



United Nations Convention on the Rights of the Child

**Draft 5th Periodic Report by the Government of New
Zealand 2015**

**Response by Action for Children and Youth Aotearoa
(ACYA)**

27 February 2015



Action for Children and Youth Aotearoa (ACYA) is a coalition of non-governmental organisations, families and individuals promoting the rights and wellbeing of our children and youth through education and advocacy based on evidence and Aotearoa New Zealand's human rights commitments.

Underpinned by the values encapsulated in the UN Convention on the Rights of the Child (UNCROC), Te Tiriti O Waitangi and the wider human rights framework, ACYA promotes:

accountability by providing reports from NGOs in Aotearoa New Zealand on compliance with UNCROC, to the UN Committee on the Rights of the Child (UNCROC Committee)

- understanding and implementation of UNCROC in Aotearoa New Zealand
- action on the recommendations of the UNCROC Committee to Aotearoa New Zealand;
- opportunities for the participation of children and youth and for their voices to be heard

ACYA's principal work is the production and publication of Aotearoa New Zealand's Alternative NGO (non-governmental organization) Report to the UNCROC Committee on Aotearoa's implementation of UNCROC. Aotearoa ratified UNCROC 6 April 1993. The alternative reports are submitted as part of the formal periodic reporting process under Article 44 of UNCROC.

ACYA most recently produced and published *Children and Youth Aotearoa 2010*, the NGO sector's third and fourth periodic report on Aotearoa New Zealand's implementation of UNCROC. The report and its working papers were presented to the UNCROC Committee in Geneva, 7 October 2010. ACYA produced and published *Children and Youth in Aotearoa 2003*, the second periodic NGO report on Aotearoa New Zealand's implementation of UNCROC. ACYA supported children to develop a video called *Whakarongo Mai / Listen Up* which collated and presented the views of children and young people. Both the report and video were presented to the UNCROC Committee in Geneva in June 2003.

ACYA has made numerous reports on Aotearoa New Zealand's compliance with other human rights treaties and on proposed legislation and policy that impact upon children. ACYA sits on the UNCROC Monitoring Group co-ordinated by the

Office of the Children’s Commissioner. All the work of ACYA is done by volunteers. ACYA is extremely grateful to the JR McKenzie Trust for the financial support that makes our work possible.

Introduction

ACYA welcomes the opportunity to comment on the draft 5th periodic report (the draft) to the UN Committee on the Rights of the Child (UNCROC Committee). These comments reflect the high-level concerns and questions that ACYA's members have in respect of the draft.

In respect of the overview presented in the draft, we make the following comments:

- We do not agree that since February 2011, the government has made substantial progress in improving outcomes for children, implementing UNCROC and addressing the Concluding Observations made by the UNCROC Committee in 2011. We note that, in respect of outcomes, there is very little substantive data and evidence to support the draft's claims. Descriptions of relevant policies do not constitute evidence of outcomes. The draft should contain evaluations of policies, their implementation and impact.
- The Vulnerable Children Act 2014 and the Children's Action Plan (CAP) associated with it relate only to some 20,000 of the most vulnerable children and young people in Aotearoa New Zealand. The CAP is not a national action plan for the implementation of UNCROC and should not be presented as such. The government's admission that the UNCROC Work Programme was delayed, while they consulted on and developed responses for vulnerable children, demonstrates a lack of appreciation that many other UNCROC rights must also be progressed. The Ministry of Social Development led a consultative UNCROC workshop with stakeholders on 30 January 2014. The UNCROC work programme was not finalised until November 2014. The UNCROC Committee will question why this was not done much sooner in the reporting cycle.

1 General Measures of Implementation

Reservations

When the government of Aotearoa New Zealand ratified UNCROC **22 years ago**, it did so with 3 specific reservations and a declaration that UNCROC did not extend to the territory of Tokelau. The UNCROC Committee has urged the government of Aotearoa to withdraw the reservations and extend the application to Tokelau in its concluding observations in 1997, 2003 and 2011. The Committee expects that the implementation of UNCROC will be progressive. ACYA regards the continuing failure to withdraw the reservations as evidence of a lack of commitment to implementation of UNCROC.

Children unlawfully in New Zealand

In its 3rd/4th periodic report, the government stated (para 26 *et seq*) that it would lift the general reservation relating to children unlawfully in New Zealand, subject to reports from the ministries of Health and Education on legislative measures needed to comply with UNCROC. The draft says that as a result of the *Health and Disability Direction 2011* and the Immigration Act 2009 and accompanying notice, children have access to health, disability and state education services in certain circumstances. The

draft also states (para 241) that children seeking asylum have access to publicly funded education and health services. It would appear that there is a sufficient basis for the government to move to lift the general reservation. If the government does not intend to do so, the draft should state the reasons for this.

Minimum age of admission to employment

The reference (para. 23 heading) should be to **admission**, not **access**, to employment. Access to employment suggests ensuring as many children as possible can work, which is the stated policy intention. The government has taken no legislative steps to tackle the UNCROC concern with admission to appropriate employment, which is ensuring that children undertake only those jobs which are safe.

ACYA reminds the government that the first recommendation from the UNCROC Committee in its 2011 Concluding Observations was that it should take all necessary measures to implement concluding observations in the 2nd periodic report, including those on child labour. In its 3rd/4th periodic report, the government stated that it “was engaged in an on-going debate with the ILO” (para 39) in respect of ratification of ILO Convention 138. The government has not ratified this and ACYA is not aware of any steps taken towards doing so. ACYA concludes, based on the draft report’s statement that the reservation will be lifted “when legislation and policy match the requirements”, that this government has no intention of taking any steps that would allow the reservation to be lifted.

