expulsion should be treated as a last resort after alternative disciplinary options have been tried and have failed but statistics show that in New Zealand school exclusions are commonplace and increasing and there is considerable evidence that students are often excluded from school after one incident with no attempt made to identify the contributing factors to the poor behaviour. There were 4,802 suspensions in the 2001, a slight reduction from the previous years figure of 5,108. This reduction went against the recent trend of steady increases in suspensions. Figures for the 2002 school year will not be available until April 2003. Most suspensions are drug-related or for continual disobedience or physical assault on other students (Ministry of Education, 2002). However, in 2001, 37 students were suspended and 841 were stood down for smoking cigarettes – while smoking should be discouraged, it should be dealt with by health promotion and smoking cessation programmes rather than school exclusion.

For many children, suspension means the end of their education, 27 percent of pupils suspended did not enrol at another school. Maori and Pacific students continue to be over-represented in stand-downs and suspensions, compared to their representation in the school age population and this disadvantage is increasing. Maori represent 47 percent and Pacific students represent 10 percent of students excluded from schools but constitute only 21 percent and 8 percent of the school population (Ministry of Education, 2002).

Being rejected and excluded by one's school is a traumatic experience for most students. Apart from the shame and embarrassment they often find themselves with no structured activities to fill their time. If their parents are working they have no supervision at home and, if they are under 16 years it is unlawful for any employer to give them paid employment. Without any income and lacking any structure to their daily lives they are likely to become bored and are tempted to become involved in petty criminal offending. Youth Court Judges estimated in 1999 that some 80 percent of children appearing before the Youth Court were not receiving an education.

YouthLaw Tino Rangatiratanga Taitamariki is the only community law centre in New Zealand advocating specifically for children and young people. In 1997 the Centre produced a report *The Effect of Indefinite Suspensions on Young People: Young People Talk About Their Experiences*. Most of the participants considered that they had been treated unfairly by the school. A typical comment was:

I sat around in the office for hours and waited. I wasn't allowed to go to the toilet. Any teachers that were there just ignored me. The Principal's Report listed all this bad stuff about me – guess I couldn't do anything about it so I left it.

Under the law the Principal is obliged to offer counselling to students who are facing exclusion. The YouthLaw survey shows that many young people had neither received nor been offered counselling. Suspension can be a devastating experience and to have someone neutral and trustworthy to speak to can be an excellent outlet for stress. There is considerable evidence that students do not see school counsellors as neutral and trustworthy as they are accountable to the school principal and the Board.

The *Education Amendment Act (No 2) 1998* and the *Education (Suspension) Rules 1999* put in place measures designed to ensure greater fairness for students. In reality there is little a student or parents can do when schools fail to follow legal requirements. While a complaint can be made to the Ombudsman, the investigation is likely to take months (although there has been a noticeable improvement in this area) and the Ombudsman has limited powers. Some school exclusions have been challenged successfully through the Courts but the process is beyond the means of most families and the outcome uncertain. People who are unfairly dismissed from employment have important rights of review and appeal, children who are excluded from school have few rights and there are only limited advice and advocacy services available to them.

Recommendations

- The law require that exclusion or expulsion of students should be a measure of last resort to be used only after other methods of punishment or behaviour modification have been tried and failed
- A system of 'in school' exclusions be introduced. This has proved successful in New South Wales and elsewhere. Students are excluded from their usual class but remain within the school in a special class where they do school work under the supervision of a teacher. The student's education is not disrupted and the student is not left in limbo with nothing to occupy his or her time thus avoiding the risk that s/he may get into trouble with the Police.
- Other options should be explored including withdrawing privileges from a student (e.g. opportunities to attend school social events or outings), extra school duties, detentions during a lunch break or for a short period after school
- If a Principal decides to suspend a student it is suggested that a conference along the lines of a Family Group Conference or Restorative Justice Conference be held. This would be more child friendly opportunity for the student, his or her parents and any other student(s) involved in the incident to discuss what occurred and to look at ways of avoiding future incidents. Outcomes could be monitored by regular reviews.
- If a student is reinstated, the school should ensure the student gets a fresh start, free from negative labelling, victimisation or harassment. If a student is not reinstated a plan should be implemented immediately to find a suitable new school or other suitable educational opportunity. That administrative responsibility and accountability should be clearly defined and monitored so that students do not drop out of education.
- Counselling and student advocacy be offered to students facing exclusion from school. School counsellors should have the initial contact with the young person and then refer them to an agency outside of the school which could provide advice and advocacy. The role of school counsellors in relation to school disciplinary matters and student exclusions needs to be clarified and counsellors should be members of a professional body and subject to a professional Code of Ethics and disciplinary procedures which guarantees client confidentiality.
- An Education Review Tribunal, independent from the school, should be established to allow school exclusions and expulsions to be reviewed. In the United Kingdom there have since 1987 been Exclusion Appeal Panels which hear and determine appeals against school exclusions: see N Harris and K Eden (2000). A proposal for an Education Review Tribunal has been promoted by the Commissioner for Children and the School Trustees Association.

Education directed to the development of the child's personality and abilities (Article 29.1a)

The New Zealand public education system is characterised by large class sizes, lack of resources and a lack of educational opportunities for students with particular interests or abilities. In recent years there has been a greater emphasis on basic skills of reading, writing and arithmetic and this has narrowed the range of courses available to meet the special interests or abilities of individual students. At secondary level technology courses have become more theoretical disadvantaging students who wish to study applied technology.

In addition New Zealand's private education sector has experienced a growth of schools offering specialist courses and tuition in areas such as the arts, languages, drama, sports, computer science, and travel and tourism.

Recommendations

- The Government make an effort to broaden teaching curricula to ensure that the subjects offered meet the interests and vocational needs of students with a greater emphasis on job related skills.
- The views of students should regularly be ascertained to gauge their satisfaction or dissatisfaction with the range of courses offered and the manner in which they are taught.

Human rights education (Article 29.1b)

Human Rights Education has never been given priority in the New Zealand education system. There is some coverage of human rights in the Social Studies and Health and Physical Educational Curriculum and many schools offer Legal Studies as a topic. 'Human Rights Education' tends to focus on New Zealand's constitutional framework, civics and citizenship responsibilities rather than on international human rights instruments, children's rights, the *Convention on the Rights of the Child* and remedies available to individual children who believe their rights have been infringed. There is a tendency to present rights as 'adult business' and coverage tends towards the abstract and theoretical rather than encouraging the view that rights are important to the individual and that there are available remedies which children can access with the assistance of advice and advocacy services.

The very low use made by children of human rights complaints bodies such as the Human Rights Commission, Commissioner for Children, Ombudsmen, Privacy Commissioner and Health and Disability Commissioner is indicative of the lack of knowledge children have about their human rights.

Recommendation

- The Government review the various curricula to ensure that human rights education in schools meets the requirements of the Convention on the Rights of the Child with an emphasis that rights are important to children and that there are actions they can take when their rights are breached.

Education directed to respect for the child's cultural identity, language and values (Article 29.1c)

A very positive move in New Zealand is the increasing availability of tuition in the Maori language (Te Reo Maori) and courses on Maori history and culture (Maoritanga or Tikanga Maori). It is now possible for a child to complete his or her education from pre-school to secondary school in Maori. School Charters and school curricula emphasise the principle of partnership enshrined in the Treaty of Waitangi.

Inter-school cultural festivals held in Auckland and elsewhere are important opportunities for students to practise their own cultures and to learn about other cultures. More could be done to provide education in relation to the culture, language and values of cultural minorities other than Maori and Pacific people. There has been a great increase in the number of children in our schools who were not born in New Zealand and whose first language is not English.

Several complaints to the Human Rights Commission alleging discrimination on the grounds of race or culture in schools have been upheld by the Human Rights Commission. These include complaints about dress and appearance codes which ban the wearing of cultural artefacts or culturally recognised hairstyles.

Recommendations

- All schools be encouraged to provide education and opportunities for students of cultural minorities to enjoy their own culture, and to use and learn their own language and for students to learn about other countries and the language and culture of minority cultural groups
- In developing school rules and dress and appearance codes, schools be required to make allowance for national and cultural differences.

Preparation for responsible life in a free society (Article 29.1d)

Schools in New Zealand drew heavily on the British education system and, particularly in secondary schools, have retained their emphasis on regulation, strict discipline and unquestioning obedience to teacher commands.

Rules and procedures tend to be imposed from above rather than reached by a democratic process involving students as well as other members of the school community. In a country which values imagination, initiative and entrepreneurial skills, it is surprising that government schools lack variety, score badly in student participation in decision-making and shy away from values education. There is an emphasis on education as a

process aimed at attaining formal qualifications rather than as a means of acquiring attitudes, values and skills which will fit children to take their place as responsible and caring people in their community.

While some schools provide some teaching in relation to general principles of democracy, citizenship and human rights there is a reluctance to embark on any topic which may be characterised as 'political' or 'controversial'. As a result students are discouraged from expressing views about issues of domestic and international politics. It is usually seen as bad behaviour for a student to express robust disagreement with the views expressed by the school principal or a teacher.

Bullying is a major issue for children in New Zealand schools and the existence and fear of bullying was a major issue identified by children in consultation for the *Agenda for Children* (Barwick & Gray, 2001). New Zealand has one of the highest youth suicide rates in the world and information compiled by Kids Help Foundation Trust shows that bullying at school was the second most common reason why children phoned the help line and the most frequent reason for children in the 12-15 age range. In a recent study involving 107 High Schools 45 percent of the students reported they had experienced bullying at their school and 33 percent recorded that they had bullied someone at the school. Students are reluctant to report bullying to teachers: only 56 percent of students believed that teachers could help if bullying was reported to them (Nairn and Smith, 2002).

On the positive side an attempt has been made to reduce or eliminate the high level of bullying in schools through a whole-school *Eliminating Violence* programme. The Peace Foundation runs a *Cool School* programme which teaches peer mediation as a means of resolving disputes between students.

Recommendations

- The emphasis in schools move towards the encouragement of responsibility and self-discipline rather than on externally imposed rules and discipline.
- Initiatives that address bullying such as the Eliminating Violence and Cool Schools programmes be extended and strengthened

Education in respect for the natural environment (Article 29.1e)

New Zealand schools generally do well in this area.

Alternative educational establishments (Article 29.2)

Home schooling

The *Education Act* permits home schooling of students subject to requirements that the teaching meet certain minimum requirements. However New Zealand has been slow to provide funding and facilities to assist parents of home-schooled children to have access to the specialist teaching, laboratories, equipment and facilities that cannot be provided in a home environment. They often lack equal access to sporting and recreational facilities such as gyms, swimming pools and opportunities for team sport. Students in alternative education miss out on health checks such as dental inspections and hearing testing available to government school students. They are not required to teach the *Health and Physical Education Curriculum* and may not receive the health and sexuality education that mainstream students will have (Clark, 2002; Denny, Clark & Watson, 2003).

Private schools

There is now a wide range of private schools in New Zealand and they receive considerable funding assistance from the government. Most of the schools rely on additional financial support from parents.

Alternatives to mainstream education

The New Zealand government has from time to time experimented with establishment of alternative schools where students are encouraged to follow their individual interests and where there is less emphasis on regulation and discipline. The last of these alternative government schools, Metropolitan College in Auckland closed last year.

Some children become alienated from the school education system. Either they are unwilling to attend school, or schools are unwilling to enrol them. For these children there are limited opportunities for participation in an alternative learning centre. Some children have been enrolled in distance education which is seen as the 'school of last resort', but many do not have the skills or parental supervision to complete their set work and quickly drop out.

Alternative Education Centres are government funded centres for children aged between 14 and 16 who are unable to learn in a mainstream school. Children are usually considered to be alienated from schooling if they have been out of school for two terms or more, and have had a history of problems over at least a few years. At Alternative Education Centres students do a mixture of schoolwork and other activities, usually with a small group of other students. There is always a danger that Alternative Education Centres could become a dumping ground for children that have been rejected from mainstream education.

Recommendation

- Alternative Learning Centres be reviewed regularly by Education Review Office so there is some monitoring of the quality of education and the life skills and vocational training provided.

Other education issues

Opportunities for the views of students to be heard (Articles 29.1a, b, & d, and Article 12)

Students in intermediate and secondary schools are entitled to have one representative on the government school Board of Trustees. This requirement was removed by an earlier National government but restored by the present Labour government. While it is important to have student representation on the governing body of a school, one student cannot represent the views of a diverse group of students of various ages, background and cultural affiliation. A single student representative is easily outvoted or marginalised and the ability of students to have effective impact on school decisions is limited by the fact that student representatives usually only serve one year on the Board while other Board members usually remain for at least three years and often longer. Student representatives tend to be drawn from high achieving senior student and cannot always represent the views of junior students or students from cultural minorities.

While some schools have School Councils or other student consultative bodies within the school, this depends on the attitude of the school principal and the teaching staff and such bodies are not widespread. Where they exist they are often limited in the matters they can have input into – and are encouraged to focus on fund raising activities for the school or school socials. There is no legal requirement in the *Education Act* that every school have a means of ascertaining the views of student on school and curriculum issues.

There are specific legislative provisions in the *Education Act* that give students no say in matters such as participation in health and sexuality education and religious classes. Students do not have to be consulted about the manner in which sexuality education programmes are taught (under section 60B of the *Education Act 1989* inserted by *Education Standards Act 2001*). They can be excluded from participating in sexuality education classes if a parent so requests: (section 25AA of the *Education Act 1989* inserted by a 2001 amendment). They have no say in these important matters. Children aged 16 and 17 have the power to opt out of classes in a particular subject on religious or cultural grounds but for children under 16, only a parent can ask that a child be excluded (section 25A of the *Education Act*).

Recommendations

- Amendments be made to the Education Act to require that students have equitable representation and influence on school Boards of Trustees and supporting student representatives to consult with students in a manner which allows every student to express a view
- The Education Act be amended to include a statutory requirement that every school have a School Council or other student consultative body to provide opportunities for students to have a say on school and curriculum matters and that the views expressed by students shall be given due weight when decisions are made

- The Education Act be amended so that students have the right to decide to participate in sexuality education classes and to have the choice of opting out of other classes on religious or cultural grounds.

Maori children (Articles 29.1c, and Articles 30 and 31)

Maori are the tangata whenua, the indigenous people of Aotearoa New Zealand. Maori children deserve special consideration within the education system. For more than a century Maori children in schools were required to acculturate to the dominant Anglo-Celtic language and culture. They were strapped for speaking their own language at school and denied other opportunities to practise their culture. Despite government funding for Maori educational initiatives, Maori have long been and continue to be over-represented in school exclusions. Maori students comprise 21 percent of the population but constituted 47 percent of suspensions in 2000 and 40 percent in 2001 (Ministry of Education Reports on School Exclusions April 2001 & 2002). Maori are under-represented on school Board of Trustees – the bodies that have the power to indefinitely suspend or expel students. Although 21 percent of school students are Maori, less than 15 percent of Board of Trustee members are Maori.

Some Maori children believe that they are disadvantaged in schools because they are Maori. The Ministry of Social Policy received around 3,500 submissions from children and young people expressing their views about being a child or young person in New Zealand. Below are examples from Maori children:

[I don't like it] when the teacher tells me off for not having [black] shoes even when I told him Dad can't afford them yet. (Age 12, gender unknown)

Teachers are racist. They put you down and say you are only a Maori. It's hard not to rise to teacher's expectations. (Boy 14)

Schools are more likely to enrol European students than Maori and Pacific students, even when applicants have similar prior achievement scores. A survey of parents found that there was less likelihood of Maori parents being able to enrol their child in their school of first choice (Wylie, 1999). Sometimes enrolment requirements discriminate against Maori and Pacific families. Some schools require that a parent be living in the local area although a student may have for years been cared for by another family member who lives locally.

More needs to be done to develop teaching approaches which are effective with indigenous students and students of cultural minorities. Iwi education partnerships between the Ministry of Education and Maori need to be developed. Such a partnership with Te Runanga o Ngati Porou has led to a strengthening of community capability to guide useful, local education initiatives.

