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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

In respect of Civil and Political Rights issues

If the purpose of the Covenant is the current and future wellbeing of a well ordered society then issues to be addressed in the New Zealand Government 5th Periodic Report should include:

- a) An explanation of their current position towards acceptance of the Declaration of Rights of Indigenous Peoples
- b) The growth of criminal gangs in the last ten years and the extensive use of pure methamphetamine, known as “P” in society
- c) The effects of climate change not only in New Zealand but also in those Pacific Island territories that have New Zealand citizens, together with environmental issues including the need to improved air and water quality.

In respect of the wellbeing of children

Across the Articles there are four issues that need to be addressed by Government to substantially improve the outcomes for current and future children, namely:

- d) Address the issues of child poverty by establishing a number of key indicators and working within a set timetable to reduce them progressively
- e) Identify the extent of child abuse, its causative factors and set out a programme to reduce it substantially in the next five years
- f) Admit the disparity of outcomes for Maori and Pacific Island children in health and education, and work with local communities to reduce the differentials within five years
- g) Create a comprehensive policy and plan for children by December 2009.

In respect of child rights

The Government needs to:

- h) Complete the work necessary to remove the Reservation to Article 37(C) of UNCRC, age mixing in prisons /detention, and provide education and health facilities to children not legally in New Zealand by the end of 2009
- i) Complete the adoption legislative changes so that the Optional Protocol to CRC Sale of Children signed in 2000 can be ratified by 30th June 2010
- j) Determine if it is committed to removing the Reservation to Article 32(2) of UNCRC, no minimum age for child work, by 30th June 2010.

INTRODUCTION

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 recommendations of the United Nations Committee on the Rights of the Child; and
- promoting opportunities for the voice and participation of children and young people.

In 2003 ACYA produced and published Children and Youth in Aotearoa 2003, the New Zealand NGO Report on New Zealand's implementation of the UN Convention on the Rights of the Child (NGO Report). The NGO Report was presented to the UN Committee on the Rights of the Child in Geneva in June 2003, accompanied by a video funded by ACYA and produced by New Zealand children called Whakarongo Mai / Listen Up.

In September 2008 ACYA made a submission to the UN Human Rights Council in respect of the Universal Periodic Review (UPR) and subsequently the New Zealand Government met with the Council on 7th May 2009. The Council's draft report was issued on 12 May 2009 and is available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/NZ/A_HRC_WG6_5_L7_NZ_E.pdf

We made a submission to the Government draft 3rd & 4th Periodic report to the Committee on the Rights of the Child (CRC) in October 2008 and the Government report was sent to the CRC in November 2008.

In March 2009 ACYA made a response to the Government Fifth Periodic report to the United Nations Committee Against Torture.

Since the Fifth Government report for ICCPR was submitted, a new government was formed in November 2008 and from a child related stance changes in direction have been signaled which are of concern and there is no clarity on their approach to child related issues.

This submission has been prepared by the ACYA Committee and the views expressed in it may not represent the views of each ACYA member.

For the purpose of this report reference to "children" is defined as those under 18 years of age, as in Article 1 of the Convention on the Rights of the Child (UNCRC). According to the 2006 census there were 1.05 million children out of a population of 4.1million

Unless otherwise stated, reference to headings, paragraphs or pages refers to those in the Fifth Government report for ICCPR

PART I : GENERAL

Overview

Paragraph (para) 9 In respect of the third bullet point of the Human Rights Treaties, the Government has not finalised steps to remove the two Reservations noted to UNCRC, and failed to mention the third Reservation to Article 32 (2) in respect of no minimum age for work.

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 draft 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.

Organised Crime and Drug abuse

There is no general comment in the report on the effect of organised crime in the country. The New Zealand Police "Briefing to Incoming Minister 2008" makes mention of the establishment of the "Organised and Financial Crime Agency of New Zealand (OFCANZ)" but no detail is given, but the Annual Report 2007/8 page 11 gives an overview. In a subsequent text there is reference to "the abuse of drugs a factor in a substantial proportion of offending. Drugs and anti-social behaviour offences totalled 58,895 for 2007/8. of which 19,000 relate specifically to drugs

In a recent newspaper "Weekend Herald" dated 16th May 2009, lead article headed "waging war on P", the police reportedly seized more than 3,000,000 pills estimated to be less than a third in circulation. A leading judge stated that it accounts for 50% of court cases. The article identified 10 homicides directly connected with P within 8 years.