Age mixing in detention

The Department of Corrections developed the “test of best interests” in respect of age mixing in prisons over 10 years ago. That test was developed to enable to reservation on article 37(c) to be lifted. The draft should explain why the necessary steps to withdraw the reservation have not been commenced.

The draft should acknowledge that the specialist Youth Offender Units in the grounds of the adults prisons at Waikeria and Christchurch are used to accommodate some adult prisoners aged 18 and 19. The numbers of these prisoners should be stated in the draft and it should be clear how this mixing is in the best interests of the young inmates under 18.

The draft should address the matter of young people who are held in court awaiting the hearing of their cases. It is often not possible to separate young people from adult accused persons. The draft should acknowledge this and advise of any steps being taken to remedy the breach. It is also important to note that under 17 year olds who have been convicted and transferred from Youth Court will appear in adult court and may be held with adults.

The report should be transparent about breaches of UNCROC. It is not adequate to state that “the police will segregate 17 year olds from adults where there is room” (para 27). The report should state the availability of police cells and the number of occasions on which separation has not taken place. If there are no records of this, then the government cannot demonstrate monitoring of practice. Without monitoring, the Committee is likely to conclude that the government has no commitment to remedying ongoing breaches.

Legislation

It is inaccurate for the report to state that “there are mechanisms in place to assess whether new legislation is consistent with the Convention” (para 33). When introducing legislation, Ministers do not ask officials to carry out a specific assessment of compliance with UNCROC. ACYA notes that if the existing mechanisms are expected to highlight any possible breaches of UNCROC in respect of proposed legislation, then they failed to do so in respect of the Family Court Proceedings Reform Act 2013. The legislation removed the right of children to legal representation in most family law proceedings under the Care of Children Act 2004 (other than those involving violence). The family law reforms moved most cases from court to Family Dispute Resolution (FDR). Clause 7(f)(i) of the Family Dispute Regulations 2013 requires FDR providers to have knowledge and understanding of the statutory requirement that children be given a reasonable opportunity to have their views heard. However FDR providers are not required to ensure that the children’s perspectives are part of the process and taken into account. That is a clear breach of UNCROC Article 12.

It is inaccurate for the report to state that UNCROC and the 2 Optional Protocols ratified by Aotearoa are applicable “to all children and young people in New Zealand”. The definition of young person in the Children, Young Persons and Their Families Act 1989 (CYPF Act 1989) remains “a boy or girl under 17”, not under 18, as required by UNCROC. The breach is compounded by excluding from the definition any children and young people who are married or in a civil union. UNCROC, therefore, patently does not apply to all children and young people.

In ACYA’s view, the government’s legislative record demonstrates a fundamental lack of commitment to progressive implementation of UNCROC. The government refused to include an amendment to the CYPF Act 1989 Act in the Vulnerable Children Bill, to extend existing care and protection provisions to those aged 17. This was despite the majority of submissions urging this and some of the Vulnerable Children Bill provisions being applicable to children and young people up to age 18.

The government’s legislative record demonstrates a refusal to prioritise long-needed reforms for children that have been recommended repeatedly by the UNCROC Committee. In **2003** (repeated in 2011), the Committee called for:

- raising of the statutory minimum age of criminal responsibility – para 21(a)
- CYPFA 1989 to be extended to those under 18 – para 21(b)
- Setting of a statutory minimum employment age – para 21 (c)
- consistent integration of the child’s right to be heard in legislation – para 26
- comprehensive adoption law reform – para 34

The statutory minimum age of criminal responsibility is age 10, below the internationally acceptable minimum of 12. Rather than raising the age of criminal responsibility, this government has lowered the age of prosecution of children in Youth Court, from age 14, to age 12 (under the CYPF (Youth Courts Jurisdiction and Orders) Amendment Act 2010). The government did not take the opportunity to amend the CYPFA 1989 when it had the chance (during the legislative passage of the Vulnerable Children Bill, later Act). It has refused to set a minimum age for

employment. It has removed an important provision for legal representation of children and young people in family law matters.

The government's refusal to reform adoption law is the clearest evidence of lack of commitment to UNCROC. The numerous breaches of this law did not prevent the government from ratifying UNCROC without a reservation relevant to that legislation. The UNCROC Committee made specific recommendations relating to adoption law reform in their Concluding Observations in 2003 (para 34) and in 2011 (para 33). In its 3rd/4th periodic report, this government accepted that a review of adoption law which began in 2003 had been stopped "due to other work programme priorities" (para 225). In this draft it states "[a] review of adoption law is on hold because of competing priorities for law reform in the justice sector" (para 16). The draft should state what justice sector priorities have been placed above adoption reform.

The draft should refer to the Adoption Action claim, being heard by the Human Rights Review Tribunal (HRRT), that current adoption law discriminates unlawfully against those it affects. The HRRT decision is pending and will have implications for current adoption law and policy. The review of adoption legislation began **12 years ago**. This government has given no priority to that review. In ACYA's view, adoption law offers an illustrative case study of this government's failure to prioritise progressive implementation of UNCROC.

Coordination

The UNCROC Committee recommended (2003 and 2011) that the government establish a permanent mechanism to ensure high-level and effective coordination of UNCROC implementation. The draft states the coordinating mechanism is the Social Sector Forum Deputy Chief Executive (SSF DCEs). ACYA is a member of the UNCROC Monitoring Group (UMG), a group of non-government children's organisations chaired by the Office of the Children's Commissioner. The draft states that UMG and SSF DCEs meet twice a year to discuss UNCROC. It is not clear how the SSF DCEs has been effective in coordinating implementation of UNCROC throughout government. Detailed policy analysis around UNCROC has been undertaken by the Ministry of Social Development. The draft should confirm that the SSF DCEs is the **permanent** coordinating mechanism and explain how it is achieving effective implementation. For example, is it responsible for implementation of the *UNCROC Work Programme* signed off by cabinet in December 2014?