Kura Kaupapa Maori schools (which involve total immersion of students in the Maori language) have been most successful at involving Maori parents because both teachers and parents have viewed education as a home/school partnership (Mckinley, 2000).

Recommendations

- The Ministry of Education build and support partnerships with iwi and Maori communities
- Additional funding be allocated and staffing levels increased to better meet the social and educational responsibilities of schools in low income communities and communities with a high proportion of Maori students
- The Ministry of Education continue to support and strengthen Kura Kaupapa Maori schools and enhance the skills of teachers working in such schools.

Young mothers (Article 29.1)

New Zealand has the one of the highest rates of young mothers in the industrialised world. The rate is not evenly spread over the population; it is much higher for Maori teenagers and higher for Pacific teenagers compared with the Pakeha/European rate (Va'a, 2001).

There is insufficient data to establish how many of these teenagers are at school when they become pregnant. However, there is significant anecdotal evidence to show that there is an extremely low rate of school

completion for teenagers who become pregnant. In 1996, 52 percent of sole parents aged 15 to 19 years had no formal qualifications compared with 31 percent of all 15 to 19 year olds. This lack of education can lead to long-term welfare dependency and unemployment (Va'a, 2001).

Pregnant teenagers and teenage mothers face a number of barriers to educational participation and achievement such as negative attitudes, the costs of accessing childcare, transport and other necessary services and resources.

While there are some community-initiated projects in place to deal with the issues raised by teen parents, such as crèche or childcare facilities at schools, these are not accessible to the majority of teen parents. There are only a few teen parent centres in New Zealand (none in Auckland and only one in the South Island) and in 1999 only 120 teen parents were attending the seven teen parent classes funded by the Ministry of Education (Auckland Teen Parent Focus Group, 2001)

There are three main issues that need to be addressed as priorities for teen parents and their children: the need for a coherent policy; health and social services support for parent and child; and access to education in a more direct sense (Auckland Teen Parent Focus Group, 2001).

Currently there is no coherent policy in relation to teen parents because income provision is very fragmented through benefits, grants, allowances and child support. There is also a lack of co-ordination of relevant services and information available from government agencies.

The childcare subsidy is only a subsidy for caring for the child and includes no additional payment for the cost of pursuing one's education. Other costs must be met, this discourages those teen parents who wish to return to education but have difficulty finding the balance of those costs (Auckland Teen Parent Focus Group, 2001).

There is a great deal of anecdotal evidence suggesting that it is common for students to be informally excluded from schools because of their pregnancy or parental responsibilities. Officially such exclusion is unlawful under the *Human Rights Act 1993* but many young mothers are unaware of their rights and lack the energy or resources to battle the school. Difficulties can be experienced when pregnant teenagers or young mothers seek to enrol at a government school.

A New Zealand government report placed some emphasis on the availability of distance education for teen parents. In 2001 an Auckland Teen Parent Focus Group carried out informal consultation with young mothers and organisations dealing with them. They found that correspondence schooling did not meet the needs of the majority of young mothers. Many felt they needed the support and encouragement of their peers and staff at a teen parent centre to keep up their motivation to complete their schooling. While the government suggests that schools provide programmes specifically for teen parents, such programs are not widespread (Auckland Teen Parent Focus Group, 2001).

Recommendations

- Increased and more accessible government funding be provided for teen parent support centres where trained personnel will visit the young person and assess their needs and direct them to the appropriate services.
- National and local health and social services develop a co-ordinated approach in dealing with pregnant teens and young parents.
- Young parents who plan to leave school to become full time parents be entitled to continue their study by taking subjects that will better equip them for parenthood.
- A nation-wide tracking system be established to record data as to the sex, age and ethnicity of teen parents and whether they have continued their education.

International students

There are concerns about the situation of some international students studying in New Zealand, especially young unaccompanied children. The situation is described in *Appendix Five: Asian Children and Youth*, and several recommendations made including:

Recommendation

- The Commissioner for Children carry out an urgent review of the situation of the safety and well-being of children and youth who are in New Zealand as international students, with special attention being given to the situation of young unaccompanied children.

Special education

Please also see Appendix Seven: Children and Youth with Disabilities.

A person under the age of 21 has the right to be provided special needs education at mainstream schools, unless education at a special school has been agreed between the parents and the Secretary for Education. Under the *Special Education 2000*, policy, funding is allocated in three areas according to the needs of the child. The *Ongoing Transitional Resourcing Scheme (OTRS)* funding is for students with high or very high needs. OTRS funding is divided between many agencies. The support each individual student gets is related to the student's needs within the fundholder's pool and their costs (Wylie, 2000).

Special Education is the government agency that is the provider for the *Severe Behaviour Initiative* (for children with severe behavioural disabilities) and the *Speech-Language Initiative* (for children with severe need for speech language therapy). Both the *Severe Behaviour Initiative* and the *Speech-Language Initiative* individually target one percent of the school population.

A Special Education Grant was established for children who do not fit the funding criteria for On-going and Reviewable Resourcing Scheme, Severe Behaviour Initiative, or and Speech-Language Initiative. However funding for the Special Education Grant is neither targeted nor funded for individual students. The allocation of the Special Education Grant is a formula based fund paid annually directly to every school to assist moderate special needs students. It is calculated by multiplying the number of students on the school's roll by a money figure determined by the school's decile rating. The Special Education Grant is allocated to the school Boards which determine the way the grant is spent.

Special Education 2000's boldly stated aims were to ensure that young children and school students with special education needs would achieve better learning outcomes, be welcome at their local school, benefit from early childhood centres and schools having more flexibility in provision of programmes, receive equitable levels of resourcing according to level of need, have decision on their resourcing made by those closest to them, be able to attend the type of facility of their family's choice (Ministry of Education, 1998a).

Special Education 2000 has been criticised as being increasingly ineffectual, fragmented and distanced from schools and parents (Wylie, 2000). A High Court challenge brought by parents of students with special needs was successful, the Court finding that the policy breached the right to education given to students with special needs in the *Education Act*. This decision was appealed to the Court of Appeal by the Government. The Court of Appeal upheld the ruling that the Government failed to comply with the *Education Act*, in closing special needs units in schools and failing to ensure there were alternative options for students at nearby schools, and 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.

Special Education 2000 has led to some students being indirectly discriminated against either through inflexible funding criteria or because of their 'behaviour'. One school that sought support for two students with difficult behaviour was turned down because the students' behaviour was not bad enough. These same pupils were provided with assistance immediately following their suspension from the school. Some schools complain that lack of support from government agencies is putting them in the position of having to suspend students (Collins, 2001).

Inflexible funding criteria have led to inequitable treatment between students. In one case a student with an intellectually disabled who behaves in a compliant manner in class, was declined funding because the student's behaviour did not match the funding criteria. By contrast a student who is also intellectually disabled but behaves in a violent manner is likely to obtain funding.

Sometimes students with special needs are unable to attend school camps. The common reason from school is the concern for the safety of existing students. Parents have been informed that their child can go to the camp provided that the parent is present to supervise their child. For most working parents and especially solo parents with other dependants, this is an unrealistic option.

Special Education was disestablished in February 2002 after a review and transferred to a new directorate under the aegis of the Ministry of Education after the review revealed widespread dissatisfaction with its predecessor.

Recommendations

- Funding must be increased. The funding pool is too small to meet the needs of all students who require it. Some students are being 'conservatively assessed' in order to avoid cost. The Special Education Grant is not being sufficiently monitored to ensure that schools are using the money for the purpose for which it is intended. Schools with the greatest number of students with special needs are not necessarily receiving higher grants, as the Special Education Grant is tagged to a school's decile rating, rather than the number of students with special needs enrolled at the school
- The Education Review Office be given sufficient power to review service delivery to ensure that schools correct shortfalls in education provision to students with special needs
- Those involved in delivering special education be provided with specialist training so they are better qualified to meet the special educational needs of children. Teachers should be supported in training at an undergraduate and postgraduate level to ensure they have the knowledge and skills to meet the special education needs of their students
- The Government fund a specialist advocacy service for children with special needs and their parents.

Acknowledgements

ACYA is deeply appreciative of the many people contributed to this paper and ACYA especially thanks Sandy Latimer, Robert Ludbrook, Meg Moss, Effie Lokeni, and Fatima Va'a for their work, the National Council of Women, as well as the others who contributed

References

- Agenda for Children Project Team (2002), Listen to us and take us seriously. Young people's responses to the government's Agenda for Children Consultation. *Children's Issues*. Vol 6. No1. 2002. Dunedin: University of Otago.
- Auckland Teen Parent Focus Group (2001), Issues for Teen parents and their access to education and health services.
- Barwick H. Gray A. (2001), Analysis of submissions by children and young people to the Agenda for Children: Children's Discussion Pack. Wellington. Ministry of Social Development. www.msd.govt.nz (Under Agenda for Children).
- Blaklock, Alison J., Cynthia A. Kiro, Michael Belgrave, Will Low, Eileen Davenport and Ian B. Hassall (2002), 'When the Invisible Hand Rocks the Cradle: New Zealand Children in a Time of Change'. Innocenti Working Paper No. 93. Florence: UNICEF Innocenti Research Centre.
- Brown, M. (2001), Ministerial Review of the Department of Child, Youth and Family Services: Care and Protection is about Adult Behaviour, Wellington.
- Bunce, M. (2002). Tea, respect and valuing young people, *Children's Issues*. Vol 6. No 1. 2002 Dunedin: University of Otago.
- Child Poverty Action Group (2003). Our Children: The priority for policy (Second edition). Child Poverty Action Group: Auckland
- Children's Issues*, (2002). Dunedin Young People Present Their Views, *Children's Issues*. Vol 6. No 1. 2002 Dunedin: University of Otago.
- Clark T.C. (2002), Young Maori attending alternative education: A profile of sexual health behaviours and associated protective factors. Masters in Public Health Thesis. University of Auckland.
- Collin, G. (2001), Suspended. When will they ever learn? *Children's Issues*. Vol 5. No 1. 2001. Dunedin: University of Otago.
- Coxon E, Anae M., Mara D., Wendt-Samu T., Finau C., (2002), Literature Review on Pacific Education Issues Final Report. Auckland Uniservices Limited, Auckland.
- Dennison, C. (2001), A Teenage Pregnancy Strategy for England' *Children's Issues*. Vol 6. No 1. Dunedin: University of Otago.
- Denny S.J., Clark T.C., Watson P.D. (2003), Comparison of Health Risk Behaviours among Students in Alternative High Schools from New Zealand and the USA. *Journal of Paediatrics and Child Health*, 39(1), 33 - 39.
- Ete, F.P., (1993), The Role of the Church and Government in Promoting Early Childhood Education in Aotearoa, What is Government's Role in Early Childhood Education.
- Feinstein, L (1998), Pre school educational inequality, London: CESP discussion paper 404 .
- Fiske, Edward and Ladd, Helen. (2000), When Schools Compete: A Cautionary Tale, The Brookings Institution Press, Washington. Gregg, P, Harkness, S & Machin, S (1999), Child Development & Family Income, Joseph Rowntree Foundation, York.
- Harris N. & Eden K. (2000), Challenges to School Exclusion, Manchester University.
- Innocenti Research Centre (2002) Educational Disadvantage in Rich Nations. Innocenti, Florence.
- Johnston, M.G., (1997), 'Tiptoeing Through the Puha': Policy Reforms for Maori Education, M. Olson and K. Morris Matthews (Eds), Education Policy in New Zealand: The 1990s and Beyond, Palmerston North: The Dunmore Press.

- Kid's Help Foundations Trust, 2002, What's Up Statistical Summary, Kid's Help Foundations Trust, Auckland .
- Latimer, Sandra. (2002), User-Pays in New Zealand's Free Compulsory Education System, A thesis submitted in partial fulfilment of the requirements for the degree of Master of Public Policy, Massey University, Auckland.
- Loo, A. & Trainor, C. (Eds.). (1999), Keeping young people at school: a resources book for schools from the Summit Conference on Truancy, Suspensions and Effective Alternatives, Summit Conference Steering Committee, Auckland.
- Maxwell, G. and Carroll-Lind, J. (1996), Children's experiences of violence. Office of the Commissioner for Children. Wellington: Apex Print.
- McCormack, J., Nairn, K., Gaffney, M., (2001), Young People's Participation in Public Life Student Representation on Boards of Trustees: Student Views, July 2001, Children's Issue Centre, Dunedin: University of Otago.
- McKinley, S. (2000), Maori Parents and Education, New Zealand Council for Educational Research, Wellington.
- Ministry of Education. (1998), Education Circular 1998/25 Payments by Parents of Students in State and State Integrated Schools, 23 June 1998, Wellington
- Ministry of Education. (1998a), Special Education 2000, Getting it Right Together, Ministry of Education, Wellington
- Ministry of Education. (2001), New Zealand Schools Nga Kura o Aotearoa: A Report on the Compulsory Schools Sector in New Zealand 2001, Ministry of Education, Wellington.
- Ministry of Education. (2002), Annual Report on Stand Downs, Suspensions, Exclusions and Expulsions, April 2002, Ministry of Education, Wellington.
- Nairn, K. and Smith, A. (2002), 'Secondary school students' experiences of bullying at school and their suggestions for dealing with it', Childrenz Issues. Vol 6. No 1. 2002. Dunedin: University of Otago.
- New South Wales Review of Teacher Education (2001), Quality Matters: Revitalising Teaching: critical times, critical choices
- Smith, A. B. (1999), 'How are we doing in terms of education rights?' The First Decade A conference held to mark the first anniversary of the Convention on the Rights of the Child, 25th Nov. 1999.
- Sullivan, K. (2002), The anti-bullying handbook. Auckland: Oxford University Press.
- Summit Conference Steering Committee. (1999), Keeping Young People at School: A Resource Book for Schools from the Summit Conference on Truancy, Suspensions and Effective Alternatives.
- Trent F. & Slade M. (2002), Declining Rates of Achievement and Retention: the perceptions of adolescent males, Flinders University, Adelaide.
- Va'a, F. (2001), Access to education for pregnant teens and young parents YouthLaw Review p12.
- YouthLaw Tino Rangatiratanga Taitamariki. (1997), The Effect of Indefinite Suspensions on Young People: Young People Talk About Their Experiences, Auckland.
- Youth Panel, Child and Family Policy Conference (2002), Dunedin young people present their views. Childrenz Issues. Vol 6. No 1. 2002. Dunedin: University of Otago.
- Wilkinson, Ian A. G., (1998), Dealing with Diversity: Achieving gaps in reading literacy among New Zealand students, Reading Research Quarterly, 33 (2): 144-167.
- Wylie, C. (1999), Ten Years on: How schools view educational reforms. Wellington: New Zealand Council of Educational Research.
- Wylie, C. (2000), Picking up the Pieces. Review of Special Education 2000. 31st July.

Appendix Sixteen

THE RIGHT TO PLAY, LEISURE, RECREATION, ARTISTIC AND CULTURAL ACTIVITIES

ACYA Working Group on the Right to Recreation, Artistic and Cultural Activities

Please also see Appendix Seven: Children and Youth with Disabilities, Appendix Eleven: Civil Rights and Freedoms and Appendix Fourteen: The Living Standards of Children and Youth.

Introduction

Rest, leisure, play and recreation, artistic and cultural activities are crucial to children and young people's development as provided for in Article 31 of the *United Nations Convention on the Rights of the Child*. Key issues affecting some New Zealand children and young people's enjoyment of the right to these activities include child poverty, the priority given to adult and business interests and the increasing commercialisation of leisure, the need for an emphasis on a greater range of activities than just physical, the lack of freedom and space to play/associate in an autonomous and safe way, and the influence of the media.

Child poverty

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. Public transport in Auckland (the largest city) and elsewhere is often expensive and sometimes unreliable.

The *Agenda for Children* states that three out of ten children and young people in New Zealand live in poverty. There is evidence that poor children in New Zealand are significantly less likely to have a bike, books in their home, have their friends over for a meal, birthday party or to stay the night, to have cultural lessons or involvement in sport (Ministry of Social Development, 2002). Further, for parent(s) and young people who work long hours just to survive financially there is little time to spend on recreational activities.

