



Action for Children & Youth Aotearoa Incorporated

**NEW ZEALAND
Child Rights - Joint submission**

To the Universal Periodic Review

**Fifth Session of the UPR Working Group of the Human Rights Council
May 2009**

Executive Summary

Action for Children and Youth Aotearoa (a national child rights coalition) provides information under Sections B, C and D as stated in the General Guidelines for preparation of information to the Universal Periodic Review.

Section B raises concerns about New Zealand's slow progress or lack of support for some human rights instruments of special importance to children, and some issues with respect to legislation, human rights structures and policy measures.

Section C raises concerns about equality and non-discrimination; violence against children; the administration of justice; the rights of children to participation, an adequate standard of living, health and education; and children who are refugees and asylum seekers.

Section D makes recommendations for action.

A. BACKGROUND

1. Action for Children and Youth Aotearoa Incorporated (ACYA) is a coalition of non-governmental organizations, families and individuals whose purpose is to promote the well-being of children and young people in Aotearoa New Zealand through education and advocacy on the rights of children and young people, encouraging the Government to act on the Convention on the Rights of the Child, and promoting opportunities for the participation of children.

2. ACYA has a membership of around 100, of whom around half are non-governmental organisations working with children and half are individuals. This submission is based on submissions previously made by ACYA to human rights treaty monitoring bodies¹; submissions to the New Zealand government on draft state party reports²; ACYA's preparation for its next submission to the UN Committee on the Rights of the Child; and a focused consultation with our members. This submission has been prepared by the ACYA Committee and the views expressed in it may not represent the views of each ACYA member.³

3. Twenty-six percent of people living in New Zealand are under the age of 18 years. The child population has much greater ethnic diversity than the adult population.⁴

B. NORMATIVE AND INSTITUTIONAL FRAMEWORK

1. Scope of international obligations

Removal of Reservations to the Convention on the Rights of the Child

4. New Zealand ratified the Convention in 1993. In 1996 and in 2003, the Committee on the Rights of the Child asked New Zealand to remove its Reservations, but this has not happened.

5. *Reservation on age mixing in prisons and other places of confinement.* There has been some progress made on separating boys under 18 years from adults in prisons. The Department of Corrections has developed a 'test of best interests' to be applied in individual cases for young male prisoners. Young female prisoners remain mixed with adult female prisoners. In 2007 a 17 year old prisoner was murdered by a 25 year-old prisoner while in a prison van. The tragedy led to a

¹ ACYA has made submissions to the United Nations Committee on the Rights of the Child (2003), the Committee Against Torture (2004 and 2008), and the Committee for the Elimination of Racial Discrimination (2007), and supported children themselves to report to the Committee on the Rights of the Child in 2003). ACYA delegates have met with the Committee on the Rights of the Child (2003) and the Committee Against Torture (2004) and attended Committee on the Rights of the Child Days of Discussion (2003 and 2007). ACYA contributed to the New Zealand National Council of Women alternative report to the Committee on the Elimination of Discrimination Against Women.

² ACYA has made submissions on draft state party reports on New Zealand's compliance with the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child.

³ ACYA has no paid staff and relies on volunteers. More information is at www.acya.org.nz

⁴ Ministry of Social Development (2008), *Children and Young People Indicators of Wellbeing 2008*.

new Ministerial directive prohibiting the age-mixing of under 18 year-olds with adult prisoners in transit. Although children held in overnight, ongoing police cell custody are not physically detained with adults, they are not held in separate facilities designed for children.

6. *Reservation on minimum age for employment.* There has been no substantive progress in setting a minimum age for employment. New Zealand has yet to Ratify ILO Convention 138 Minimum Age. New regulations due to come into force in April 2009 will extend to child contractors the same workplace health and safety protections as child employees. There is still no minimum wage protection for child employees or child workers aged under 16 years.

7. *Reservation on children not lawfully in New Zealand.* The Immigration Bill 2007 proposes to exempt providers of compulsory education (primary and secondary schools) from liability should they provide educational services to children unlawfully in New Zealand. However the Immigration Bill falls well short of achieving compliance with Article 22.1 of UNCROC.

Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

8. This Optional Protocol was signed in 2000 but is not ratified. Ratification requires amendment to the Adoption Act 1955, and there have been ongoing delays in reviewing the Act.

The Declaration on the Rights of Indigenous Peoples

9. Te Tiriti o Waitangi (the Treaty of Waitangi), guaranteed the rights of Maori in 1840 “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.”⁵

10. The recognition of indigenous rights is especially important for children. Fourteen percent of people living in New Zealand – and twenty-four percent of those under 18 years of age - identify as Maori.⁶

11. New Zealand in its candidature for membership of the Human Rights Council has said: “Indigenous rights are integral to New Zealand’s identity as a nation State. The treaty concluded in 1840 between the Crown and New Zealand’s indigenous people is a founding document of our country”.⁷

12. However, New Zealand was one of only four United Nations member states to vote against the Declaration last year, and is one of only three that continue to oppose it. Some explanation should be given to the Human Rights Council to justify such an unusual position.

⁵ ACYA (2003). *Children and Youth in Aotearoa 2003*. p 2

⁶ Statistics New Zealand (2007) *Quick Stats About Maori, Revised 27 March 2007*. Ministry of Social Development (2008). *Children and Young People Indicators of Wellbeing 2008*.

⁷ Ministry of Foreign Affairs and Trade (2008). *New Zealand: A credible, consultative and committed candidate for the Human Rights Council* (brochure).

Situation in relation to Tokelau

13. Tokelau is a non-self governing territory. We are concerned that the 600 children of Tokelau who are New Zealand citizens are not accorded the rights and protection of the Convention on the Rights of the Child.

2. Legislative framework

Legislation affecting children

14. The Committee on the Rights of the Child has twice expressed concerns about legislation that does not comply with the Convention on the Rights of the Child and has twice asked New Zealand to carry out a comprehensive review of all legislation that affects children. This has not happened.

Delegations of authority - local government - lack of application of human rights treaties

15. A letter from the Minister of Local Government to ACYA (2 April 2008) states “While central government takes its UNCROC commitments seriously, it does not issue directives to local bodies or develop specific procedures for their compliance with the convention.”

16. We consider that when the state ratifies a human rights treaty, the treaty does apply to local government and other entities with delegated authorities under legislation; and that the New Zealand government has a duty to inform and support local government and other entities with delegated authority to implement the principles and provisions of human rights treaties.

17. We respectfully request that the Human Rights Council raise with New Zealand the importance of central government giving leadership and direction to local government, and other entities with delegated authorities under legislation, in order for New Zealand to meet treaty obligations.

3. Institutional and human rights structure

Maintaining the functions of the office of the Commissioner for Children

18. Some politicians – including from the newly elected government - have publicly said that the office should be amalgamated with the Families Commission. This would be strongly opposed by children’s advocates. The budget of the Commissioner has not been increased for three years.

New Zealand Action Plan for Human Rights

19. The New Zealand Action Plan for Human Rights was developed by the Human Rights Commission with the Children’s Commissioner and involved considerable consultation with the public and officials.

20. However the Government has not formally endorsed the Action Plan. In mid 2007 Cabinet directed agencies to progress matters, The Human Rights Commission’s Mid-term Review (October 2008) shows implementation has been patchy, slow, and sometimes non-existent.

4. Policy measures

Absence of a comprehensive policy for children

21. In 2002 the Government produced its “Agenda for Children”. Although sometimes quoted by Government agencies, ACYA’s recent review found no evidence that it is used in any sustained way in policy decisions. The government does not have a comprehensive approach to issues affecting children.

Strengthening the consideration of children in political decision-making processes

22. New Zealand does not have a coherent system of structures and processes to place children at the centre of decision-making, and there is only limited monitoring of the effects of legislation, policy and programmes on children.