Climate change

An extract from the Government website: "Countries need to reduce their emissions to limit further climate change. To achieve that, a collective international response is required. To make its contribution New Zealand has introduced programmes such as its emission trading scheme to reduce future emissions."

There is much debate in society about the correct response to climate change and some resistance. The ramifications to get it correct are most important for the succeeding generations.

Air quality

In the Social Report 2008 under the heading "Physical environment" there are two pages devoted to this topic. Christchurch and Dunedin as well as a number of towns are below international standards. From the Government website:

"New Zealand has good air quality in most locations for most of the time. However, coal and wood used for home heating and exhaust emissions from transport can affect air quality in about 30 locations, particularly during winter. About 53 per cent of New Zealanders live in these affected locations.

Pollutants in the air can affect our health, because we inhale them into our lungs. Vulnerable groups such as the very young, the very old, and people with underlying respiratory or cardiac disease are particularly at risk. About 1,100 New Zealanders die prematurely each year from exposure to air pollution. The number of New Zealanders who die prematurely from traffic-related air pollution is similar to the number killed in road accidents each year"

This has serious repercussions for children especially those who have breathing difficulties.

Water quality

In the Social Report 2008 under the heading "Physical environment" pages 98/9 are devoted to this topic. Only 79% of the drinking water meets the Drinking Water Standards for *E coli* and 67% for *cryptosporidium*. This means that a significant number of children particularly in remote areas face the risk of water-borne disease.

PART II : INFORMATION RELATING TO SPECIFIC ARTICLES

Overview

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 practice of children being kept in police cells is addressed under Article 10.

The Reservation to Article 37 (C) of UNCRC age mixing in prisons, police cells, court cells and mental health facilities 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.

Article I Right to Self- Determination

Tokelau

Para 55/56 (see also para 442/460). As mentioned the Self Governing referendum was once again lost by a narrow margin. Our concern is that the children of Tokelau, who are citizens of New Zealand, have access to the same rights and safeguards as the children living in New Zealand. We address this later in this submission.

Article 2 Legislative matters and freedom from discrimination

CPAG V Attorney General

Para 81 addresses the case CPAG V Attorney General. This is an extract from the CPAG website taken at 20 May 2009 "*Child Poverty Action Group NZ has obtained a legal decision confirming the In-Work Tax Credit is discriminatory. This is because children whose parents cannot meet a work test are denied the support needed to keep them out of poverty. CPAG, represented by the Office of Human Rights Proceedings, has received a decision confirming that real and substantive discrimination exists in the IWTC, from the Human Rights Review Tribunal (Dec 2008). Yet the Tribunal has also decided the discrimination is justified. At least 200,000 of our poorest children are affected.*"

NZ Action Plan for Human Rights

Paras 82-88 New Zealand Action Plan for Human Rights, "Mid Term Review" has been issued. Action Points 2 (seventeen pages) and other texts cover a wide range of child related issues. Some progress has been made but there are substantive concerns still to be addressed. Many of the issues are canvassed in the government 3rd & 4th Periodic Report to CRC.

Article 3 Equal Rights for men and women

Para 106. Note that young workers under 16 years of age have no minimum wage and that there is no minimum age for work (Reservation to Article 32 (2) of CRC)

Article 4 Derogation of rights in an emergency

Para 131ff .There is no mention under Article 4, public emergency, of the laws governing the situation following the effects of an Earthquake, Volcanic Eruption, Tsunami or act of Terrorism. ACYA has concerns for children caught in such situations.

Article 6 The Right to Life

Para 133. The Social Report 2008 is now available. The infant mortality rate for Maori and Pacific Island babies should be ascertained.

Abortion

We note no comment has been made on abortion legislation, its effect in society, and the arguments internationally on the appropriate or inappropriate termination periods being debated. Abortion is addressed on pages 85/86 in the UNCRC Implementation Handbook. New Zealand adheres to the common law "born alive" principle, where a child has no rights until it is born alive. This question of interpretation of the law has been raised by the Court. Of the 18,382 abortions registered in 2007, 104 were for 11-14 year olds and 4,173 for 15-19 year olds

Immigration Bill

Para 138 Immigration Bill. The future of this Bill is uncertain and ACYA made a submission that raised a number of issues where clauses were detrimental to the wellbeing of children.

