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APPENDIX 1: THE LONG REPORT

*This report is a longer version of the short report and provides more detail, case studies and questions.*

1. INTRODUCTION

Action for Children in Aotearoa was formed as a non-governmental organisation with the purpose of reporting to the United Nations Committee on the Rights of the Child, and in particular, to comment on the report of the New Zealand Government to the Committee. The Youth Law Project Tino Rangatiratanga Taltamariki has provided an umbrella for the group. Youth Law Project is the only community law centre in New Zealand specifically for children and young people.

A wide range of groups and individuals have had input into the process of developing this report

which was completed by a group of people from Youth Law Project and other professionals experienced in advocacy for children and young people.

The main report consists of a twenty six page main document. The appendices contain this longer report - which follows the same format as the short report but gives considerably more detail - and supporting documents.

We want to begin by acknowledging that there are tens of thousands of people in Aotearoa New Zealand who work tirelessly in the best interests of children, doing all they can to promote and protect the rights of children. This report is in itself an example because many people went the second, third and fourth mile to assist in development and completion. This happens in families who care for children, often despite considerable difficulties and external pressures. It occurs among those who work with children and families across all sectors and at all levels of government. We have enormous respect for their courage, practical actions and commitment. We are very aware of the courage and dedication of people who have been through restructuring, work in poorly funded services and highly stressful positions and yet still continue to do all they are able to do for children in spite of the difficulties. Our criticisms are not directed at those people, who have only our admiration. We are aware that there have been important advances for the rights of children in Aotearoa New Zealand over the last few years, and a range of successful programmes which should be expanded and developed. These successes are because of the efforts of politicians, policy makers, governmental and non-governmental organisations, young people and families. We applaud these advances.

However as our report makes clear, we have serious concerns about the many ways in which the direction of the State means that the rights of children are often not upheld in practice and are fearful for the future. We regret that we have had to adopt an adversarial tone in much of our report but we feel obliged to demonstrate some of the many ways in which the Government report does not represent the reality of life for children.

The complexity of the issues, the frequent changes of government policies and purchasing of services and of legislation mean that we are very aware that there may be mistakes in the report despite our best efforts. We would be very appreciative of any corrections and comments.

The members of Action for Children in Aotearoa have worked on a voluntary basis with no designated funding. This has limited the opportunity for children and young people to have direct input into this report - see Part One (c) - and meant we were unable to consult as widely as we would have liked. The situation of children in Aotearoa New Zealand is subject to a myriad of rapidly changing influences and although we have tried to be up to date in our comments, some of what we state will have been surpassed by events.

#### **a. Measures taken to harmonise national law and policy with the provisions of the Convention**

Aotearoa New Zealand has a young population. In March 1995 the population under the age of 20 years was estimated at 1,098,030 - this was 31% of the total population (statistics New Zealand). Over a third of the Maori and Pacific Islands populations are under 15 years (New Zealand Now: Children. Statistics New Zealand 1995).

We are very pleased at the statement in the Government report that New Zealand is fully committed to upholding the Convention and takes very seriously the obligations assumed upon ratification.

Many people in Aotearoa New Zealand including many in the government and public service-

are doing all they can to promote and protect the rights of children. The Government report describes some important initiatives which we applaud.

We note the report is one which expresses many good Intentions., It describes an idyllic social environment which could Indeed be- to quote our own popular sayings - 'God s own country which Is a great place to bring up children. It describes many policies and programmes which we wished were actually being Implemented to the benefit of all children.

## **War Zones**

**Everywhere I look the war goes on**

**Trying to survive and in the process tearing each other limb to limb**

**Look! They say you are becoming too Involved with the television That s happening over there**

**What s over there mean???**

**Where is there??**

**Who Is there?**

**Open your eyes**

**Children may not be killed by sniper fire in good ole God s own**

**No!!**

**Every day they live in the adults work! of revenge, resentment and fear**

**How long do they survive Internally before trust and innocence disappear Reclaimed maybe twenty years later In a therapists room.**

***Youth Forum on Creative Solutions to Poverty, 30 March 1996, organised by students of Auckland Institute of Technology, Te Ara Poutama, Faculay of Mawi Studies.***

The experiences of vast numbers of Aotearoa New Zealand children are very different to what is stated in the Government report. The reality is that life for many children is getting worse. The appalling rise in child poverty, the reductions and continuous restructuring of government services, traditions which have perpetuated high levels of violence towards children and women, and common beliefs like 'children should be seen and not heard have had a serious detrimental effect on the rights of New Zealand children.

Aotearoa New Zealand has no national policy for children to ensure that their Interests! needs and rights are assessed, provided for and monitored In a comprehensive and integrated manner in both legislation and practice. There is no National Plan of Action for children despite the commitment made at the World Summit for Children.

The government ratified the Convention with three reservations. We suggest this was to avoid compliance with the minimum standards set out in the Convention about child labour, the separation of children in custody from adult offenders and humane treatment of children who are not citizens. Our report *gives* various instances where other legislation is not in accord with the Convention.

## **Questions**

**1.Does the Govenment intend to produce a National Plan of Action for Children?**

**2. What steps is the Government taking in order to be in a position to fully ratify the Convention**

**b. Existing or planned mechanisms at national or local level for co-ordinating policies relating to children and for monitoring the Implementation of the Convention**

There has been no commitment to ensuring that the maximum resources available are being directed to ensuring the promotion of the rights of children described within the Convention.

**'Between 1985 and 1990, New Zealand's GDP grew 0.7 percent, the worst record of an Industrialised country, while unemployment more than doubled. The deterioration in living standards has been particularly severe among families with children Hewlett, S. Child neglect in rich nations. New York United Nations Children's Fund, 1993.**

The reforms of the state social services throughout the last decade sought to separate noncommercial state operations into policy, service delivery and regulatory functions. This policy has also created very hierarchical government agencies which are responsible for the policy advice and monitoring within government ministries, and further entrenched the position of Treasury, giving it dominance through the entire state sector. Control was asserted through membership (and often chairmanship) of most major task-forces, official committees and reviews as well as Input, which could not be disputed by individual ministries and departments, into all submissions before cabinet which had economic, financial or revenue implications. Thus decisions regarding children, their rights and needs, have been frequently driven by fiscal concerns.

The Ministers contract with their Ministry or Department for certain outputs, and the Ministries and Departments in turn contract with providers of services - or with other purchasers who in turn contract with providers - for outputs. The outputs are mostly described as various forms of contact with a service (numbers of referrals or admissions or operations). The wider needs of children for accessible, co-ordinated, child focused and family centred services are frequently lost. Further, the outputs categories often do not even count children as a group: for example, the Ministry of Health has no 'child health' output category so it is not surprising that there is no person or group in the Ministry with responsibility for children.

The emphasis on the performance of each individual government department or service erodes lateral links and co-operative contacts across the government system. This has further resulted in difficulties in providing coherent, consistent and effective advice and has caused duplication and inter-agency rivalry.

The stated objects of the reforms was to target the needy who It was postulated, would be able to purchase the services they need from private sector providers. The other dominant model was to devolve service delivery to local level bodies which work within a resource and policy framework dictated by central government, preferably in competition with its private sector counterparts. This has resulted in ad hoc proliferation of services, who are forced to compete with each other for scarce resources, and serious problems of co-ordination of services. Accessing services has left many children and their families in a state of bewilderment.

There have been widespread cutbacks of resources for services and/or a failure to increase resources to match increased need and population growth. One of the consequences has been a loss of morale and experienced staff. For example, the Children and Young Persons and the Families Service has lost over 252 social workers in the last two years and only employed another 149 social workers.

**'Information about children and young people is often difficult and time-consuming to access. Much of the information which is available has discrepancies and omissions and different sectors collect information for different age groups and boundaries. There are also problems in Information about ethnicity. There is little information which describes the views and personal experiences of children and young people.**

**C Wildermoth and A Blaklock. The Children and Young People of Waitakere City 1996.**

The situation has also been greatly exacerbated by the separation of policy, operational and evaluatory functions within government. Practitioners working with children may have a genuine and realistic understanding of the types of policy development needed yet there are limited mechanisms for this knowledge to be fed back into the various policy arms of the various government ministries which in their turn, are uncoordinated. The most common mechanism is when a government agency produces a document for consultation but there is often scepticism as to whether submissions are taken seriously. Thus policies and practices affecting children's health, education and well being, are developed in isolation.

The separation of the functions of government departments coupled with devolution, has also led to the development of services with inadequate monitoring and evaluation. Often it is only in times of crisis that deficiencies in services are exposed, leading to damaging effects on children - for example, the collapse of various residential care placements. Other unsafe services can continue for up to a year before any evaluation is undertaken, and often such an evaluation is only fiscal.

The Government report provides little in the way of statistics which meaningfully document the situation of children in Aotearoa New Zealand. This is not surprising. There is no co-ordinated approach to collecting information about children: different sectors collecting information using different definitions, for different age groups and different boundaries. Problems with information about children are described in the report "The Children and Young People of Waitakere City 1996 by C Widermoth and A Blaiklock Public Health Promotion, West Auckland". It is only this year that information about births and deaths has been collected using the parents description of the child's ethnicity. Until this year biological descent was used whereas other official statistics used self-classification.

Available information is most likely to measure contact with a service rather than describe the actual experiences of children. Thus, although the annual number of referrals to New Zealand Children, Young Persons and their Families Service is known, the service's statistics do not describe how many children are seen by the service. Information is often late - mortality statistics from 1993 are only recently available - and difficult or expensive to access. Important information which could show the severity and incidence of problems is often not collected: for example, there is no official poverty line and measures of child poverty, and no information is collated regionally or nationally on school truancy.

There is no requirement that proposed policies or legislation be reviewed for their likely impact on children and their families. There is no government requirement that planning bodies and agencies delivering services to children appoint someone to act as a children's advocate during planning processes. There is no national system for the review of child deaths. There is no co-ordinated system to ensure the delivery of health and education services to all children. There has been no official attempt to evaluate the effect of the reforms of the state on children.

The Government report notes the work of the Commissioner for Children. The Commissioner's office carries a growing workload - for example, the number of complaints has increased nearly three and a half times between 1991/92 and 1994/95 and the number of inquiries increased five times between 1992/93 and 1994/95 but the increase in resources has not been commensurate with this.

**"The value of the Commissioner for Children was questioned yesterday by the Minister of Justice, Mr Graham...**

**The Labour spokesman on justice, the Hon Phil Goff ... asked why there was a Commissioner for Children, a position held by Mr Laurie O Reilly.**

**"You may well ask", interrupted the Minister.**

**Graham questions value of children's commissioner by Warren Gamble, New Zealand Herald, July 1996.**

Unlike some other New Zealand Commissioners, the Commissioner does not have the Independence afforded by being an Officer of Parliament reporting directly to Parliament. Instead he reports to the Minister of Social Welfare and negotiates his budget with the Director-General of Social Welfare - but his functions include independently monitoring some of the actions of that Department. The 1992 Report of the Ministerial Review Team of the Act (the 1992 Mason Report) recommended the Commissioner be made an Officer of Parliament and this has been widely supported. However the government has not done so.

**QUESTIONS: -**

1. *What research and evaluation has there been or is planned about the effects of the state sector reforms on children?*
2. *What are the Governments plans for monitoring the state of New Zealand children?*
3. *What mechanisms are used to ensure that the impact of policies and legislative changes on children and their families are reviewed and monitored? How effective are these in promoting the best interests of children?*
4. *Is the Government committed to the Commissioner for Children? Why is the Commissioner for Children not an Officer of Parliament?*

**c. Measures to make the principles and provisions of the Convention widely known**

Although some excellent resources are available as described in the Government report, the Convention is not widely known. For example, in 1994, Youth Law Project did a survey in central Auckland (New Zealand's largest city) and found that 94% of the public had never heard of the Convention and of those who had, half were lawyers, law students or related to lawyers. The Project later surveyed some Auckland schools about what they had done with the materials on the Convention sent by the Ministry of Youth Affairs and the majority could not remember receiving them.

Action for Children in Aotearoa wanted to consult with young people through focus groups about their views on how the Convention was being implemented in New Zealand. We were aware that so few young people know about the Convention that each consultation would have had to begin with a workshop on the Convention. We hoped that a group of tertiary students with skills in qualitative methodology, an understanding of youth issues across Maori and other cultures, and a knowledge of the Convention, could run the workshops, take the focus groups and analyse the results. As a non-governmental organisation with no resources, we needed funding for this. We applied to the Ministry of Youth Affairs for financial assistance in preparing the non-governmental organisation report, suggesting this was compatible with their role in making the principles of the Convention widely known. Our request was turned down. We unsuccessfully sought alternative funding. So we regret that our report contains little direct comment from children and young people. The fact that the Convention is not widely known meant that collecting the views of a wide range of children in an ethical way, was not possible within our very limited resources.

Although a Maori/English version of the Convention was produced in 1992, no versions have been published in other languages.

**QUESTION**

1. What are the Government plans to make the Convention better known? How will this be monitored?

**Action for Children in Aotearoa is very concerned about the serious and deteriorating position of New Zealand children. Our report outlines many instances of harm to children:**

- increasing levels of child poverty;
- fragmented, frequently reorganised, uncoordinated and poorly resourced services;
- no national plan of action for children;
- high levels of violence against children;
- failure to recognise Maori children as tangata whenua;
- lack of services for young people;
- high rates of avoidable deaths and injuries including a high rate of youth suicide;
- limited monitoring of the well-being of children - whether as individuals or populations;
- many instances where legislation and administrative practice is not in line with the convention;
- failure to recognise the needs of particular groups of children, including those of different ethnic groups, refugees, those with disabilities and those with mental health needs;
- denial of the problems by Government.

**We are fearful of what might happen in the five years between when the Committee receives the first and second government reports. We ask you to please next review New Zealand's compliance with the Convention in two years time.**

## **PART TWO: DEFINITION OF THE CHILD**

As stated in the Government report at Paragraph 16, majority is achieved at the age of 20 in New Zealand (Age of Majority Act 1970). Accordingly, under 20 year olds are denied many of the rights accorded to adults. For example, a young person cannot marry without their parents permission until they are 20; a young person cannot change their name until they are 18 (or earlier married) unless an application is made by their parents; a young person cannot go into a pub alone and buy an alcoholic drink until they are 20 and may only do this once they are 18 if they are with their spouse (aged 20 or over) or parent.

Whilst there is no requirement that the protections contained in the Convention be accorded to over eighteen year olds, it appears anomalous that young people in the 18 to 20 age group are not always accorded all the rights available to adults and yet are not given any particular protection either.