National Plan of Action

The UNCROC Committee recommended that Aotearoa New Zealand adopt a comprehensive policy and corresponding national plan of action for implementation of UNCROC and its Optional Protocols. That national plan should be based on a child's rights approach. The *Better Public Services* policy is not a national plan for UNCROC implementation and it is not based on a child's rights approach. The *Children's Action Plan* is a policy for around 20,000 of Aotearoa New Zealand's most vulnerable children and young people. It is not a national plan for all children and its goal is not implementation of UNCROC.

Allocation of resources

Implementation of UNCROC requires that disaggregated data is gathered, showing how much of the government's spending is allocated to children and young people. A child budgeting exercise is then required. This should specify strategic allocations to implement children's rights, track implementation and evaluate impact. The report admits that the government accounting processes cannot isolate the total expenditure on children and young people (para 44). In its 3rd/4th periodic report, this government stated that gathering disaggregated data "proved too difficult to get the full picture across different government working streams". ACYA concludes that there is no evidence currently that the government plans to fulfill its obligations under Article 4.

Dissemination and awareness-raising

The UNCROC Committee has recommended that the government ensure that UNCROC provisions are widely known to the public, all those working with children, and the children and young people themselves. ACYA is very concerned that the draft suggests that the limited information on government websites fulfils its obligations for dissemination. In 2003, the Committee recommended public information campaigns using the mass media to reach, among others, those who lack formal education.

The draft should refer to whether local government officials and employees are aware of and use UNCROC principles in their work. ACYA notes that Youth Boards have been set up and that limited consultations with young people have taken place, in a few areas. These initiatives appear to be sporadic and the Committee will be interested in proposed government action to ensure wider dissemination and awareness at local government level.

The draft places responsibility for awareness-raising with the Office of the Children's Commissioner (OCC). ACYA believes OCC should be given considerably more funding to support its awareness-raising function. OCC's awareness-raising functions have reduced during the reporting cycle, in accordance with budget constraints. The government itself also has responsibilities to ensure all employees understand UNCROC and how it relates to their work. The draft should refer to this.

Training

In 2011, a UNICEF NZ report *Education and training for professionals working with and for Children in New Zealand* found that the absence of widespread training meant that people had little knowledge of the government's obligations and were not using UNCROC as a framework to guide policy development or to inform practice.

The New Core Competencies for all professionals working with children provide an opportunity to train workers in UNCROC and its importance for practice. The UMG understands that knowledge of children's rights is one of the core competencies. The draft should confirm this. If this is the case, this could constitute significant progress in this area. The draft should indicate whether Professional Learning Development for leaders and teachers has an UNCROC component.

2 Definition of the Child

As noted above, Aotearoa New Zealand continues to be in breach of the UNCROC definition of a child as “any human being below the age of 18”. The confused and contradictory legislative provisions are reflected in the draft’s use in the draft of inconsistent definitions and phrases, such as “child”, “young person” and youth justice”.

ACYA suggests that the draft state the definitions that are used in various pieces of legislation, acknowledging those that breach UNCROC. It could then make clear the age group to which it is referring, when discussing different policy areas.

- Children’s Action’s Plans – the Vulnerable Children Act 2014 defines children for these purposes as those under age 18 (**compliant**)
- Child Protection – the Vulnerable Children Act 2014 continues the definition for these purposes as those under age 17 (**breach**)
- Youth Justice – the jurisdiction of the Youth Court and of Youth Justice Family Group Conferences (FGCs) cover children aged 12 and 13 and young people aged 14 or over and under the age of 17 (**breach**); young people aged 15 and over may be convicted and transferred out of Youth Court for sentencing (**breach**)
- Adult offenders – those aged 17 and over are adult offenders for the purposes of prosecution and sentencing (**breach**)
- Child and youth employment – there is no minimum age below which children and young people cannot work (**breach**)

3 General principles

Non-discrimination

The UNCROC committee called on the government in 2011 to take urgent measures to address disparities in access to services by Maori children and their families. In February 2013 *Te Ohonga Ake The Determinants of Health for Maori Children and Young People in New Zealand* (NZ Child and Youth Epidemiology Service for Ministry of Health) found that admissions for medical conditions and injuries influenced by social factors were much higher for Maori and Pacific children than for others. Educational achievement is much lower for Maori and Pacific children and their exposure to overcrowded housing much higher, than for others. The report noted concerns regarding access to and use of mental health services by Maori children. The draft should indicate how these concerns are being addressed.

In December 2013, the Maori Affairs Committee reported to Parliament on its *Inquiry into the determinants of wellbeing for tamariki Maori*. The report recommended extensive research, evaluation of the impact of whanau focused services and long term funding for relevant service providers. The report should indicate what funding has been given to Whanau Ora and other relevant services, and how the impact of the work is being measured.

The draft should refer to *Youth '12*, an important survey of young people in secondary education. The survey received funding from several government departments and that approach is informed by UNCROC. The survey suggested that overall, the health and wellbeing of secondary school children has improved since the *Youth 2000* survey. This is progress against UNCROC commitments. Its gathering of the views of 8,500 young people, 20% of whom were Maori, and its use of a young people's focus group to review the findings, is a model of good practice to implement Article 12. The draft should indicate how the concerns in the survey are being addressed, including bullying in schools.