Article 7 Torture , Cruel or Degrading Treatment

Fifth periodic Report under Convention against Torture

Paragraph 139ff The Committee considered this report on 1 & 4th May 2009 and issued its report CAT/C/NZL/CO/5 dated 14th May 2009. Paragraph 8 addressed Juvenile Justice in some detail.

Tasers

Para 146 Taser Trial. Tasers are now given to police and the Standard Operating Procedures do not have any direction of their use on children. The Committee Against Torture para 16 came out strongly against the use of Tasers

Article 8 Slavery and Trafficking

Trafficking

Para 151 quote *“The New Zealand government is committed to maintain its record as a country with no reported incidence of human trafficking.”* The USA has questioned this position and in the UPR Report para 45 recommended a legislative review, and this was carried through in Recommendations 56 & 57

Article 9 Right to Liberty

Anti- terrorism event- Operation 8

Page 37 ff. There has been major public concern of events of 15th October 2007 in respect of the Police anti-terrorist investigations carried out in Ruatoki, (Operation 8) both as regards road blocks and the holding of children in a manner that was prejudicial to their wellbeing. We understand that a civil rights QC has carried out independent investigations subsequent to the event. Numerous Firearms Charges have been laid by the police. This was mentioned in the government UPR report at paras 113/115

Human rights issues affecting any such children are:

- How many children and young people were caught up in the operation
- Did they received appropriate care as the incident unfolded
- Were they treated inappropriately, or discriminated against, by reason of their age or gender or their parents' or legal guardians' race or political opinion

Article 10 Treatment of Persons Deprived of their Liberty

Para 200 the Corrections (Mothers with Babies) Act is in force see Government UPR report para 71, but there is little evidence that it is working in practice.

Para 231/2 In respect of age mixing of juveniles the Government should indicate the present position to remove the Reservation to CRC. This also was raised in the Government UPR Report para 72 and a response was made in the HRC UPR report para 69 and recommendation 49. It was additionally raised in the CAT Report Para 8 recommendation (C).

Children in Police cells

The number of young people held in police cells has reduced from 680 in 2005 to 284 in 2008. The average bed night in 2008 was 2.2 days. By age blocks the numbers for 2008 are Age 14: 54, age 15: 89, age 16:136, age 17:7. Police cells are not geared for detention of young people and are required because of shortage of beds in Youth Residences.

Article 16 Right to Recognition (not addressed)

In respect of Article 16 where everyone is to be recognised before the law, ACYA submits that for those under 16 to be subject to a restriction under the Human Rights Act (particularly in respect of no protection for minimum age/wage) is in breach of this Article.

Article 17 Privacy

Para 265 ff. No mention is made of the Broadcasting or Advertising Standards Associations that protect children or the issues that have arisen. However the definition of children is those below 14 years and in a recent submission by ACYA to the Advertising Standards Association the current definition was challenged, and a recommendation made to amend the definition in line with Article 1 of UNCRC.

Article 23 Giving our Children best start in Life

Absence of a plan for Children

Para 331. While there are a number of innovations there is no coordinated plan or goals that have been set in spite of a Recommendation by UNCRC at para 11 to “have a permanent mechanism to coordinate activities...”. Reference in other Government text to the “Agenda for Children” is now obsolete as that programme has disappeared, apart from a casual mention in formal reports .

Family violence

Para 341ff addresses the issue of Family Violence and makes reference to the Taskforce (para 343). Child abuse is a very serious problem in New Zealand. Calls notified to the Child Youth and Family exceed 65,000 (up from 10,000 seven years ago) per year and a substantive number need serious investigation. A recent case involved a 3 year old child put in a clothes dryer, who having suffered other abuse died. One commentator indicated 45 new cases of child abuse are reported every day to child Youth and Family. There are over 4,800 children in care and protection placements outside their home. The Committee should ask the Government for a briefing on their policy of abuse reduction.

Article 24 Protection of Children

Section 59 Crimes Act – Corporal Punishment

Para 359. There is a non- binding Public Referendum to be held in July/August 2009 seeking to reverse the legislation. The Child Right movement clearly wishes the legislation to remain. There is a review clause in the Act which can be triggered in 2010.