More importantly, however, New Zealand law does not accord all those below the age of 18 the rights and protections accorded under the Convention. For example, the Human Rights Act 1993 provides protection against discrimination on the basis of age only for young people over 16. The Children Young Persons and their Families Act 1989 generally applies only to children and young people aged less than 17 at the time they require care and protection or commit an offence. Minors aged over 17 who commit a criminal offence are dealt with as adults.

Paragraphs 21 and 22 of the Government report give the impression that the law in the area of consent to medical treatment is clear. However, the law as to the age at which a child or young person may give or refuse consent to medical treatment is quite unclear. Section 25 of the Guardianship Act 1968 states that a young person aged 16 and over may give consent to treatment for their benefit and that a young person who is or has been married may, in addition, refuse consent to treatment. The section is said to incorporate the common law. The common law is unclear as to when a child or young person of any age is mature enough to give consent to treatment and as to whether a young person's refusal to consent to treatment may be overridden by their parents consent to that treatment.

In Paragraph 29 the Government report states that children between 10 and 14 can only be prosecuted for murder, manslaughter and minor traffic offences. However an increasing number of children aged between 10 and 14 are being taken to Youth Justice family group conferences and processed in respect of allegations of criminal offences. As they are not formally charged these children do not have the benefit of legal advice and assistance. Issues of legal capacity are not addressed at all. Although they cannot receive a criminal conviction because of their

age, the outcomes of these family group conferences are recorded and these children are labelled as "offenders" by the police, the Children Young Persons and their Families Service and their families. The children themselves often come to internalise this labelling. Statistics are not available to ascertain the extent of this problem but the report "Child Offenders" produced by the Commissioner for Children's Office documents the fact that it does occur and (Interestingly) fails to question the label "child offender". This report is appended.

The Government report and the above comments, illustrate the lack of consistency of the use of the term 'child in New Zealand. This has generated public confusion and makes it difficult to obtain -statistics and data concerning children.

Different government departments (including Health, Children, Young Persons & their Families Service and Education) and use different definitions of "children" for data, collection and the provision of services. There is a real lack of co-ordination and planning of services for children so that many children fall through the gaps. This is, in part, due to the different definitions of child being used but also because of the lack of funding by central government. There are at least five different official definitions of 'young people/youth young person in use in Aotearoa New Zealand (See 'The Children and Young People of Waitakere City 1996)

A good example of the way children are being failed is provided by the Child Offenders study (see Appendix 2). The Children Young Persons and their Families Service (CYP&FS) is divided into two parts - Youth Justice and Care and Protection. Where a child is both in need of care and protection and is committing criminal offences, there is a tendency for both parts of the service to refer the child to the other due to both the definition of 'child and underfunding. The Child Offender study clearly shows how children fall through the gaps and how the Children Young Persons and their Families Service is not adequately assisting these children.

The contracting out of public services to private enterprise and non-governmental organisations - many of whom provide particular age specific services - has further exacerbated this situation and made it almost impossible to see what is happening for children.

#### QUESTIONS

1. *What action is the Government taking to ensure all legislation conforms to the Convention?*
2. *What action is the Government taking to ensure effective and co-ordinated provision of services to all children?*

### **PART THREE: GENERAL PRINCIPLES**

#### **a. Non-Discrimination - Article 2**

The approach of the Government report to the issue of discrimination is to refer to various statutes (i.e. the Human Rights Act, the New Zealand Bill of Rights Act and the Children Young Persons and their Families Act). No statistics are provided on the extent of discrimination against various ethnic or other "protected" groups nor does the report contain any recognition of the issue of discrimination against children on the grounds of their age. It is naive to assume that legislative measures to minimise discrimination alone can achieve that result. It is our contention that discrimination is a major issue in the lives of children in Aotearoa New Zealand and that legislative measures have not tackled discrimination due to a lack of funding, inadequate monitoring of policy and practice, lack of education of children and the general public about discrimination issues and the remoteness of institutions such as the Human Rights Commission to most children.

Section 59 of the Crimes Act 1961 permits adults to use reasonable force to discipline their children. This provides a defence to parents who commit what would otherwise be an assault on their children. This constitutes discrimination against children, as they are the only group of people in respect of whom there is legislation which effectively decriminalises assault.

Perhaps the most common form of discrimination against children and young people is discrimination on the grounds of age. However, the Human Rights Act does not outlaw discrimination on the grounds of age for under 16 year olds. In addition, the Human Rights Act specifically permits discrimination against those aged 16 to 20 in the workplace by allowing employers to pay lower wages to young people in this age group. The Government report makes only passing reference to the issue of discrimination on the grounds of age.

Young people are frequently powerless and have no input whatsoever into decisions being made in their lives and over which they would have control if they were adults. Youth Law Project encounters instances on a daily basis, through their advice service, of children being treated less favourably than adults on account of their age. This treatment occurs particularly in schools. Many of the structures and staff of schools and government departments have little respect for children and young people's rights. Those under 16 have no right to complain about such treatment under the Human Rights Act.

The Human Rights procedure is rarely used by children and young people in dealing with various forms of discrimination. A recent study on 'Youth with Disability' was carried out by Youth Law Project with assistance from the Human Rights Commission. It aimed to enquire into the legal needs of young people with disability and provide training on Human Rights legislation and complaints procedures. Almost none of the young people knew about the Human Rights Act or how to obtain redress when they suffer discrimination.

Paragraph 38 of the Government report refers to the claim of Maori students that they were being discriminated against on the grounds of race by their school's refusal to permit them to wear *taonga*. The students in this case were assisted to make this complaint by Youth Law Project and it is arguable that without access to such advice and support the complaint would not have been made. Without better education and information being made available about the Human Rights Act and without children and their families being able to access advice and advocacy services, the protections afforded by the Human Rights Act will remain largely irrelevant and unenforceable by the majority of children and young people.

Legislation concerning discrimination against people on the grounds of sexual orientation and disability is relatively new and it is not yet clear how effective it will be in practice.

There is no protection in the Human Rights Act against discrimination on the grounds of social origin. There is increasing agreement that Aotearoa New Zealand is experiencing growing social stratification. There is a visibly widening gap between those best and worst off, and increasing numbers towards the bottom of the socio-economic scale. At the same time the direct and indirect costs of accessing education are continually growing. The combination of these factors is a growing inequality of opportunity, effectively disadvantaging children from poorer families.

The Government report ignores the widespread discrimination against Maori and Pacific Island children in both education and employment. The statistics speak for themselves. 4096 of Maori and Pacific Islanders (aged under 25) are unemployed. In the first four months of 1994 Maori and Pacific Island students accounted for well over 50% of all school suspensions and expulsions (725 out of a total of 1148) in the Auckland and Northland area. (Ministry of Education statistics)

Although discrimination on the grounds of race is illegal, few refugee or immigrant families complain to the Human Rights Commission or the Race Relations Conciliator. Many refugee and immigrant students report experiencing racism from other students, and some teachers. The inadequate funding for English as a Second Language programmes in schools has led to racial tensions. Several refugee and immigrant children (for example, Somali girls and Sikh boys) have been told that their enrolment at school is contingent upon wearing school uniform. This may contravene cultural norms. Older refugee and immigrant children also face difficulties enrolling in schools, especially if they have little or no prior formal education, as schools find it difficult to accommodate them and seek bureaucratic means to exclude them. It is particularly difficult for those from countries where contact with officialdom is associated with terror, to approach official bodies about discrimination.

Recent moves by some schools to develop enrolment schemes which deny enrolment until children have been resident in the school zone for up to twelve months are also discriminatory in their effects. They impact most directly on newly arrived immigrants and refugees who are already struggling to gain familiarity with Aotearoa New Zealand systems. At least one school has told immigrant families that when an enrolment scheme is in place preference will be given to children moving into the area from other parts of Aotearoa New Zealand ahead of those who have recently arrived in the country as permanent residents. Other schools have endeavoured to discriminate against students by making their enrolment conditional upon enrolment in certain, specified, subjects. This practice contravenes not only the Human Rights Act but also the spirit of the New Zealand Curriculum Framework which is committed to removing barriers to learning and participation. In February 1995 it was revealed that some schools were (illegally) requesting that parents pay for extra English tuition for their children. Some schools were also (falsely) insisting that enrolment was contingent on payment.

In the area of employment, the Minimum Wage Order provides that for young people aged 16 to 20 the minimum wage is \$3.82 (UK pounds sterling 1.60) per hour, just 60% of the adult minimum. For under 16s there is no minimum wage protection whatsoever.

Although the legal obligations of parents to support children generally cease once the child is 16, young people under 18 are not eligible for unemployment benefit and receive a lower rate of benefit between the ages of 18 and 25. The main benefit which under 18s can apply for if they are unemployed is 'independent youth benefit'. In order to qualify they need to meet a number of criteria which are not required for adult beneficiaries, including satisfying the Department that their parents are unable or unwilling to support them and it is unreasonable to expect them to do so. In practice it is very difficult for a young person to get this benefit unless they have experienced serious violence at home which led to him or her leaving home. The young person has to attend family meetings and see a psychologist to validate their claim. These limitations upon a young person's eligibility for welfare benefits, based solely upon age are clearly discriminatory.

In Paragraph 40 of its report the Government report claims that the objectives of the Children Young Persons and their Families Act include promoting non-discrimination and protecting cultural rights. These objectives have been undermined by inadequate resourcing, lack of appropriate training and monitoring of community services and the failure, until very recently of CYP&FS to support Care and Protection Resource Panels. In addition there has been a delay in establishing iwi and cultural social services which are only now beginning to be established, some six years after the Act came into force.

Interpreters are rarely provided by NZCYPS and are not provided by the Family Court. Very little use has been made of the provision in the Act for the appointment of 'lay advocates to appear in the Youth Court in support of young people and to represent the interests of their whanau, hapu and iwi.

#### Questions

1. *Will the Government revoke legal permission for parents to assault their children?*
2. *What steps does the Government propose to take to eliminate the discrimination that currently exists in respect to rights to welfare benefits for the young unemployed?*
3. *What anti discrimination or other measures does the Government propose to take to improve the position of young Maori and Pacific Islanders in the education system, particularly with regard to the numbers of young people in these groups who are suspended or expelled from school?*

#### **b. Best Interests of the Child - Article 3**

The principle of best interests of the child is not contained in all legislation affecting children

and young people and even where it is, practice does not always result in the principle being fully respected. In both central and local government there are few real mechanisms for children's interests to be taken into account. As children are not old enough to vote their interests are usually ignored, particularly when financial resources are being allocated.

Compliance with Article 3 in Aotearoa New Zealand is being obstructed by a statutory and policy focus on the rights and responsibilities of parents and family rather than a focus on the best interests of the child. This situation presumes that the child's best interests will be advanced by family privacy and responsibility with the state accepting the responsibility of providing no more than a safety net. The New Zealand stance fails to recognise that the focus must be on the best interests of the child, with the child's rights to autonomy, identity, a place in their family and community being aspects which must be considered and balanced when determining the best interests of this child in this situation. In addition the restructuring of the state has placed enormous pressures on families (see Part Six (e)).

The Government's report in Paragraphs 42 to 44, describes the best interests provisions contained in the care and protection part of the Children Young Persons and their Families Act 1989 (CYP&FA). However it is our contention that this Act, even in its amended form, fails to spell out that 'the interests of the child or young person must be the first and paramount consideration. Section 6 requires that the welfare and interest of the child or young person shall be the first and paramount consideration having regard to the Act's principles. The principles contained in Sections 5 and 13 place an emphasis on family responsibility and the child's place in the family. They give little acknowledgement to the interests of the child as a separate human being. For example Section 5(c) requires consideration not only of how a decision would affect the welfare of the child but also how the decision would affect the stability of the child's family, whanau, hapu, iwi and family group. The latter aspect of Section 5(c) is not cited in the Government's report.

The failure to place a focus on the child in care and protection legislation and practice has had significant detrimental effects for children.

The Government report, in Paragraph 48, describes the role of CYP&FS as being, inter alia, that of protecting the child, ensuring the adequacy and stability of the care arrangements and strengthening the family. In reality a policy of 'minimum intervention operates which results in children being left in the care of their families in most instances. The number of children in residential, out of family placements is very low. There is a serious lack of high quality out of family placements. Once a decision is made to leave a child with his or her family very little on going monitoring occurs and many parents report that CYP&FS are unresponsive to their requests for help with their children's needs which belies the Government's contention that they 'strengthen families'. Under resourcing of NZCYPs and a lack of highly qualified and experienced social workers have resulted in a dangerous lack of focus on the right of the child to protection.

In his 'Report to the Minister of Social Welfare on CYP&FS Review of Practice in Relation to Craig Manukau and his Family 1993', the Commissioner for Children found that the social worker investigating concerns about Craig and his family lacked a child protection focus and was unwilling to upset the whanau and intrude into their affairs to a degree that was dangerous to the children in the family. The emphasis on the family led to a failure to perceive and deal with reports of concern for Craig as possible child abuse - instead the reports were dealt with as further examples of adult problems requiring support for the adults.. Although entitled to veto FGC decisions under the legislation, CYP&FS were unwilling to disagree with a family group conference recommendation that their social worker did not, in fact, believe would promote the welfare of the child. Craig Manukau was subsequently killed by his father. .

Concerns such as these had already been raised in the 1992 Mason Report. The irresistible conclusion that we draw is that some social workers do not know what is meant by the term "care and protection" or that they are using the 'minimum intervention principle as justification for subverting the principles of the Act (p 43).

The focus on family responsibility, the strong policy of in-family placement and serious fiscal problems have resulted in a failure by CYP&FS to ensure there is an adequate range of residences with the result that children are placed unsatisfactorily; mixed inappropriately (for example, male/female, different age groups and youth justice children being mixed with care and protection children) and staff are not appropriately trained to meet children's needs. There has been limited funding for support programmes for children and young people. At times children have not been protected from violence or inappropriate punishments. The same policies can result in children remaining for long periods in temporary placements with consequent instability and trauma for the child and difficulty in making a permanent placement when out of family care is finally considered as an option (Department of Social Welfare v R 22 February 1994, Family Court, Auckland CYP5004/54/93, Judge Green)

Many children are kept in CYP&FS residences without programmes or other services such as counselling. These residences often do not provide a positive, therapeutic environment and can be more akin to holding pens. There is a clear understanding amongst the children and young people placed there that they are the 'most difficult children'. Although such a placement may not be suitable for them there is very little choice and some children are kept in such placements for years because no suitable alternative is available.