Priority given to adult and business interests

Leisure opportunities have become increasingly commercialised with powerful business interests targeting children and youth as consumers, to purchase Play Station and computer games, McDonalds' food or the latest 'label' clothing, and so forth. This has had wide ranging effects on such things as levels of exercise and eating habits. A recent study showed that of 269 food advertisements during 42 hours of children's programmes in New Zealand, 63 percent encouraged children and youth to eat food high in fat or sugar. The study concluded that these food advertisements targeted at children generally reflect the dietary pattern associated with an increased risk of obesity and dental problems in childhood; and cardiovascular disease, diabetes and cancers in adulthood (Wilson, Quigley & Mansoor, 1999).

Government funding for the development of sport within New Zealand comes through Sport and Recreation New Zealand whose research shows that the top five sports and active recreation activities for boys were swimming, rugby union, soccer, cycling and cricket, and for girls was swimming, exercising, outdoor games, netball and cycling (Sport and Recreation New Zealand, 2002). However Sport and Recreation New Zealand's funding priorities focus on rugby, netball, cricket, golf, rowing, yachting and equestrian sports simply because these sports are the ones which have enjoyed recent publicity on the international stage.

Emphasis needed on a greater range of activities

A recent New Zealand study found that young peoples' recreation is focused on a narrow range of physical activities rather than on a broader range of activities including artistic and cultural activities. (Smith, Nairn & Gaffney, 2001).

The study (of 821 students aged 15 and 16 years and 439 staff from 107 secondary schools) found that the most common recreational activity engaged in by young people was being with friends (89 percent). There was a high level of participation in team sports with almost two thirds of students being involved (64 percent), about half of the students were involved in outdoor pursuits (51 percent) and just less than half in fitness activities (43 percent) (Smith, Nairn & Gaffney, 2001).

Other activities like music, reading, craft, or drama were less common. The most common non-physical form of recreation was music with more than a third of students participating in it, followed by reading, making things, and art. About one in four students were involved in drama, but only one in ten students participated in cultural groups. Of note is that Pacific students reported the most involvement in cultural activities, while Pakeha (European) students reported the least. The study also suggests that unstructured free time is valued by young people as part of their recreation (Smith, Nairn & Gaffney, 2001).

Some young people state that the pressure of academic work is a major barrier to their ability to pursue these activities. Amongst competing demands on students' time and economic resources, and within the constraints of the school timetable, curriculum, financial and other resources, recreational activities do not come high on the agenda. Often students are encouraged to obtain academic qualifications rather than participate in wider cultural activities (Smith, Nairn & Gaffney, 2001).

Space and freedom to play

A recent New Zealand study shows that children and young people in both rural and urban contexts identify natural features (such as rivers and beaches) and built features (such as cafes and fast food outlets) as important elements of their respective environments (Nairn, Panellu & McCormack, 2002). However, some children and young people have less freedom and space to play and associate in an autonomous and safe way. There is a heightened perception of risk, that is, there is a feeling that it is unsafe for children and youth to play and associate together without adult supervision. Children are less and less likely to play unsupervised in local parks or bike or walk to school by themselves. Some local council by-laws that prohibit youth activities, such as skateboarding, unreasonably restrict recreational opportunities for their young people).

For children and young people with disabilities, the range of recreation opportunities is frequently restricted (please see Appendix Seven: *Children and Youth with Disabilities*).

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 several 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*.

Influence of the media

Although the media is a powerful part of children's environment it is not considered in the Government's *Agenda for Children*. Children's rights under Articles 12, 13, 16, 17 and 18 of the *Convention on the Rights of the Child* describe a delicate balance between provision for protection and participation in the media. The Broadcasting codes in New Zealand are designed by the broadcasting industry. In the case of programming codes compliance is overseen by the Broadcasting Standards Authority. By contrast the advertising codes are self-regulated by the industry. Both sets of codes are complaints driven and reactive.

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 range and diversity of content provided by quotas or licence renewal obligations as in other nations. NZ On Air, the funder of local children's content, requires producers to win commissions from commercial television companies. Article 13 from the Convention, as well as The *New Zealand Bill of Rights Act* and the Article 19 of the *United Nations Covenant on Civil and Political Rights*, are used to justify continued advertising to children.

There is little commitment to informing the child 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 (assisted by the National Certificate of Educational Achievement/Unit Standards

provisions in Media Studies, and the lobbying of the National Association of Media Educators), 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, and ongoing research into the play and recreational needs of children and young people, and regular recommendations to policy makers.
- 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. This should include public reserves and space for children to play in, a statutory duty on local authorities to make adequate and appropriate provision for children's play and leisure activities, funding paid trained supervisors at popular playgrounds, and greater support for out of school care and recreation
- 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, 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. This includes reviewing the level of commercial capture of children, the extent to which charter recommendations are being met, whether there is sufficient protection from exposure to violence, the effects of advertising, the extent to which sufficient funding is allocated to enable culturally relevant content and a range of genres are broadcast for children and young people, media education, and advising on contemporary trends in broadcasting and interactive convergent digital media.

Acknowledgements

ACYA is deeply appreciative of Philipa Biddulph who co-ordinated this paper, Beverley Morris, Karen Nairn, Ruth Zanker, Bindy Barclay, Geoff Lealand, Alison Blaiklock, and others who contributed.

References

- Ministry of Social Development (2002) New Zealand Living Standards 2000, pp 119-120. Ministry of Social Development, Wellington.
- Nairn K, Panelli R, and McCormack, J. (2002). Destabilising dualisms: Young people's experiences of rural and urban environments. *Childhood* pp 19-21.
- Smith A, Nairn K, Gaffney M (2001) Secondary students' involvement in recreational activities at school, Children's Issues Centre, University of Otago.
- Sport and Recreation New Zealand (2002). PushPlay Facts III. Sport and Recreation New Zealand www.sparc.govt.nz
- Wilson N, Quigley R, Mansoor O. (1999). Food ads on TV: a health hazard for children? *Aust NZ J Public Health*. 23(6): 647-50.

Appendix Seventeen

YOUTH JUSTICE

ACYA Working Group on Youth Justice

Please also see Appendix Eight: General Measures of Implementation of the Convention, and Appendix Eleven: Civil Rights and Freedoms.

Introduction

New Zealand's juvenile justice laws are largely contained in Parts IV and V of the *Children, Young Persons and their Families Act 1989*. The *Children, Young Persons and their Families Act* is a landmark in New Zealand's treatment of young people who offend against the criminal law. It moved away from a Court based system of prosecution, conviction and punishment towards a new concept of 'family group conferences' involving the child, parents, extended family members, the victim and Police and Department of Child Youth and Family Services representatives in a meeting at which attempts were made to reach an agreement which would recognise the harm suffered to the victim, work out ways in which reparation could be made, and make arrangements which would ensure that the child did not commit further offences. The family conferencing model was based on Maori cultural approaches to decision-making and has been acclaimed and adapted by most Australian States and Territories and in other English-speaking countries.

It is acknowledged that the *Children, Young Persons and their Families Act* is an excellent framework for dealing with children caught up in the criminal justice system. The drafting of the Act took into account the principles of the *United Nations Convention on the Rights of the Child*.

A welcome law change in 2002 abolished the sentence of corrective training, a sentence which could only be imposed on 16-20 year olds the essence of which was to deter recidivism by giving young offenders a short, sharp shock. It was characterised by harsh conditions and hard physical labour and had for years been criticised for its harshness and a re-offending rate in excess of 90 percent.

However there are a number of concerns at the practical realities for children who are alleged to have broken the law. Good legislation has often not translated into good practice.

Young people deprived of their liberty

They are at a stage where they have got no one. They are lacking in a lot of maturity and they come to a point where they find that they are not really used to relying on themselves. (Youth Perspective, Prison Review, 1989)

This environment has no room for it in the young because in the young it comes out in big bursts. They have not got the knowledge to tap it and they find the authorities don't give them any opportunity to tap it. (Youth Perspective, Prison Review, 1989)

New Zealand has entered a Reservation to the Convention which allows for the age mixing of under 18 year olds in certain circumstances. The Working Group consulted with young people who had been deprived of their liberty. The purpose was to give voice to them and to examine whether progress made by the New Zealand government is sufficient under the *United Nations Convention on the Rights of the Child* to allow the age-mixing Reservation to be removed.

This paper draws on the findings of qualitative interview data collected from 40 young offenders held in prison units or specialist facilities. Access to young people held in a Youth Justice Facility and Youth Sex Offenders Unit, administered by the Child, Youth and Family Service, was made on their release from those facilities. 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.

A qualitative research interview schedule was developed to gather the views of young offenders deprived of their liberty across a range of institutional settings

Structured qualitative interviews³⁷ were conducted by the Working Group members with 40 youth offenders. The emphasis in the questionnaire on the experience of young people in custody was due to the Reservation on age-mixing entered by the Government. Young people were initially informed of the purpose of the research and invited to participate in individual interviews at an arranged time. Interviews were held between September 2001 and February 2002 in the young person's current place of confinement or following release from these institutions in the Canterbury region.

Respondents included Corrective Trainees held together in one prison wing, youth in an adjacent prison wing, youth in a new Youth Prison Unit, unsegregated young women held in a women's prison and those newly released from these institutions or the specialised Youth Sex Offenders Unit and the residential Youth Justice Facility both operated by the Children and Young Persons Service. Young people interviewed were 18 years old or less at the time of their loss of liberty or imprisonment.

Excerpts of the interviews are presented within the report and at the end. These views, experiences and perceptions are assumed to reflect the reality for youth in other institutions around New Zealand although cautious support with regards the new Youth Prison Unit in Hawkes Bay has been expressed by one external agency. An application to the Department of Corrections for approval to visit this and two other youth prison units met with such delays that these visits could not be made. The working group was disappointed with this outcome.

The information gathered was analysed separately by three members of the Working Party. Material was not quantified in depth due to the specific data collection methods employed, and time and budget restrictions.

Youth in custody

In a 1998 discussion document 'Getting Kids Out of Adult Prisons', published by the Government, three problems – victimisation and bullying, suicide/self-harm, and gang recruitment were identified as particular issues faced by young prisoners in adult prisons.

Seven youth units at adult prison sites were approved to accommodate all male prisoners under 17 years, and those prisoners aged 17 to 19 years assessed as vulnerable. These were to be 'physically separate from the rest of the prison and would be designed for intensive case management and for the provision of youth-specific rehabilitative interventions and educational programmes' (Department of Corrections website, 2001).

Four such Youth Prison Units for young males have now been opened at Waikeria, Hawkes Bay, Rimutaka, and Christchurch Men's prisons. Young women prisoners remain in the company of adult women in the three women's prisons. In mid-December 2002, there were 99 under 17 year olds in prison custody – 86 young males and 13 young females. (Offenders in Custody, Department of Corrections 16.12.02.) In November 2002 some 8 males were mixed with adults. All females under 18 remained mixed with adult women.

The research carried out by the Working Group indicates, that while important, the three issues identified by the Government are not central to the concerns of youth offenders or to youth workers in contact with youth offenders.

Before expanding on the six principal areas of concern identified in the research some specific findings can be highlighted.

- Only nine of the 40 respondents had not been institutionalised in the past. The majority had been through a range of institutions from early childhood, starting in foster homes and residential facilities.
- 26 of the respondents identified themselves as Maori, reflecting the disproportionate number of Maori in prison. Five identified themselves as of Pacific origin.
- Only 12 respondents reported having a clear understanding of the rules of the institution held in, with a further 23 stating that they had learned the rules only as time passed.
- Eleven respondents revealed they were being held outside their home region. Most were distressed by this separation from family. As no question was specifically asked about home region, it is likely that more were being thus confined. Overall, only 12 of the 40 respondents felt they had adequate access to family.

³⁷ Developed by the Working Group and available on request.

- Half of all respondents considered that they did not receive sufficient help with educational needs while the other half felt the education offered was helpful.
- Twenty-four of the respondents stated they had inadequate social activities within the units, with 21 explicitly complaining of boredom and being locked down for lengthy periods. Twenty-two complained of being treated more restrictively and disrespectfully by staff and of being treated like 'kids' when compared to adults.
- Thirty-one respondents expressed negative or mixed feelings about staff. Some staff were seen as approachable while others were seen as inconsistent, intimidating, and controlling. Unpleasant, uncaring staff were mentioned often as the aspect least liked by young offenders.
- Twenty-four of the respondents felt safe in the various youth facilities. A further nine had felt unsafe in the initial stages of confinement. Six youth felt unsafe in the remand unit and in the Youth Prison unit.
- Recreation was identified most frequently as the most enjoyable aspect of confinement followed by industry and education. One third of the respondents could not identify anything they liked.
- When asked what they had learned from others during confinement, 23 respondents identified entirely negative consequences often centred on antisocial/criminal behaviour. Just seven respondents identified positive learning, arising from programmes on offer.
- Twenty-seven of the respondents felt that their cultural needs were unmet.
- Eighteen respondents could identify an internal support person such as a nurse, social worker, or chaplain. However, 22 respondents stated they would not seek help from these people when feeling upset or low. Rather, they would keep their problems and worries to themselves. Delays in obtaining health care were mentioned frequently.
- Only seven respondents felt they had been treated satisfactorily throughout the whole youth justice experience. A majority (24) felt poorly treated and let down by Police, lawyers, and Child Youth and Family Social Workers. Twelve of the young people explicitly mentioned being beaten by the Police, Four others mentioned being harassed or badly treated by the Police, These latter comments were unsolicited responses.
- Twenty-nine of the respondents identified family as the most important people providing support for them. The majority of all respondents felt that they had very limited access to family or other outside support.
- When asked what changes they would welcome, a quarter responded that staff attitudes needed to improve. The next most important changes sought were for more education, recreation, and programmes.

The research data further identified the following six broad areas of concern:

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

Understanding and experience of the Youth Justice system

No one explained clearly what was happening the first time, it was horrible. I felt stink cos I was doing stuff wrong and no one told me. I was lucky I didn't get a hiding! Its been heaps better this time cos I already knew the rules. (Youth Interview, 2001)

The first time I was confused but I got to know the system quickly. It would have been good to have it explained to me, but you soon learn. (Youth Interview, 2001)

The first major issue revealed by the interview data concerned the poor communication of valuable information and the subsequent inadequate understanding youth offenders have regarding the justice and correctional systems.

The general feeling of youth interviewed was that there was a lack of guidance and information about the justice process and, later, custodial rules. Many commented on the lack of explanation given concerning basic rights while proceeding through the youth justice system. Many mentioned being given papers and pamphlets to 'find out for themselves' the expectations and rules governing the justice system.

A number of the youth cited poor communication between their lawyer and themselves. Some claimed that crucial information was lost during lawyer-client relations leading to a poor representation in court.

Significantly, a majority of young offenders stated that they were badly informed by their lawyers about the justice system applying to youth, leaving them ill advised of the support available.

Once confined, and further compounding the poor understanding youth offenders have of the system, a significant number commented on the 'ever-changing' rules. As covered later in this report, many young prisoners believed they are treated quite differently from the adult prison population. Prison officers are perceived to exercise greater discretion to change the rules at will because of the young age of prisoners confined to the youth units and wings.

Access to support networks

You see your family once a week [Sunday]. It needs to be more flexible to suit family members and their budgets. (Youth Interview 2001)

A youth worker or social worker from the outside that could relate to me and not break promises! (Youth Interview 2001)

The second major issue concerned the access youth offenders have to outside support in the form of family/whanau, solicitors, social workers and youth workers. This issue is particularly important because of its direct relationship to Article 37(c) of the Convention. The research clearly indicates that youth offenders feel cut-off from the outside world and that they receive limited or no access to available external support networks.

Youth offenders expressed a strong desire to have access to outside counsellors and youth workers in particular. The general perception was of poor availability of professional support staff when required. A majority of youth offenders interviewed stressed the need to have professional people to talk to, who would both value and protect their privacy.

