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14 March 2012

Maori Affairs Committee Secretariat,  
Bowen House,  
Parliament Buildings  
Wellington.

**Inquiry into the Social Determinants of Wellbeing for Maori children:  
Submission No 1 Shuttleworth P**

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**GENERAL SUPPORT**

I support the Inquiry into the Social Determinants of Wellbeing for Maori children. In this context the Government ratification of the Convention on the Rights of the Child (UNCROC) along with the other six major Human Rights Treaties as they affect Maori children should be of paramount importance in addressing these issues.

The Treaty of Waitangi in this process is to be recognised along with all cultural norms that face western style Human Rights Treaty obligations.

This submission has been influenced by the Green Paper for vulnerable children.

**MAJOR RECOMMENDATIONS**

I make the following Major Recommendations

- a) The Government immediately review the Children's Commissioner Act 2003 with the Commissioner to ensure that it meets interim needs to protect the wellbeing of Maori children
- b) The Children's Commissioner be empowered to increase his role in the wellbeing of children
  - i) By meeting with the Prime Minister and Cabinet annually around 30 September to provide a Report Card covering a comprehensive review on the wellbeing of Maori children based on UNCROC
  - ii) Through a progressive completion of Memorandums of Understanding with key child related agencies starting with Ministry of Social Development, and then progressively

Ministry of Health, Ministry of Education, Ministry of Justice, New Zealand Police, Department of Corrections, Te Puni Kokiri

- iii) That such Memorandum of Understanding bind the Agency to compliance with UNCROC through training of staff and contractors and set out agreement on service provisions, data collection, rights of monitoring and site visits, discussions on pending legislation
- iv) By the Commissioner's annual budget to be increased from \$2.2m to \$3.5m and that the increased funding is provided by contributions from each of the Ministers in paragraph ii) above
- v) Through a Plan of Action for the wellbeing of children be introduced by 30 June 2013 giving time for the Children's Commissioner to work with Government, its Ministries and civil society
- viii) By being required to formally report to Parliament on aspects of any new or amending legislation that does not comply with UNCROC

### **CONVENTION ON THE RIGHTS OF THE CHILD**

The 3<sup>rd</sup> & 4<sup>th</sup> Government Periodic Report was issued in November 2008. Action for Children and Youth Aotearoa (ACYA) issued their report "Children and Youth in Aotearoa 2010" (CYA 2010) in June 2010. In October 2010 the Government issued a response to the List of Issue raised by the Committee on the Rights of the Child (CRC). In February 2011 CRC issue their Concluding Observations. A letter to the author dated 23 February 2012 from the Ministry of Social Development indicates work has commenced on addressing the Concluding Observations and that ultimately the responses to the Green Paper and this Inquiry will also influence the suggested Maori Children's Action Plan..

In particular I request the three Reservations to the Convention should be withdrawn

- a) General one in respect of undocumented children
- b) in respect of Article 32.2 re no minimum age for children in employment
- c) in respect of Article 37(c) age mixing in prisons

One of the Working Papers in support of CYA 2010 was entitled "Tamariki Maori : a Maori view of children's rights" and it is particularly relevant to this enquiry

### **CRC CONCLUDING OBSERVATIONS FOR MAORI CHILDREN**

The CRC Concluding Observations addresses issues of relevance to all children but had these specific references to Maori children. An "R" notes a Recommendation.

Paragraph

11(a) R Legislation is to be consistent with the Convention "and it supersedes any existing customary law, including Maori customary law"

24 Discrimination against Maori population including children

25(a) R The State Party to take full protection against discrimination " taking urgent measures to address disparities in access to services of Maori children and their families"

25(b) R The State party..." taking affirmative action for the benefit children in vulnerable

situations such as Maori ...children”

31 R (Family environment) The State party to assist parents.... “ and in the case of Maori...populations, culturally appropriate services to enable them to reach their full potential”.