The Government report provides no statistical information about CYP&FS practices and very little information is available, even to the Commissioner for Children. This makes it difficult to address the issue of accountability of CYP&FS. However a study was done by the Office of the Commissioner for Children of basic statistical data and of a sample of notifications (Robertson J P, Maxwell C. A Study of Notifications for Care and Protection to the Children and Young Persons Service. Office of the Commissioner for Children, Occasional Paper No S. 1996)

This study found that there had been 12,079 notifications in 1990 which had risen to 30,552 in 1994 and then fell to 24,490 in 1995. (The fall in notifications is not surprising to us: there are many anecdotes of teachers and others having concerns for the safety of children but not referring them to CYP&FS because they know that the Service lacks the resources to intervene.) The study noted there were 'considerable disparities between the numbers of family/whanau agreements recorded, referrals to a care and protection co-ordinator for family group conferences, family group conferences held, and the provision of services as a consequence of family group conferences. This may be in part due to the Service's capacity to respond, and in part due to increased recording of notifications. A third possible explanation is the nature of the increase in notifications: many of the additional notifications may not have required formal intervention.

The study sampled 918 of the 1993 notifications and discovered that 25% of the first notifications were notified again within the next 12 months. This suggests that CYP&FS actions have been frequently ineffective in protecting children.

The study concluded it was likely that each year at least 13 in every 1000 children may become involved with investigation through CYP&FS each year.

The 'best interests principle' does not apply to children who fall under the Youth Justice Provisions of the CYP&FA. The Act does not apply to 17 year olds.

In education there is no provision for the child's best interests being taken into account, let alone being a primary consideration. This is particularly apparent when schools are suspending or expelling a student. In these situations the issue to be considered is whether or not the student is guilty of "serious misconduct" or "continual disobedience" which is likely to be a harmful example to other students. There is no requirement for the student's best interests to be considered and issues of the school's reputation and management are generally paramount.

In the Adoption Act 1955 the welfare of the child is only a consideration once consent is given or dispensed with. There is no provision for counselling or advice prior to consent

In the Child Support Act 1991 there is emphasis on parental responsibility and fiscal policy rather than welfare of children or first or subsequent families (see Part Five (e)).

Although in the Guardianship Act 1968 the welfare of the child is stated to be the first and paramount consideration, the Court's ability to meet this objective is seriously hampered by the reduction of resourcing for specialist reports to the Family Court. Dr Karen Zelas, a past president of the Royal Australasian College of Psychiatrists, has commented that the unrealistic fee of NZ\$ 75 per hour (L15S52.S0 / 33 pounds sterling) that has been set will restrict the number of well trained and experienced people who will be prepared to be expert witnesses. She adds that financial restrictions have resulted in reports being called for less frequently and only in the more difficult cases. This carries the risk that the 'expert who may be called upon or be prepared to be engaged may not have the training or the expertise that the Court would want to rely upon. (Karen Zelas: Comment on the limits of s29A reports in custody hearings. Butterworths Family Law journal, April 1995, p 194)

In the Marriage Act 1955 there is provision for a court to consent to the marriage of a minor where a guardian is withholding consent. For these purposes a minor is young person aged under 20. However where a young person makes such an application the court is required by the Act to act as a responsible parent rather than focusing on the best interests of the young person.

When the courts consider applications under the Matrimonial Property Act 1976, the emphasis on adult property rights has resulted in little consideration being given to children's interests. The courts have almost never exercised the discretion to settle matrimonial property on the children and occupation orders are rarely made for a time commensurate with the child's needs. The statute and the courts fail to recognise that children are part of the community and that their interests should be recognised and protected when community property is divided.

The Status of Children Act and its 1987 amendment and the paternity provisions of the Family Proceedings Act pay no regard to the best interest of the child resulting in breaches of rights guaranteed by Articles 3,7,8,12 and 18.

In Immigration matters the child's best interests are not generally taken into account although the recent Tavita case heard in the Court of Appeal did refer to the Convention in terms of the child's right to a family in the face of the imminent deportation of his father. The child's best interests were not specifically mentioned in the case which was an interim decision, the case being referred back to the immigration department for further consideration. In general in immigration matters other factors are considered when determining applications and the child's best interests are generally not a consideration.

Refugee children placed in the government run reception centre at Mangere (close to Auckland airport) are frequently treated in a manner which breaches Article 3. For example if their parents are admitted to hospital these children (who have been in the country for less than 6 weeks) are separated from their parents or caregivers. The hostel staff do not have the training or expertise to provide care. The children are consequently left in the care of other refugees at the centre whom they may not have met prior to arrival in Aotearoa New Zealand.

When young people apply for welfare benefits (e.g. independent youth benefit) their best interests are not paramount - indeed their best interests are not part of the criteria for determining benefit eligibility.

The Domestic Violence Act 1995 permits children to apply for a protection order with the assistance of a representative. However, no funding has been specifically provided to ensure children have information about this right and to knowledgeable representatives who can make the application for them and continue to support them so they can enforce any protection order. The Guardianship Act 1968 has been amended to require the court to determine an allegation of domestic violence made in a custody or access dispute and create a presumption that the

Court will not grant custody or unsupervised access to a person who has used domestic violence. No funding has been provided for supervised access. There may still be difficulties for the child when the non-abusive parent is unable or unwilling to apply for a protection order, or to support the child's application or where cases are settled on the basis of memoranda of consent being submitted. Where a matter has not proceeded to the stage where a Court hearing is inevitable Counsel for the child may not have been appointed.

#### QUESTIONS:

1. How does the Government propose to ensure that obligations to consider the best interests of the child are incorporated into national and local policy making in all areas of relevance to children's lives?
2. Does the Government intend to incorporate best interests provisions into legislation governing care and protection, youth justice, education, immigration and provision of welfare benefits where these apply to children and young people?

#### c. The right to life, survival and development - Article 6

***New Zealand's under 5 year mortality rate is ranked behind the Republic of Korea, Slovenia, Australia, Italy, the Netherlands, Norway, Canada, Austria, the United Kingdom, Switzerland, Ireland, Germany, Denmark, Japan, Hong Kong, Singapore, Finland and Sweden.***

#### **The State of the World's Children, 1996, UNICEF.**

Many children and young people die of avoidable causes. Available statistics are three years out of date. There is no national system for the review of child deaths despite years of advocacy for this.

In 1993 the rate of Maori babies dying from Sudden Infant Death Syndrome was four times the non Maori rate.

UNICEF reports Aotearoa New Zealand as sixth highest on a table of the industrialised nations for deaths of infants presumed to be the result of abuse in the years 1985 - 1990 (The Progress of Nations 1995).

The report of the late Public Health Commission *Our Health, Our Future 1994* noted: 'During 1988 - 1991, there were 446 deaths (277 boys and 169 girls) in the 1-4 year age group. Among OECD countries, New Zealand's mortality rate for this age group is only exceeded by the rate in Portugal.

'Forty-two percent of the deaths among New Zealand pre-school children were due to unintentional injuries ... and this mortality rate is the highest in the OECD countries. ... Almost 40 percent of the deaths from unintentional injury in this age group were caused by motor vehicle crashes. New Zealand's death rate from motor vehicle crashes is exceeded only by Portugal in the OECD countries and is three times greater than the rate in the United Kingdom.

Recent legislation has made the use of car restraints compulsory for children under five. However many parents cannot afford the cost and are not using them.

The Public Health Commission report goes on to note that injury, particularly due to motor vehicle crashes is a major cause of death in older age groups: 'Between 1988 and 1991, 44 percent of the deaths among children aged between five and nine years were due to injury. ... Of the 275 deaths (in the 10 to 14 age group), 44 per cent were due to unintentional injuries and 27 percent specifically due to motor vehicle crashes. ... There were 2,597 deaths among people aged 15 -24 years... 45 per cent were due to motor vehicle crashes.

Aotearoa New Zealand has an appallingly high youth suicide rate. The rate increased markedly since 1987. The increase came at the same time as young people were adversely affected by the restructuring of the state and as youth unemployment increased. UNICEF reports that among Industrialised countries in 1991 -1993, Aotearoa New Zealand had the third highest death rate from suicide and self-inflicted injury of those aged 15 to 24 (The Progress of Nations 1996).

Many professionals working with young people consider that the structural changes in society, the rise in youth unemployment and increased poverty have worsened the situation and that little is being done by government to address youth suicide. The Government report notes the work of the Taskforce on Youth Mental Health and Suicide Prevention. Their report came out in 1994. This report was generally regarded as making very sensible recommendations which were not expensive to implement. The Report of the Inter-agency Monitoring Group on Youth Mental Health and Suicide Prevention has just been released. It describes a range of activities but reports that no progress has been made in implementing over a quarter of the recommendations in the 1994 report. Of the 21 recommendations pertaining to education, one agency declined to comment on what it had done about the five recommendations relevant to its activities 'as it has refocused on core activities due to restricted funding , and no progress has been made on a further seven recommendations.

*QUESTION:*

1. *What actions are the Government going to take to substantially reduce the high numbers of avoidable deaths of children and young people?*

**d. Respect for the views of the child - Article 12**

Aotearoa New Zealand is not a child-oriented society. There are relatively few real opportunities which enable and empower young people to have their voices heard in the decision making processes which affect their lives. The Victorian adage that children should be 'seen and not heard' is still very strong in Aotearoa New Zealand.

We are aware of many instances when adults do not listen to children, even when decisions are being made about the child - for example, by some social workers who fail to hear and listen to the views of young people (even when they are under a statutory duty to do so); by social work managers (who decide on service provision); by policy makers. In order to illustrate our comments we draw the Committee's attention to law and practice within Aotearoa New Zealand which illustrates that the obligations of Article 12 are clearly not being met.

*The Guardianship Act 1968*

Section 3 of this Act gives guardians very wide powers. There is no requirement for a guardian to consult with a child. Legislation is needed to clarify whether mature minors may consent or refuse consent to medical procedures affecting them. The Government report assumes that the 'mature minor principle' is part of the law. This does not fit with the wording of Section 25 and even in the United Kingdom the elements of the principle are now unclear. The Government's report at Paragraph 56 incorrectly states that young persons over 16 may refuse medical treatment. This is only true where the young person is, or has been married.

In Paragraph 55, the Government report refers to obtaining the wishes of children under the Guardianship Act. The issue of orders being made following the submission of Memoranda of Consent is an important one. Many orders concerning children are made by consent and the courts do not - in such cases - generally enquire into the views of the children.

Psychological reports are often commissioned to inter alia ascertain the views of the young person in custody and access cases. However the reduction of resourcing for specialist reports to the Family court has meant that the number of well trained and experienced people may fall. The current hourly fee payable to such psychologists is NZ\$75 (US\$52.50 / 33 pounds sterling). Once proceedings have been commenced in court Counsel for the Child may be

appointed. Although Counsel for the Child is appointed to represent the child or young person, many lawyers in this role rely solely upon the psychological reports and do not even meet the children to take instructions. There are severe fiscal restraints on Counsel for the Child's work. In many cases Counsel will be told that they must restrict themselves to a pre-determined number of hours. Individual courts are allocated a budget for Counsel for the Child in each financial year. This can mean that if a particularly complex case occurs at the beginning of the year which takes up a large amount of the budget, a child whose case commences at the end of the financial year may find themselves denied representation for purely fiscal reasons.

Some Counsel have little or no empathy with children and young people, some have no training in child development and only very recently has the Law Society training programme addressed the issue of children's rights.

Many Counsel for the Child perceive their role as one of putting forward to the court what they believe is in the child's best interests - a role for which, in our view, a lawyer is unqualified and unequipped to perform. The Government report at Paragraph 63 demonstrates that Counsel for the child is concerned exclusively with criminal (not care and protection) family group conferences (G Maxwell and A Morris, *Family Victims and Culture - Youth Justice in New Zealand, 1993*). This research demonstrated that the vast majority of children and young people did not feel involved in their Family Group Conferences - a fact that is confirmed in the Government report at Paragraph

As far as the criminal procedure under CYP&FA is concerned there is a move to take children out of the court system and deal with them in a way which encourages them to take responsibility for what they have done and acknowledge the effects that crime has on them, their families and their victims.

Almost 90% of Family Group Conferences are held before the young person is even charged with an offence ('pre-charge FGCs'). Youth Advocates are not present at pre-charge FGCs (unless privately paid). These FGCs are an opportunity for all those involved in the offence and offenders' life to talk about what has (allegedly) happened. If the young person admits to the offence and an appropriate penalty can be agreed by, on behalf of, all present and incorporated into a plan then the young person is not charged. Whilst attempts to nip criminal tendencies in the bud are to be encouraged as this is likely to be in the young person's best interests, there must be some balance. There is potential for young people to admit to offences without independent legal advice and being aware of the legal elements of offences or the evidence against them. There is also potential for pre-charge FGCs being used as fishing expeditions by the police or CYP&FS. Clearly where a Family Group Conference is held before the young person is charged there will be pressure on him or her to admit to allegations to 'get it over with'.

In summary the legal rights afforded to a young person by having a youth advocate present are only upheld in a minority of (post-charge) FGCs when appointment of a youth advocate is mandatory.

#### *Other legislation*

There are a number of other important enactments which fail to incorporate the principles contained in Article 12. For example, although the Adoption Act 1955 states that the wishes of the child are to be given due consideration (Section 11(b)) there is no provision for appointment of counsel for the child. Where step-parent adoptions are concerned there is no real opportunity to ascertain the views of the child. In the Child Support Act 1991 there is no provision at all for eliciting the views of the child.

In Paragraph 62 of the Government report reference is made to the lack of a complaints procedure for children placed by CYP&FS. With regard to residential care there is no adequate complaints procedure for children and young people. If a young person has a complaint in most CYP&FS run residences they have to complete a grievance form or tell a member of staff. The forms are obtained from staff members and have to be handed to staff members. The manager

of the centre then investigates the vast majority of complaints internally. If a complaint reaches the Commissioner for Children he generally carries out a review of the residence s investigation rather than Investigating the complaint de novo .

An independent element to the Investigation of complaints Is essential but there is no such provision in the regulations drafted (pursuant to the CYP & FA) in 1992 and still awaiting approval. It is also undesirable for children to be required to hand their complaints to residence workers as this could have the effect of discouraging young people from complainihg. There is no standard system for records to be kept of complaints made nor any overall monitoring of complaints throughout the country.

For children in Community Funding Agency funded residences - some of which could be small 'Family Homes - there is no established complaints procedure or mechanism for Investigating complaints, except by complaint to the Commissioner for Children. In a small home there is a real danger of victimisation of a child who complains.