The limited access of youth offenders to their support network is compounded by the place of residence for the young prisoners. Many are confined a long way from their home area. All female youth offenders interviewed were separated from their family in the North Island. This is a result of the limited facilities available for both young male and female prisoners in the North Island where three quarters of the population reside.

A majority of the youth offenders interviewed commented adversely on having only one day per week for visits by family/friends, inside the prison facility (rather than in outside areas adjacent to the visiting room), with such visits limited to 2 hours.

Age mixing in prison

Adults get more privileges and respect from the staff than we do! (Youth Interview, 2001)

Staff treat you different to the adults, they treat you like a kid! (Youth Interview, 2001)

When questioned about their views on being confined separately, but within, an adult prison complex, the majority of youth offenders said they would prefer to be with the mainstream adult population. The principal reason given was that they felt adult prisoners received better treatment, greater privileges, and were treated with more respect.

Although the issues of victimisation and bullying, suicide, and gang recruitment were mentioned by some respondents, many still expressed a preference for being with the adult population rather than the newly developed youth prison units and wings. The following reasons were given for this view:

- Many commented adversely during the interviews on the treatment they receive from staff in the newly developed specialised youth prison units.
- Often comments were made about intimidation tactics used by prison officers and the misuse of authoritative and referent power.
- It is also perceived by young offenders that they are more likely to suffer a loss of privileges in specialised youth units as a result of the mood of the particular prison officers.
- Even with the new youth prisons, it is apparent that 'stand over' incidents and power struggles amongst the youth population continues, along with some 'gang' intimidation. This suggests that safety is an issue for young offenders held in the new Youth Prison units and remand wings.

Education in prison

I can do correspondence. I am doing maths but I just got a bill for \$20 for my course. I don't know how I'm suppose to pay for that cos I only earn about \$5 week for cleaning the wing and I don't have anyone who sends me money. (Youth Interview, 2001)

Been here five months, have asked for education but nothing has happened. I was told something is coming soon! (Youth Interview, 2001)

The fourth critical area to emerge was the availability and quality of education for young offenders while in prison. This research indicates some positive perceptions towards courses such as the Straight Thinking Programme and Employment Skills offered to young people. However, the limited availability of mainstream education courses for them and the financial costs incurred by those who chose to undertake them, were criticised.

The general view of young offenders was that insufficient courses are available for selection, and of those that are available, many are aimed/taught at a level either above or below their potential. Concerns were also raised over the access to education materials. A few commented that access to education materials was only allowed during the teacher's presence.

Others commented on the limited eligibility for receiving education while in prison. Often it was noted by young prisoners that they were not considered to be 'in prison long enough' to receive educational assistance. This limitation is at odds with the Convention.

The issue of 'user pays' for education in prison remains a concern. Although there is a public perception that education is free for prisoners this is not the case in most New Zealand prisons. Numerous adverse comments were made by youth regarding the costs to them for education in prison.

While the Government has introduced programmes such as Equip, Straight Thinking and Employment Skills (for young people and adults), which are well received by young people, there are currently few such programmes widely available in prison, particularly for those young people not held in the new Youth Prison Units.

Although the Department of Corrections has acknowledged the importance of structured, comprehensive youth-specific programmes facilitated by skilled staff in a supportive environment, the reality of the prison regime for young people can be rather different from the 'full, active and purposeful day' proposed by the Department of Corrections (Website, 2001). Indeed young people complained of long periods locked down.

Health care in prison

You don't get help straight away. The guards make you wait until you're really sick before they let you go to Medical. (Youth Interview, 2001).

If you're depressed they might give you something to help you sleep for 3 days. If you're still shattered they give you antidepressants – no real help! (Youth Interview, 2001)

Feeling upset and down. I keep it to myself or else you get locked down. (Youth Interview, 2001)

The fifth important area raised by youth concerned access to health care while in prison – both mental and physical health care. This area can be said to raise some of the most critical issues for confined youth.

Delays in accessing health care was the most significant issue raised by the youth offenders with an overwhelming number commenting on the delays and long waiting times before medical attention was received. Many opted to 'keep it to themselves' rather than approach the prison officers for help. This option also emerged when youth referred to episodes of low mood or mental health problems.

An alarming number of interviewees reflected on the poor help made available for fellow youth suffering from mental health problems. Despite the Government recognising the issues of self-harm and risk of suicide in young offenders, little progress appears to have been made in actively addressing the mental well-being of youth. Many commented on being 'locked-down' if they were feeling 'down-and-out'. They report keeping their feelings and emotions to themselves, a situation placing them at some risk.

Cultural and social activities

There is a Marae here but you walk through the back door not the front door – only go there for education – no cultural protocol, tikanga, adhered to. (Youth Interview, 2001)

There are not, and it's disgusting. We have a Kapa Haka group but they only get us together if someone important is visiting and they want to impress – like 'see what they can do!' (Youth Interview, 2001)

The sixth concern emerging from the survey data concerned the cultural and social activities available to young offenders. There is a clear indication that young prisoners have few, if any, cultural and social opportunities available to them while in prison. On the social front, many expressed a desire to have such activities available as inter-wing touch rugby competitions where they are given a chance to interact with other prisoners, or youth from outside.

When questioned about cultural activities, the majority of young prisoners commented on the complete lack of activities made available. Several commented that the adult population seemed to have access to cultural experiences and opportunities not available to them. Many also noted rules that prohibited cultural expression while in prison. For example, young prisoners had been told not to speak, chant or sing in Maori. Those who did have access to cultural activities or groups, stated that culture was only promoted to entertain visitors to the prisons. They considered the prison administration to be insensitive towards cultural beliefs and practices.

What progress has been made about age mixing?

This research also suggests that there remains, in several areas, a considerable gap between official policy and daily practice in the care and treatment of young people deprived of their liberty.

Age mixing still occurs in the case of all young women and for some young males. Nevertheless, the interviews with youth highlight that some young people in the youth unit feel they are less well treated than adults confined nearby. Furthermore, perceptions of safety appear to centre largely on staff behaviour and attitudes.

On opening the Youth Prisons, the Government gave an undertaking to provide specially trained staff and an enriched environment in areas where young people are detained. This research suggests that the specialist knowledge and skills required to deal fairly, consistently, and effectively with young offenders deprived of their liberty, is yet to be fully realised. This Working Group is not satisfied that all staff assigned to the supervision and due care of young offenders are appropriately trained or well suited to the task.

Although the Government has opened four of the seven planned Youth Prison Units in order to address the age-mixing practices, the under 17 year age limit, (unless 17 to 19 years and considered vulnerable), has until very recently, remained below the Convention standard of separation (under 18 years of age). In late 2002, new policy was introduced bringing this age limit in line with the Convention. This policy is subject to a test of best interest in terms of where a young person is placed i.e. if a young person lives in Invercargill (at the southern end of the country) and they are in the Invercargill prison, then they would be kept there because it would be in the best interest of that young person to be near their whanau/family.

Conclusions

- The Government in 1998 identified three central issues in the treatment of young prisoners: victimisation and bullying, suicide/self-harm, and gang recruitment. However, this research suggests that both youth offenders and youth workers identify more pressing issues of equal concern.
- Youth offenders state that they are inadequately informed about the youth justice system. The poor communication of valuable information regarding the justice system leaves many young people confused about their rights and expectations concerning the judicial process. Allegations of beatings and harassment of young offenders by the Police is a matter of grave concern.
- The absence of adequate personal support during confinement is a significant finding of this research. Youth offenders indicate they have insufficient access to external support networks – support that might positively influence their behaviour during and after confinement. Little allowance is made for more flexible visiting hours for family members and friends. The visiting regime, designed for adults, makes no allowance for the particular needs and circumstances of young people. Many youth are imprisoned outside the area in which they normally reside and have little or no access to family.

- Youth offenders also indicate a desire to have access to external professional support staff (e.g. social workers and youth workers) in circumstances where their privacy is maintained and in whom they can confide their concerns.
- Young male offenders held in prisons perceive that the mainstream adult prison population receives better treatment and more privileges from staff. A disconcerting number of young prisoners indicated they would prefer to be with the mainstream prison population because of these factors. Young women interviewed considered they were treated no differently from the adults around them. However, some initially spend long periods (up to 12 months) in segregated and restrictive conditions.
- Youth offenders feel they have limited access to education courses. This is further compounded by the financial costs of education for young prisoners.
- Youth offenders raise concerns over the access to adequate mental and physical health care. Long waiting lists, delays, and intimidation by prison officers were cited as the core of these problems.
- The cultural and social needs of youth offenders are not currently being met. Indeed in some settings the spontaneous expression of cultural traditions is actively prohibited or discouraged. The Working Group finds such practices unacceptable given that Maori is recognised as an official language in New Zealand and the Government's obligations under Te Tiriti O Waitangi.

Recommendations

- The Government needs to take further steps before being considered as worthy for removal of the age mixing Reservation on the Convention.
- All facilities contracted to house young people in the youth justice and prison system, be required to be independently evaluated every two years with feed back from the young people in residence, family/whanau and external NGOs Included in the evaluation.
- The Youth Development Strategy Aotearoa be implemented in its entirety throughout all youth justice facilities and youth prison units.
- New information systems are required to ensure young offenders are well informed of the justice system they move through. Young people also need information about how to make complaints against Police, lawyers, prison, and Child, Youth and Family staff, and to be given support through any complaint procedures, which protects their safety.
- Current policies and procedures be made available to young people on arrival at youth justice and penal institutions, with explanations so the young people can understand clearly their rights and responsibilities.
- Current institutional visiting regulations and policies, particularly those found in prisons and designed for adults, need to be revised to ensure young offenders are receiving more frequent access to important family and support networks.
- Family/whanau and external networks are maintained in accordance with the *Youth Development Strategy Aotearoa* (so that young people are able to access family/whanau). This includes making available a directory of youth services to all young people and staff of institutions actively supporting them to establish/maintain these relationships.
- Current education programmes and number of tutors available to youth within the prisons need to be reassessed. This includes making more programmes available, and removing any costs to the individual prisoner. The Equip programme would be more valuable if it was aligned to other youth developmental and cultural programmes specifically designed to encourage change. This would create a more holistic approach. It is imperative that such programmes meet the needs of Maori youth. Young people should participate in the development of programmes, in accordance with the *Youth Development Strategy Aotearoa*.
- The Government must ensure that the social and cultural needs of young prisoners are being met by facilitating greater access to external providers and community groups. Policy must not disadvantage young people from having free phone access to family/whanau and identified external support workers.
- Despite Government undertakings, prison officers appear to receive minimal training in the specialist management of youth. The Government must move to ensure that all prison officers dealing with young offenders undertake in-depth initial and ongoing training in order to provide young people with appropriate care and role models, and to provide the highly trained and well-qualified staff promised

prior to the introduction of youth prisons. This research indicates the need for training in recognising and responding to the mental health needs and well-being of youth. Training provided to staff will be consistent with the Governments *Youth Development Strategy Aotearoa*.

- The Government must ensure the fair and consistent application of policy, procedures, and rules in dealing with young people deprived of their liberty in all custodial settings.
- The Government urgently reviews and monitors healthcare services available to young people in custody.
- The Government must ensure prison is used as a last resort for those youth who pose a high risk to the community. This is not the case at present. The Working Group considers that greater use could be made of Restorative Justice options as set out in the Sentencing Act 2002 – bringing victims and offenders together to address the harm done. Restorative Justice processes are steadily gaining the support of community as a more constructive sanction than that offered by the existing justice system. Such options need further resourcing and expansion.

Age limits in the youth justice system

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. Young people between 14 and 16 years can be charged with a much broader range of offences and are generally dealt with in the Youth Court under the *Children, Young Persons and Their Families Act 1989*.

More serious young offenders may be transferred to a higher court where they are subjected to adult sentences and punishment. Offenders transferred from the Youth Court and offenders aged 17 years and over are dealt with in the District or High Court. These offenders, like adults, can be sentenced to the full range of community-based orders or to imprisonment. Up until 1 July 2002 they were also subject to the special youth custodial sentence of three months Corrective Training – a sentence repealed by the Sentencing Act 2002.

The *Children, Young Persons and their Families Act* does not apply to 17 year olds who are treated as adults in the eyes of the law in relation to criminal court laws and procedures (although their youthfulness will usually be taken into account in imposing sentence or in fixing an appropriate term of imprisonment).

Recommendations

- 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.

Police interviews

The *Children, Young Persons and their Families Act* set in place a series of safeguards to protect children from oppressive and violent behaviour by Police, including restrictions on the situations when children can be arrested or taken to a Police station and safeguards to ensure that they are not bullied or pressured into making admissions. The child or young person is entitled to have a lawyer, a parent or other nominated adult present during questioning. If these rights are not complied with the courts can and do order that the statement not be admitted in evidence.

Although the Act has been in force for more than 13 years, Police continue to breach the requirements of the Act as is evident from a number of cases in which courts have ruled statements inadmissible. The Police often fail to make a real effort to contact parents or family members and select from their own list of suitable people a nominated adult (who is a stranger to the child) to support the child or young person. In a recent reported case the Police claimed that could not contact the child's parent although the child's mother was easily contactable through a work phone number that the child knew. The Police sometimes discourage children and young people from having a lawyer present and fail to inform them of the availability of free legal advice and assistance.

There is a need for a requirement that the Police record precisely the steps they have taken to contact a parent, family member or other adult nominated by the child or young person. When no person chosen by or known to the child or young person can be contacted the Police should be required to contact someone from a list of suitable independent people who are briefed and trained independently of the Police. A recommendation to this effect was recently made by a High Court Judge.

Recommendations

- 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.
- The Police be required to record precisely what steps they have taken to arrange for a parent, family member or adult nominated by the child or young person present while interviewing children and young people under 18 years.

Family Group Conferences

The Family Group Conference is the centrepiece of youth justice in the *Children, Young Persons and their Families Act 1989*. The Working Group supports the mechanism of Family Group Conference and consider it provides an excellent way of dealing with children and youth outside the formal judicial system.

Unfortunately administrative practice has failed to ensure the effectiveness of Family Group Conferences. A 1998 paper written by former Chief District Court Judge, Ron Young listed a number of shortcomings noted by Youth Court Judges in the implementation of the youth justice provisions of the Children, Young Persons and their Families Act:

- A lack of independence by Youth Justice Co-ordinators.
- Family Group Conferences are held outside the statutory time limits or adjourned because essential participants are not present.
- Family Group Conferences take place without the presence of the victim and/or essential family members, often because inadequate efforts had been made to arrange their attendance.
- Family Group Conferences too often deliver uninventive or poorly-structured results.
- Too many Family Group Conferences recommendations that involve only apologies and purposeless community work.
- Reports from Child Youth and Family Service that are superficial and fail to address the real issues for the family.
- Successful rehabilitative or community-based programmes that are not able to secure funding from Child, Youth and Family Services.
- Desirable sentencing options which are seen by Child, Youth and Family Services as too expensive or involving too much supervision.
- A lack of credibility of sentencing options, often with no monitoring so that judges and the community have no idea whether a sentence has been completed.
- Referrals to the care and protection arm of Child, Youth and Family Services are seldom acted upon by an overworked child protection service.

Chief Judge Young's summary of the situation was that 'the statute is well drafted; the ideas are right; indeed the family group conference is a brilliant idea; the process is theoretically good, but practice too often lets us down' (*Youth Justice in Focus: Conference Proceedings*, 1998, Institute of Criminology, Wellington 237-239).

Although some efforts have been made to address these issues, the problems continue. Sadly the feedback from families, victims, support networks and professionals involved in the Family Group Conference process consistently expresses the following concerns:

- Family Group Conferences are only as good as the planning by the Youth Justice Co-ordinator.
- The person responsible for monitoring Family Group Conference does not always fulfill their responsibilities.
- Young people are sometimes strongly persuaded to enter agreements at Family Group Conferences without having clear understanding about expectations/responsibilities.
- Professionals use language (jargon terminology) that is unclear.