36 (Health) The Committee is concerned “ by the disparities in infant mortality rates between the Maori population .... and in immunisation rates which tend to be lower among Maori children”

37 R The Committee “recommends that inequality in access to health services be addressed..”

38 (Breastfeeding) “ The Committee is also concerned that Maori children are more likely than others to be given solids before the age of four months”

39 R The Committee recommends exclusive breastfeeding up to six months “with a particular focus on raising the awareness of the Maori population about the benefits of exclusive breastfeeding...”

40 (Adolescent health) The Committee concern of teenage pregnancies....especially among girls...of Maori background and the high suicide rates of teenagers, particularly Maori teenagers”.

41 R The committee calls for improved services to address those items in paragraph 40

44 (Education) The Committee concern for children who cannot enjoy their full right to education). “ ....Maori ...children.....”

45 R The Committee commends a long list of initiatives to improve educational improvements.

57 R (Minority groups). The committee notes and asks the State to take into account the visit by the Special Rapporteur on Indigenous People, references the Treaty of Waitangi and notes the General Comment 11 on Indigenous Children.

61 R (Dissemination) The Committee asks for dissemination of all UNCROC material “available in the languages of the country”.

## **POLITICAL DECISION MAKING PROCESS REVIEW**

In reviewing the effectiveness of any plans to improve the wellbeing of children it is necessary to look at the reporting process to Parliament. At the moment there is no Minister for Children, no Child Select Committee or any requirement for Child Impact Statements. There has not been any review of the Children’s Commissioner Act 2003. UNCROC is not recognised in legislation.

Each of these propositions should receive consideration. In the short term the functions of the Children’s Commissioner can be extended. One issue that needs addressing is for the Commissioner to be required to report to Parliament if a Select Committee Report breaches the intention of UNCROC similar to the Declaration of Inconsistency by the Human Rights Review Tribunal, in situations such as CYP &F (Youth Court Orders & Jurisdiction) Amendment Act..

My own views of changes to the political decision process and a monitoring programme are set out in the Major Recommendations above.

## **RESPONSIBILITY OF LOCAL GOVERNMENT**

In a letter dated 9 December 2011 the Hon Murray McCully as Minister of Foreign Affairs confirmed to the author that Local Government was bound under delegated authority to the obligation of Human Rights Instruments ratified by the Government. This is reflected on page

7 of the Human Rights in New Zealand 2010 report. Accordingly all matters affecting the wellbeing of Maori children in terms of UNCROC require the compliance of Local Government. Government should make this clear to the appropriate bodies.

### **DEFINITION OF CHILDREN**

As part of this review for the protection of children it will be pertinent to review all legislation to see that it meets the definition of children under Article (Art) 1 of UNCROC. In particular, the Children, Young Persons and their Families (No 6) Amendment Bill needs to be passed into legislation.

A review of the Children, Young Persons and their Families (Youth Court Orders and Jurisdiction) Act 2010 should be implemented as it is non compliant with UNCROC.

The Human Rights Act needs to be amended to remove discrimination against 16 year olds.

### **VULNERABLE CHILDREN**

The Green Paper raised the question of how to address the plight of “vulnerable children” without defining what was meant by the term. In submission No 2 I make an attempt to address that issue from a layman’s point of view.

### **EARLIEST DAYS**

Arising from Art 6 of UNCROC every care should be taken for the wellbeing of the child in the womb.

### **FOUR KEY ISSUES**

Although a long list of issues needs to be considered there are four key issues:

- a) Child poverty
- b) Child abuse
- c) Disparity of outcomes , particularly for Maori children
- d) Lack of an Action Plan with timely accountability criteria

### **DATA COLLECTION**

The numerous reports of Government and its agencies for children have differing age ranges that do not comply with Art 1 definition of UNCROC. Many of the submissions will seek further information. While there will be a reluctance to change age ranges for historic comparative reasons at some stage it will be beneficial to standardise, given the capability of electronic data processing.

### **RECENT AND PENDING LEGISLATION**

It is my understanding that the following became effective 16 November 2011  
Domestic Violence Amendment Act 2011  
Care of Children Amendment Act 2011  
and Adoption Amendment Act 2011.