The Commissioner for Children can receive and investigate complaints from children in residences but very few such complaints are in fact made to the Commissioner. The Commissioner's office is in Wellington and is not very accessible to children placed in residences.

### *Education*

The voices of children are often not heard in their schools. Recently there has been an amendment to the Education Act which no longer makes it compulsory for a student representative to be part of the Board of Trustees set up to manage and control the school's affairs. A few schools have recognised the value of having a student voice, but unfortunately many have dispensed with student representatives.

If a school is considering excluding a student for more than a three day period, they are legally bound to hold a Board of Trustees Disciplinary Hearing to consider the matter and decide if there are legal grounds to do so. Although parents are entitled to attend and make representations, there Is no statutory right for the young person affected to be present. This Is confirmed by the government in their report at Paragraph 66. This is a breach of Article 12 and'of natural justice.

Hearings by Boards of Trustees which determine the suspended student's future at that school are perceived as quite frightening by students. Invariably students feel too afraid or ashamed to speak up. Youth Law Project assists a limited number of students at such hearings and confirms that many Boards of Trustees take a punitive attitude towards students from the outset which effectively precludes their Involvement. One school Board even requires the student to stand throughout the hearing - which can last for over an hour - whilst all other participants are seated.

The Government report at Paragraph 67 makes reference to Youth Law Project and other (unnamed) NGOs providing advocacy and support for children and young people. Youth Law Project is the only community law centre in Aotearoa New Zealand committed specifically to providing advocacy and advancing the legal rights of children and young people in legislation, policy and practice. They employ 5.5 workers (plus some administrative assistance) to produce publications and other resources, operate an advice line providing advice and advocacy (particularly on school related issues), make submissions on issues affecting young people and carry out other media and project work. Clearly an organisation of this size is inadequate to meet the legal needs of all children and young people in Aotearoa New Zealand and the Government report's reference to Youth Law Project and other (unspecified) underfunded overworked non-governmental organisations is a measure of the extent to which they fail to adequately assess the needs of children and young people.

### *Refugees*

Much professional training is needed before the views of refugee and immigrant children are heard, especially for children placed in out-of-family-care. There are few social workers, lawyers

or health professionals who come from non-English speaking backgrounds. Families lack the confidence to use the official systems. Frequently children come from cultures where it is inappropriate for them to express their views to elders or those in authority. Unless there is at least, ready access to a person from one's own first language and culture then huge misunderstandings occur. Thus disempowering provisions are put in place instead of children's voices being heard.

**QUESTIONS:**

- 1. What measures are being taken in the education system to implement Article 12 both in respect of the child's right to participate in decisions that individually affect him or her and also in respect of the right to participate in the development of school policy and administration? What measures are being taken to ensure that affected children have a right to be heard in all administrative procedures within the education system e.g. school choice, choice of school subjects, school exclusion hearings and special education assessments?*
- 2. Are the views of children and young people being ascertained as to the service they have received from CYP&FS and, if so, how?*
- 3. What steps are being taken by government to ensure that all new law and policy allows for children's views to be heard?*
- 4. What strategies have been used to encourage children and young peoples' involvement in FGCs? Is the effectiveness of any such strategies being researched?*

## **PART FOUR: CIVIL RIGHTS AND FREEDOMS**

### **a. Name and Nationality - Article 7**

Paragraph 69 of the Government report describes the way in which children's births are recorded and notes that if no name is recorded at that time there is provision for a child's name to be recorded after the initial registration. There is also no legal obligation for names and details of both parents of a child to be entered on the birth certificate where the parents are not married to each other. In fact, the mother cannot include the father's name in the birth records without his written consent or a court order. Many Aotearoa New Zealand children born to unmarried couples are deprived of their right to know the name and particulars of their father, which contravenes Article 7.

Paragraph 69 also states that a child's names may be changed at a later date. The report fails to mention that until a child attains the "age of 18 (or earlier marries) in order to have their name changed a child's parent must make the application. The child's consent to a change of name is not required until they reach the age of 16 so that a 14 year old's name could be changed against their wishes. If a child aged between 16 and 18 who is single wished to change their name (by deed poll) their parent would have to be persuaded to make the application or the child would have to make an application under Section 14 of the Guardianship Act and persuade the court to resolve their dispute with their guardian concerning name change in their favour. A child under 16 years has no right of recourse to the courts to resolve a dispute about their name.

New Zealand law appears to impose unreasonable constraints upon a child's right to change his or her name as well as their right to an identity, right to freedom of expression (art 13) and right to be heard (art 12).

Many refugee and immigrant children come from cultures where naming systems show historical lineage. For Aotearoa New Zealand born children they must cast aside this system to fit a European New Zealand pattern. Although the decision as to a child's name is a right of guardianship there are concerns about the way in which children's names are used in school. Often schools will give children anglicised names, tell children their names are too difficult to pronounce or refuse to use the child's name correctly (insisting on using only part of a name). Problems also arise when names are transcribed into a romanised form. Frequently the transcription does not meet accepted norms, or errors made previously by officials overseas are perpetuated. Children's names can then be changed by Deed Poll but few families can afford this. Nor do they know how to access the system. This is particularly distressing for some

refugee families as all they have on arrival in Aotearoa New Zealand is their identity and name.

Some teachers still advise immigrant parents to speak only English at home. A disproportionately small number of schools teach Samoan, Aotearoa New Zealand's major minority language. Those that do often have inadequate resources to employ fully qualified teachers.

Paragraph 72 of the Government report does not make it clear that since the Citizenship Amendment Act 1992 New Zealand citizenship is no longer automatically conferred upon children over 14 who are adopted overseas by New Zealanders. In such situations children have to apply for citizenship but may be prevented from doing so due to the high cost of application.

Although generally entitled to apply for citizenship after three years permanent residence in Aotearoa New Zealand, some refugee children remain stateless because of the high application costs. This is the case for children born in refugee camps or in countries of first asylum where they were not automatically eligible for citizenship by right of birth.

### **b. Preservation of Identity - Article 8**

The rights guaranteed by Articles 7 and 8 are not adequately protected for children who have been adopted or conceived by assisted reproductive technology.

A child who has been adopted may never be informed of that fact. Under 20 year olds have no right under the Adult Adoption Information Act to a copy of their original birth certificate nor to information about their birth parents. In respect of many Maori and Pacific Island children adopted in this country there is no record of their tribal or village affiliation. If they are aware of their status they must wait until reaching majority to obtain any information about their natural parents. Siblings have no way of obtaining information about one another when they have been adopted. If an adopted child's parents were not married to, or cohabiting with, one another at the time, of the child's birth the father will have no right to be informed of the adoption. Extended family have no right to involvement in the adoption process. The child has no right to be legally represented in an adoption application.

A child conceived by assisted reproductive technology will have a deemed mother and may have a deemed father. Some children will not have any man who has the legal rights and responsibilities of a father. Such children have no right to be informed of the method of their conception and no rights to information about their genetic heritage.

#### **QUESTIONS:**

- 1. Does the Government propose to amend the Adoption Act 1955, the Guardianship Act 1968, the Status of Children Amendment Act 1987 and the Births, Deaths & Marriages Registration Act 1995 to ensure compliance with Articles 7(1), 8(1) and 12 of the Convention?*
- 2. Has the Government any definite plans to ensure all refugee and immigrant children are accorded their rights under Articles 7 & 8 of the Convention? In particular, does Government have any plans to provide adequate resources for refugee settlement programmes, and for education for New Zealanders especially those in positions of responsibility, to encourage understanding of, and sensitivity towards, the cultures and needs of all children in Aotearoa New Zealand?*

### **c. Freedom of expression - Article 13**

The Government's draft report refers to the Bill of Rights Act 1990, the Privacy Act 1993 and the Human Rights Act 1993. The reality for most children and young people is that these Acts are not of much practical use. The Privacy Commissioner and Human Rights Commission are perceived as distant by those children and young people who are fortunate enough to know

they exist. In theory children can complain to these bodies but in practice very few do.

In the course of an education project carried out by Youth Law Project for young people with disability 'Youth with Disability' which is appended, it became apparent that these young people had very scant knowledge of the Human Rights Act and how it affects them.

As far as rights under the Bill of Rights Act are concerned a young person seeking to enforce his other rights under this piece of legislation would need to bring a civil action. For most children and young people it is impossible to get legal advice. Where a child has been advised that they have a legitimate claim it is difficult to apply for legal aid (generally means tested on basis of parental income for under 16 year olds) and pursue a claim. To date there has been just one action under the Bill of Rights Act initiated by a young person, and this concerned the unreasonable (strip) search of students at a college.

For many children and young people an important aspect of freedom of expression is the area of personal appearance and dress. This is severely restricted by the imposition of school uniform requirements in most schools. Youth Law Project regularly comes into contact with students who are facing disciplinary action at school - ranging from detentions and short suspensions to permanent exclusion from school - as a result of attempts to exercise their right to freedom of expression. Issues which arise frequently are the wearing of jewellery (especially nose studs), haircuts and facial hair. Whether or not a student is permitted to exercise this right depends upon the attitude of the Board of Trustees running the school. The attitudes of Boards vary around the country and there is no appeal from a Board's decision. Boards are often more concerned with the reputation of the school in the local community than with the individual student's right to freedom of expression. Students can be suspended under the Education Act for continual disobedience and it is this provision which is invoked by schools wishing to rid themselves of a student who refuses to conform to the school's uniform or appearance code. Whilst this may be an unlawful interpretation of the Education Act (in the light of the Bill of Rights Act and the Convention) many schools do suspend students in these circumstances. If negotiations with the school are unsuccessful most students choose to conform rather than be suspended from school but some students do not and are forced out of school for exercising their right to freedom of expression. There have been no cases of students bringing actions under the Bill of Rights Act in these circumstances.

In general terms there are few avenues for children and young people to express themselves publicly. There are few political organisations set up for children and young people and young people are rarely given a say, even with regard to issues which concern them.

In 1995 the Prime Minister, Jim Bolger, visited a school and a seventh form student questioned his assertion that there was no poverty in New Zealand. There was considerable media attention given to this incident and the consensus presented by the media was that the student was 'speaking out of turn' and should be made to apologise. Media reports of this incident are appended.

#### **d. Access to appropriate information - Article 17**

The Government report states that New Zealand enjoys freedom of the press. However, there are very few daily newspapers in Aotearoa New Zealand and these are regionally based, such as the New Zealand Herald in Auckland and the Evening Post and Dominion in Wellington. So, even for a person living in a large city such as Auckland or the capital, Wellington, it is only possible to purchase a maximum of two or three daily newspapers. These newspapers share a similar political complexion and there are no daily newspapers putting forward a different political viewpoint. Coverage of overseas news in the major daily newspapers is variable and there is little 'investigative journalism'.

The image portrayed of children and young people in the media is generally not positive. Occasionally the media covers a young person who has done well in a sporting event or won a major scholarship. However, most reporting of children is as victims of violence and abuse or as young offenders.

#### **e. Freedom of thought, conscience and religion - Article 14**

As far as the references in the Government report to the Bill of Rights Act 1990 and Human Rights Act are concerned we repeat the comments made in respect to Article 16 with regard to the difficulties children and young people have in being aware of these pieces of legislation, let alone enforcing their rights under them.

Religious instruction is taught in some state primary schools. Children are given the choice as to whether or not they attend religious instruction. Some immigrant parents encourage their children to attend to broaden their general education. However, in some schools there is little monitoring of the lessons. In some of these schools children from non-Christian backgrounds are frightened as they may be asked in the class if they are Christian and told they will go to hell if they aren't.

The Penal Institutions Regulations provide that parents of under 20 year olds can decide which religious services the young person shall attend. Although this issue has been highlighted by the Human Rights Commission the law remains unchanged and young people in prison are denied freedom of religion.

#### **f. Freedom of association and of peaceful assembly - Article 15**

In a report last year, the United Nations Committee on Economic, Social and Cultural Rights expressed concerns over the compatibility between New Zealand legislation governing the right to freely form and join workers organisations, and Articles 7 and 8 of the International Covenant on Economic, Social and Cultural Rights. Although the Bill of Rights formally guarantees to everyone (including children and young people) the right to freedom of association, in the employment context that right and the enjoyment of its benefits is severely restricted, despite that context being one of the most important in which a free and democratic society should be respecting this freedom.

The justifiability of these concerns is borne out by the reports of the ILO Committee on Freedom of Association concerning a complaint by the New Zealand Council of Trade Unions over the incompatibility of the Employment Contracts Act 1991 with International Labour Organisation (ILO) Conventions 87 and 98, which concern freedom of association and the right to organise and collectively bargain.

Technically the Act does not prohibit or expressly restrict the right to join workers organisations. The Act in fact appears to formally respect freedom of association. However, the Committee (and subsequently the Governing Body of the ILO) found that the law and practice under the Act was fundamentally incompatible with ILO principles concerning freedom of association and collective bargaining.

It also noted that in practice, employers are able to raise such obstacles to the effective functioning of workers organisations, that even the bare right to form and join them was undermined.

It must be emphasised that the apparent respect in the Act for freedom of association is a very minimalist protection. Employers are free to seek to persuade workers to leave or not join a workers organisation, by any means short of "undue influence". These words have been defined as referring only to the grossest and most extreme acts of pressure. There is still vast scope for an employer to more subtly exploit workers vulnerability especially that of inexperienced or naive young workers attempting to secure their first employment or the beginnings of a career.

A major restriction upon the rights of children and young people in Aotearoa New Zealand is the imposition of curfews in some towns. Below is a press release from the Paeroa Police and an article from the New Zealand Herald, both dated October 1995, which are examples of such curfews.

### ***Paeroa Police concerned at Youth Crime***

'Paeroa Police are concerned at the level of youth crime in the town. Sergeant Peter Devoy says youths have been involved in crimes ranging from wilful damage to arson and aggravated robbery. Recently two 15 year olds were involved in the aggravated robbery of a bread delivery driver. This happened at 1.00am he says.

'We have had discussions with a number of community agencies on ways to reduce youth crime and agreed to introduce a curfew for youths under 17 years old, for a trial period," he says.

'Sergeant Devoy says the idea is based on the successful trial in Te Kuiti and has the strong support from the community.

'The curfew will be from 10.00 pm until 6.00 am and will be on a trial basis for three months.

"The curfew is part of a broader youth crime strategy which will also focus on the families of at risk youths. Parents should be asked why their children are on the streets after 10.00 pm. Sergeant Devoy says.

Police Press Release, October 1995.