23. Every Child Counts, a lobby group for children supported by thousands of organisations (including ACYA) and individuals has been calling for a coherent and comprehensive approach which includes a senior Minister for Children, a Parliamentary Select Committee, child impact reporting, and incorporation of the Treaty of Waitangi and the Convention on the Rights of the Child into relevant legislation.⁸ There is no clear support from the outgoing or incoming government to achieve this.

Allocating appropriate budgetary and resource allocations to the wellbeing of children.

24. The absence of disaggregated budgetary data make it difficult for effective decisions to improve and maintain the wellbeing of children. It is impossible to accurately ascertain the extent to which the Government is meeting its obligations under Article 4 of the Convention on the Rights of the Child.

Climate change

25. By late 2007 the government had taken an active position on climate change. This topic has substantive issues for children in New Zealand and Tokelau, Cook Islands and Niue, other islands in the Pacific, and beyond. The impact of climate change will affect government’s ability to meet its obligations under UNCROC, and other human rights treaties. The Human Rights Council may like to raise with the New Zealand Government its approach to climate change and possible effects on children, particularly those in the Pacific islands.

C. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND:

Implementation of international human rights obligations

1. Equality and non-discrimination

Inequities for indigenous and Pacific children

26. Reports from government, non-governmental organisations and academic research repeatedly show that Maori and Pacific children experience higher rates of disadvantage as evidenced by child mortality rates, infant mortality rates, youth suicide rates, child injury rates, rates of low birth weight, immunisation rates, child smoking rates, child obesity rates, reduced participation in early

⁸ See www.everychildcounts.org.nz

childhood education, leaving school with no or low qualifications, children living in poor households and disadvantaged neighbourhoods, household crowding, rates of teenage incarcerations, child victimisation, etc.⁹

27. These inequities need to be recognised and addressed in a comprehensive manner. All children in New Zealand need support, but Maori and Pacific children need *immediate* support.

Children with disabilities

28. New Zealand's education policy focuses on the benefits of ensuring that all children with disabilities are able to participate fully at their local school alongside other children of the same age. Inclusive education is acknowledged within the New Zealand Disability Strategy and as central to ensuring inclusive communities.

29. Parents attempting to choose inclusive education for their child regularly report instances where their children are not given the opportunity to learn on the same basis as their peers - for example, schools may limit attendance, require parents to financially contribute to teacher aide hours, or refuse enrolment altogether. Many children with disabilities are only able to access school for limited hours and miss out on wider curricular activities and the sense of belonging within their school community.

30. IHC New Zealand Ltd (a non-governmental organisation which provides services for people with intellectual disabilities) has lodged a complaint with the Human Rights Commission against practices that exclude disabled children from full participation at their local school.

The Human Rights Act and discrimination on the basis of age

31. The Human Rights Act 1993, fails to provide protection from age discrimination to persons aged under 16. We consider that the failure of the Act to provide age discrimination protection for persons aged under 16 means the Human Rights Act itself is discriminatory. The Government position appears to be that the restriction under the Act is justified because making age discrimination claims open to under 16 year olds would be unworkable due to the necessary legislative restrictions that exist as a result of their diminished capacity.

32. However, we consider that the Human Rights Act should be amended so that all persons in New Zealand can enjoy their right to freedom from unreasonable discrimination on the basis of age. The amendments should include exclusionary sections to reflect public policy considerations.¹⁰

⁹ See for example, Ministry of Social Development (2008), *The Social Report 2008*; Ministry of Social Development (2008), *Children and Young People Indicators of Wellbeing 2008*; Fletcher, M, Dwyer, E (2008), *A Fair Go for All Children*, Office of the Children's Commissioner and Barnardos; Child Poverty Action Group (2008), *Left Behind*; New Zealand Child and Youth Epidemiology Service, (2007), *Monitoring the Health of New Zealand Children and Young People*.

¹⁰ Such sections already exist elsewhere in the Act.