The Crimes Amendment Act No 3 has recently been passed. The Privacy (Information Sharing) Bill and the Victims of Crime Reform Bill are before Select Committees.

A check should be made to get feedback on the appropriateness and effectiveness of such legislation for Maori children including a review of the Family Court submissions.

## **GREEN PAPER FOR VULNERABLE CHILDREN**

Material received from all the submissions of the Green Paper relevant to Maori should be placed before the Select Committee

## **PARTICULAR ISSUES**

Arising from work for the Convention on the Elimination of Racial Discrimination (CERD)

**a)** I note the following Health issues::

*Bronchiolitis: Pasifika 5 times and Maori 3 times the risk compared to other sectors*

*Bronchiectasis : Maori 3 times and Pasifika 12 times the risk*

*Skin infection hospitalisation : Maori 2.8 times and Pasifika 4.4 times the risk*

*Oral health: Poor outcomes for Maori and Pasifika 30% decay free (against 60%)*

*Iron deficiency- Maori and Pasifika children*

*Obesity – a serious problem*

*Mental health services inadequate for depression and suicide prevention for at risk Maori particularly*

*No mention that Maori children have high rate of disabilities*

*Breastfeeding: low rates for Maori and Pasifika mothers*

*Smoking higher risk exposure through family*

## **b) Maori customary adoption**

*New Zealand's Adoption Act is 56 years old and reflects attitudes and values of a past era. In particular, adoption laws:*

*- fail to recognise Maori cultural values in respect of placement and care of children with whanau (family members)*

*- give grandparents and other whanau of a Maori child no rights to a say in relation to the adoption of that child and no opportunity to offer extended family care of the child as an alternative to adoption by strangers.*

*- denies Maori children who have been adopted by non-relatives the right to information about their whanau, hapu and iwi thus depriving them of knowledge of their family, tribal and racial identity*

*There is a need for legislative amendment.*

## **c) Children of Prisoners**

This Te Puni Kokiri study reports on the Māori data collected as part of a research project on the children of prisoners carried out in 2009 and 2010, for Pillars, a community organisation that works with the families of prisoners. The study makes a number of Recommendations.

## **d) ICESCR List of Issues**

In October 2011 the Government responded to the Committee's List of issues. Included in that response was reference to Maori children health and education issues.

## **MAORI CHILDREN ACTION PLAN**

- a) An Action Plan is essential to provide long term planning.
- b) A Maori Action Plan needs to apply to all Maori children but recognise that some children, including vulnerable children, will need particular attention
- c) The Action Plan should be the responsibility of the Commissioner for Children working with Te Puni Kokiri
- d) Any legislative changes should be framed in terms of UNCROC
- e) Agenda for Children 2003 should be kept in mind as a Plan that failed.

### **MAKE CHILD CENTRED POLICY CHANGES**

I make the following Comments:

- a) In principle services should be targeted to disadvantaged Maori children who meet pre determined assessed needs, but accepting the need to maintain the wellbeing of all children
- b) In principle the targeting of early intervention is acceptable
- c) The definition of a trigger for discerning such vulnerable children is a complex issue and needs careful consideration including cultural norms , and for individual cases possibly continual review
- d) Notwithstanding privacy issues (legislation and Art 16 of UNCROC) there is a need to protect the right to life (Art 6) and Best Interests (Art 3) of an at risk child in respect of information sharing. .

### **MAKE CHILD CENTRED PRACTICE CHANGES**

I make the following Technical Training Suggestions for those working with children:

1. All professionals/services and workforce, together with Parliamentarians and Parliamentary staff are made aware of UNCROC, have received basic training and been given access to the latest Concluding Observations where appropriate in the Maori language..
2. Training for Professionals/services and workforce is under the direction of the Children's Commissioner, delegated as appropriate to the sector concerned, monitored annually and a Report tabled to Parliament as part of the Maori Action Plan.

### **OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE**

The Optional Protocol provides for a Communications Procedure, which will allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two Optional Protocols.

This Optional Protocol was open for signature at a signing ceremony held in Geneva, Switzerland on 28 February 2012.