Review of Children, Young Persons and their Families Act.

Para 364. The new Government has not indicated whether it will support this Bill and that needs to be raised by the Committee.

Child Support Act 1961

Para 366/373 The committee should seek to establish how much is owing both in New Zealand and Australia over 3 months. It should also ask if steps are being taken to extend the Reciprocal Agreements with other countries, especially China, Hong Kong and the Pacific Islands.

Age of Criminal Responsibility

Para 374 The Bill mentioned is known as CYF (No 6) and is referred to previously under Para 364. If passed in the format indicated it will meet a UNCRC 2003 recommendation at paragraph 21 (b). However see Part 11, Overview for a contrary move by Government.

Reservations to UNCRC

Para 376 children illegally in NZ- removal of reservation. While the Government has made progress the Reservation has not been withdrawn.

No mention is made under Article 24 of the failure to remove the Reservation to Article 32 (2) minimum age for work. There is no evidence of a will to action this. There has been some attempt to clarify ILO 138 in respect of "Light Work", but that has been in progress for five years.

Right to Nationality

The Citizenship Amendment Act has the effect of raising questions of the nationality of children born in New Zealand to a mother who is not a resident of New Zealand. No child born in New Zealand can be stateless. However there is a period where the nationality of the child is undecided. The position needs to be monitored as there are around 500 cases a year that need to be resolved and it may take more than three months to clarify nationality.

Right to Protection as a Minor- Child Poverty

There is a serious problem of child poverty in New Zealand. 16% of dependent children were in households with incomes below the 60% threshold (with equivalised disposable income net of housing costs), Social Report 2008.. The report for the Office of the Commissioner for Children by M Fletcher and M Dwyer entitled "a Fair Go for all Children" has an extensive list of recommendation. In addition the Child Poverty Action Group "Left Behind" has detailed research. No evidence is available that the Government has considered these reports seriously.

Optional Protocol to CRC : Sale of Children

The Government signed this Optional protocol in 2000 but through failure to address some technical issues in respect of adoption law reform has not ratified the Protocol. The Council report on UPR addressed the issue in para 35, and it was made a Recommendation No 3

Article 25 Public Affairs

Local government

Para 393/6 address Local Government, and in our understanding this includes Local Authorities, District Health Boards, and School Trustee Boards. We have a major concern with the failure of Government to advise Local Government on the need to comply with Human Rights Treaties. In an exchange with the Minister of Local Government we were advised there is no responsibility. In a report by the Office of the Commissioner for Children "Undertaking child assessments in Aotearoa" the following statement appears on page 26: *"This was because in the initial conversations council colleagues who were informed about UNCROC quickly dismissed the Convention's relevance to local government"*.

Article 27 Minorities

Social report 2007

In respect of Para 413 note the Social Report 2008 is now available

In respect of Maori the education outcomes are often inferior to those of the general school populace and this is evidenced in the Annual Reports and Statement of Intent of the Ministry of Education. The Social Report 2008 page 39 Table K2.2 showing the proportion of school leavers with Level 2 NCEA as European 76%, Maori 39% Pacific Island 56%

Education and Language

Para 420ff There is no mention of Pacific Island experience that in many factors is at a disadvantage to the general populace, see para 413 above.

Para 423. A revised New Zealand Curriculum commences in 2010, and “human rights” is now a recognized topic. There seems however to be no resource material.

TOKELAU

Para 442. The 2003 Concluding Observations of the UN Committee for CRC raised the specific issue of the CRC not applying to Tokelau. ACYA as expressed its concerns to the Ministry of Foreign Affairs that under the present arrangements there can be no certainty of the welfare of children in Tokelau who are NZ citizens. The Government produced a separate report for Tokelau under the UPR review but no observations appear to have been made by the Council. NZAid, that was an independent arm of Government, has had its structure changed and it is not clear what effect that will have. Currently around \$14 million annually is donated to Tokelau that has a population of 1400 of which around 600 are children.