- The process is sometimes not culturally respectful and accountable.
- Family Group Conferences are often timed outside the guidelines due to large case load.
- There is sometimes a lack of investigation by Youth Justice co-ordinator as to the services and agencies engaged with the young person.
- Sometimes the victim attending the Family Group Conference is not given support.
- Sometimes the Youth Justice Co-ordinators lack the facilitation skills which are necessary if there is to be a safe process for all parties.
- Having different Youth Justice Co-ordinators for different members of a family leads to inconsistency.
- There is often a lack of resources attached to Family Group Conference plan outcome.

Recommendations

- An independent evaluation of Family Group Conferences be carried out nationally.
- There should be regular monitoring of Family Group Conferences to ensure consistency and appropriate and ongoing training for Family Group Conference Youth Justice Co-ordinators.
- Support for victims attending Family Group Conferences be addressed as a priority.

Legal assistance and representation

There is a system whereby children appearing in the Youth Court are represented by Youth Advocates who specialise in this area of the law. Because these lawyers represent a number of children appearing in court on the same day they are sometimes not able to spend as long with each child as they would wish. (I think this sentence is redundant given the preceding one)

There are several situations in which children miss out on legal information and assistance that they need:

Legal representation in the Youth Court

Children being questioned by the Police have a statutory right to speak to a lawyer before they make any statement to the Police and to have a lawyer present during a Police interview. This right is buttressed by the right to legal advice and assistance assured by the *New Zealand Bill of Rights Act*. Free legal advice is available by phone for children about to be questioned by Police. Despite these legal 'paper' rights it is rare for children to have the assistance of legal advice before making a statement and even rarer for a lawyer to attend at the Police station to support the child during an interview. There are grounds for believing that the Police discourage children from exercising this right and/or fail to provide information as to the services provided by a lawyer and the availability of free legal advice and assistance. This is confirmed by the research study conducted by L. Aziz. These issues were raised by the young people during interviews for this paper.

Information about proceedings

The Act requires that Youth Court Judges and lawyers explain to children the court procedures but the dynamics of the court often mean that this does not always happen. Such issues were raised by the young people during interviews for this paper. The government should take heed of the evidence that children caught up in youth justice processes are significantly lacking in knowledge of such processes. A video could be prepared and shown in the court waiting room while children are waiting for their case to be called. A video is shown in waiting areas to prepare prospective jurors for the task they are required to perform. It would be possible to prepare a comic along the lines of the excellent Australia *Streetwise* comics setting out basic information about court processes.

Youth advocates attending family group conferences

Children in New Zealand (2000) (para. 865) acknowledges that there are problems as a result of Youth Advocates failing to attend Family Group Conferences. This is not a question of forgetfulness or dereliction of duty on the part of Youth Advocates so much as failures in the system. The *Children, Young Persons and their Families Act* requires that, where a child does not have a privately arranged lawyer, a Youth Advocate will represent the child in the 'proceedings'. There is a question whether a family group conference is part of the 'proceedings' and there is a difference of opinion whether having lawyers at a conference is beneficial to the child. What is important is that the child should have adequate opportunity to receive advice from the Youth Advocate before the conference and that the lawyer should be available to speak to the child by mobile phone during the conference. Family group conferences are often held at a venue convenient for the family which may

be some distance from the Youth Advocate's office and the time fixed for the conference may conflict with the Youth Advocate's court obligations or may be in the evening outside normal office hours. Youth Advocates complain that time spent attending a Family Group Conference is not adequately remunerated. There is a need for a full review of the benefits to the child of having lawyers attend a family group conference and possible alternatives. If there is a need for lawyers to be present, administrative changes are needed to ensure that Youth Advocates are consulted about the time and venue for the conference and adequately paid for their attendance.

Criminal legal aid in higher courts

If a child denies serious criminal charges, the case may have to go to a District Court or High Court Jury trial. Children can be transferred to a District Court or High Court for sentence on serious charges. The Youth Advocate scheme only applies to children who appear in the Youth Court and some Youth Advocates are not qualified to appear in jury trials.

There are sometimes problems in getting legal representation for children in higher courts. At times the lawyer who has represented them at the preliminary hearing in the Youth Court cannot represent them at jury trial.

Recommendations

- The Police be required to advise young people whom they wish to interrogate of the availability of free legal advice which can be accessed by free phone call from the Police station and of the availability of a lawyer to be present at the Police interview without cost to the child or parents.
- There be a review of the role of Youth Advocates at family group conferences and administrative changes be made to make it easier for lawyers to attend or to be available by phone when necessary.
- Youth Court Judges and Youth Advocates be trained to fulfil their statutory duty to fully inform children about the proceedings in the Youth Court and the duty be extended to Judges and lawyers representing children in the District Court and High Court.
- Information about Youth Court processes be made available in the form of a video to be shown in the court waiting room while children are waiting for their case to be called and/or in comic form with comics available to be handed out by lawyers, court officials, advice services etc.
- Changes be made to law and practice to ensure that lawyers appointed to represent children in serious criminal matters will be available to represent the child not only in the Youth Court but at a jury trial or on appeal.

Children held in Police cells

There are insufficient beds in Department of Child, Youth and Family Services residences to accommodate children who are remanded in the care of the Department and children have for years been placed in Police cells pending the availability of accommodation in a Child, Youth and Family Services residence. Police cells are intended as temporary accommodation for adults between the time of arrest and court appearance and adults are rarely held in a Police cell for more than 48 hours. A former Principal Youth Court Judge has described conditions in Police cells as entirely inappropriate for children and the Commissioner for Children released a Discussion Paper in 1997 highly critical of the practice of placing children in cells where there are often no facilities for the preparation of food, no showers for prisoners, no recreational or educational facilities and social isolation. At that time some children had been held in Police cells for weeks. While improved management practices have reduced the length of time that children spend the reality is that children are frequently held for several days in Police cells in which conditions are totally unsuitable. In this respect children are worse off than adults who will usually only be held in a Police cell for hours and only rarely held there overnight.

The government has attempted to deal with this problem by introducing a new provision in the *Sentencing Act 2002* which allows courts to remand children to adult prisons. There is a sunset clause in this provision which is said to be a temporary measure pending the building of specialist youth justice facilities.

While it is acknowledged that conditions in a remand prison are better than those in Police cells the unacceptable situation of holding children in Police cells has been known for at least a decade and previous governments have failed to take any steps to deal with the problem. Even since the *Sentencing Act* came into force there have been

instances of children being held for in Police cells. In the second week of February 2002 there were seven children in Police cells because of shortage of residence beds including one 16 year old who had been in a Tauranga Police station for seven days (NZ Herald, 7 February 2003). The current situation is a blatant breach of Articles 40.3 and 19.1 and amounts to inhuman and degrading treatment under Article 37(a).

Recommendation

- The Government act urgently to ensure that children and young people under 18 years are not held in Police cells.

Searching of children in youth justice residences

Children in the youth justice system are held in Department of Child, Youth and their Families Services residences either on remand pending a hearing of their case, on a Youth Court order of supervision with residence or under a provision which allows that children convicted of serious offences may be held in a Child, Youth and Family residence rather than a prison until they reach the age of 18 years.

Although there are detailed regulations setting out a number of rights and protections for children in residential care, information gathered from the Department of Child, Youth and Family Services shows that these rights are regularly breached (see R Ludbrook *Victims of Tokenism and Hypocrisy: Children in New Zealand Residential Institutions*, Human Rights Law and Practice Vol 5 No2, 1999). Information most recently available shows that: Children and young people in some residences are being routinely strip-searched on entry to or on leaving the residence (the *Children, Young Persons and their Families Act* allows searches only where a staff member has a reasonable belief that an individual child has a dangerous or illegal item).

Children and young people are searched (but not strip searched) for possession of money which, on any criterion, cannot be classified as harmful or illegal.

Two residences (with 49 beds) conducted over 300 strip-searches between them in the year to June 2002 while the remaining three residences (with 48 beds) conducted only 24 strip searches between them. The great majority of strip searches were to look for cigarette items or items used for lighting cigarettes (Information provided under Official Information Act, Oct 2002 and Jan 2003).

Other basic rights of children in Child, Youth and Family youth justice institutions

Standards of compliance with other Regulations have regressed:

The Child, Youth and Family Services report for the 2001 year (the most recent available) shows that standards of compliance with the Regulations have slipped back (in comparison with 2000) in 8 out of 10 criteria and compliance with strip- searching regulations is rated as below 'adequate'.

The 2001 official report discloses that in one residence children were admitted to the residence through the secure unit. This practice is illegal and was roundly condemned by the Human Rights Commission in a 1982 report.

In some residences Regulatory requirements for holding children in secure care (lock ups) are not always followed and questions are raised by the Child, Youth and Family Services whether the rules about the amount of time children spend in their rooms and their right to eat meals communally are always being complied with.

Although each residence is required to have a complaints procedure this has often not provided an effective method of redressing grievances and there are examples of complaints being lost or failing to be addressed for several months. The 2001 internal audit shows that in two residences there were significant delays in processing complaints in the two largest residences and that notices about the grievance procedures in these two residences was contrary to the Regulation requirements. Although there are independent Grievance Panels for each residence, information provided by the Department in January 1993 shows that not one of 205 recorded complaints were referred to a Grievance Panel. The independent scrutiny of complaints intended by the Regulations is not operating in practice. (Information from 2001 Compliance Audit report and obtained under Official Information Act Jan 2003).

In one residence outgoing letters are routinely inspected by staff. In another large residence visits from family and friends are restricted to one week day and weekends and in a third residence telephone calls to friends are treated as a privilege which can be withdrawn for 'non-compliant' behaviour. All these practices are recorded in the 2001 internal audit report and breach the Regulations.

Recommendations

- 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.
- Child, Youth and Family Services review the current grievance procedures and introduce statutory or regulatory requirements which will ensure that complaints procedures will provide an effective means by which children can raise concerns as to their care and treatment and know that these concerns will be considered and addressed promptly, efficiently and confidentially.

The Voices of Youth Offenders

Here are some quotations taken from what the young people said during the interviews:

Understanding of the Youth Justice system

I found all out for myself.

I only understand because my Mum told me, no-one else told me properly what was happening but I am used to others making decisions about what is best for me and I learnt not to ask questions.

It was really confusing, I had to learn as I went along.

The process was very scary and it wasn't explained well to me.

I only know what's happening because of previous experience. New inmates don't have a clue about what's happening!

Access to personal and professional support networks

I don't have any access to my family cos they live in South Auckland. I don't ring them cos I have to ring collect and it just makes me sad ... I would like a social worker or a youth worker from outside. I suppose if I needed a lawyer I could see one.

I can see a social worker from prison if I want, it would be better if I had someone from outside.

I hate being so far away from my family.

I supported myself. When I was with other young people we tried to help each other.

... just having someone to talk to would be nice.

Bull shit. Have to ask continuously for visits and staff say we'll do it when we are ready. ' Not given easy access, inmate advocate separate from prison would be helpful.

Not enough family support because contact with whanau wasn't allowed.

Caseworker from the prison I have only seen once in five months.

Someone to talk to that isn't working for the prison, maybe a social worker or outworker who you can trust not to tell the guards what you said.

Age mixing in prisons

Didn't like it [being with adult prisoners] ... intimidation, gang stuff.

I would prefer to be with people 16 to 25 because we have more in common.

Youth unit to too easy – no-one learning from mistakes, people will keep coming back.

I don't think young people should be in with adults.

Adults get more privileges and respect from the staff than we do.

Rather be in prison with adults because they look after you.

Some of us will get beaten up, they take all my stuff, threatened me, said I was going to die, didn't want to go to the showers so was given a separate one was kept in solitude. Wouldn't like to be in with adults again.

Was on 23 hour lock down. When asked why said was because of my age. Was for the entire 3 month sentence.

Young people can be immature. Adults know what they're talking about – they don't talk shit. There are more fights here – when young people first come in they feel they have to prove themselves. I've had heaps more hassles ... adults tend not to pick on young people.

The screws scare you about going to the main jail ... tell you stories about goon squad, bashings, suicides in main stream ... so by the time you get shifted you are scared shitless.

Education for young prisoners

Better teacher would be good ... I'm at a higher level in maths than my teacher.

Normally you can do correspondence if you want but you have to pay for it yourself – which is impossible for me.

Relationship with prison staff

All the staff are different, some treat you OK, others judge me for what I did ... some are hypocrites – they expect us to behave but they can treat us really bad and get away with it.

Depends on the staff, some can be really degrading when they strip search and some chuck all your stuff around your cell and break stuff. There is one officer who is nice and folds stuff up again but the other staff don't give a shit.

Staff are slow and ignorant. Depends on if they like you or not then you get special treatment.

Staff didn't know what they were doing, had to act differently with each staff member as each had their own set of rules.

Some staff are fine, others pick on you ... they try to find faults so they can have a go at you ... staff try to discipline but go all the way and I just get pissed off and I want to do something to get back at them.

What have you learnt from the other people here?

Learnt that I want to change my life.

That I don't want to come back to jail. Seen people on 3 or so lag ... I don't want to be like that.

How to do crime ... learnt how to do burs/cars etc.

That I'm never coming back. I have more support now than ever before.

How to speak Maori ... how to steal cars properly ... how to grow weed better ... how to fight better.

Access to health care and professional support

I don't ask, I'd rather keep it to myself ... I've had bad experiences when I ask for help so I just shut up.

You can put out a chit but sometimes you could already be dead before they get around to seeing you.

Been waiting since Nov 1999 to see a dentist.

Suck it down, don't show it. Prefer not to talk to anyone in here, don't trust them. I'm not confident enough to talk.

Can go see the doctor – three month waiting list.

Cultural needs of young prisoners

... they make promises but things never happen.

Chaplain told me to pretend I'm Maori.

We get kapa haka but only when someone is visiting and they want us to look flash. I strongly believe it is important that we get to experience and learn about our culture.

Safety of young prisoners

When I first came I didn't trust anyone and was a little scared but now I know people it's OK.

I feel safe but only because I was institutionalised before I came here so it is normal and I know the rules and how to behave. When new young people come they are really scared and ask for lock-down for ages.

I'm safe but others are not. Here you mind your own business. If you are attacked you're lucky if staff intervene, lack of supervision.

I feel safe from inmates, not staff. I have seen smashings when the screws take it out on you.

Treatment of young offenders

I was beaten up by the Police, but who hasn't aye?

I didn't expect to be treated well so I wasn't disappointed.

Lawyer comes in with a hangover and stinks of bourbon.

I've been treated badly by those people all my life so I don't expect any difference any more. You do get some good ones but I haven't met many of them. You can't trust lots of the people that work here cos if you tell them stuff they use it against you later.

I was bashed by the Police but so has pretty much everyone in here.

What changes would you like to see happen?

Separate wings for different groups of people, eg: 18 to 25 ...

Someone available from the outside to talk things through with.

General comments

I hope this helps to get someone to listen.

Attitudes by staff need to be consistent.

Good luck getting heard – does anyone really want to hear this stuff? I hope so.

I hope someone takes notice of what you guys are doing. It feels good to know I might be able to change things for other kids so they don't end up like me – doing life. Thank you for listening.

Acknowledgements

ACYA is deeply appreciative of the youth who contributed, John Harrington who co-ordinated the Working Group, and Kim Boyce, Anni Watkin, Kathy Dunstall, Stacey Holbrough, Tonto Neilson, Robin Anchor, Jo Lucas, Cheryl Hitchcock the support and advice of Robert Ludbrook, and others who contributed.

Appendix Eighteen

PROTECTING CHILDREN FROM VIOLENCE AND NEGLECT (CARE AND PROTECTION)

ACYA Working Group on Care and Protection

Please also see Appendix Eight: General Measures of Implementation, and Appendix Twelve: The Family Environment.

New Zealand's response to the care and protection

Recommendations made by the UN Committee in 1997

The New Zealand Government has yet to fully implement the two specific care and protection Recommendations made by the United Nations Committee on the Rights of the Child in 1997 when it first reviewed New Zealand's progress in complying with the *United Nations Convention on the Rights of the Child*.