The government has signed such communication documents for other Human Rights Treaties. If the Government wants to affirm its protection of the wellbeing of its children then it should sign this Optional Protocol and the Maori select committee should recommend the signature.

## **AUTHORS NOTE**

I am a layman interested in UNCROC and have been involved in child advocacy on a voluntary basis for 8 years.

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## **REFERENCES**

### **Inquiry into the Social Determinants of Wellbeing Maori Select Committee**

[http://www.parliament.nz/en-NZ/PB/SC/BusSum/9/d/f/00DBSCH\\_INQ\\_11080\\_1-Inquiry-into-the-determinants-of-wellbeing-for.htm](http://www.parliament.nz/en-NZ/PB/SC/BusSum/9/d/f/00DBSCH_INQ_11080_1-Inquiry-into-the-determinants-of-wellbeing-for.htm)

### **Ministry of Social Development: Green Paper on Vulnerable children**

<http://www.childrensactionplan.govt.nz/>.

### **Committee on the Rights of the Child: Concluding Observations**

[http://www.occ.org.nz/\\_data/assets/pdf\\_file/0013/8014/UN\\_recs\\_periodic\\_report\\_07.01.2011.pdf](http://www.occ.org.nz/_data/assets/pdf_file/0013/8014/UN_recs_periodic_report_07.01.2011.pdf)

### **Sir Peter Gluckman: Improving the Transition**

<http://www.pmcsa.org.nz/wp-content/uploads/Improving-the-Transition-report.pdf>

### **Action for Children and Youth Aotearoa: “Children and Youth in Aotearoa 2010”**

Report to the Committee on the Rights of the Child, June 2010, [http://www.acya.org.nz/site\\_resources/library/Documents/Reports\\_to\\_UN/CYA\\_2010/Children\\_and\\_Youth\\_Aotearoa\\_2010.pdf](http://www.acya.org.nz/site_resources/library/Documents/Reports_to_UN/CYA_2010/Children_and_Youth_Aotearoa_2010.pdf)

and 10 Working Papers including **Tamariki Maori : a Maori view of children’s rights**

<http://www.acya.org.nz/?t=104>

### **New Zealand Government**

\*A. 3<sup>rd</sup> and 4<sup>th</sup> Periodic report for UNCROC November 2008

<http://www.myd.govt.nz/documents/working-with-young-people/uncroc/uncroc-in-nz-3rd-and-4th-periodic-report-full-doc.pdf>

### **List of Issues for 3<sup>rd</sup> and 4<sup>th</sup> Periodic report for UNCROC: November 2010**

[http://www.acya.org.nz/site\\_resources/library/Documents/Reports\\_to\\_UN/CYA\\_2010/Govt\\_Response\\_List\\_of\\_Issues\\_.pdf](http://www.acya.org.nz/site_resources/library/Documents/Reports_to_UN/CYA_2010/Govt_Response_List_of_Issues_.pdf)

### **Information on UNCROC issues**

<http://www.msd.govt.nz/what-we-can-do/children-young-people/uncroc/how-uncroc-is-improving-the-rights-of-children-and-young-people-in-nz.html>

### **Summary Report Human Rights in New Zealand 2010**

<http://www.hrc.co.nz/human-rights-environment/human-rights-in-new-zealand-2010/>

### **Children of Prisoners**

<http://www.tpk.govt.nz/en/in-print/our-publications/publications/a-study-of-the-children-of-prisoners->

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## TERMS OF REFERENCE

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The terms of reference are to inquire into 1 The historical and current health, education, and welfare profiles of Maori children. This would take account of the transmission of life circumstances between generations, and how this impacts on Maori children. 2 The extent of public investment in Maori children across the health, education, social services, and justice sectors—and whether this investment is adequate and equitable. 3 How public investment in the health, education, social services, and justice can be used to ensure the well-being of Maori children. 4 The social determinants necessary for healthy growth and development for Maori children. 5 The significance of whanau for strengthening Maori children. 6 Policy and legislative pathways to address the findings of this inquiry.