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New Zealand Fifth Periodic Report to the Human Rights Committee for the
International Covenant on Civil and Political Rights.
Alternative NGO Report

EXECUTIVE SUMMARY

There have been no substantive changes to our submission of 29 May 2009 concerning the wellbeing of children except as noted below.

The New Zealand Government met with the Human Rights Council in May 2009 in respect of the Universal Periodic Report (UPR) and issues affecting children were raised.

Noted in respect of children the List of Issues raised by the Human Rights Committee items 8, 16, 17 22/24 are of particular interest.

Recommendations have been made.

UPDATE OF ACYA SUBMISSION 29 MAY 2009

Selected Items

The Declaration on the Rights of Indigenous Peoples

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. The Government's stance was addressed in their UPR report para 10 and was raised at the Council meeting report in para 14 and some evidence of a possible shift in position was indicated in para 15. In para 81 of the Council report recommendations 8-10 urge New Zealand to reconsider their position. Some explanation should be given to the Committee to explain the

Government's current position and how this accords with their obligations under article 27 of the ICCPR.

Treatment of Persons deprived of their liberty

In relation to para 51 there has been a development in a Bill before Parliament "Children and Young Person and their Families (Youth Court Jurisdiction & Orders) Amendment" which seeks to increase the outcomes for criminal responsibility for 12 & 13 year olds, clearly contrary to UNCRC. Noted also para 76 of the UPR report for New Zealand. The select committee report of Parliament, noted opposition by child rights groups but has recommended legislation is put forward to Parliament. The Select Committee has set up an enquiry into current responses to offending by children (those up to 14 years of age) that may lead to different options.

The Government needs to clarify how this proposed legislation will in accordance with Article 14.4 assist with the rehabilitation of such persons.

The practice of children being kept in police cells overnight is addressed under Article 10. In response to an Official Information Act request the Ministry of Social Development advised ACYA on 3 April 2009 that for the year to June 2008, 284 children (down from 680 for 2005) were detained at an average of 2.2 bed nights. The Children's Commissioner advised they have figures for year to 30 June 2009 that show 117 children or young persons in for average of 2.1 days.

In respect of age mixing in prisons, police cells, court cells and mental health facilities the Reservation to Article 37 (C) of UNCRC remains, notwithstanding the statement in Para 51, and was identified as an issue in the latest CAT report on New Zealand. See also para 231 of the Government report, and articles 10.2(b) and 10.3 of the ICCP

The OPCAT 2008/9 Report "Monitoring places of detention" issued by the Human Rights Commission does not identify substantive issues for children and young people but indicates where improvements are needed including the development and consistent application of standard operating procedures in use of secure care.

HUMAN RIGHTS TREATIES AT A LOCAL LEVEL: AUCKLAND CITY

The Government in 2009 decided to amalgamate local governance of Auckland into one entity effective late 2010. The process was envisaged as three Parliamentary Bills, two of which are now Acts of Parliament. The third, Local Government (Auckland Law Reform) Bill is currently before Parliament.

The Auckland city will have a population of one million, with over 200,000 children aged below 18 years. The amalgamation has engendered much debate on issues of democracy, and the balance of power and allocation of resources between State and local governance. The outcome of the debate affects the lives of children. The Children's Commissioner is making a significant contribution to the debate. ACYA made a submission to a Select Committee as did UNICEF NZ.

One issue that is unresolved the application of Human Rights Treaties at a local level. In respect of children the local governance issue runs alongside delegated authority under legislation for health, through District Health Boards, and education, through Boards of School Trustees, guided by Ministry of Health and Ministry of Education respectively. In an exchange of letters with the then Minister of Local Government advised ACYA on 2

April 2008 that “As a result, while central government takes its UNCROC commitments very seriously, it does not issue directives to local bodies or develop specific procedures for their compliance as referred to in your letter”. ACYA disagrees with this position.

The Committee may like to explore the issues with the Government.

UNIVERSAL PERIODIC REVIEW MAY 2009

The following Recommendations that affect the wellbeing of children were made to the New Zealand Government. Each was accepted except that for Recommendation 48.

Recommendation 3 OP-CRC-SC (Articles 8 and 24)

New Zealand signed this optional protocol in December 2000 and the Child and Family Protection Bill has been prepared to address the remaining obstacle to ratifying the Optional Protocol.

Recommendations 8-10 Declaration on the Rights of Indigenous Peoples (Article 27)

We await evidence of a suggested move to support the Declaration.

Recommendations 25-28, 30-32 Disparities of outcomes (Articles 24 and 27)

Noted the Government efforts to reduce the disparities of outcomes for health, education and social welfare which affects Maori and Pacific Island children particularly. Given the economic downturn there is evidence of increased vulnerability.

Recommendation 36 Education (Article 20)

Noted the New Zealand Curriculum will aid the fight against xenophobia and racism.

Recommendation 46 –Children with disabilities (Articles 2 and 24)

While we note a commitment to more resources for services for children with disabilities a recent decision by Government to remove financial assistance to special needs children undermined that statement. Following a public outcry the financial assistance has been reinstated but we await evidence of increased funding. The more general point is that the funding for children with disabilities in the education sector is very complicated and under heavy pressure as to its adequacy.

Recommendation 48 Age of criminal responsibility (Article 14 and 24)

Of concern is the statement that New Zealand does not accept the necessity to increase the age of criminal responsibility, that runs counter to the 2003 Recommendation in paragraph 21 a) of the Committee on the Rights of the Child.

Recommendation 49 Age mixing in prison (Article 10)

Noted further work is required to address this issue but no statement is made of a date to remove the Reservation to UNCRC. Paragraphs 24, 34 and 57 of the

report address this issue.