The UNROC Committee specifically recommended affirmative action for refugee and migrant children, children with and affected by disabilities, and gay, bisexual, lesbian and transgender children. The draft refers to social change campaigns, but contains no information about improvements, if any, in the experiences of these children and young people. Children and young people and their families who are affected by HIV/AIDS are subject to stigma and discrimination in day-care, schools and communities. Some schools state openly that they require the HIV/AIDS status to be disclosed to them. This is discriminatory and breaches the child's and families right to privacy.

Best interests

ACYA agrees that the provisions of the Children, Young Persons, and Their Families Act 1989 and the Care of Children Act 2004 exceed the UNCROC article 3 requirements and that they provide a model for other legislation. It is therefore extremely disappointing that the best interests of the child is not the paramount consideration in adoption decisions.

Article 3 requires that the best interests of the child should be a primary consideration in all actions concerning children taken by administrative authorities and legislative bodies. The draft should explain how the best interests of the child principle is integrated into decision making of government departments and into the legislative programme.

The earthquakes in Canterbury on 4th September 2010 and 22 February 2011 and subsequent aftershocks caused significant trauma and loss. It is estimated that around 85,000 children have been affected by the earthquakes. These children and their families have to deal with loss of homes and belongings and enormous disruption to their lives. The draft should indicate the policy and actions implemented in response to the earthquakes and how these ensure that children's best interests are a primary consideration in all matters affecting those living in Canterbury.

The right to life, survival and development

The report states that the Aotearoa New Zealand "continues to support the right of the child to life, survival and development" and refers to parts V, VI and VII. Part V contains a brief reference to corporal punishment; Part VI refers briefly to family violence courts (para 143) and to a public information campaign on domestic abuse (para 146). Part VII refers to collection of statistics on prostitution (para 237) and to a Helpline (paras 237 – 240).

Nowhere does the report tackle the high incidence of death and serious injury of children from abuse and neglect in Aotearoa New Zealand. During the 1980s, child mortality from intentional injury almost doubled (*The Children's Social Health Monitor 2011 Update*, E Craig et al, New Zealand Child and Youth Epidemiology Service, Dunedin) and has improved little since then. Between 2009 and 2012, there were 37 child abuse and neglect deaths (*Family Violence Death Review Committee 4th annual report* (2014, Health Quality Safety Commission). Aotearoa New Zealand continues to have one of the highest child maltreatment death rates in the OECD.

The report *Death and Serious Injury from Assault of Children under five years in Aotearoa New Zealand* (2009, Office of the Children's Commissioner) recommended that, under the Well Child Tamariki Ora framework, there should be significant investment in professional development and in maximizing the skills of those working in early years. The draft should state whether any additional resources have been made available, standing the fact that the Vulnerable Children Act is "resource neutral".

Respect for views of the child

The draft should acknowledge that the family law reforms have removed the child's court appointed lawyer from most family proceedings. The court's duty to appoint a lawyer for child under the Care of Children Act 2004 has been deleted and replaced by a power to do so only where there are concerns about a child's safety and where the court thinks it is "necessary". That is breach of UNCROC Article 12.

The draft suggests that one mechanism for children to express views in family matters would be "through the evidence of their parents" (para 81). This demonstrates a fundamental lack of appreciation of the right to express views **freely** in all matters affecting them.

ACYA welcomes the item on the *UNCROC Work Programme* relating to mechanisms that will improve the input of the views of children and young people's views in policy and legislation developments. It is likely that the UNCROC Committee will ask for information on progress on this when it meets the government representatives.

4 Civil rights and freedoms

The New Zealand Bill of Rights Act 1990 (BORA) provides the basis for protection of civil rights and freedoms in Aotearoa New Zealand. BORA applies to all natural and legal persons and therefore applies to children and young people. There is only one specific mention of children, in s25(i), which requires children accused of having committed an offence to be treated in a manner that takes account of the child's age. That 17 year olds and some younger children are treated as adults in the criminal justice system is a breach of this provision as well as UNCROC, ,

The draft should refer to whether the government is considering ratification of UNCROC Optional Protocol on a Communications Procedure. Ratification would improve significantly the ability of children and young people to seek redress when their rights are breached in Aotearoa New Zealand.

Pacific Women's Watch and Shakti Community Council Inc., among others, have raised the issue of forced and underage marriage in Aotearoa New Zealand. This practice

breaches the human rights of the young women involved. The Marriage Act does not provide adequate protections against the practice: there is no explicit requirement for the consent of a minor party to a marriage. The draft should address this matter directly.

Corporal Punishment

The UNCROC Committee recommended that the government heighten public awareness of amended s59 of the Crimes Act 1961. The draft claims that there is “no identified need for ongoing public education”. Although public support for corporal punishment is declining, it is still vital for the government to provide parents with information about child development and positive parenting.

Preservation of identity

The Adoption Act 1955 has not been amended to respect the preservation of the child’s knowledge of and links with their birth family. Adoption law does not recognize adequately, support and respect traditional Maori whangai, arrangements under which children and young people are cared for by those other than their birth parents.

Violence against children

The draft should acknowledge the very high levels of violence against and abuse of children and young people in Aotearoa New Zealand. We make comments regarding child deaths due to maltreatment, to hospital admissions and to the serious shortage of care and protection social workers, under “family environment and alternative care” and “basic health and welfare”.

The draft should acknowledge that poverty is a perpetuating factor for violence against children. *Preventing Physical and Psychological Maltreatment of Children in Families* (2008, Centre for Social Research and Evaluation) found that policies that lead to poor living standards, over-crowded housing and social inequality contribute to the perpetuating of violence. Evidence of the links between child abuse and poverty is clear – see (Child Poverty Action Group *Our Children, Our Choice: Priorities for Policy 1 – Child poverty and health* (CPAG, 2014) and advice from the Office of the Children’s Commissioner to the government in *Solutions to Child Poverty in New Zealand: evidence for action* (2012, OCC). The draft should accept that the current government position, that child poverty will be addressed through getting adults into paid employment (draft paras 194, 195) is inadequate.