2. Right to security of the person

Violence against children

33. We commend Parliament for amending Section 59 of the Crimes Act that removed the defence that allowed parents to use “reasonable force for the purposes of correction” in the administration of corporal punishment of children. There remains a groundswell of public opposition, which has led to a non-binding citizens-initiated referendum due to be held in July 2009.

34. Violence against children is a serious problem. In the five years to 2005, 36 children under 15 years died as a result of assault and the assault death rate for children under 5 years was 1.6 deaths per 100,000.¹¹ There are over 4,800 children in care and protection placements outside their home.¹²

35. An important government initiative to address family violence has been the cross-sector Family Violence Taskforce. Much more needs to be done in order to reduce and eliminate violence against children at home and school.

Optional Protocol to the Convention against Torture

36. The Human Rights Commission are preparing a report for the initial period 30 June 2007-08. Children are recipients of custodial care. The Human Rights Council may like to seek clarification of issues that have been identified in the initial report on the Optional Protocol to the Convention against Torture.

3. Administration of justice

Minimum age for criminal responsibility

37. Under the Crimes Act and the Children, Young Persons and their Families Act, the minimum age for criminal prosecution is set at 10 for murder and manslaughter and at 14 years for other offences. In 2003 the Committee on the Rights of the Child recommended New Zealand “raise the minimum age of criminal responsibility to an internationally acceptable level”. A Bill going through Parliament will, if enacted, bring New Zealand’s juvenile justice jurisdiction into line with international standards by increasing the jurisdiction of the youth justice system to include 17 year olds (who are currently treated as adults for criminal justice purposes). However, there is no proposal to raise the minimum age for prosecution.¹³ The incoming government has said they intend to reduce the age of criminal liability from 14 years to 12 years of age.

4. Respect for the views of the child

38. Although there has been some progress, we continue to be concerned about the limited opportunities that children have for meaningful participation, especially for children who are experiencing discrimination or disadvantage. An especially troubling example comes from the fact

¹¹ Ministry of Social Development (2008), *Children and Young People Indicators of Wellbeing 2008*. Ministry of Social Development (2008), *The Social Report 2008*.

¹² Office of the Children’s Commissioner (2008). *Statement of Intent 2008-2011*.

¹³ The Children, Young Persons and their Families Bill No 6.

that thousands of children contributed their views in consultation for the “Agenda for Children” but the Agenda seems to have disappeared.

5. Right to an adequate standard of living

39. Rates of poverty among children are high, much higher than rates among adults. In 2006/07 after taking housing costs into account, 230,000 children, or 22 percent of all children, were below a poverty line set at 60 percent of median income, and 170,000 (16 percent) were below a poverty line set at 50 percent of median income.¹⁴

40. Maori children, Pacific children, those in one-parent families, those where the family income is from a benefit, and those who themselves have a disability or have a family member with a disability, are especially likely to be living in poverty.¹⁵

41. “Working for Families” social assistance only helps children in families where a parent or carer is working - yet it is the children of beneficiaries who experience greatest hardship. Recent tax cuts did not assist the children of beneficiaries. The current world wide financial crisis will escalate child poverty.

42. Child Poverty Action Group (a non-governmental organisation working for the elimination of child poverty) has argued before the Human Rights Review Tribunal that the Government’s “Working for Families” social assistance package is discriminatory against children whose parents are on benefits. The Tribunal’s decision is awaited.

6. Right to health

43. New Zealand children have high rates of avoidable mortality and morbidity compared with similar countries. This is in part because of the effects of poverty and discrimination.¹⁶

44. Access to maternal and well child care is variable as demonstrated by variations in breastfeeding rates and low immunisation rates. There are often costs in accessing primary health care, especially after-hours services and fees for medicines.¹⁷ Older children (from 15 years of age) often have to use adult secondary and tertiary services. There is a serious shortage of mental health services for children, and of drug and alcohol services for children, partly because of a shortage of child mental health professionals and lack of workforce planning and service development.

¹⁴ Ministry of Social Development (2008), *The Social Report 2008*; Fletcher, M, Dwyer, E (2008), *A Fair Go for All Children*, Office of the Children’s Commissioner and Barnardos.