RECOMMENDATIONS

We ask the Committee to seek further information from the New Zealand Government, in order to promote the wellbeing of children, as follows:

GENERAL

1. The current position on the Declaration on the Rights of Indigenous Peoples
2. What action is being taken to address criminal gangs and the use of “P”
3. How is society, and the environment, to be protected from climate change
4. What steps are being taken to improve air and water quality
5. What action is being taken to identify the actual extent and potential effects of child poverty
6. Has the extent of child abuse been identified and what steps are being taken to reduce the affects of adults abusing children, with a quantifiable reduction by June 2011
7. How is the Government going to reduce the disparity of outcomes for Maori and Pacific Island children over a range of issues, including education, health, poor housing
8. Will the Government be able to remove the Reservation to Article 37 (c) UNCRC and provide appropriate health and education services to children not legally in New Zealand by the end of 2009
9. Is legislation able to be passed by 30 June 2010 to provide the appropriate adoption reform to enable ratification of OP-CRC- SC
10. Is the Government prepared to accept ILO 138 and legislate accordingly so the Reservation to Article 32 (2) UNCRC can be withdrawn by 30th June 2010
11. The steps necessary to complete a comprehensive policy for children by the end of December 2009.

Article 1

12. Can the Government give assurances that the wellbeing of children in Tokelau is adequately monitored and services consistent with facilities of a remote New Zealand region are available, and describe the level of service that will be provided in the future.

Article 4

13 The legislative effects applicable when a natural catastrophe occurs particularly for the

safety and wellbeing of children.

Article 7

14. Experience to date on the use of Tasers, and justification for their use on children.

Article 25

15. What is the justification for the Government not to advise and monitor Local Government compliance with Human Rights Treaty obligations.

P. Shuttleworth
ACYA Committee

NOTES

1. Information about the 5th Periodic Report for New Zealand is at

<http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>

2. The Government 5th periodic Report to the UN Human Rights Committee for ICCPR is at:

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

3.. The 3rd & 4th periodic Report for UNCRC- Rights of the Child

<http://www.myd.govt.nz/Publications/Rights/thirdandfourthperiodicreportforthe.aspx3>.

4. Convention Against Torture (CAT) Periodic Report

<http://www2.ohchr.org/english/bodies/cat/cats42.htm>

5. Government website for Climate policy:

<http://www.mfe.govt.nz/issues/climate/policies-initiatives/index.html>

6. Government air quality website

<http://www.mfe.govt.nz/publications/ser/enz07-dec07/html/chapter7-air/page1.html>

7. Government drinking water standards

<http://www.drinkingwater.co.nz/default.asp>

8. Human Rights Commission: NZ Action Plan: Mid term review

http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/08-Dec-2008_11-08-45_Mid-Term-Review_Action_Plan_Human_Rights.html

9. Child Poverty Action Group

<http://www.cpag.org.nz/>

10. The Social Report 2008

<http://socialreport.msd.govt.nz/tools/downloads.html>

11. Children and Young People: Indicators of Wellbeing in New Zealand in 2008

<http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/children-young-indicators-wellbeing/>

12 Office of Commissioner for Children: "A Fair Go for all Children"

http://www.occ.org.nz/_data/assets/pdf_file/0017/5129/CC_ChildPovertyReport_070808.pdf

13 Child Poverty Action Group publication: Left Behind

<http://www.cpag.org.nz/resources/publications/res1213939891.pdf>

14. Abortion law case: extract:

In the High Court in Wellington this month, Justice Simon France rejected the committee's bid to rule out expert medical evidence, produced by Right to Life, about the viability of fetuses being removed for medical treatment and returned to the womb.

The judge said Right to Life's claim included questioning the definition of when the law deemed someone to be alive and thus had human rights under the New Zealand Bill of Rights.

New Zealand adheres to the common law "born alive" principle, where a child has no rights until it is born alive.

"Right to Life sees the 'born alive' rule to be a potential impediment to its case and wants to be in a position to contest that rule if either committee or the court see it as relevant," he said.

"The recent text, Medical Law in New Zealand, notes that generally New Zealand adheres to the born alive rule, although there have been inroads. It suggests there is scope for future challenges to its continuing relevance

<http://www.stuff.co.nz/the-press/news/christchurch/26208> viewed at 20.5.09

The judgement.

http://www.right-to-life.org/RIGHT%20TO%20LIFE%20N%20Z%20INC%20%28JUDGMENTS%20TEMPLATE%29_JTK_603.pdf

The 2008 Annual Report of the Abortion Supervisory Committee is seeking an appeal page 10

<http://www.abortion.gen.nz/asc/documents/abortionreprt2008.pdf> viewed 20.5.09