5 Family environment and alternative care

Assistance in child-rearing responsibilities

ACYA acknowledges the increase in the length of parental leave, from 16 weeks (1 April 2015) to 18 weeks (1 April 2016). Paid parental leave in Aotearoa New Zealand is, however, still less generous and less comprehensive than in some other OECD countries. Longer paid parental leave strengthens bonds with carers and supports breast feeding, both of which have significant benefits for children’s development. The low amount of the payment, which is capped and does not replace wages in full, forces many women back to work after a short time.

Alternative care

The draft report does not deal adequately with the experiences of children and young people in alternative care, i.e. foster and residential care. These are some of the most vulnerable and damaged children and young people in Aotearoa New Zealand. Only two of the 282 paragraphs of the draft refer to these children and then state only the statutory responsibilities of Child, Youth and Family (CYF) under the CYPF Act 1989 and the existence of the *Children's Charter*. The draft should, at least, indicate what investigations the Ministry of Social Development has made into knowledge of and respect for the *Children's Charter*.

The draft should acknowledge that, under the 1989 Act, the cut-off for support for children and young people is age 17. This is a breach of UNCROC and the Committee will be interested in hearing whether the *UNCROC Work Plan* priorities amendment of this age limit.

ACYA notes that a short video, developed by the Dingwall Trust, highlighting the issues for young people who are discharged from care on their 17th birthdays, was given to the government in response to the *Green Paper for Vulnerable Children*. The draft should refer specifically to what additional supports are being made available to care leavers and what steps will be taken to extend the 1989 Act to those up to age 18.

The draft report should present evidence that indicates to what extent CYF manages to achieve the best outcomes for these vulnerable children and young people. In doing so, the draft should refer to the *Qualitative Review of Social Worker Caseload, Casework and Workload Management* (2014, Office of the Chief Social Worker). That review of over 800 cases focused on how CYFs can improve outcomes for children and families.

The review found that “more priority needs to be given to quality, professional engagement with children, young people and their families” (para 1.18). It also found that only 25% of care and protection social workers' time was spent communicating with children, young people and families, while 50% was spent on documentation, administration and travel (para 1.52). The review raised very serious questions about the capacity of the system to meet the six fold increase in referrals. It also raised questions about the effectiveness and consistency – and in particular the cultural appropriateness – of professional development.

Avoid revictimisation of victims of violence and abuse

The draft should refer to child witness research *Child Witnesses in the New Zealand Criminal Courts* (Kirsten Hanna et al, New Zealand Law Foundation, 2010). That research showed that there is inconsistent implementation of existing laws and policies and that child witnesses face average delays of 15 months in the hearing of cases. These delays are twice as long as they were in the 1990s.

Delay is extremely stressful and is compounded by the study's finding that many children are being cross-examined in ways that are forensically unsafe. Existing provisions are therefore failing to stop revictimisation of the victims of violence and abuse. The draft should indicate what additional steps the government intends to take on this issue.

6 Basic health and welfare

Perinatal and maternal death

The rate of perinatal deaths has been consistent for many years in Aotearoa New Zealand, while in equivalent countries, the rate is declining. According to the Perinatal and Maternal Mortality Review Committee (PMMRC) one in 5 of the deaths are potentially preventable. Aotearoa New Zealand has one of the highest maternal death rates at or around the time of childbirth of countries in the developed world. Coroners have regularly called for an independent review of maternity services, but there has never been such a review. The draft should refer to standards for maternity services and actions that the Ministry of Health intends to take.

Greater co-ordination between health policies and policies aimed at reducing income inequality and poverty

The first UNCROC Committee recommendation on health was that government coordinate health policies with those relating to income and poverty. The draft does not address this. It should acknowledge that the government's policies have not been concerned with reducing income inequality and it should point out that income inequality has increased during the reporting cycle.

Maori children continue to experience poor outcomes disproportionately. Recent data shows that some preventable diseases, such as acute rheumatic fever, are more common now than previously (Milne, et al "Mortality and Hospitalisation Costs of rheumatic fever and rheumatic heart disease in New Zealand" 2012 *Journal of Paediatrics and Child Health* 48(8) 692-7. Ethnicity gaps have widened for hospitalization due to poverty-related infectious diseases (Child Poverty Action Group *Our Children, Our Choice: Priorities for Policy 1 – Child poverty and health* (CPAG, 2014). Pasifika children and young adults are 50 times more likely than European and twice as likely as Maori children, to be hospitalized with acute rheumatic fever (Craig *New Zealand Children's Social Monitor 2011* (NZ Child and Youth Epidemiology Service, Dunedin, 2011).

The hospital admission rates for non-fatal injury of children are extremely high. In the report *Death and Serious Injury from Assault of Children under five years in Aotearoa New Zealand* (2009, Office of the Children's Commissioner), the authors (Duncanson, Smith and Davies) noted that between 1995 and 2004, 443 children – almost one per week – were admitted to hospital because of intentional assaults.

Tackling abuse and neglect requires effective procedures for investigation. The draft does not refer to the *Inquiry into Police Conduct, Practice, Policies and Procedures Relating to the Investigation of Child Abuse* (Part 1, 2010, Independent Police Complaint Authority). That inquiry found that over 100 active child abuse files in the Wairarapa area had not been progressed at all, following the initial complaint to the police (para 51). The report should be transparent about the fact that the Vulnerable Children Act was "resource neutral". This means that no additional resources were made available for improving information-sharing and investigation in respect of child protection.