Corporal punishment of children (Article 19, 2, 3 & 37)

The Government has reviewed section 59 of the *Crimes Act 1961*, which provides parents with a statutory defence if they are prosecuted for or face a civil claim for assaulting a child. It has also looked at the actions taken by other countries that have changed laws to effectively ban physical punishment. There has been Government funded public education to discourage the use of physical punishment (as part of the *Breaking the Cycle* campaign).

At the end of 2002 the Government announced that the issue of possible change to section 59 of the *Crimes Act* was still under review but in early 2003 the Minister of Social Services advised that a decision on possible legislative change would not happen until after a planned public education campaign in 2004 which will have a focus on 'alternatives' to physical punishment.

There is still a risk that the Government will opt for amendment of section 59 of the *Crimes Act* to define what forms of physical punishment are 'reasonable'. This is an unacceptable approach that does not effectively ban physical punishment, nor respect the rights of children, and sends out a public message that hitting children is acceptable. Government reluctance to repeal section 59 may be based on public support for physical punishment – over 80 percent of adults surveyed in 2001 felt it is acceptable to hit children in some circumstances. (Ministry of Justice 2001) There is some anxiety that a change in law might lead to parents being prosecuted and found guilty for trivial assaults.

The Ministry of Justice survey (Ministry of Justice, 2001) did not constitute a thorough public consultation on corporal punishment and did not seek the views of children. There is a need for public education about how physical punishment breaches the child's fundamental right to bodily integrity and protection from violence. It should also be directed at allaying unreasonable fears that parents may be prosecuted for minor assaults. Any campaign should be planned in consultation with children and young people and agencies working with or for children and young people. Sixty-six child-related agencies support ending physical punishment and repeal of section 59. (www.epochnz.org.nz)

Physical punishment of children is still legal in New Zealand. In order to effectively end physical punishment of children and comply with the Convention, section 59 of the *Crimes Act* must be repealed and attitudinal change needs to be effected through public education about non-violent parenting and by the provision of adequate support services for families with young children.

Recommendation

- The Government immediately comply with the Convention by passing legislation to repeal section 59 of the *Crimes Act 1961* and to ban the use of all forms of physical punishment of children and other cruel and degrading forms of punishment.

In conjunction with the ban on physical punishment, the Government must take measures to educate parents and the public about children and young people's right to bodily integrity and protection from all forms of violence and the need to embrace non-violent methods of parenting

Appropriate mechanisms to ensure physical and psychological recovery and social reintegration of child victims of ill treatment and abuse (Article 39)

In order for child victims of abuse to recover and reintegrate they need:

safe, secure, and stable placements with their own family if the family is safe and fully supported, or with foster parents, members of their extended family or in specialist institutions.

accessible and effective therapeutic and other rehabilitative services.

During the reporting period there have been no significant measures taken to improve the recovery of child victims of ill-treatment and abuse. There are serious problems and gaps in services. The shortcomings of New Zealand's efforts in these areas are covered in the section of this paper on Children Affected by Violence under the headings:

Out of family care

Therapy and support programmes for traumatised children.

Children affected by domestic violence.

The extent of violence toward children in New Zealand

There is a lack of good data in New Zealand about the incidence and prevalence of child abuse and neglect and about trends over time. Existing statistics must be interpreted with caution. There are inconsistencies in what is reported or how it is interpreted over the years. Particular caution should be applied to referrals to the Department of Child, Youth and Family Services (Child, Youth and Family) and its variously named predecessors (Child Poverty Action Group, 2001). However, indications are that there has been little if any reduction in the number of children traumatised, injured or killed by abuse and neglect since 1997.

Reported child deaths from violence are one measure of violence to children, but probably do not accurately reflect the number of deaths because some abuse deaths may not be classified in a way that identifies them as abuse. For example, shaken baby deaths and deaths from neglect cannot always be identified as deaths from abuse.

An average of about nine children a year under 14 years of age die in circumstances that can be classified as abuse (Ministry of Health 2000). In 1999, 2000 and 2001 a number of highly publicised cases involving the brutal deaths of children, in particular from beatings, has sensitised the public to the issue of child abuse.

In 2001 the Ministry of Health published a document, *Report on Cross-Sectoral Outcome Measures and Targets* (Ministry of Health, 2001). This updates previous reports begun as part of the *Strengthening Families* initiative. The outcome measures and targets include child abuse:

- To reduce the mortality rate among children 0-14 years from injuries inflicted by other persons from 1.23 per 100 000 to 1.00 by the year 2000 and .80 per 100 000 in the year 2010. Between 1996 and 1998 the rate per 100 000 remained at over 1.00 per 100 000 children. The report acknowledges 'It is unlikely that the year 2000 target will have been met given the current rate of child death due to injuries inflicted by other people'.
- To reduce abuse and neglect re-notifications and recurrence.

The number of recorded notifications to Child Youth and Family Services rose from below 25,000 in 1996/97 to 26,588 in 1999/2000. The number of notifications requiring further investigation also rose. Fifty percent of cases that were the subject of completed investigations, were found to involve substantiated abuse, neglect or problem behaviour assessment outcomes. The reported notification rate is 10.6 per 1000 for the population aged 17 years and under. An increase in notifications does not necessarily mean an increase in incidence of child abuse. It can mean that agencies and the public are being more vigilant.

In 1999 Child, Youth and Family began to collect information on the level of re-notifications and recurrence of notifications. This is a useful indicator of the effectiveness of interventions. Information against two definitions were collected:

- Number and proportion of notifications for children and young people who had a prior notification within the previous 12 calendar months (re-notification)

- Number and proportion of substantiated abuse or neglect or problem behaviour notifications that are for children and young people who have had a prior substantiated abuse, neglect or problem behaviour finding within the previous 12 month period (recurrence).

In 1999/2000 over 50 percent of notifications were not first time notifications. Between 8 and 10 percent were re-notifications – the other 43 percent were known outside the previous 12 month period. The recurrence rate (i.e. children whose abuse, neglect or problem behaviour had been substantiated within the last 12 months) was 8 percent.

These targets and measures are useful and must be achieved over time.

Other areas in which children are significantly affected by violence include domestic violence (see below) and bullying (see Appendix Fifteen: The Education of Children and Young People).

Recommendation

- 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 must be established, remain constant over time and be reported on regularly. Such data should include the number of child deaths or serious injury from abuse, the number of cases referred to the care and protection system, numbers of cases of abuse substantiated, re-notification and recurrence rates, as well as indicators of the quality and effectiveness of the care and protection system (such as 'response time in investigating notifications').

Children affected by violence

The care and protection system has been under funded, stressed and unstable over the reporting period. Abused and neglected children have not had their care and protection rights recognised, acknowledged or met adequately.

Legislation and services (Articles 3 & 19)

The legislation that underpins child protection in New Zealand is the *Children, Young Persons and Their Families Act 1989*. It is well regarded both in New Zealand and overseas. However, some features of the existing legislation may now be out of date and may not reflect current knowledge of children's rights (for example, participation rights) and security needs (for example, the irreparable harm that can result from lack of stability and security in the early years). Its provisions and implementation are in need of review.

The Act does not apply to 17 year olds. This fails to ensure that 17 year olds receive the special protective measures to which they are entitled under the Convention.

As early as 1992 there was strong criticism of the poor implementation of the *Children, Young Persons and their Families Act 1989* (Mason, 1992). Many of the failings identified at that time have never been addressed. The provisions of the Act are sometimes seriously compromised by delays in legal and administrative processes. Nor has there been adequate monitoring of the Act or systematic research into outcomes for children under it (Hassall, 1999). There have been no effective external monitoring mechanisms and public accountability of implementation of the Act relies on occasional one off reports (e.g. Brown, 2000, and McClay, 2000). These functions were perhaps intended as part of the role of the Commissioner for Children under the Act, but this has not happened. A new *Commissioner for Children Bill* is currently before Parliament. It would give the Commissioner wider powers and functions generally but does not strengthen his or her role in relation to monitoring implementation of the Act and the Child, Youth and Family Services

There is an urgent need for research into outcomes for children under the *Children, Young Persons and their Families Act 1989* and for evaluations of the effects of the care and protection processes arising from the Act. Findings of such research must be made public.

Recommendations

- The care and protection provisions of the Children, Young Persons and their Families Act 1989 be reviewed. The review process should involve seeking the views of children who have experienced the system in operation, foster parents and non-government organisations with an interest and expertise in the area of child protection
- The Act be amended to include 17 year olds in its child protection provisions so as to ensure compliance with the Convention on the Rights of the Child
- The outcomes for children under the *Children, Young Persons and their Families Act 1989* and the effects of care and protection processes arising from the Act be properly evaluated through research.

The statutory agency providing care and protection services in New Zealand is currently named the Department of Child, Youth and Family Services. It has a history of frequent restructuring and re-naming. Staff in the organisation report that the frequent structural changes have led to demoralisation and deflect resources from front line services. Instability adds to public cynicism about performance. There are no public reports available on the effects of the various restructures. Child, Youth and Family needs a period of considerable stability if staff and public confidence in it is to improve.

The period covered by this Report has been a negative one for the care and protection of New Zealand children. Two major public reports detail shortcomings in depth (Brown, 2000 and McClay, 2000). There have been a distressing number of child deaths from abuse. Where details of cases and case management are available, consistent themes of poor practice on the part of Child, Youth and Family is the lack of co-ordination and co-operation between agencies and widespread failure by family and agencies to either identify or take responsibility for taking action on serious signs of risk emerge. Funding increases have been very limited and have impacted very little on local child protection services. There is little value in public education campaigns that increase awareness of abuse and increase the reporting rate when the care and protection services cannot cope with an increased load.

Systemic problems with care and protection in New Zealand during the reporting period have included:

The negative impact of wider public policy which has contributed to increased poverty and income inequality including welfare benefit cuts

A history of frequent restructuring, cost cutting and under-funding of Child, Youth and Family Services, has led to an inability of the statutory agency responsible for care and protection to implement the *Children, Young Persons and their Families Act 1989* effectively. This has resulted in overloaded, inadequately trained, poorly supervised, highly stressed and demoralised staff. There have been serious problems with retention of staff within Child, Youth and Family Services. Increased funding for the Department was announced in 2002 but it is not yet clear whether this has improved the capacity of local offices to deliver services.

Fragmentation of service delivery and a competitive funding environment within the NGO sector –means that sometimes too many services are in competition for the same money and there are many gaps in services.

Output driven philosophies that have lacked emphasis on outcomes, quality and training.

At both a local level and a national level, the Government care and protection agency has seemed closed to scrutiny or input from the outside – one illustration of this is its continued unwillingness to enable and accept effective operation of Care and Protection Resource Panels (set up in legislation to provide outside advice on individual cases and more systemic issues).

Recommendations

- The Government provide adequate funding to child protection services to ensure that all children are protected from abuse, neglect and exploitation
- The Department of Child, Youth and Family Services embrace a philosophy of openness, inter-agency co-operation and liaison with the non-government sector

Responding to abuse (Articles 2, 3, 19, 20, 25 & 30)

The greatest concerns in care and protection in New Zealand can be summarised as a lack of confidence in, and positive perception of, the statutory care and protection system. Until recently, concerns about the system met with systematic denials by the statutory service or to reassurances of improvement that led to very little change.

The negative perception of the statutory agency has arisen from:

- Delays in responding to notifications – there has been a significant number of cases unallocated for a lengthy period – the Government is claiming to be addressing this at present.
- Consistent failure on the part of Child, Youth and Family to give feedback to referrers.
- The isolation of the child protection service – its seeming reluctance to co-ordinate its work with community agencies or to be open to hear the concerns of the community.
- Joint protocols between NGOs and the statutory agency not being formalised or acted on.
- Until recently, a lack of commitment to consultation with the community.

Some operational issues that have not been sufficiently addressed include:

- A lack of full and adequate assessment of the needs of abused children and lack of resources to address needs when they are identified. Child, Youth and Family staff are not always good at assessing children's developmental or physical or mental health needs. Children are not being referred often enough to specialists. Young people who are known to the care and protection system are inadequately supported and at high risk of early school leaving, crime and health problems.
- Children in care are still subject to too many changes of placement.
- The interface of the care and protection system and youth justice system has long been problematic – young offenders have not got their care and protection or mental health needs adequately recognised, assessed or met.
- Unacceptable delays in matters getting to Family Group Conferences or before the Family Court.
- Inadequate funding of Family Group Conferences and recommended outcomes and inadequate monitoring of outcomes.
- Care and Protection Resource Panels, set up under the *Children, Young Persons and their Families Act 1989* to give expert and community advice to statutory social workers from outside the child protection service have consistently been sidelined and inadequately utilised. The role and functioning of these panels are currently being reviewed by the Government.
- Lack of short and long term outcome studies of children in care.
- Failure to adequately support young people who have been in care who are approaching independence. There is often a lack of support for young people cast out from the 'system' after long periods in state care. Under existing legislation a custody order cease when a child reaches the age of 17 years although guardianship orders continue until age 20. There is currently consideration of extending the cut off age to 18. Budget 2002 announced an initiative to provide children leaving care with better help.
- Court processes continue to be abusive of children because of the delays in getting matters to court, outcomes that serve adults' needs rather than children's needs. Despite some improvements, being a witness is still a very traumatic experience for many children. The Ministry of Justice *Child Witness Programme* is currently being piloted and is to be evaluated but it is suspected that lack of inter-agency co-ordination in its delivery has led to some difficulties.

Key operational issues requiring attention include significant improvements in assessment of children and young people's needs and respect for their needs.

Out of family care (Articles 2, 3, 19, 20, 25, 30 & 39)

Judge Brown (Brown, 2000) reported that that the number of children and young people in care was estimated to be over 5000, and increasing by 12 percent a year. He also reported that the average number of placements for any one child is 3.1 per year. He considered that the interests of the child are often unsatisfactorily met in care. Children and young people are inadequately supported and consulted. Children do not have adequate contact with social workers and too often face the disruption of frequent changes of social worker. Reviews of placement are inadequate. Caregiver needs have been neglected, for example, there is little respite relief available to foster parents. Recent Government announcements may go some way towards providing foster families with better financial and other support.

There are also issues of inadequate assessment of the safety of placement. The principle of placement within extended family has been misused. Many children needing care have behavioural difficulties that are too great to

be managed by extended families. Sometimes whole extended family systems are dysfunctional and cannot offer safe care. Kinship families have received fewer resources than unrelated caregivers. Extended families are frequently pressured into agreeing to permanent care.

There is a critical shortage of care-giving families in New Zealand. There is a particular shortage of Maori foster caregivers. Professional foster care, where foster care families receive a salary has been trialed for conduct disordered youth (e.g. Youth Horizons Trust) but has not been considered for the general foster care population. The New Zealand Family and Foster Care Federation is implementing a registration process for foster parents, but the government, while supporting the training initiatives of this scheme, does not offer any reward to those care givers who go through this process. There are still agencies, including Child, Youth and Family, which are using untrained caregivers. The training of related caregivers is not mandatory.

The de-institutionalisation programme of a decade and a half ago, has led to there being insufficient residential facilities to meet the needs of children who are severely traumatised by abuse and whose behaviour makes them unsuitable for private foster care. This is particularly the case for children and youth who are at risk of, or have sexually abused other children.

Problems associated with residential care include:

- A lack of sufficient residential care beds resulting in children being placed in residences considerable distances from their families, their social worker or the lawyer representing them.
- A serious lack of compliance in some residences with statutory and regulatory requirements set in place to ensure the welfare and protection of residents. The latest Departmental Audit shows that standards have fallen in eight out of ten reporting categories (Child, Youth and Family Audit Report on compliance with *Residential Care Regulations 1996 (2001)*).
- A lack of effective and accessible complaints procedures for residents (Ludbrook, 1999, Audit Report 2001)
- Routine strip searching of children who are in residential care (Ludbrook, 1999, Audit Report 2001)
- The process for review of care plans is not timely nor respectful enough of children's views
- Contact between residents and their parents or families is made difficult by removal of children to residences in distant cities or by policies which discourage free communication with friends and family (Ludbrook, 1999, Audit Report 2001)

The rights of many children cared for outside their birth families are not being met. Neither are the needs of their care-givers being met. These issues must be addressed if children are to be safe from re-abuse and recover from the effects of child abuse and neglect.