Recommendation 50-51 child abuse (Article 3, 7 and 24)

While the Government accepts the recommendations to take action, there is no evidence that there is any reduction in the reporting of violence to children.

In 2007 legislation, Section 59 Crimes Act, was amended to prohibit the defence of reasonable force. A public non binding referendum has been held and by an overwhelming majority the public made it clear that “smacking” should be permitted. The Government and Opposition are remaining firm and not seeking to change legislation. Also see below at item 23 of List of Issues.

Recommendation 56 Trafficking of children (Articles 8 and 24)

Noted the Government now recognises there may be a problem, previously denied, associated with trafficking and bonded labour.

LIST OF ISSUES RAISED BY THE COMMITTEE

The following items affect the lives of children:

No 4 Family Court. We received the following advice: A total of 63,171 substantive applications were filed in the Family Court in the year between September 2005 and August 2006. Between 70% and 75% of parenting order cases under the Care of Children Act are disposed of within 52 weeks, the majority of these within 33 weeks. About 80% of all types of cases under the Act are disposed of within 52 weeks. In 2006 54.3% of parenting order cases were disposed of within 33 weeks, with an additional 18.3% within 52 weeks.

From the children’s perspective - The balancing act that needs to be conducted is in weighing the risk associated with making a determination that allows access too quickly where key information is still in the pipeline where there are serious allegations in regards to violence/abuse v denying children access to a parent who has potentially not done them any harm. For this small percentage of serious cases we believe, based on the stats the current process is not unreasonable and for unusual cases such as E.B a delay is justified. Of course this does not necessarily prevent a parent from requesting supervised access until a determination is made.

No 8 “Ruatoiki” –Operation 8. Children were involved.

No 16 Tasers: there is no specific Police guideline for use on children

No 17 Trafficking: Children are not specifically identified in the Action Plan, and there should have at least been mention of the role of Child Youth and Family in such circumstances.

No 22 Section 59 Crimes Act. The legal status to protect children from corporal

punishment remains which satisfies the child rights perspective. A report to the Prime Minister dated 1 December 2009 recommends the legislation remains.

No 23 Child Abuse. Serious incidents and non accidental deaths continue to be reported and the number of cases requiring Child Youth and Family intervention continues to rise. The Children's Commissioner In his Statement of Intent 2009-12 addresses the issue on pages 6 &7, and in the Annual Report 2009 pages 12, 13 and 15, which include reference to the "Taskforce for Action on violence within Families". (www.occ.org.nz). Continuous monitoring of child abuse, and remedial steps needs to continue. The Commissioner is of the view that two challenges are to do things that will reduce the underlying incidence of maltreatment (and the most common types of maltreatment are emotional abuse and neglect, not physical and sexual abuse) and to respond to maltreatment when it is identified in ways that will reduce re occurrence.

No 24 Minimum age for criminal responsibility. See note above.

RECOMMENDATIONS

It is recommended that the Committee ask the Government

a) In respect of the Declaration on the Rights of Indigenous Peoples to clarify their intentions on plans to accept the Declaration, in accordance with Article 27.

b) to identify barriers to removing the Reservation on Article 37c) of UNCRC and compliance with ICCPR Articles 10.2(b) and 10.3 in respect of the separation of juvenile offenders, and to explain the current situation on juveniles being detained in police cells overnight.

c) to explain their perceptions on the application of Human Rights Treaties at a local level.

d) in respect of child abuse, in accordance with Articles 3, 7 and 24 to identify why notifications to Child Youth and Family continue to increase, confirm that Child Youth and Family, Family Courts and New Zealand Police have adequate resources to follow up and address abuse notifications, and require the Government to give a further report after twelve months.

e) to justify the proposed legislation in the "Children and Young Person and their Families (Youth Court Jurisdiction & Orders) Amendment" that concerns 12 and 13 year olds in relation to Articles 14 and 24.

P. Shuttleworth
ACYA COMMITTEE

Note:

The ACYA submission in May 2009 is available at : <http://www.acya.org.nz/?t=28>

The Report to the Prime Minister is the "Review of New Zealand Police and Child Youth and Families

Policies and Procedures relating to the Crimes (Substituted Section59) Amendment Act” dated 1 December 2009
<http://yesvote.org.nz/files/2009/12/s59-report-to-prime-minister.pdf>

The OPCAT report 2008-9 is available at:

<http://www.hrc.co.nz/home/hrc/newsandissues/reporthishighlightsinadequatetreatmentofdetainees.php>

Information on the Taskforce for Action on violence within families. is available at:

<http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/action-family-violence/index.html>

The CRC Concluding Observations (CRC CO) issued in 2003 are available at:

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

New Zealand Universal Periodic Review outcome:

<http://www.mfat.govt.nz/Foreign-Relations/1-Global-Issues/Human-Rights/Universal-Periodic-Review/human-rights-review.php>

The Government response to List of Issues for 5th Periodic report is at:

<http://www2.ohchr.org/english/bodies/hrc/hrcs98.htm>

The Government 5th Periodic Report ICCPR is at

<http://www.mfat.govt.nz/downloads/humanrights/5th-ICCPR-report.pdf>

Auckland Governance Legislation

http://www.parliament.nz/en-NZ/PB/SC/Details/AucklandGL/1/3/f/00DBHOH_BBSC_SCAGL_1-Business-before-the-Auckland-Governance-Legislation.htm

The Children’s Commissioner submission in respect of Auckland governance is at

http://www.occ.org.nz/media_speeches_and_submissions/submissions

UNICEF NZ: UNCROC and local government

<http://www.acya.org.nz/?t=40>

This submission has been prepared by the ACYA Committee and the views expressed in it may not represent the views of each ACYA member. Websites quoted were visited at the date of this submission.