The draft should acknowledge the relationship between poverty and child abuse. In its concluding observations in 2011, the UNCROC Committee called on this government “to take all necessary measures to provide adequate support to allow disadvantages families and their children to move out of poverty in a sustained way” (para 43). ACYA notes with concern that the draft does not accurately record this recommendation (heading of para 194), as it does not contain the words “in a sustained way”. The shortcomings of government policy and the ways in which they fail to tackle child abuse and poverty are set out in *Child Abuse: What role does poverty play?* (2013, CPAG). In setting out the government’s approach to an adequate standard of living (paras 194, 195), the report fails to acknowledge that the 2012 legislative reforms to the social security system introduced a significantly more punitive sanctions regime.

ACYA is very concerned that the draft does not refer to housing. Around 300,000 older houses in Aotearoa New Zealand are un-insulated, damp and cold; this causes respiratory diseases in children and the situation is made worse when housing is overcrowded (see *Our Children, Our Choice: priorities for policy Part 1 – Child Poverty and Health*, CPAG 2014). Maori and Pasifika children are more likely than others to live in overcrowded housing. The draft should refer to the government policy of selling some of the state housing stock and to the shortage of housing, particularly in Christchurch.

Take all necessary measures to provide appropriate support to allow disadvantaged families and their children to move out of poverty in a sustained way, while at the same time, continuing to provide assistance to those who remain under the poverty line

This recommendation is not addressed directly in the draft. The recommendation is reproduced inaccurately, by omitting the words “in a sustained way”. The draft then describes the government’s policy for addressing child poverty by “promoting social mobility through paid employment”.

The draft should acknowledge the role that the taxes levied on earnings have on family incomes. GST, which affects lower income families disproportionately, is relatively high and the income tax scale is relatively flat, in Aotearoa and current tax policy does not consider moves to a more progressive tax scale.

The draft should address the fundamental role of redistribution of income, in tackling child poverty. Redistribution occurs primarily through social welfare benefits, housing subsidies and child-related payments such as Working For Families tax credits – see *Our Children Our Choice: Priorities for Policy Part V – Adequate incomes to address child poverty* (CPAG, 2014). The benefits paid to children and families have been reducing in real terms and the adequacy of benefit rates has not been reviewed for 30 years. To fulfil its obligations under UNCROC Article 26, the government should review social welfare benefits for their adequacy.

The draft should acknowledge the punitive nature of the benefit system in Aotearoa New Zealand. Sanctions reduce the incomes of families on benefits if, for example, they do not enrol children in early childhood education or take children for well child checks. These measures are not in the best interests of the children in these families, since the result of the sanctions can be a 50% cut in benefit, or even cancellation of

the benefit. These are some of Aotearoa New Zealand's most vulnerable and deprived children. The sanctions are unconscionable.

The government's obligation is to ensure that its policies do not discriminate against groups of children and young people. The In Work Tax Credit (IWTC) is claimed as a child poverty alleviation measure, but is not available to parents who receive income tested benefits. It is also withheld when a family is unable to work the required number of hours – as may happen as a result of natural disasters or under casualised work arrangements. The IWTC thus discriminates between children whose parents are in receipt of benefits and those whose parents are not. Children in households who rely on benefits experience significantly higher levels of poverty and Child Poverty Action Group (CPAG) argued in the courts that the IWTC was unlawfully discriminating against these children. The Court of Appeal agreed with CPAG that the policy discriminated against a large number of children, but found that the discrimination was proportionate to the policy of incentivizing people into work. The report should acknowledge the effects of its policies on children's rights to equality and best interests.

Suicidal behaviour among adolescents

The UNCROC Committee recommended that Aotearoa New Zealand address the issue of suicidal behaviour among adolescents. ACYA again notes that the descriptions of policies in the draft (paras 186 – 190) contain no information about evaluation or impact of the policies. The decline in suicide of 15 – 19 year olds in the Coroner's provisions figures for 2014 is encouraging, but the rate among young Maori men remains high. It would be helpful for the draft to state the rates for young Maori and to explain what resources are being provided and what monitoring and evaluation of relevant policies and initiatives is taking place.

A key element in addressing suicidal behavior among young people is the availability of accessible, youth focused mental health services. The draft should provide information on the availability of Maori and Pasifika child and adolescent health services and the funding that District Health Boards receive to provide these services. Young people's experiences of discrimination because of mental health issues were powerfully presented in *Through the Looking Glass* (Mental Health Foundation, 2004). The draft could advise how the Ministry of Health has responded to that evidence and what consultations it has undertaken with children and young people in this reporting cycle, to gather their experiences of mental health services currently provided.

The draft should acknowledge the shortage of appropriate and accessible mental health services for young people, particularly residential services. The draft should confirm whether young people under age 18 are being placed in adult mental health wards, which ACYA understands is the case. The discussion of mental health services should refer directly to the trauma experienced by children and young people as a result of the Canterbury earthquakes and specific additional measures taken by the government to deal with this.

7 Education, leisure and cultural activities

Access to high quality early childhood education

The draft refers to expenditure on early childhood education (ECE), but does not explain the mixed economy model that underpins the spending. The government's spending targets subsidies for some disadvantaged children to be able to access ECE, but policies have supported an increase in private provision. In 2014, over 91,000 children were attending for-profit ECE, with the number attending non-profit ECEs less than 25,000. The draft should explain whether education and care standards in the non-profit centres are being monitored and assessed.

The draft should state what the child-adult ratios are, how these are being monitored and what changes have taken place during the reporting cycle. In 2011, the regulations were changed, to increase the maximum number of children in an ECE from 50 to 150. ACYA understands that one for-profit operator owns 28 large centres.