¹⁵ Fletcher, M, Dwyer, E (2008), *A Fair Go for All Children*, Office of the Children’s Commissioner and Barnardos.

¹⁶ Innocenti Research Centre (2007) *Innocenti Report Card 7. Child Poverty in Perspective. An overview of child well-being in rich countries*; Child Poverty Action Group (2008), *Left Behind*; New Zealand Child and Youth Epidemiology Service, (2007), *Monitoring the Health of New Zealand Children and Young People*.

¹⁷ Child Poverty Action Group (2008), *Left Behind*.

45. Maori health workers are more likely to be lower paid, have less formal qualifications and access to training opportunities and more likely to be in unregulated occupations and employed by non-governmental organisations. Maori providers need funding to enhance capacity as well as capability. There are similar issues for the development of the Pacific workforce and developing the capacity of Pacific providers. Training and development are needed to ensure that non-Maori and non-Pacific workforce and providers are able to address the issues of Maori and Pacific children appropriately and effectively.

7. Right to education

46. There are marked inequities in educational opportunities, participation and outcomes for children from different ethnic groups and socio-economic circumstances.¹⁸

47. Although under legislation primary and secondary schooling is supposed to be free, in reality schools rely on parental donations and may pressure parents to donate through excluding children from school activities when parents do not pay “voluntary” fees.

48. A new secondary school curriculum to commence in 2010, includes components on human rights.

49. Many children say they have experienced bullying in schools. Addressing violence in schools is one of the priorities in the New Zealand Action Plan for Human Rights. The Children’s Commissioner is undertaking an investigation into violence and bullying in schools.

50. The numbers of students subject to suspension or stand-down has increased substantially over the last decade.¹⁹ Maori students are over three times more likely to be suspended, and twice as likely to be stood-down as Pakeha students.²⁰ The Ministry of Education has launched initiatives such as its Student Engagement Initiative to address such disparities. However, the targeted nature of this Initiative has not led to widespread systemic change. There have been calls from the Office of the Children’s Commissioner and other organisations seeking the establishment of an independent tribunal or authority for the sector.

51. The limited support available for children with learning and behavioral disabilities contributes to these problems. Please also see comments above on children with disabilities.

¹⁸ Ministry of Social Development (2008), *Children and Young People Indicators of Wellbeing 2008*

¹⁹ In 2006 a total of 27,484 students were stood down or suspended. In 1996 a total of 10,016 students were subject to suspension or stand-down (at the time, a stand-down was called a ‘specified suspension’). Of particular concern is the high proportion of suspended students who are then excluded from school - in excess of 30%. (From 2007 Ministry of Education report on Stand-downs, suspensions, exclusions and expulsions – see www.youthlaw.co.nz/default.aspx?_z=189)

²⁰ See 2007 Ministry of Education report on Stand-downs, suspensions, exclusions and expulsions – www.youthlaw.co.nz/default.aspx?_z=189

8. Recent migrants, refugees and asylum seekers

52. Please see comments on Reservations to the Convention on the Rights of the Child. The Immigration Bill 2007 would if enacted, introduce the detention of children aged under 18 for periods of up to 96 hours.²¹ This proposal runs contrary to the established principle that detention of children should be a last resort measure and Article 37(b) of the Convention on the Rights of the Child.

53. Funding for learning English for children who are speakers of other languages applies only to the compulsory education sector and not children in early childhood.

54. The Ministry of Education has no refugee early childhood policies and therefore support within the sector is variable.

D. RECOMMENDATIONS FOR ACTION

Normative and institutional framework

55. International obligations

- New Zealand undertakes to withdraw its Reservations to the Convention on the Rights of the Child by January 2010.
- New Zealand set a timeframe to ratify the Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
- New Zealand supports the Declaration on the Rights of Indigenous Peoples.
- New Zealand and Tokelau work together to ensure the children of Tokelau have the same opportunities to enjoy their rights as other New Zealand children.