Curfew sees young off streets of rural township.

Te Kuiti streets have been empty of loitering teenagers on the first nights of a curfew imposed by the town's police.

The curfew, aimed particularly at under 17 year olds on the street because of a lack of parental supervision, has the firm support of local business people but the town's teenagers are divided.

'The 10 p.m. to 6 am curfew was first enforced on Thursday nights and Te Kuiti was a "ghost town" Senior Sergeant Rex Knight said.

'The police patrolling on Friday night called it one of the quietest they had had in the past six months.

'The curfew was a reaction to police and local business people's concerns about a rash of burglaries and vandalism committed by young people. On a late night patrol police officers pointed out the makeshift cardboard and timber repairs to a number of smashed windows and the houses recently burgled - some more than once.

'The curfew allows teenagers with reasons for being out after 10 pm to go on their way. Those without are taken home.

'If the parents cannot be found - and it is there where the police say the trouble lies - efforts are made to contact other relatives. As a last resort the youngsters will be handed over to Social Welfare care.

'The police described their frustration at repeatedly having to deal with children as young as 10 whose parents had little idea and less concern about where they were.

'The president of the Wairoa District Chamber of Commerce Mr David Ream, said his organisation was right behind the police. As Tiffany's Restaurant - a popular night-time venue for Te Kuiti teenagers - the manager, Colleen O Sullivan, said the curfew was warranted. Senior students from Te Kuiti High School say there is little to do in the town after dark.

'Seventh-formers David Wayne and Nigel Sharpe thought the lack of recreational facilities was a factor in the burglaries and vandalism. But sixth-formers Reece Hazelton and Lisa Gerrard said efforts to provide alternative entertainment had proved unsuccessful."

New Zealand Herald, October 1995

Following a complaint to the Police Complaints Authority by Youth Law Project on the issue of youth curfews, the Police Complaints Authority confirmed that the police have no lawful authority to impose curfews and that 'the only curfews that can lawfully be imposed are those which are set in place as part of bail conditions or by Family Group Conference .

However the curfews were portrayed positively in the media - both newspapers, television and radio - as a legitimate means to combat youth crime and curfews are still being announced in rural Aotearoa New Zealand towns. The vast majority of young people affected have no access to legal advice or information as to the legality of curfews, an issue that was largely ignored in the media coverage.

Another way in which the rights of young people to freedom of movement and association is being restricted is by the imposition of 24 hour curfews upon young people charged with criminal offences. These curfews are imposed by the Youth Courts and amount to virtual house arrest of under 17 year olds charged with criminal offences.

Trespass notices under the Trespass Act, are frequently issued to young people by shopowners and shopping malls to prevent young people from entering them. Under New Zealand law it is only possible to issue a trespass notice in respect of places to which the public has the right to enter (such as a shop) if the person upon whom the notice is to be served has broken or is likely to break the law. However some shopkeepers view all young people as potential shoplifters and want to keep them out. In many cases where young people are served with notices these conditions are not met but they are served with notices nonetheless. Many of these young people feel more hurt by being treated like a criminal than angry that their freedom of movement has been restricted.

#### **g. Protection of privacy - Article 16**

The Privacy Act is to be welcomed, particularly in the fact that there is no minimum age for its application. However this is another area where practice does not always live up to the legislation's expectations. This is still a new piece of legislation and many bodies and organisations who are supposed to apply its principles are not clear how to do this. Inadequate education about the Privacy Act has resulted in confusion about the extent and purpose of the Act's provisions and has resulted in children being placed at risk of abuse because individuals and organisations with knowledge of abuse have believed that they may not report their concerns to the authorities.

Youth Law Project has received complaints from children that their privacy is not respected at school. The attitude of school teachers, counsellors and principals when these issues are raised sometimes demonstrates an unwillingness and even hostility to the notion of respecting the child's right to privacy.

Many children and young people are unwilling to pursue complaints to the Privacy Commissioner for fear of being labelled as a trouble maker (particularly where breaches occur at school). The Commissioner will not issue general opinions on issues, only adjudications on actual complaints so that many of those charged with respecting children's right to privacy claim ignorance as to what those obligations might entail.

Youth Law Project has received complaints from young people that their right to privacy is breached by principals trying to arrange for the student to attend another school after the student has been suspended. Under the Education Act 1989 if a child is suspended from school the principal at that school is under an obligation to try to arrange for another school to take the student. Whilst some principals respect the student's privacy, many principals are unable to restrict themselves to informing the other school that the student has been suspended and would like to attend their school. Instead they provide a large amount of background information about the student which is often prejudicial, as well as constituting a breach of their privacy.

Youth Law Project frequently advises students encountering problems at home and at school to see their school counsellors for support and advice. A good school counsellor who respects the student's privacy can make a huge difference to the student's life. However, some students are often unwilling to approach their counsellors because the counsellor does not respect confidentiality. Indeed some schools have an expectation that the counsellor will share

information they have about students with other teachers, the principal and even the school's Board of Trustees. As a result a number of students have no confidence in their school counsellors and are left without support.

A further raft. of complaints has been received from students who are arbitrarily searched at school. In some schools searching students for drugs or items reported as lost or stolen is commonplace and considered acceptable by Boards of Trustees and staff. Youth Law Project are aware of an instance where all students at a school (both their bags and persons) have been searched for drugs. No cautions were given (as is necessary under Youth Justice legislation) nor were the provisions of the Bill of Rights respected. Many young people also complain about the confiscation at school of non-uniform or prohibited items like radios, walkmans, jewellery and non-uniform clothing.

In terms of specific examples of breaches Youth Law Project can provide the following:

- A sixteen year old student, who does not live with his parents and has little contact with them, was outraged and upset to find out that his mother had been given information over the telephone about his progress at school, despite the fact that the school were well aware of his domestic circumstances. When he complained, after seeking advice from Youth Law Project, he was told that his mother had a legal right to the information and that the school would continue to provide it if requested. As far as we are concerned this is not correct and the school was breaching the Privacy Act. The school's attitude was very hostile and the young man was thereby discouraged from taking the matter further.
- A student, X, aged 12, was suspended from school for taking a bottle of rum to a glance. We suspect that there were a number of procedural irregularities in the suspension process but the boy was settled in another school by the time the family sought advice. However, the principal was convinced that other students had been involved in the rum incident but X would not name them. The principal then wrote to 15 other families whose children he suspected to have been involved, telling them what X had done (and naming him), that he had been expelled and that the matter had been referred to the Youth Aid section of the police for the student to receive counselling. The letter contained a number of inaccuracies: the student was not expelled (he had been suspended and might have been able to return to the school had he challenged the decision to suspend); the case had not been referred to Youth Aid and the student was not having counselling. The family's main concern, however, was the blatant breach of the student's privacy.

Some newly arrived refugee groups find there is a conflict between a free press and protection of their privacy. Because they have often come from countries where there is strict control over the media it means that people's private lives are protected from scrutiny. It is a shock for them to discover that the most intimate part of their lives can be openly discussed in the media. This has been the experience of Somali people over reporting of female genital mutilation.

#### **h. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment - Article 37(a)**

The Government report refers to the Commissioner for Children's jurisdiction and it is important to note that the Commissioner's functions only relate to children up to the age of 17.

The Government report makes no reference to the treatment of children in school and degrading treatment undoubtedly occurs. Violence is a serious problem in schools and very little is being done to address it. Some cases have been publicly highlighted - for example St Stephens School in Auckland where bullying was rife, and the Commissioner for Children held an enquiry. Although programmes have been developed to counteract bullying, such as the highly regarded 'Eliminating Violence' (run by the Special Education Service) individual schools have been required to 'purchase' the programme and many schools are unable or unwilling to do this. Central government funding has not been made widely available for schools to run anti-violence programmes despite the obligations under this Article of the Convention.

Youth Law Project, through its advice service hears of many cases of degrading treatment occurring in schools: for example, children with impaired hearing being made to stand still as a punishment, or children being searched and strip searched,

As far as youth justice programmes are concerned there have been major problems with many residential programmes designed to accommodate and rehabilitate young offenders and young people in need of care and protection. The Northern Residential Centre has been the subject of a number of reviews over recent years. Specific incidents of degrading treatment include a group of children and young people being forced to wear pyjamas in the afternoon to prevent absconding. Young residents at this centre make allegations of assault against staff, some of which are accepted as true even by the residence's management who carry out the investigations.

The Faafuina Trust, a residential centre for young offenders in South Auckland subjected its residents to cruel, inhuman and degrading treatment. The manager of the centre was filmed delivering a savage beating to a young man who had been returned to her centre, having absconded. She then encouraged the other children in the centre to beat the young man who was made to sit in the middle of the room and take the beatings. This brutal incident was cruel, inhuman and degrading not just for the main victim but for the other young residents who were encouraged to take part. The incident was filmed by a television crew and the manager was prosecuted and sentenced to a term of imprisonment. The centre was funded by the Community Funding Agency (part of the Department of Social Welfare). Despite this incident, the agency still does not have an effective, independent monitoring system nor an independent complaints process for young residents.

An inquiry was ordered into another government funded residential programme for young people - the Whakapakari programme. The programme operates on a small island near to Auckland. The inquiry found that the residents did not have sufficient food or proper medical treatment. Problems in the programme came to light after complaints were made by a former employee about standards of care. This again highlights the need for proper monitoring and an independent complaints procedure. For more details of problems with residential programmes see Appendix S

#### QUESTIONS:

- 1. What measures does the Government intend to introduce to ensure that children's civil rights are not overridden by those adults who have authority over them?*
- 2. Can the government identify measures it has taken to prevent the unlawful imposition of curfews upon young people in Aotearoa New Zealand and what steps it intends to take to ensure that such curfews are not imposed in the future?*
- 3. What steps has the government taken towards amending the Employment Contracts Act 1991 so as to alleviate concerns of the ILO and comply with its obligations under the Convention concerning membership of workers associations/freedom of association?*
- 4. When does the government intend to introduce an effective monitoring system and independent complaints system for residents of residences for children and young people? How will the monitoring and complaints system operate?*
- 5. If the government acknowledges that bullying is a serious problem in Aotearoa New Zealand schools and that the "Eliminating Violence" programme is an effective tool in changing these behaviour patterns, does the government intend to make available the necessary resources so that the programme will be available to all schools in Aotearoa New Zealand?*

## **PART FIVE: FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

### **a. Parental guidance - Article 5**

The essential role of parents and families in caring for children has been consistently

undermined by government practices and policies. The combination of increasing levels of poverty, the increased user charges in health and education, the reductions in social services, the cuts in benefits and the introduction of market rents for state housing, combined with unemployment and low incomes, have had a serious effect on families.

Many families have coped by working longer hours for many parents. Labour market deregulation and The Employment Contract Act has also contributed. As the Working Women's Resource Centre has explained:

"women tend to be employed in small businesses on a part-time or casual basis, and are often low paid. Frequently women are sole employees, and are forced into a confrontational situation with their (frequently male) employer when considering conditions of employment. This leads to women often accepting a contract without negotiation, or not receiving a contract at all and being too intimidated to ask for one". ("Report of the Select Committee on the Inquiry into the effects of the Employment Contracts Act on the New Zealand Labour Market, 1993. p 87. Cited by J Kelsey in "The New Zealand Experiment". Auckland University Press, 1995)

Paragraph 48 and 105 emphasise working with families to protect children. The vision for the Department of Social Welfare social services in the next ten years is that all families are meeting their care, control and support responsibilities (Jim Nicholson, Senior Policy Analyst, Social Policy Agency Focus Issue of 30 October 1995). In view of the Department's funding problems, we interpret this vision as an intent by the Department to continue to divest itself of financial and other responsibility and to place the load on over-stretched families to the detriment of children.

#### QUESTIONS

1. *What have been the effects of increasing levels of poverty and labour market deregulation on Aotearoa New Zealand parents?*
2. *What is the Department of Social Welfare's vision and plan for its future services to children?*
3. *What programmes exist to break cycles of abuse, neglect and deprivation, and promote positive parenting?*

#### **b. Parental responsibilities - Article 18**

Funding for assistance to families through a variety of services in the health, welfare and education fields has failed to keep up with need and in some instances has been reduced in recent years. The experience of workers within these services has been one of progressive attrition and of inability to meet their obligations to families. For example, the well-child visiting schedule carried out by the Plunket Society, mentioned in Paragraph 115, has been reduced amid recurring public protests that the risk to children will increase. In 1990 there were over 340,000 home visits by Plunket services. In 1995 there were less than 240,000.

#### **Early childhood care and education**

We acknowledge the positive steps<sup>4</sup>, the government has taken to improve the quality of early childhood education and care by requiring licensed centres to have at least two qualified teachers and by improving the teacher-pupil ratio of centres.

Unfortunately the Government report fails to fully represent what is happening in early childhood education. For example, the figure of 95% of four year olds in early childhood care and education may not be accurate. Actual participation rates are not known because children are commonly enrolled in more than one centre and are counted more than once (Future directions: Early Childhood Education in New Zealand, Interim Report, June 1996, 8 - a report of a research project of representatives of all early childhood care and education services) The lack of reliable and detailed statistics has contributed to the inadequacy of adequate planning and appropriate funding for services. A recent report on future directions for early childhood education (Future directions: Early Childhood Education in New Zealand, *ibid*) expresses

serious concern that financial difficulties are threatening the quality and viability of services. The roll-based formula for funding means that centres are under pressure to maintain full rolls to the detriment of the needs of children who require individual attention. The report notes that low pay rates for staff have contributed to a growing and severe problem in recruiting and retaining high quality staff.

However we are concerned that early childhood education policy appears to be driven by labour market objectives rather than being focused on the rights and needs of children. This is illustrated by the 1993 reduction from 30 hours per week to 9 hours per week of early childhood education and care available to children of low income families via the Childcare Subsidy whose parents are not involved in full-time education, employment or training. In 1994 the 30 hour subsidy was made available to low income families where the caregiver was seriously ill or disabled, or a child of the family was seriously ill or disabled in hospital, or the child or sibling was in receipt of a Handicapped Child Allowance. The reduction in the subsidy and the increasing cost to parents of early childhood education and care via centre fees which may be \$120 - \$140 per week, the donations requested by the public kindergartens and transport costs are cited as significant barriers to participation by Maori children (E Clark, 'Barriers to Maori Participation in Early Childhood Education and Strategies to Overcome Them', Te Puni Kokiri, December 1995) and are very probably a significant factor in the lower participation rates for children from low and medium income families. (Clark, *ibid*, 79) Participation by Maori children in kohanga reo decreased by 6.7% between 1993 and 1994 and 58% of Maori children are not enrolled in early childhood education. (Clark, *ibid*, 7)

Participation in early childhood education and care by three year olds decreased from 83.6% to 80.7% between 1994 and 1995. (Ministry of Education statistics, March 1996) As there is a lot of anecdotal evidence that most centres have long waiting lists we are concerned that children may receive only a very brief period of early childhood education before they attain 5 years of age.