The draft should refer to the proportions of appropriately qualified adults working with the children in ECE. The previous 10 year strategic plan for early childhood education *Nga Huarahi Arataki* (2002 – 2012) had a target of 100% qualified teachers working with those under 2; in 2009, this government reduced the target to 50%. The draft should indicate what resources are being put into professional development and research support for ECE, bearing in mind that the UNCROC Committee called for **high quality** ECE.

That the quality of ECE is not a priority for this government is suggested strongly by the fact that the draft does not refer to *Te Whariki*, the ECE national curriculum. High quality and culturally responsive ECE is unlikely to take place where centres employ unqualified caregivers. Lack of quality ECE is extremely damaging to children and a 2013 National Education Review Office report found that only 14% of ECE services has "very responsive practices that focused on achieving success for Maori children".

Reduce negative effects of ethnic and social backgrounds on enrolment, attendance and achievement at school

The UNCROC committee was particularly concerned about pressure being placed on parents of children in public schools to make "donations" to their children's education. The draft does not explain, in a transparent way, that all state schools are allocated a decile number, from 1 to 10, with decile 1 schools having the highest proportion of children from socio-economically disadvantaged communities. The draft should acknowledge the significantly and persistently lower educational outcomes for children attending lower decile schools. Wylie in "Schools and Inequality" (in Rashbrooke, ed, *Inequality: A New Zealand Crisis*, 2013) found that average 5 year olds' reading scores for children in decile 1 schools were almost half of the children in deciles 7 – 10 schools, with mathematics scores a third lower.

The draft refers to NCEA Level 2, since this government regards this as the minimum qualification necessary for economic and social participation in adult society. The draft should acknowledge the 2013 figures (see education counts.) that 89.6% of pupils in decile 9 and 10 schools achieved Level 2, compared with 58.1% in deciles 1 and 2. These figures ask a very serious question about whether education funding policy is appropriate to meet the educational needs of children and young people from socio-economically disadvantaged communities.

Inclusive education to develop a child's fullest potential

The draft claims that “New Zealand is a world leader in providing inclusive education”, but then simply states the overall global government spend on special education services with no further information regarding the nature of the supports, evaluation of these and outcomes for the children and young people.

It would be helpful for the draft to state clearly the amount of government spending that goes specifically to the Ongoing Resourcing Scheme (ORS) and the number of children in receipt of this support. A global figure of \$530 million is referred to, but it is not clear how that spending is allocated. ORS is central to learning support and ACYA understands that while money to be allocated to ORS was previously ring-fenced, this is no longer the case. Clarification would be very useful.

The draft should refer to the closures of residential special schools. These residential schools catered for children with very high dependency needs. The draft should state what additional long-term funding has been made available, to ensure that education for these children within mainstream settings is being delivered adequately.

The draft should refer to the Review of Special Education conducted by the Ministry of Education in 2010. It should indicate what matters have been taken forward and those that are still to be actioned. The Committee will then be able to form a view as to how far along the government is, in respect of improvements to special education provision.

IHC is a large national provider of services, support and advocacy for people with disabilities and their families. IHC lodged a complaint with the Human Rights Commission in 2008. An amended complaint by IHC was filed with the Human Rights Review Tribunal in April 2014. The complaint states that children with a range of disabilities were experiencing discrimination at their local schools. IHC’s members’ experiences were that children with disabilities were being treated differently from non-disabled children in respect of enrolment, access to the curriculum and participation in school life. The draft should set out the steps taken by the government – and the Ministry of Education in particular – to ensure inclusive practices are operating in all state schools.

Reduce the number of exclusions

The draft restates the legislative provisions surrounding stand-downs, suspensions and exclusions from school with no comment. There is no information about the numbers of students involved, how many are permanently excluded and what alternative provisions are made to fulfill their right to education.

The number of exclusions from school has not decreased during the reporting cycle, raising questions about whether it is being used only as a last resort. Maori students are excluded 2.1 times as often as Pasifika students and 3.1 times as often as Pakeha students. Students from decile 1 and 2 schools were nearly five times more likely to be excluded than those in decile 9 and 10 schools – see *Out of School, Out of Mind* (YouthLaw Inc., 2011).

One third of students who are suspended will eventually be excluded or expelled. This represents a serious disruption to the education of a large cohort of students.

The processes that allow students to be suspended, excluded and expelled do not meet the standards of a fair hearing that respects the right of the child or young

person to be heard. School Principals may take decisions to stand down and suspend, with Boards of Trustees confirming (or not) suspensions. Where a student is excluded, the parents – but not the pupil – have a right to appeal to the Independent Appeal Panel. Decisions to deprive students of their education for any length of time, are very serious ones. All decisions to stand-down, suspend, exclude or expel should be subject to the scrutiny of an independent education tribunal.

Human Rights Education to be included in official curriculum

The secondary school curriculum has a section on “values”. There is no explicit reference to knowledge and understanding of UNCROC or other international or domestic human rights instruments. The draft should indicate what human rights education is expected in state schools and how this education is supported. What resources does the Ministry of Education produce to support human rights education in state schools?

ACYA is concerned that this is no evidence of a government commitment to human rights education. We are not aware of any information documents or curriculum resources that indicate the government’s support for this part of the curriculum.

8 Special protection measures

Economic exploitation including child labour

The draft states that existing policies and legislation provide “effective age thresholds for entry to work” (para 236). Since there is no minimum age for admission to employment in Aotearoa New Zealand, ACYA finds this statement astonishing and worryingly complacent.