56. Legislative framework

- Government carry out a comprehensive review of all legislation affecting children for its harmony with the principles and provisions of the Convention on the Rights of the Child.

57. Institutional and human rights structure

- Government increase the budget allocation to the Office of the Commissioner for Children and maintains its statutory independence.
- Government formally endorse the New Zealand Action Plan for Human Rights and give regular progress reports on implementation.

58. Policy measures

- Government develop and implement a comprehensive policy for children.
- Government develop a coherent approach to ensure that the interests of children are considered at all levels of decision-making.
- Government review the collation and analysis of government budget information to work towards being able to know what resources go towards the wellbeing of children.
- The Treaty of Waitangi and the Convention on the Rights of the Child be incorporated into relevant legislation.

²¹ Under Clause 294 of the Bill.

Promotion and Protection of Human Rights on the Ground

59. *Equality and non-discrimination*

- Government give priority to developing and implementing a comprehensive programme to progressively reduce and eliminate the discrimination and inequities experienced by Maori and Pacific children, and work with Maori and Pacific peoples in doing this.
- Government implement the intention of the United Nations Convention on the Rights of Persons with Disabilities so that children with disabilities are not discriminated against in education, the workplace, or elsewhere.
- The Human Rights Act be amended to provide protection from unreasonable age discrimination against persons aged under 16 years of age.

60. *Right to security of the person*

- Government strengthen its actions to promote non-violent family discipline of children.
- Government give priority to the development and implementation of a comprehensive programme with clear objectives, sufficient resources, timeframes and milestones, and responsibilities for leadership and implementation, to eliminate violence against children, including violence at home and at school.

61. *Administration of justice and the rule of law*

- The Crimes Act be amended to increase the minimum age for criminal prosecution.
- The Children, Young Persons and their Families Act be amended to increase the jurisdiction of the youth justice system to include 17 year olds.

62. *Respect for the views of the child (please also see other Recommendations)*

- Government ensure that policies, programmes and services include measures to increase children's participation in their families, communities, cultures and society, including opportunities for their views to be taken into account in accord with their age and maturity.

63. *Right to an adequate standard of living (please also see other Recommendations)*

- Government set an official child poverty line and report progress annually.
- Government give priority to developing and implementing a comprehensive programme with clear objectives, sufficient resources, timeframes and milestones, and responsibilities for leadership and implementation, to reduce and eliminate child poverty, with special priority being given to the poorest children.

64. *Right to health (please also see other Recommendations)*

- Government ensure that all pregnant women and children have access to free quality health services, including public health, maternity, well child care, primary, secondary and tertiary services.
- Government develop and implement an intersectoral programme to reduce and eliminate disparities in health outcomes, particularly in pregnancy and the early years of life when the greatest potential exists for achieving improvement.
- Government take urgent action to addressing the shortage of mental health and drug and alcohol health services for children.
- Government give priority to Maori health workforce development, Pacific health workforce development; strengthening the capacity of Maori providers and Pacific providers; and

ensuring the generic workforce and generic services are able to address the issues of Maori children and families and Pacific children and families.

65. *Right to education (please also see other Recommendations)*

- Government support initiatives which promote human rights for children in education across all sectors from early childhood to upper secondary schooling.
- Government review its funding of schools so that all students are able to enjoy free education.
- Government take urgent steps to address the inequities of participation and outcomes in the education sector for Maori and Pacific students.
- Government review its special education funding policy to provide greater coverage of children with mild to moderate learning and behavioral disabilities.
- Government establish an independent tribunal or authority for the sector, which is able to review individual stand-downs, suspensions, exclusions and expulsions and other matters related to a school's exercise of its powers under the Education Act.

66. *Recent migrants, refugees and asylum seekers (please also see International obligations)*

- The Immigration Bill be amended to comply with Article 37 (b) of the Convention on the Rights of the Child.
- Government ensures that funding children to learn English applies to all education sectors.
- Government ensures that policies for refugee and asylum seeker children in early childhood education are developed promptly and implemented to enable these children to access support.