In recent years there has been an increased level of participation in early childhood education among young Pacific Island children, as a result of the establishment of Pacific Island Language Nests. Their level of resourcing however means it is difficult for them to retain well qualified staff.

The participation rate of refugee and immigrant children in early childhood education is significantly lower than that of other groups. For example in 1992 only 25 out of 52 early childhood education centres in South Auckland, an area with a high number of refugee and immigrant children, had refugee children enrolled. There is little translated information available regarding the variety of early childhood education providers or how to access them.

We are concerned that too many children may have their development hindered and their opportunities for education and later employment adversely affected because their parents are unable to access early childhood education services.

#### QUESTIONS

1. *How many licensed early childhood care and education centres have more than the required two qualified teachers?*
2. *Is the Government satisfied that there are sufficient numbers training as early childhood teachers to meet the needs of Aotearoa New Zealand children?*
3. *How many children enrolled actually attend early childhood centres regularly and how many months of early childhood education will most children have received by the time they attend primary school?*
4. *What does the Government intend to do to increase the rates of participation in early childhood education of children from lower socioeconomic groups, and of Maori, Pacific Island, Immigrant and refugee children?*
5. *What percentage of the early education budget goes to the free public kindergartens and what percentage to private fee-paying centres?*

6. *What does Government intend to do to meet the concern expressed among early childhood workers at the lack of effective Ministry response to non-complying centres and at the infrequency of reviews of centres? [K A Hurst Monitoring Quality in Early Childhood Education: Final Research Report to Ministry of Education, March 1995,56]*

### **c. Separation from parents - Article 9**

Reference has been made elsewhere in this report to the difficulties in implementation of the CYP&FA legislation and with the role and funding for Counsel for the Child.

#### **The Imprisonment of offender parents and contact with their children**

While Article 9 of the Convention states parties have an obligation to ensure personal relations and direct contact with both parents is maintained, the facilities for doing this in the case of an imprisoned parent are currently inadequate.

The Government Report states, "There is no legislative prohibition on mother and child units in prison (but) such units are not provided (as) a prison is not a suitable environment for a child." While the latter point has validity, it doesn't seem a sufficient argument against establishing such units as the raising of children by people with whom they have no parental bond, can be worse.

Women may choose to have a child in prison for up to three months. There are no provisions in New Zealand prisons to make this a comfortable option, and women prisoners who have children with them are kept isolated in single rooms in the prison's medical centre.

No provisions exist for the maintenance of a child's relationship with an imprisoned father other than the same visitation rights that exist for adults, and the child experiences a father's company in a large, crowded room in the presence of other prisoners, their adult visitors and prison guards. These conditions do nothing to maintain and advance the desirable natural bonding of children with their fathers and can adversely affect the male role-modelling that children need.

While (as stated in the Government report) the Criminal Justice Act 1985 and the Penal Institutions Act 1954 provide a number of statutory means by which an offender may be released to be with his or her child, in this respect no men have been released early and nothing of any consequence has so far occurred.

In accordance with the Criminal Justice Amendment Act 1993, four habilitation centres have been set up as a form of parole. These allow some opportunity to maintain family relationships and reduce family dislocation but have proved minimal in terms of need as they don't cater for all who require such provision nor are they placed in a sufficiently wide variety of locations to offer a full and complete service.

The New Zealand Prisoners Aid and Rehabilitation Society is a voluntary organisation funded by the Justice Department. The service it provides is intended to assist in the maintenance of family relationships but is not sufficient for the number of families in need of it.

#### **Immigration decisions involving separation**

The Government report refers to the Tavita case in Paragraph 136, and says that the Immigration Service makes submissions with appropriate emphasis being placed on the Convention.

Again the reality is often different as is shown by the case of Erika v Minister of Immigration (1996) 1NZLR741. This case is of three Aotearoa New Zealand born children who are all Aotearoa New Zealand citizens and range in age from one to six years. Their mother, Ms Erika

is being removed from Aotearoa New Zealand by the Immigration Service pursuant to a removal order. The children will be sent to Tonga with her, their airfares paid by the Immigration Service. The father is still in Aotearoa New Zealand but his Immigration status is uncertain.

The removal of the mother is effectively removal of the children. The youngest is breast feeding. It is unrealistic to contend that the motherless children are able to stay on in Aotearoa New Zealand to enjoy the benefits of citizenship.

The children are not Tongan citizens. The Immigration Service has presented no evidence about the children's right to reside in Tonga nor even ascertained if there is a home for the children to go to. The mother has no family members in Tonga other than her own mother. She has no prospects of employment. The children will be unable to obtain an education equivalent to that of other Aotearoa New Zealand citizens.

#### **d. Family reunification - Article 10**

Family reunion under the refugee quota is only available to those who are able to pay or borrow the airfare for reunification. In 1993/1994 575 places out of annual quota of 800 were allocated for family reunification. In the 1994/1995 quota the number was reduced to 250. From mid 1996 family reunion will no longer be a category of the refugee quota programme. This will leave many refugee children separated from their families.

Refugees and immigrants whose family members are not included in the refugee quota must use the usual Immigration system for family reunion. The high cost of this system makes it unusable for the poor.

For refugees and immigrants from many parts of the world, but especially Africa the system is extremely cumbersome. Application must be made to the nearest New Zealand Embassy or High Commission. For example those who are in Sudan or Ethiopia must apply through London; those in the former Soviet Union must apply through Moscow. High application costs exclude many families from applying. Applicants also need to obtain a Medical Certificate, Chest X Ray and a Police Clearance, all virtually impossible to obtain in a country of first asylum.

Many refugee children are separated from their families because of the lack of an immigration procedure to ensure their speedy reunion. In 1995 250 Somali refugees, including many children, were separated from family members resident in Aotearoa New Zealand. Despite concentrated efforts by non-governmental organisations, their reunion only occurred if their families were able to pay the airfares to bring them here.

#### **e. Recovery of maintenance for the child - Article 27**

In Paragraph 140 of the Government report, the parent or parents are given virtually sole responsibility in this area, while little or no acknowledgement of the duties and obligations of government is specified. This is a clear disregard of the requirements of the Convention which is further disregarded in the Government's *Child Support Review 1994*.

We are concerned about the statement of underlying principles in this review which includes the statement "Children have a right to expect financial support from their parents whether they are living with them or not". Nowhere in the document is there a statement about the Government's responsibilities. Indeed the document says "The new scheme gives renewed life to the principal that liable parents have the first obligation to support their children and should do so before reliance is placed on state paid benefits". It is an exploitation of children to use the notion of their rights to shield the Government from its responsibility under the Convention.

### *Questions*

*What steps is the Government taking about its responsibilities for children who are living apart from one or both parents and / or their family?*

#### **f. Children deprived of a family environment - Article 20**

The standard of care and safety of children at both CYP&FS run residences and Community Funding Agency funded residences remains a serious concern.

CYP&FS conducted a care and custody resources review which was completed in March 1995. The Service was unwilling to release this document to the public and Youth Law Project, the community law centre for children and young people finally obtained a copy of the report in May 1996 following a complaint to the Ombudsman's office made in October 1995 (i.e. eight months after a copy of the review was originally requested).

The report identified 361 young clients in care (aged 5 or over) who, due to serious behavioural problems, CYP&FS were unable to place in a safe environment or for whom no constructive work could be done. The report concludes "This indicates a serious shortage of placements across the country as well as a need to review case management".

However these 361 children and young people do not adequately portray the full extent of the crisis. The report states: 'Among these (361) clients, most of whom are in the custody of the Director-General of Social Welfare, are some who are still at home in at-risk situations, some who are living on the streets (some into crime, prostitution and/or drug and alcohol abuse), sexually abusing and violent children and young persons placed with younger and/or more vulnerable ones, and suicidal young people. Many move from placement to placement, sabotaging with their disturbed behaviours all attempts to make them feel loved or wanted. Even quite young children, have had as many as ten placements in 18 months. Six under five year olds were identified but were removed from the totals.

Not included in this figure are those with serious behavioural and emotional difficulties who are placed currently in a reasonably safe environment with some kind of services available, even if these are far from satisfactory. Nor does it include those that NZCYPS staff have admitted not taking into care because 'there is no placement for them'."

Of the 361 children and young people identified in this study 150 are Maori or part Maori.

In its Preamble the report provides an overview of residential care over recent years and summarises the current situation: "This review has highlighted not only gaps in placement options for repeatedly offending and/or disturbed children and young persons. It has also revealed an urgent need for a more concerted effort to work jointly with these young people to help resolve or come to terms with the very real emotional difficulties which give rise to their unmanageable behaviours. At present, it seems that many of these young people are simply being "held over" until the age of seventeen when either they 'pull through' or become eligible for adult psychiatric or corrections services.

This situation is not seen by this review as a failure by social work staff, but as a lack of recognition by Government and other Government agencies, of the seriousness and enormity of the situation. Currently, the NZCYPS staff are often working single handedly with young clients, their family/whanau and caregivers to attempt, with limited funding and knowledge, to assess and provide for the complex needs of the case. Overstretched schools are often unable or unwilling to offer much help or even to accept or keep the young person on their rolls. Most psychiatric and therapeutic treatment must be bought from private practitioners, often at very high costs. Such services are therefore only purchased at a minimal level.

The impact of Puao-te-Ata-Tu in 1986 (government report) and the resultant development of the CYP&FA in 1989, led to the closure of all but four of the Department of Social Welfare's twenty odd residential institutions for children and young persons (there are now five). The aim was clear to many - to return these young persons to their families/whanau and communities

where they could avail themselves locally of educational, cultural, psychiatric, therapeutic and placement services, resolving their issues within their usual, culturally appropriate environment instead of being incarcerated and/or institutionalised. The understanding was that money gained from the closure of these institutions would be diverted back into the community to ensure that such services were available.

The tragedy, and the irony, was that this did not happen. Although services and resources have been set up and funded by the New Zealand Community Funding Agency, responses indicate that these have been inadequate in almost all localities and do not necessarily coincide with the needs identified by CYP&FS. Moreover, the short term funding and strict procedures of the Community Funding Agency have caused the demise of several useful and reputable services which had been operating for some years prior to 1990.

Concurrently, many other government services, particularly psychiatric and psychopaedic services, have been either withdrawn or greatly reduced. As a result, there are neither sufficient local services nor sufficient residential beds or other placement options for the need as identified by this project."

Apart from the desperate plight of Aotearoa New Zealand's children requiring out of family care, identified in the Government report there are serious concerns about the standard of the care that is provided.

There is no through-going, regular monitoring system of residences, in that there is only limited checking of the standards and quality of care being offered. Such monitoring should involve both organised and unannounced visits to residences to check on conditions.

Alison Thom in her paper "Rights, Needs and Responsibilities of Youth" (at Appendix 5) has highlighted some of the shortcomings of residential programmes for young people in Aotearoa New Zealand. One such programme was the object of a request for review by the Commissioner for Children. There were calls for an inquiry into the "Fafulna Trust" (a state funded residence) following the televised beating of a young boy by the manager of the home who also encouraged other boys in the residence to beat the boy. The manager was prosecuted and sentenced to a term of imprisonment. Another Auckland based residential programme was investigated following allegations by a former worker of bullying, inadequate food and medical attention for the children.

The CYP&FS still appears to have no plans in place for regular and frequent monitoring of residences despite the fact that children are sometimes ill-treated and neglected. The draft residential care regulations require at least one monitoring visit per year but this is clearly inadequate.

The Northern Residential Centre at Weymouth, Auckland has a small secure unit which has poor conditions. It has small single, lockable cells in which each child or young person is locked for up to 12 hours per night. During the day children receive school classes and are permitted to use the gym. For the rest of the time they are kept in one poorly furnished dimly lit room with a pool table and television. On occasions there are up to ten children kept in this room. The children are aged between 12 and 16 and include girls and boys. 'Care and protection and youth justice children and young people are also mixed together in the secure unit.

As far as programmes are concerned it is right that there is a shortage of trained specialists (eg psychologists) particularly Maori professionals. A major problem is lack of funding for these services for children and young people in care.

Residential placements for young people with psychiatric illnesses mentioned in the Government report are not 'secure facilities and if a young person needs a secure environment they must be placed in an adult facility with adult patients. Wards are frequently mixed and this can be a very distressing experience, especially for young women.

A further concern with regard to residential care is the absence of an adequate complaints

procedure for young people. Complaints are generally internally investigated ~The time frame for Investigating serious complaints is lengthy and many complaints are never satisfactorily resolved as the young person has left the residence before the procedure is completed.

An Independent element to the investigation of complaints is essential but there is currently ~no such provision in the regulations drafted in 1992 and still awaiting approval There is no standard record keeping system for records to be kept of complaints made nor any overall monitoring of complaints throughout the country. Recent attempts to pilot a complaints procedure which incorporates the possibility of an independent element in serious complaints have not been entirely successful. Independent advocates for children wishing to make complaints in residences are only available in two of the five CYP&FS residences and where advocacy is provided it is often on a voluntary basis.

As far as children in Community Funding Agency funded residences are concerned - some of which could be small "family homes" - there is little in the way of established complaints procedures or mechanisms for investigating complaints. Although the Commissioner for Children has an office in Wellington to which children can complain this is not a realistic option for a child placed in a rural family home.

#### QUESTION

*How does the government propose to meet the unmet needs of children and young people outlined in the recent Care and Custody Resources Review published by the CYP&FS?*

#### **g. Adoption - Article 21**

New Zealand's adoption law and practice fail to accord children a number of their Convention rights. The Adoption Act 1955 is based on the outmoded, imported English Common Law concept of the child as the possession of his/her married parents. As a consequence the Act is insensitive to the needs of Maori and Pacific Islands peoples and fails to recognise children's rights to be treated as citizens rather than objects of concern. Although the legislation has been widely criticised for a number of years and the object of official reviews in 1979, 1987 and 1992 the government has not made public any proposals for new legislation.