Recommendations

- Government must commit to a stable, well-resourced public care and protection system with well-trained and well-supported staff. The government 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: improvement to assessment of children young people's care and protection needs, and fully addressing the rights of children and young people being cared for outside their birth families and the support needs of their caregivers.
- There be an independent review of the rights of children in Child, Youth and Family residential care and the availability and effectiveness of complaints procedures. This should include a survey of the positive and negative experiences of children involved and an assessment of areas on non-compliance with the *Convention on the Rights of the Child*.

Therapeutic services and support programmes for traumatised children (Articles 2, 3, 19 & 39)

Shortcomings of therapeutic services include:

- Inconsistent availability of services – some areas, particularly smaller towns and rural areas, have no services at all and funds for travel are very limited.
- Delays in children getting the help they need.
- Services (where they exist) are not able to meet the needs of children and often have long waiting times.

- Accident Compensation Corporation (ACC) and Child, Youth and Family funding criteria which restrict the number of sessions available.
- Child mental health systems that are seriously inadequate and plagued by long waiting periods.
- Very little training is available for people who want to work with children and in many parts of the country there is a lack of qualified therapists.
- Insufficient recognition of the fact that working with children is a specialist area requiring specialist training and professional supervision.

Specialised therapeutic services for children traumatized by abuse are inadequate. Services need to be better funded and more widely available.

Recommendation

- Improve the resourcing and availability of specialised therapeutic services available to counsel and rehabilitate children who have been abused or neglected.

Children and domestic violence (Articles 2, 3, 19 & 39)

Children in homes where there is partner violence are at increased risk of child abuse from parent or step-parent. Children witnessing family violence are traumatised and sometimes placed at increased risk of being violent, or becoming victims of violence, themselves. One indicator of the number of children affected by family violence is the number of children admitted to Women's Refuges annually – over 9,000 (personal communication, National Collective of Independent Women's Refuges, 2001). These children are the tip of the iceberg. Currently children in situations where there is no Protection Order in place are not funded to participate in programmes offering support and therapy although limited funding announced recently may improve this situation.

New Zealand has been slow to recognise the vulnerability of children in situations of domestic violence and the impact of domestic violence on children has been minimised. There are consistent reports of lack of co-ordination of care of children where there are reports to the Police of incidents of family violence and a reluctance of Child, Youth and Family to take referrals and respond promptly. Some domestic violence agencies have advocates whose role is to ensure that the safety of the children is taken into account but this provision is not consistent around the country and the needs and rights of children are frequently neglected as the needs and rights of women take predominance. In some areas Police have to be reminded that Protection Orders made under *Domestic Violence Act 1995* automatically cover children. Although children can apply for Protection Orders in their own right, little support is available to assist them to do this and such action is rare.

Although there are some support programmes available for children where Protection Orders have been made, uptake is not high and services are not accessible to all entitled because of issues of locality and travel. A range of programmes is needed to assist children of different ages and with different life experiences.

The support, protection and rehabilitation rights of children caught up in domestic violence are not adequately recognised and responded to.

Recommendation

- The Government make greater efforts to ensure the care, protection and rehabilitation needs of children caught up in domestic violence are met in an age appropriate and culturally appropriate manner.

Maori children (Articles 2, 3, 19, 30 & 39)

Maori children continue to make up 45 percent of the Child, Youth and Family client group and yet there remains a lack of any clear strategy to assess the quality and effectiveness of services for Maori children.

The reduction of primary health care services (for example, Plunket, Public Health Nurses and school dental care) in the last 15 years in New Zealand has had a negative effect on the care of Maori children. Their families are less likely than other families to access the limited services available. The proliferation of small local service

providers gives a facade of there being more services on the ground. However, these services have limited capacity to provide for the needs of Maori children.

Institutionalised racism contributes to the lack of visibility of the needs of Maori children. Maori children are also exploited by the media that feeds distorted public perceptions of the needs of Maori children and generates an unhealthy paternalism.

There is inadequate recognition of the importance of Maori professional leadership and management in mainstream organisations providing services for high numbers of Maori children and their whanau. Maori professional participation in these services is still too often relegated to an 'advisory' role. Although Maori are over-represented in child abuse statistics, there are insufficient high quality and culturally appropriate services to meet the needs of Maori children and their families. The move to devolve care and protection services to Maori service providers has not progressed as fast as was envisaged by the 1989 Act.

Recommendation

- The Government Improve the provision of high quality and culturally appropriate services to meets the needs of Maori children and youth and the move to devolve services to iwi and Maori run services should be progressed.

Commercial exploitation of children (Articles 34, 35, 36 & 39)

Commercial exploitation is the term used to cover various activities that exploit children including child prostitution, child pornography, child sex tourism and child trafficking for sexual purposes. In 1996 New Zealand adopted the *Declaration and Agenda for Action*, and in December 2001 the Government published New Zealand's *National Plan of Action Against the Commercial Exploitation of Children (Protecting our Innocence)*. The measures it proposed have yet to be resourced and implemented. New Zealand also recently ratified *ILO Convention 182 Concerning the Worst Forms of Child Labour* and must therefore 'design and implement programmes of action to eliminate as a priority the worst forms of child labour'. This includes sale and trafficking of children, child prostitution and child pornography.

New Zealand has also signed, but has yet to ratify, the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography. This extends measures parties must take under the Convention on the Rights of the Child.

In 2001 amendments to the *Crimes Act 1961* prohibited any person from being a client in an act of prostitution by a person under eighteen years of age. Indications are that a significant number of young people enter sex work before the age of 18. In one study, over 140 children under the age of 16 were having sex for money or goods. Other studies have also indicated the involvement of children younger than 12. Instances of child prostitution were reported from most parts of the country and both males and females were involved although girls out-numbered boys by four to one. Unsafe sex, drug use and inadequate support are current problems. Poverty, abuse and dysfunctional family lives appear to contribute to children becoming sex workers (Saphira, 2002). Interventions must therefore be aimed at every level. Informants report a growing incidence of child prostitution in at least three major cities.

Child pornography is prohibited by the *Films, Videos and Publications Classification Act 1993*. The internet contributes significantly to the growing problem of child pornography in New Zealand and intervention requires co-operation between a range of policing and education organisations and information for parents about safe use of the internet. New Zealand is reported to have the highest pro-rata number of convictions against child pornographers of any OECD country (partly due to the efficiency of the monitoring system). However penalties are very light compared with those in most western countries.

The Crimes Amendment Act 1995 created a new extra-territorial offence, under section 144a, which made it a crime to engage in any sexual conduct with children overseas, that if done in New Zealand, would be an offence. Assisting or encouraging others to travel overseas for sex with children is also an offence. To date there has only been one prosecution and unless the law is used effectively, it will not be an effective deterrent.

The Crimes Act 1961 essentially outlaws any form of child trafficking in New Zealand. New Zealand has signed the United Nations Convention Against Transnational Organised Crime and its accompanying Protocol to

Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, but has not yet ratified this provision.

There is thought to be a problem of young women being brought into New Zealand, particularly from Thailand, to become sex workers. Investigation and prosecutions are difficult to pursue because of factors that inhibit victim co-operation.

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 (i.e. poverty, family violence and an inadequate care and protection system) children will continue to be vulnerable to commercial exploitation and sexual abuse.

Recommendations

- The Government take all necessary steps to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography.
- The Government ratify and implement the United Nations Convention Against Transnational Organised Crime and its accompanying Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,

A voice for children and youth (Articles 12 & 19)

Children's participation rights and legal representation needs are not consistently given priority or adequately respected in care and protection processes. For example:

- There are no clearly stated internal procedures to ensure that the views of children are heard and given appropriate weight.
- Children are not routinely provided with age appropriate information about their care and rights nor are they provided with a well-maintained personal record.
- While children caught up in procedures under care and protection legislation have a lawyer appointed to represent them (Counsel for the Child), The lawyer's role is confused and compromised as a result of Family Court Practice notes and differences in interpretation. Some lawyers perceive their role as being to change the child's views if these are not consistent with the views the lawyer has formed as to the child's best interests (Law Commission Preliminary Paper 47). Children have no choice in the appointment of a counsel for child, no knowledge of what to expect and no right to challenge the appointment if they are dissatisfied. They are very rarely given the opportunity to express their views directly to the decision makers or to be present when their 'representative' speaks on their behalf. Lawyers are not trained to form judgements about children's welfare and their views (unlike those of psychologists or social workers are not subject to challenge by cross-examination: see Porteous S, 2003 Collaboration and Conflict: The roles of lawyers and social workers in child protection proceedings Social Work Now
- In child protection matters Counsel for the Child is usually appointed after proceedings have been commenced and is often not available to represent the child at the Family Group Conference where important decisions are made affecting the child.
- There is no power for children to initiate proceedings for their own care and protection and they are not party to proceedings. A child who is removed from his or her parents or family cannot apply for an order giving him or her access to family members.
- Children are sometimes subject to repeated interviewing by a succession of professionals particularly in sexual abuse cases.

The voices of children and young people (Article 12)

There's lots of manslaughter, child abuse. I would like it to stop so much (Girl aged 8).

I hate how mothers and fathers beat up on their own kids (Mixed gender group of 16 year olds) (Barwick & Gray, 2001).

Lack of funding has meant that it has not been possible to consult children and young people directly about their views on violence to children and the care and protection system as part of this background paper. Instead this report will quote from a report in which children have been consulted about relevant issues.

In 2001 the Ministry of Social Development analysed over 3,500 submissions from children and young people as part of a consultation initiated by the Ministry to inform the development of the *Agenda for Children*. They incorporated the views of more than 7,500 children and young people.

Violence and abuse and the prevalence of crime, violence and gangs were the main concerns that children and young people had with the wider social context:

- 8.9 percent of individuals and 29.9 percent of group responses listed 'Existence and fear of bullying' as a negative aspect of being a child or young person in New Zealand.
- 5.4 percent of individuals and 19.3 percent of groups reported 'Violence, crime and gangs' as negative aspects.
- 4.95 percent of individuals and 13.1 percent of groups listed 'Abuse of young people' as a negative aspect.
- 5.6 percent of individuals and 11.8 percent of groups listed 'Doing something about abuse of children' as a suggestion for improvement in New Zealand.
- Maori children and young people, and Pacific children and young people, specifically mentioned physical punishment as a negative aspect of being a child or young person in New Zealand.

The report included the results of eight small group discussions held with children and young people in Child, Youth and Family care. Children from both the care and protection system and the youth justice system were involved, and many of the negative comments made about being a child or young person in New Zealand related to the youth justice system.

The suggestions for improvement from young people in Child, Youth and Family care included making more community support available to prevent some of the problems developing, more rights for young people, better treatment of young people by authorities, more money for young people and more respect from older people.

Recommendation

- The Government must take measures to ensure that the participation rights of children in the child protection system are ensured and that lawyers representing children be required to provide a voice for the child and do not act as 'experts' advising the court on the child's best interests.

Prevention of violence (Article 19)

Prevention of violence towards children includes public awareness, community development initiatives and provision of early intervention and family support services. Provision of these activities has been patchy and insufficient.

Public awareness

Various factors have increased public awareness of violence to children. Deaths of children are widely reported in the media with an increasing tone of outrage. Media coverage is increasingly sympathetic to children's right to protection.

The Child, Youth and Family *Breaking the Cycle* campaign of the late nineties was extensive and reported in evaluations to have been successful in increasing awareness of aspects of abuse. It was curtailed in 2000 after the change of government but a new campaign recently initiated, based on a community development model (Everyday Communities) holds promise for both increasing awareness and fostering local and personal responsibility.

Staff in programmes providing education to people working with children and families report a greater awareness of abuse issues on the part of participants. Both Child, Youth and Family and the NGO sector have taken responsibility for increasing the skills of people who work with children – the Government directly through Community Liaison Social Workers and indirectly through some funding grants to NGO agencies. However, community agencies have become discouraged by the poor response they receive when referrals are made to the care and protection service. Overall efforts in this direction have not been adequate and some sectors remain seriously deficient in education about abuse prevention, recognition and responding.

Public awareness and community development initiatives are important and effective and must be sustained and expanded.

Early intervention and other support for families at risk

Programmes that provide intensive intervention to support families at risk of abusing children are limited. The government funded *Family Start* programme that provides intensive home visiting services in strictly defined localities, is yet to be evaluated. There are 16 *Family Start* programmes throughout the country but there has been no expansion of the programme has been announced since the change of government in 1999. Government departments are currently considering what forms of family support and education are likely to be effective in improving outcomes for children. A small number of non-government initiated early intervention programmes exist. These rely on government funding to exist but must also fundraise to maintain their service provision. As yet there has been no commitment by the New Zealand Government to a large increase in financial investment in the early years as there has been in Canada and Britain.

A wide range of NGOs provide services to support and assist families to care for their children and manage their lives. They are all under pressure from workloads and financial constraints. Most of these agencies are dependent on government agencies for funding. Services have been negatively affected by the output driven, competitive funding environment that has existed for the last decade in New Zealand. Most agencies report their funding is inadequate to meet the needs of families in the community and that the time they have to put into making application for funds and meeting reporting requirements is too great.

Referrals to NGOs from Child, Youth and Family are not always appropriate, and families are not always supported to get the help they need, in part, because the Department may wish to avoid costs associated with referrals, and rather than approaching the NGO themselves, advises the family to make contact.

Larger agencies can maintain good standards of staff education, policy development and quality assurance, especially if they have ability to raise funds from charity or corporate sponsorship, but smaller providers are disadvantaged in these areas because contracts do not take such requirements into account.

Co-ordination of services

A consistent theme in child abuse inquiries has been the lack of communication and co-ordination between agencies, both government and non-government. Several factors contribute to this, including apprehension about privacy constraints, the competitive contracting environment, time pressures and lack of education. Co-ordination and communication takes commitment and time and is usually not funded.

Strengthening Families was an initiative brought in by a previous Government to improve local service co-ordination of care for individual families. Feedback indicates that it is patchy in its implementation and that buy-in by agencies is not consistently good. co-ordination is not backed by sufficient sources of help for families.

Social Workers in Schools is another initiative intended to have both an early intervention role and a co-ordination role. The scheme is limited in its coverage and social workers each carry a responsibility for very large numbers of children (ratio of one social worker to 700 children). A fundamental problem faced by this programme is the limitations that exist in support services. Referrals from social workers in schools generate work for already overloaded agencies – both the Child, Youth and Family and agencies providing therapeutic and family support programmes. Additional funds for the *Social Workers in Schools* programme were announced in the 2002 Budget.

At another level there is criticism of lack of planning in the development and maintenance of family support services in the community. There has been a call for greater scoping of what is available in a specific community and what is needed in that community to avoid duplication and to attend to gaps on a local basis. The Government has recently introduced an initiative to address this called *Local Services Mapping*.

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.

Recommendation

- The Government maintain and develop initiatives to prevent abuse through public awareness campaigns, increasing the availability of early intervention and family support services and addressing constraints on interagency co-operation and co-ordination.

Initiatives for change

A number of new government initiatives 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.

Initiatives with potential to impact positively on care and protection

The Government has acknowledged many of the care and protection shortcomings identified above and various initiatives recently established or currently under development have the potential to improve outcomes for children in New Zealand. Some additional funds for new or established programmes were announced in the 2002 Budget. However, New Zealand has a history of good initiatives that disappear from sight without ever being fully implemented or struggle to be effective because they are not backed by adequate financial support.