Discrimination on the grounds of age is one of the prohibited grounds of discrimination under the Human Rights Act 1993. The NZ Bill of Rights Act states that everyone is entitled to freedom from discrimination on the grounds in the 1993 Act. Despite this, young people continue to be discriminated against, in respect of the minimum wage that they are paid for their labour and in relation to basic employment rights. The Youth Rate allows employers lawfully to pay workers . Young workers are subject to a 90 day fire-at-will trial. This places them in even more vulnerable positions. The Ministry of Business, Innovation and Enterprise figures for 2014 suggest that the 90-day trials have not made young people “more employable” as the government has hoped. Instead, it appears that the trials are acting as barriers to sustainable employment – see *Evaluations of the Short Term Outcomes of the Changes to the Employment relations Act and Holidays Act* (MBIE, 2014).

The draft should acknowledge the discrimination in working pay and conditions for young people and explain how the Department of Labour intends to respond to the failure of the 90 day fire-at-will policy.

Sexual exploitation and abuse

The first step in taking action against sexual exploitation and abuse of children and young people is to ascertain how many children and young people may be working in the sex industry. Comprehensive research is required, which considers the number of children who are homeless and living on the street. The government’s Initial Report

under the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) admitted (paras 26 and 27) that data collection was “difficult”. The draft should outline what research the government intends to commission into child prostitution.

Homelessness renders children and young people very vulnerable. The Human Rights Commission has raised concerns about the number of children who are homeless and displaced in Christchurch. ACYA again raises the matter of inadequate supports for young people leaving care, who are several times more likely than others to end up living on the streets.

The Initial Report under OPSC indicated a very low prosecution rate for child pornography offences. Given the widespread nature of the offending, the draft should outline actions being taken to increase the prosecution rate significantly.

Children in emergency situations

Aotearoa New Zealand accepts 750 refugees annually, through the UN High Commission for Refugees quota. ACYA acknowledges that many countries do not do so and the government’s action is welcomed. However, amendments to the NZ Immigration Act in 2013 have meant that asylum seekers of more than 30, arriving by boat, can be detained for up to 6 months. This is a punitive measure that tackles an almost non-existent threat: very few boats carrying refugees come to Aotearoa New Zealand.

During the year 2012 – 2013, 53 minors claimed asylum in Aotearoa New Zealand – see *Marking Time: Experiences of Successful Asylum Seekers in Aotearoa New Zealand* (2013, National Refugee Network, Change Makers Refugee Forum). The draft should acknowledge that the human rights of asylum seekers are not fully protected in Aotearoa New Zealand. Although the right to freedom from discrimination is protected by the NZ Bill of Rights Act 1990 and the Human Rights Act 1993, Immigration New Zealand policies are exempt from the 1993 Act. Thus, the Human Rights Commission cannot receive complaints of alleged discrimination in relation to immigration.

Immigration legislation allows the warrantless detention of children and young people under 18 in Child, Youth and Family secure residences for up to 96 hours. The Human Rights Commission has suggested that this is arbitrary detention that breaches the human rights of the children and young people.

The draft report appears to reference only the rights and access to services experienced by quota/resettlement refugees, with no reference to ‘Convention’/ spontaneous refugees, who have arrived as asylum seekers. This distinction should be made clear, and where possible the difference in protection and experiences of Conventions refugees should be presented. It is understood that no official data or qualitative research exists focusing on the experiences of children within either group of refugees in New Zealand.

The draft report does not outline any steps taken to promote understanding, counter discrimination, and tackle bullying specifically experienced by migrant and refugee children (see Concluding Observations on New Zealand’s 4th UNCROC periodic report)

Children in conflict with the law

As noted above (general measures of implementation) the age limits for dealing with young people accused of offending behavior are breaches of UNCROC.

All references to 'young people' in section F of the draft should be amended to specify the actual age groups to which the rights referred to apply. As it stands the claims made about the rights of 'young people' at conflict with the law are misleading since the age groups excluded from protection by CYP&F Act as well as other legislation are not clearly noted.

The minimum age of criminal responsibility (MACR) of age ten is below the internationally accepted minimum standard of age 12 (See UNCROC Committee General Comment 10). Rather than raise the MACR, this government reduced the minimum age of prosecution for serious and repeat offenders from age 14 to age 12.

The jurisdiction of the Youth Court ends at age 17, which is a breach of UNCROC. Similarly, young people accused of committing certain serious offences are also tried and sentenced as adults, either by specific legislative exclusion from the youth jurisdiction or through judicial discretion allowed by the CYP&F Act. Those exclusions should be clearly set out in the draft to avoid misleading the Committee.

Young people aged 16 or over who are married or in a civil union are charged and dealt with as adults. All young people who offend after attaining the age of 17 are dealt with as adults. Young people aged 15 and 16 who are convicted and transferred from Youth Court to adult court are sentenced as adults. Some young people who offend before the age of 17 are charged only after they reach age 18 and are therefore treated as adults. All of these provisions breach UNCROC and are not covered by any reservation.

9 Disability

ACYA notes that the draft notes the number of children and young people in Aotearoa New Zealand with a disability, but does not state what the disabilities are and how many children are affected by each. This makes it impossible to assess the adequacy or otherwise of the spending figures stated, for example, in respect of "autism spectrum disorder work programme". The nature of services, their accessibility and how they are being evaluated are not mentioned.

One of the key issues for children and young people with and affected by disability is poverty. *Social and Economic Outcomes for Disabled People: Findings from the Disability Survey 2013* (Statistics New Zealand 2014) found that disabled adults were less likely to be employed and had significantly lower incomes than non-disabled adults. Disabled people experience discrimination far more often than those without disabilities and both adults and children with disabilities were much less likely to participate in many popular leisure activities.

The right to leisure and recreation (Article 31) is severely curtailed for disabled children. Their right to education (Article 24), as noted above, is also limited. The draft should provide information on policies that will address these matters.

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