The Adoption Act 1955 deprives the child of their right to an identity and their family ties (Articles 5 & 8) in a number of ways: there is no requirement that adoptive parents inform the child of the adoption; extended family and natural fathers (who are not guardians) have no right to be involved in the adoption process; the child's birth certificate may not show that the child is adopted; the child cannot obtain information about their natural parents until they reach majority (20 years); natural parents may place a veto on the child being given identifying information about them; siblings who have been adopted have no right to obtain information about one another. Hence a child may effectively be denied knowledge of their heritage.

The procedures under the Adoption Act do not provide effective means for ensuring compliance with Article 12 of the Convention. Although the Act requires that the wishes of the child be given due consideration before an adoption order is made (s11) there is no provision for the child to be legally represented in the adoption process and thus no mechanism to ensure the child's wishes are ascertained and presented to the Court.

The Act does not provide that the best interests of the child shall be *the* paramount consideration (art 21). It merely provides that before making an adoption order the Court shall be satisfied, *inter alia*, that the welfare and interests of the child will be promoted by the adoption (s11). Hence the child's welfare is not paramount in such important prior matters as, for example, whether the child's natural father should be informed of the adoption proposal and his consent sought, or whether a required consent should be dispensed with.

Although an adoption order can only be made by a Family Court one half of stranger adoptions in the first half of 1994 were arranged privately ( M Iwanek, B Nelson and NI Quinlivan. 'Adoption in the International Year of the Family . In Rights and Responsibilities - Papers from the International Year of the Family Symposium on Rights and Responsibilities of the Family, held

in Wellington 14 to 16 October 1994) rather than by the competent authorities required by Article 21. As the child was likely to have been placed with the applicants (contrary to Section 6 of the Act) and to have bonded with them by the time of the Court hearing the Court's ability to ensure that appropriate selection and preparation of adoptive applicants had occurred was effectively restricted.

#### *Question*

*When does the government intend to introduce legislation that accords adopted children Convention rights?*

### **Inter-country adoption - Article 21**

Although New Zealand policy on Inter-country adoption is generally in accord with the Hague Convention on Inter-country Adoption, and although the Departments of Social Welfare and Internal Affairs and the New Zealand Immigration Service have an agreed protocol for dealing with inter-country adoption, it is of concern that

- The best interests of the child is not stated as a primary consideration in all legislation and policy concerning inter-country adoption:
- It is still possible for New Zealanders to obtain a child overseas, by-passing all the recommended procedures and applying for an adoption order in circumstances which make it very difficult for the Family Court to refuse an order or for the Immigration authorities to require the child to be removed from the country.

In order to ensure that Article 21 is complied with:

- Government policy should give priority to maintaining the child within their family and country of origin through the provision of increased resources and international aid to address child and family policy.
- Aotearoa New Zealand should ratify the Hague Convention on Inter-country Adoption.
- Aotearoa New Zealand should ensure that all children from overseas who are adopted by New Zealanders are guaranteed their rights under the Convention
- To monitor Aotearoa New Zealand's compliance with art 21 in particular and the Convention general, the Director-General of Social Welfare should be required to keep statistics on all forms of inter-country adoption and should maintain a database with full information concerning the ethnic and cultural origins and details of the biological family (including pertinent medical information) of every child adopted from, or to, overseas.

#### **QUESTIONS**

1. How do New Zealand authorities ensure that adoptions occurring in the child's country of origin are made in accordance with the requirements of Article 21?
2. What is New Zealand's immigration policy regarding children adopted overseas without adequate safeguards?

**'The Government is relying on community groups in financial crisis to back programmes to combat family violence, without making extra funds available.**

**'The police and Children and Young Persons Service rely on the community groups for their programmes.**

**"At the same time as the Government is putting family violence on the agenda, we find organisations like the Wellington Sexual Abuse Help Foundation and Rape Crisis about to go to the wall," Victoria University criminology lecturer Reece Walters said.**

**'...Central Region Stop, a programme providing treatment for adult sexual abuse offenders in Horowhenua, Manawatu, Rangitikei, Wanganui and Hawke's Bay, announced its closure yesterday. "Justice Community Corrections will not pay for these men and neither will the Community Funding Agency of Social Welfare," spokesman Brian Tapper said**

**'The group met three Cabinet Ministers in the past few days who said funding was a difficult policy issue.**

**'Rape Crisis national spokeswoman Toni Allwood said her organisation was worried it would not have the funds to cope with its workload jump.**

'At least three branches faced closure at the end of the last financial year and Wellington's four Rape Crisis staff have not been paid for the last six weeks. They expect to hear this week if they will get continued funding from the Government's Community Funding Agency.

"But even with that funding, we will still be in financial crisis," Wellington rape crisis worker Jo Niblett said.

"There is an irony in this situation because recently we have seen the launch of several major projects which will inevitably increase the workload of community groups like ours," Ms Allwood said....

"Why spend three-quarters of a million dollars on an advertising campaign, then fail to adequately resource the service delivery end of the process?" she said.

Evening Post 22 July 1995, Erin MacDonald, Welfare reporter

#### **h. Illicit transfer and non-return - Article 11**

This is not contentious.

#### **a. Abuse and neglect, including physical and psychological recovery and social re-integration - Articles 19 and 39**

The Government report Paragraph 172 fails to make clear that the Domestic Violence Act 1995 is primarily directed to providing protection for adults. The Act does not provide protection for the child from the all too common violence by partners of the child's parent, or partners of another household member, when the abuser is not a relative of the child and does not live in the same household as the child. The extension of the definition of domestic violence to include psychological abuse does not apply where domestic violence is alleged in a custody or access dispute. Government has not made any resources available to establish child advocacy services so that children can both be aware of and access their right to apply for protection orders under the proposed law.

Although government has provided \$9 million over the next three years to implement the initiatives in the Act (a good portion of that money is intended to provide programmes) that is only a fraction of what it would cost to adequately resource the Act. The Principal Family Court Judge, Judge Mahony, told the select committee considering the Act that he estimated that the number of domestic violence cases going to the Family Court would nearly double as a result of the legislation. It has been stated in Parliament that it will cost at least \$10 million per year to put the Act into effect.

The Government report comes at a time when there have been increases in the notifications of children in need of care or protection and living in detrimental environments (Jefferson and Laven, 'The Care and Protection Provisions of the CYP&F Act 1989 Revisited, NZLS Seminar, August 1995, 49; Robertson and Maxwell, 'A study of Notifications for Care and Protection to the Children and

Young Persons Service, Office of the Commissioner for Children, March 1996, p1), family violence has been estimated to cost New Zealand \$1.2 billion annually and a government select committee (The Report of the Education and Science Select Committee of Inquiry into Children in Education at Risk Through Truancy and Behavioural Problems, 1995) has expressed concern about the increase in dysfunctional families which in turn produce at-risk children who are unable to benefit effectively from the schooling system and who are likely to perpetuate a cycle of disadvantage. (p21]

The CYP&FA, if properly resourced and serviced by sufficiently well-qualified, experienced, culturally aware social workers would ensure that Aotearoa New Zealand was endeavouring to meet its obligations under Article 19. The degree of protection the Act gives to children is questionable when:

i. Reporting of abuse and neglect is not mandatory and concern for family autonomy may result

in a report being noted as "adult problems" rather than child abuse and hence not triggering the child protection procedures of the Act:

ii. There is inadequate follow-up of referrals and considerable evidence that the CYP&FS emphasis on minimum necessary intervention and family responsibility often result in a failure to use statutory protective procedures in favour of informal, non-statutory procedures such as family hui which are not subject to the statutory accountability provisions and do not require the same level of resourcing as statutory procedures. From the 22,277 care and protection notifications received by CYP&FS in the period 1 August 1994 to 31 May 1995 there were 3,687 referrals to Family Group Conferences. Agreement was reached by the Conference in 3,707 cases. However, in the same period CYP&FS entered into 2,788 whanau/family agreements which are outside the provisions of the Act. 1,838 of these agreements were regarded as successful in that no formal state intervention was required (Jefferson and Laven, above at 49. Robertson and Maxwell as above, pl)

lii. There is a chronic shortage of skilled social workers and trained, experienced social workers who can appropriately assist refugee and immigrant families. The General Manager of the Children and Young Persons and their Families Service has stated publicly that the service mirrored the dysfunctional nature of its clients to an alarming extent.

iv. The voices of children and young persons are often lost in Family Group Conferences and children who may have been abused by family members are inappropriately expected to be present and to express a view at such meetings in the presence of the alleged abuser, often without independent support. There is no effective complaints procedure for children and young persons who are receiving inadequate service from CYP&FS.

v. Children and young persons have very poor access to mental health or behavioural assessments and there are large gaps in the provision of appropriate residential services or placements for young persons with serious behavioural or addiction problems.

vi. The government's collection of statistics is inadequate to provide for the accountability of CYP&FS or to provide an adequate base for research.

vii. Services are not being delivered to children and families because the current economic emphasis on family and community responsibility and the single focus criteria for funding have resulted in over-stretched families and poorly resourced service providers struggling to cope with poorly co-ordinated, fragmented services. Too many parents are finding that their child's needs cannot be met because one service, such as health, has not contracted to provide the welfare or education services their sick child also requires. Children's needs are being left unmet while government agencies dispute issues of financial responsibility."

**We are left with the impression that the departmental view is more concerned with scarce resources and the increased work load which may result from mandatory reporting other than the need to detect and respond to allegations of abuse  
The 1992 Manson Report p.13**

**'The perceived shortfall between available resources of the NZCYPS, and the need for care and protection by New Zealand children and adolescents, was seen by many to often result in a superficial service by the CVI S, reducing their role to that of crisis intervention, and dealing mainly with overt physical and sexual abuse**

**Report of the Child Protection Trustee Advocacy Committee The New Zealand Children and Young Persons Service: :An Evaluation by Professionals Working in the Field of Child and Adolescent Care and Welfare , p7**

**Psychologists are warning of a widespread crisis in services catering for children with problems. Specialists in social welfare, education and mental health say services are**

diminishing and fragmenting.

'If the country does not do something now, it will pay a huge social cost in the future, says Mr John Thickpenny, the chairman of the Psychological Society's child and education division 'Inter-agency co-operation was decreasing as pressure went on the system and continual restructuring created huge damage to services for children and young people.

'The managing psychologist of the Social Welfare south Auckland specialist services unit, Mary Dawson, said there was a crisis in front-line staff numbers and high stress levels in the service. 'More and more complex referrals involving abuse were coming through and there was a frustrating lack of co-ordination between services dealing with children, young people and their families.

"You feel like you are reinventing the wheel every year trying to find who is out there and where the money is being distributed this year compared to last year."

New Zealand Herald 11 October 1995, Catherine Masters

'Waitakere is a city of young people perched dangerously on a cliff-top, the Minister of Social Welfare was told at a public meeting yesterday. The minister was told that the city's rapidly growing population, combined with an under-resourced Children and Young Persons Service, produced a 'seriously worrying picture. The deputy mayor said 'the cliff analogy was reality, she said 'The youth suicide statistics for our city tell a chilling tale.

"Gaye Stemberge-Beeson, representing the voluntary sector, said that every day there was another case of suicide, rape, physical beating and sexual violation - young people displaying often outrageous behaviour in their expression of hopelessness and desperation

Mr Gresham (the Minister of Social Welfare) said the Social Welfare Department's vision of families meeting care, control and support responsibilities was fundamental.

"Let's not lose sight of whose the original responsibility is."

Margaret Bazley (the Director-General of Social Welfare) said her department had inherited serious financial problems.

New Zealand Herald, 2 November 1995, 4.

"An Auckland widow unable to cope with her violent (14 year old) son found he had been sent home yesterday after the closure of an Auckland trust...

He was one of 18 youths who had to be reposed yesterday after the Regional Youth Services Trust in Onehunga was forced to close for lack of money.

The woman said she had constantly sought assurances from the trust that her violent son would not be sent home.

The director, Mr Rex Herbert, said the trust, which runs a 24 bed facility under contract to the Social Welfare Department, was about \$380,000 in debt."

From the New Zealand 25 November 1995. page 2.

### Compliance with the Convention Requires

i. That government adequately resource CYP&FS, the Office of the Commissioner for Children and the education, health and justice services concerned with child and family welfare and the prevention of family violence to enable those services to focus on the protection of children and support of families rather than on narrowly defined deliverables. Unless this occurs the 24 hour response time, for example, claimed in Paragraph 178 of the Government report will remain a fiction.

**ii. Systematic local and national monitoring of programmes and protocols established to ensure community and professional awareness of the unacceptability of child abuse and the measures available to protect children; and of action taken following reports of abuse or neglect**

**iii. To ensure the Convention principles are consistently respected including the best interests principle and the right of children to express views, have those views taken seriously, and be heard in all administrative and judicial procedures affecting them.**

### **Corporal punishment**

It is difficult to reconcile the Government report's assertion (Paragraph 170) that child abuse is an area of increasing concern in all levels of Aotearoa New Zealand society with the retention of Section 59 of the Crimes Act 1961. Section 59 is a provision that ignores the proven relationship between physical punishment and family and community violence and which appears to be in contravention of Articles 2, 5 and 19 of the Convention. Section 59 allows parents and caregivers to use physical force by way of discipline. The only limitation is that the force be 'reasonable'. No statutory definition of "reasonable" is provided.

This is of particular concern in a society which statistics and research show has a high tolerance of violence. Such tolerance was illustrated by the Introduction into the House of Representatives of the Education (Corporal Punishment) Amendment Bill 1994. The Bill, which was sponsored by the Minister of Youth Affairs and was later withdrawn, aimed to make physical punishment of children in schools legal. It is of concern that such a Bill had an official sponsor especially in a society which has an acknowledged problem with bullying in schools and in which assaults by teachers on pupils are not unknown. Schools Boards vary tremendously in how they deal with bullying. In some cases it is left to the child's family to press for action and for complaints to be dealt with fairly. There is no agreed procedure for dealing with assaults and because of the 'Tomorrow's schools philosophy' the Ministry of Education is unwilling to intervene too directly. The child whose family is unable or unwilling to support a complaint can be assaulted and have no means of obtaining protection or redress.

### **QUESTIONS**

- 1. How much funding does government provide to assist the Commissioner for Children and others specifically to assist parents and caregivers to learn positive, non-abusive means of providing children with appropriate direction and guidance?*
- 2. Has government taken any positive action in response to the Special Education Service's research showing that many children truant because they do not feel safe at school?*

### **j. Periodic review of placement - Article 25**

Paragraphs 190-193 of the Government report state the theory but not the reality of monitoring and review under the CYP&FA. Many reports have expressed concern about lack of monitoring of, and support for, placements. Fiscal restraints have meant that the concerns expressed by *The Report of the Review Team to the Minister of Social Welfare on the Review of the CYP&F Act 1989* (the Mason report) about the lack of monitoring of Family Group Conference recommendations have not been fully addressed in practice.