The following suggestions have been promoted by a number of child advocates as being potentially valuable in reducing child abuse and neglect in New Zealand:

- Measures to address child poverty.
- Significant extension of parent education and support services (including intensive home visiting services) particularly for vulnerable families and consistent co-ordination of service delivery.
- Funding and support for local community development initiatives to reduce violence to children.
- The development of a system to track the whereabouts of children and families to ensure the safety of the children and promote access to relevant services.
- Mandatory reporting – currently it is not mandatory for anyone to report suspected child abuse or neglect.
- Improved access to child care – child care costs are high and mechanisms that reduce cost of care might encourage parents to seek more relief when they are stressed and ensure that their children are in high quality, safe care.
- The same issues apply to after-school care for school aged children many of whom are reported to be home alone after school.
- Improved child support – the level of financial support available for parents parenting alone places families under stress.
- Counsel for Child (legal advocates for the needs and rights of the child) should attend all Family Group Conferences – this is not currently the case.
- Strengthening of care and protection services and advocacy services provided by non-government organisations: for example, helplines (both for children and for families concerned about risk of abuse by family members), child and youth advocacy services and community-based assessment services.

The following Government initiatives have the potential to make a positive difference but their effectiveness will depend on the extent to which they are translated into action:

- *New Directions* an initiative to improve the performance of Child, Youth and Family with a focus on action with the community and strengths based practice.
- *Blueprint for Care and Protection* (Ministry of Social Development – further initiatives to improve care and protection practice in New Zealand)
- Implementation of Family Violence Prevention Protocols in the Health Sector (Ministry of Health) – an initiative to educate the health sector and improve its responsiveness to family violence issues.
- *Family Violence Strategy Te Rito* (Ministry of Social Development) – a strategy to reduce family violence over five years involving various Government Departments in consultation with the NGO sector.
- *Agenda for Children* (Ministry of Social Development) – the identification of issues requiring priority action.
- *Everyday Communities* – a public awareness campaign (Child, Youth and Family) which takes a community development approach aimed at changing attitudes and behaviour about child abuse.
- *Youth Development Strategy Aotearoa* (Ministry of Youth Affairs).
- *Registration of Social Workers Bill* (New legislation currently before Parliament).
- *Stronger Community Action Fund* (Child, Youth and Family).
- *Te Pounamu* Child, Youth and Family Maori Strategy.

- *Early Childhood Strategic Plan* (Ministry of Education)– the vision for the future of early childhood education.
- *Child Mortality Review System* (Ministry of Health) – systematic reviewing and reporting on trends and patterns in child deaths.
- The Law Commission’s report on *Adoption and its Alternatives* (2000) and its discussion paper on *Dispute Resolution in the Family Court* (2002), and the Department of Courts discussion paper on *Guardianship, Custody and Access Laws* (2000) may lead to rationalisation of laws and court systems relating to the care of children and result in overarching legislation which will offer a range of care options.
- *New Zealand’s National Plan of Action Against Commercial Sexual Exploitation of Children*.

Recommendation

- These new initiatives designed to enhance healthy development and protect children from violence be adequately resourced, implemented and evaluated.

Acknowledgements

ACYA is deeply appreciative of Beth Wood who co-ordinated this paper, Emma Davies, Terry Dobbs, Ian Hassall, Heather Henare, Robert Ludbrook, Ron O’Grady, Anne Todd-Lambie, Anthea Simcock, Alison Thom, Russell Wills, and Jill Worrall, and others who contributed.

References

- Barwick H, Gray A, 2001. Analysis of submissions by children and young people to the Agenda for Children: Children’s Discussion Pack. Wellington. Ministry of Social Development. www.msd.govt.nz (Under Agenda for Children).
- Brown, Judge M J A. 2000 Care and Protection is About Adult Behaviour: The Ministerial Review of the Department of Child, Youth and Family Services. Wellington, New Zealand. Ministry of Social Policy.
- Child, Youth and Family (2001) Report of Audit of Residential Care Regulations
- Hassall IB. 1999. The 1989 Children, Young Persons and their Families Act Ten Years on. Paper presented at The First Decade Conference. Auckland. November 1999.
- Law Commission. 2002. Family Court Dispute Resolution: Preliminary Paper 47. Wellington. New Zealand Law Commission.
- Ludbrook R. 1999. Victims of Tokenism and Hypocrisy: Children in New Zealand Residential Institutions. Human Rights Law and Practice. 2(2).
- Mason Judge K 1992. Review of the Children, Young Persons and Their Families Act. 1989: Report of the Ministerial Review Team to the Minister of Social Welfare. The Hon Jenny Shipley. Wellington. New Zealand.
- McClay R. 2000. Report on the Death of Riri-O-Te-Rangi (James) Whakaruru. Office of the Commissioner for Children, Wellington.
- Ministry of Health, 2001. Children in New Zealand: Report on Cross-Sectoral Outcome Measures and Targets 2000. Wellington Ministry of Health.
- Ministry of Justice. (Carswell) 2001. Survey on public attitudes towards the physical discipline of children. Wellington. Ministry of Justice.
- Porteous S, 2003 Collaboration and Conflict: The roles of lawyers and social workers in child protection proceedings Social Work Now
- Saphira M. 2002. Child Prostitution in New Zealand. Paper prepared for Ministry of Social Development Seminar on Underage Prostitution in New Zealand.
- St John S., Dale C., O’Brien M., Blaiklock A., Milne, S. (2001) Our Children the priority for policy. Auckland. Child Poverty Action Group.

Appendix Nineteen

CHILD LABOUR

ACYA Working Group on Child Labour

Please also see Appendix Eight: General Measures of Implementation, and Appendix Eleven: Civil Rights and Freedoms.

Background

Article 32(1) of the *United Nations Convention on the Rights of the Child* refers to the right of the child to be protected from economic exploitation and harmful work and Article 32(2) says that states shall take 'legislative, social and educational measures' including minimum age(s) for employment and 'appropriate regulation of the hours and conditions of employment'. However, New Zealand's Reservations to the Convention include:

The Government of New Zealand considers that the rights of the child provided for in article 32 (1) are adequately protected by its existing law. It therefore reserves the right not to legislate further or to take additional measures as may be envisaged in article 32 (2).

Current information shows part time employment among school-age children and young people is widespread. A recent survey found:

- more than 40 percent of 11 to 14 year olds are estimated to work at least occasionally
- approximately 25 percent of 15 year olds are in regular part time work
- nearly 40 percent of 16 year olds and 50 percent of 17 year olds are in employment.

Employment includes child care and baby sitting, delivery work, shop assistance, office work, and farm work. Employment patterns vary in different age groups and are gender sensitive (Gasson et al, 2003).

Legislative framework

The legislative framework around child labour is fragmented. Various laws apply to children and young people in work, although none has child labour as its primary focus. Relevant legislation includes the following:

<i>Employment relations</i>	The <i>Employment Relations Act 2000</i> covers all workers irrespective of age and provides for freedom to join unions and utilise personal grievance procedures. Employers must record the ages of employees under 20 years of age (section 130).
<i>Minimum age of employment</i>	There is no minimum age of employment.
<i>Minimum wage</i>	Under the Minimum Wage Order the minimum wage from 24 March 2003 for 16 to 18 year olds is \$NZ 6.80 (being 80 percent of the adult wage of \$NZ 8.50). There is no minimum wage for workers under the age of 16 years.
<i>Health and safety</i>	The Health and Safety in Employment Regulations 1995 provides some protection for those under 15 years from working in unsafe areas (section 54), injurious lifting (section 55), with machinery (section 56), and tractors (section 57 – although children over 12 may drive tractors on farms under section 61 in some circumstances). Section 58 says children under 16 years are generally prohibited from night employment between the hours of 10 pm and 6 am.
<i>Education</i>	Section 30 of the <i>Education Act 1989</i> states that those under 16 shall not be employed during school hours (with exceptions) Employers and parents can be fined for breach.
<i>Equal pay</i>	The <i>Equal Pay Act 1972</i> provides for equal pay for male and female employees.
<i>Discrimination</i>	The <i>Human Rights Act 1993</i> prohibits discrimination in employment on various grounds, but allows employers to discriminate against under those under 16.
<i>Contracts</i>	The <i>Minors Contracts Act 1969</i> mitigates harsh contracts involving children and young people.

<i>ILO Convention 182 on the Worst Forms of Child Labour</i>	This was ratified by New Zealand Government in June 2001. A Child Labour Officials Advisory Committee has been formed.
--	--

Minimum age of employment

Please also see Appendix Eight: General Measures of Implementation of the Convention: New Zealand's Reservations to the Convention.

Although the Convention requires a minimum age for children to work, the government made a Reservation that waived this requirement. In its 1997 report to the New Zealand Government, the United Nations Committee on the Rights of the Child recommended that New Zealand withdraw its Reservations to the *Convention on the Rights of the Child*, and that 'policy and law in relation to child labour be reviewed and that the State party consider ratifying *ILO Convention No. 138* on minimum age for admission to employment.'

Poverty leads to children having to work. For example, people who work from home as outworkers (particularly in the clothing industry) sometimes get their children to work long hours assisting with piece work in order to supplement the family's low income.

The Government has retained its Reservation on this issue and has maintained that children are protected within the existing law. This assertion does not appear to be based on evidence. New Zealand has not ratified *ILO Convention No 138*³⁸. However, as stated in the Government's 2000 report to the UN Committee (paragraphs 24 (ii), 90/91 and 918-924 of *Children in New Zealand*), a review is being done. ACYA has made a submission to the officials involved in reviewing the legislation. The Government has however ratified Convention No 182 on the Worst Forms of Child Labour (which is complementary to ILO 138).

Recommendations

- New Zealand urgently withdraw its reservation to the Convention and ratify ILO Convention 138.
- A minimum age for work be established by legislation. Legislation should be developed after consultation – including with children – and discussion about minimum ages for full time and part time employment and for light work and what exceptions should be granted with specific rules for selected activities (for example. entertainment, working for parents or family members, etc.).
- Health and safety laws and enforcement procedures be evaluated for their effectiveness in protecting children from exploitation, injury or harm.

Minimum wage

There is no minimum wage for children and young people under 16 years. This means that younger children do not receive equal pay for equal work which amounts to discrimination under Article 2 of the Convention. Younger workers are the most vulnerable because of their lack of bargaining power and life experience. The Government's 2000 report to the UN Committee (paragraph 924 of *Children in New Zealand*) states that the minimum wage for 16 to 17 year olds is \$NZ 5.40, based on 70 percent of the adult rate of \$NZ 7.70 (this was increased in March 2003 to \$NZ 6.80, being 80 percent of \$NZ 8.50). There is no justification for the entry point for minimum wage protection being fixed at 16 years and no explanation how the 70 percent (now 80 percent) of adult wage was arrived at.

Recommendations

- In principle a minimum wage be established irrespective of age.
- The minimum wage be set at a rate per hour for those under 16 years if the current Youth rate cannot be dismantled, and there are grounds for not extending the Youth rate to those below 16 year olds.
- The minimum wage be index linked annually to increases in the cost of living.

³⁸ In summary, *ILO Convention 138* provides for the minimum age to mirror that for the completion of compulsory schooling (16 years in New Zealand or otherwise 15 years). There are specific rules for: mining, quarrying, manufacturing, construction, electricity, gas, water, sanitary services, transport, storage, communications, agriculture and other employment which may jeopardise the health, safety or morals of a young person. ILO 138 also states that for light work which is not likely to be harmful to health, development or education, the minimum age should be 13 years; and that in some circumstances these ages may be less, particularly where work is part of education and training, and in countries where the economy and educational facilities are insufficiently developed. There is an accompanying *ILO Recommendation 146*.

Other aspects of compliance with the Convention on the Rights of the Child with respect to child labour

The 1997 UN Committee Recommendations addressed the need for the New Zealand Government to have adequate information on matters affecting children (paragraphs 25, 26, 27, and particularly 31). The section of the Government's 2000 report to the UN Committee concerning child labour (Paragraphs 918-943 of *Children in New Zealand*) indicates a need for improved data collection and interpretation. There are no statistics collected about children and young people working, and no overall government policy on children and young people in work.

This problem is compounded by the many different age bands used in different sectors of government and because there is no one government department dedicated to overseeing issues relating to children under the age of 12 years. The Ministry of Youth Affairs is primarily concerned with older age groups of young people.

We used the checklist in the *UNICEF Implementation Handbook on the Convention on the Rights of the Child* (Hodgkin & Newell, 2002) to evaluate the New Zealand Government's compliance with respect to child labour.³⁹ The following points emerge:

- It is pleasing that the Government has ratified *ILO 182: Worst Forms of Child Labour*⁴⁰ on 12 June 2001, and has formed a Child Labour Officials Advisory Committee on ILO 182. The Government has no co-ordinating body in respect of children at work.
- There has been no review of legislation regulating child employment, no strategy established to secure full implementation, no ratification of ILO 138, no development of mechanisms for monitoring outcomes, no programmes for education, and there is only very limited protection through age restrictions.
- Inspections of workplaces are achieved through Occupational Safety and Health Inspectors, but the actual coverage of children's and young people's workplaces is very limited.
- Complaints procedures for children are available through the *Employment Relations Act*. This also provides for the identification of numbers of working children in New Zealand. There are no disaggregated statistics showing how many workers under the age of 18 years make use of these procedures but anecdotal evidence suggests that they make only minimal use of complaints procedures.
- There appears to be no evidence of policies or procedures within Government departments of compliance with the Convention with respect to child labour.
- There is no move to extend the age discrimination provisions on the *Human Rights Act 1993* to include children and young people under the age of 16 years and this allows children to be discriminated against in employment.
- There is limited information programmes or useful advice on child employment on Government web sites.
- The Government has ratified the optional protocol to the Convention concerning children in armed services and armed conflict, and has signed but not ratified that concerning the sale of children.
- The Government has never undertaken a definitive study on children and work in the New Zealand context. However, in recent years three interesting research projects have been conducted: *Children and Work* (by Dixon, Gasson and Linzey, Dunedin College of Education, December 2001); *At School and at Work* (by the New Zealand Council of Trade Unions and Post Primary Teachers Association, November 1999; and *Young People and the Labour Market* (for the Ministry of Youth Affairs, September 1998). The Government has commissioned a further report about the work experiences of Auckland children from Gasson and colleagues. There appears to be different terms and definitions used in different projects.

We note with concern that, as free trade, market flexibility, and restructuring continue to drive economic policy in New Zealand the risk of economic exploitation of children and young people may increase – and makes it even more important that Government take action to protect children and young people from economic exploitation and harmful work.

³⁹ Some major issues arising from this review are addressed in this paper. Further information is included in a supplementary paper done by the Working Group.

⁴⁰ There is an accompanying *ILO Recommendation ILO R 190*. In summary, *ILO Convention 182* defines the worst forms of child labour as all forms of slavery, bondage, trafficking, recruitment for armed conflict; prostitution and pornography; illicit activities: drug pushing; and all work likely to endanger health, safety or morals and states that governments must take steps to create an environment where such things cannot happen, consult widely and develop enforcement measures.

Recommendations

- All Government activity concerning child and youth labour be cognisant of the relevant human rights Conventions and adjust their policies and practices accordingly.
- 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).
- The Government collect and publish disaggregated statistics about children and young people in work, and that utilise consistent age ranges.
- Regular research projects be carried out to establish children and young people's positive and negative work experiences and that this information be used in developing new laws and policies
- The Human Rights Act 1993 be amended to extend the prohibition against age discrimination to those under the age of 16 years.
- All Government bodies and interested parties establish policies, practices, protocols and monitoring devices to ensure compliance with the Convention on the Rights of the Child.
- Government and child protection agencies define their obligations under ILO 182 and that Government bodies and child agencies identify and monitor exploitation factors.
- The programmes and policies arising out of the ratification of ILO 182 be promulgated 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.

Acknowledgements

ACYA is deeply appreciative of Peter Shuttleworth who co-ordinated this paper, Ruth Gasson, Robert Ludbrook, Alison Blaiklock, and others who contributed.

References

Gasson et al. Report to be published 2003, Dunedin College of Education.

Newell, P, Hodgkin, R. (2002) UNICEF Implementation Handbook for the Convention on the Rights of the Child, UNICEF, New York.