**"At present the only so-called monitoring process takes place following a review of a Family Group Conference by the Family Court. There is no formal and little informal monitoring of the many 'at risk' cases by DSW. All too often such cases are 'informally resolved without reference to a Family group Conference."**

## **The 1992 Mason Report**

Statutory review times are not being met because of lack of resources (Wadsworth, 'Time frames for a child's world', *Social Work Now - The Practice Journal of NZCYPS*, vol 1, July 1995, p17)

Children are being placed with extended family without proper checks being made or monitoring carried out. The families are not being provided with the extra support and assistance they need to care for at risk children. Kin-carers receive a considerably lower level of on-going support and monitoring than was traditionally available to foster parents. (Jefferson and Ivens, 'The Care and Protection Provisions of the CYP&F Act 1989 Revisited', NZLS Seminar, August 1995, p11) Children are being placed back with abusive families with inadequate monitoring that does not ensure the child's safety.

### *Question*

*1 What steps is the Government taking to improve monitoring and review of placements?*

## **PART SIX: BASIC HEALTH & WELFARE**

### **a. Survival and development - Article 6**

There are far too many avoidable deaths. The Government report describes some important initiatives such as the programme to reduce babies dying of SIDS (cot death) in Maori communities but these programmes are poorly funded for the scale of the need.

Further information is given in Part 3 (c).

### **b. Children with disabilities - Article 23**

The Government report gives an idealistic overview of the situation of children with disabilities. Most services are seriously underfunded. There are serious problems of fragmentation and a lack of co-ordination between services.

There is often an inconsistency of services across the country. For example in some parts of the country the health sector provides continence supplies to children who need them; in other areas the families have to buy their own or fund raise for supplies. Because the Department of Social Welfare now delegates more of its responsibilities to regional and district offices, local interpretations of criteria result in allocations of resources differing from one office to the other.

A major issue is the lack of support for children who receive mainstream education. This means that they get little, if any access to therapy and support services that children in special schools have previously had.

Many early childhood centres are reluctant to enrol children with special needs and tend to see them as 'optional extras'. Although children with special needs have the same rights to school access as other children, short term funding of schools for this purpose makes access can be difficult to obtain, while some get only part-time schooling or are denied (illegally their right to attend unless a teacher aide is present)

School charters are required by law to include equity provisions for children with special education needs, but some schools ignore these provisions. Although it is outside their jurisdiction, Boards sometimes participate in the enrolment of special needs children or try to limit the numbers of such children in their schools. Entry may be delayed several months while the school organises the resources needed. Sometimes and inappropriately, correspondence school assignments supervised by a teacher aide are used in the school for children with

special needs. Sometimes students with disabilities are barred from attending school full time or prohibited from attendance unless there is teacher aide support. Others with behavioural problems are suspended for behaviour that would be overlooked in a child without disabilities. The Special Education service has had substantial reductions in its budget over the last few years.

Tertiary institutions are funded in a way that doesn't allow for the extra support that may be needed by students with disabilities. What extra funding they get, is quickly used up and parents meet the student's support requirements or the student goes without.

Children with disabilities may have a community service card which gives them free primary medical care and hospital services, but part-charges for prescriptions are not covered. Hospital services are overburdened to the degree that these children often have to wait for long periods for appointments and non-urgent surgery and struggle for services that are provided for other children.

There is minimal state funded access to equipment for many children with disabilities. One Regional Health Authority has changed its criteria from supplying what is 'essential' to approving only vital equipment and housing modifications which will mean some families will need to move house.

The Accident Compensation system is widely criticised for its anomalies and inconsistent rulings. For example children who suffer life time consequences from an injury are not able to receive earnings related compensation regardless of their potential.

Many families report how difficult it can be to arrange appropriate caregivers for 'respite care'. For example, the parents of many 'medically fragile' children are highly skilled at carrying out complex tasks in caring for their children and want someone with equivalent skills - perhaps a paediatric nurse - to care for the child while they are away. This is often impossible to arrange.

The Human Rights Act outlaws discrimination on the grounds of disability, but the Government is currently exempt from these provisions (Section 151) **so** that the Human Rights Commissioner is unable to investigate individual breaches of rights in the education field.

Refugees with disabilities who have resident status don't qualify for an appropriate benefit (the Invalid Benefit) until they have met the residency clause of 10 years in New Zealand.

#### *QUESTION*

*1. what steps is the Government taking to uphold the rights of children with disabilities?*

#### **c. Health and health services - Article 24 Infant and child mortality**

There are far too many avoidable deaths. The Government report describes some important initiatives such as the programme to reduce babies dying of SIDS (cot death) in Maori communities but these programmes are poorly funded for the scale of the need.

Further information is given in Part 3 (c).

#### **Medical assistance and health care, especially primary care**

We are pleased to see that the Government is committed to providing comprehensive, publicly funded child and family health services. In practice many children do not receive the health care they need.

Aotearoa New Zealand, along with other industrialised countries, is experiencing a 'new

morbidity amongst its children. This includes high rates of injuries, an increasing exposure to violence, the loss of a wider protective oversight and a continuity of care and nurturing, a lack of a sense of belonging and adult abandonment, exploitation, abuse and neglect. Along with this new morbidity, New Zealand still has high levels of rheumatic fever and communicable diseases and respiratory infections similar to that of much poorer nations. Maori and Pacific Islands children have higher rates of many diseases.

There are problems with co-ordination of services with many different providers of services, particularly in primary care, and a fragmentation of services with children falling through the gaps. There are only a small number of Maori and Pacific Islands services (although these services are increasing). Many children receive no 'well child care at all, and even greater numbers receive none past the age of two. There are very few adolescent health services. Many immigrant and refugee children are denied adequate primary health care services because there is no interpreting service available.

There is a partial subsidy for primary medical care. Some doctors choose not to charge at all for children under five. The Community Services Card (CSC) is the main means by which health resources are targeted at low income families. There has been little official-monitoring of the effectiveness of the card. However a recent study showed there are serious flaws. 'Many individuals and families who are eligible do not have CSCs~ and are therefore not receiving subsidies to which they are entitled. ..Having a CSC by no means guarantees a person (adult or child) access to care . . . The criteria for eligibility are complex and therefore difficult to understand, as are the application form... Incentives are perverse, for example a person might want part-time work but elect not to do this because this may take them over the income limit for card eligibility. There is little incentive for providers to educate patients about cards other than to reduce the potential for bad debts, particularly as the cards incur higher administration costs and little incentive for general practitioners to provide services to those on low incomes... 67% of CSC holders still found fees posed barriers and this was found to be more of a problem for Pacific Islanders and Maori ( Child Poverty Action Group. Targeting and the Community Services Card. Backgrounder No 2, July 1996. The study referred to was by D Parks )

Even when there is no charge from the doctor, families are often unable to afford the antibiotics or other medications prescribed. Health professionals report many families are delaying visits to the doctor or delaying getting a prescription filled until the illness is quite advanced.

The Government report refers to the Child Health Liaison Group 'Principles of Health Care for Children and Young People as being included in many child health service contracts (Paragraph 218). The President of the Child Health Liaison Group says she does not know of any contracts which have incorporated these guidelines.

The Government report also refers to the Healthy Home (not Themes) Programme being developed in South Auckland (Paragraph 222). The Regional Health Authority has since announced it is not able to implement this Programme, at least in the short-term, because of a lack of funding.

The state of mental health services for children and young people is a major concern. A review ( Review of Child, Adolescent and Family Mental Health Services. Wellington. Ministry of Health, 1995 ) of child, adolescent and family mental health services commissioned by the Ministry of Health found these services appeared sparse and underfunded with regard to meeting levels of defined and likely need .. Some commented on the lack of support, understanding and priority given to their services.

The reports conclusions included 'A more detailed, comprehensive survey of health, and other services, would be required to determine more exactly the numbers of young people with mental health problems, receiving and requiring assistance. Nevertheless, Government reports and the opinions of those consulted during this study, indicate that a substantial number of young people suffer with significant disturbances of mental health. Many consulted spoke of the "youth time-bomb" and the lost generation" .

There is very little basic health care information available in languages other than English.

Some attempts have been made to ensure information is translated into Pacific Island languages, but little is available to other minority groups.

### **'Frustration at lack of services for disturbed youngsters**

**'Seriously disturbed adolescents are said to be languishing in hospital or going untreated because services in New Zealand are so severely lacking.**

**'Dr Leah Andrews, a senior psychiatry lecturer at Auckland University, said morale was low among specialists who were frustrated at the ongoing lack of mental health services for young people.**

**She said there was widespread disappointment among peers that a report commissioned by the Ministry of Health had not been acted on. Suggestions in the report, completed by an Auckland psychiatrist, Dr Peter McGeorge, in January last year; Included doubling the number of services over the next four years.**

**New Zealand Herald, 11 March 1996**

### **QUESTIONS**

*1. What steps is the Government taking to improve accessibility to comprehensive health services for all children?*

*2. What is the Government doing about mental health services for children and young people ?*

### **Combating disease and malnutrition**

The Government report refers to the activities of the Public Health Commission in improving the health of children. But (as the Government report notes) the Public Health Commission was disbanded in 1995 despite many public and professional statements of concern at the effect this would have on public health.

The Commission commissioned a report on perceived hunger among school children which concluded that throughout the country 3.4% of school children are perceived to be regularly hungry. Over 596 of schools estimated that over 30% of their school roll are regularly hungry. Almost 39% estimated that up to 10 per cent of the roll were regularly hungry. ( Food and Nutrition Consultancy Service, University of Otago. Final Report for the Public Health Commission on the Perceived Food Inadequacy Among Children in Schools. Dunedin: Food and Nutrition Consultancy Service, University of Otago, 1995) Many local groups provide food for hungry school children.

### **Pre-and post-natal care for mothers**

The Government report refers to the major review of maternity services undertaken by the Regional Health Authorities (Paragraph 230). The implementation of the new maternity service contracts has been accompanied by an outcry from providers (particularly doctors) who believe that the new system could be unsafe - as there is a financial disincentive to refer women to other providers -and will restrict the choices of women to the care and advice they might want. The new system was introduced on July 11 1996.

The policy of early discharge after childbirth is widely encouraged by hospitals. While many women welcome this, others wish they could spend longer in hospital resting and being with their new baby with fewer demands made on them they may have at home.

For some women - particularly Maori, Pacific Islands women, refugee or immigrant women, and young women - available services may not recognise their cultural needs. Somali women who have been victims of female genital mutilation find the process of childbirth in New Zealand unnecessarily stressful as few health professionals have adequate training to respond to their

In the case of a person becoming unemployed, there is a stand down period of two weeks before an unemployment benefit is paid. Redundancy payments and other factors such as a job

being left needs. The women complain that they are made to feel "as if they have come from Mars" when many health professionals come to examine them.

**QUESTION -**

1. *What evaluation is planned of the impact of the changes to maternity care?*

### **Health education, preventive health care and family planning**

Children and young people in Aotearoa New Zealand suffer from a high rate of avoidable mortality and morbidity. The funding of preventive health services is grossly inadequate to meet the need. For example, the Government report refers to the 'Healthy Schools Initiative. Few of the country's 2,700 schools have implemented such a programme.

The Government report acknowledges some of the health issues for children and young people and how they are reflected in statistics of smoking, teenage pregnancies and abortions and sexually transmitted diseases. Other priority issues for young people are injury prevention, violence, self-harm and drug and alcohol abuse. There are such few programmes aimed specifically at the needs of young people.

(A range of preventive health issues are included in other parts of this report.)

**QUESTION:**

1. *Will the Government back its policy documents on the prevention of avoidable deaths, disease and injuries among children and young people through ensuring funding is sufficient to implement the policies for all children and young people?*

### **Traditional practices**

We disagree with the contention in the Government report that 'there are no particular traditional practices in New Zealand which are prejudicial to the health of children and requiring special measures to protect them. There is a long tradition of violence against children, as is shown by the law allowing parents to use 'reasonable force to discipline their children.

### **d. Social security and child-care services and facilities (Articles 26 & 18) (See also Part Five (b))**

While the New Zealand social security system is 'non-contributory and designed to 'target those in need, the reality is that it is a highly complex system that imposes a marginal life-style on recipients. The results are educational, recreational, health and housing disadvantages that adversely affect children.

The complexity of the system makes it difficult for those in need to access the provisions available and appears to even confuse those administering them. The Government report implies a moralistic view in regard to children's rights and needs by stating (Paragraph 246) that 'incentives (for youth) within the system are directed to employment, training or education rather than benefit dependency, when the truth is that poor people generally prefer the dignity of work to unemployment and hardship for their families, particularly in a society where the thrust of the market place and consumerism have become the philosophic touch stones of politicians, economists and the media. Sadly, for many there are few or no jobs available and what wages such jobs might bring in, often provide incomes less than what is available through government benefits.

***The growing insecurity of the middle income groups portends ill for the future. If we have done so badly by children in a recovery, the next recession is a thought too horrible to contemplate.***

## **Susan St John, Senior Lecturer, Economics Dept, University of Auckland**

'without good reason or being terminated because of misconduct, can extend this period up to 26 weeks. A disadvantage of the system is that while it may have been designed to prevent people seeking the unemployment benefit unnecessarily, it can penalise the well-being of children who in terms of the Convention, have an absolute right to benefit from social security (Article 26).

In addition, far from the global integration conceived by government, there is little consistency among the various targeting measures. Different definitions of income apply for different targeting measures: some rely on the income from the previous financial year; others take current income and require a square up at the end of the year; still others adjust past income for inflation; some allow for adjustment where current income is well below past income while some require a broader definition of income than taxation income. Others require an estimate of expected income, some use joint incomes, while some use the income of the individual. Who is counted as married for purposes of income aggregation varies. Income ranges for abatement also vary, and targeting is administered by a range of different departments. Low income working people, low income families, supernatants, students, beneficiaries, divorced and separated people are all treated differently. This results in children in need receiving government support on the unequal basis of care-giver circumstances rather than in terms of their rights as defined by the Convention.

Unemployment benefit is not available to young people until they reach the age of 18, and they do not receive the full rate of benefit until they are 25. 16-18 year olds can only apply for training benefit (if they are on a designated training course) or Independent Youth Benefit (IYB). However, they will only qualify for IYB if they can prove that it is unreasonable for them to look to their parents for support. They must be interviewed by a psychologist before qualifying and in practice may be denied this benefit unless there has been serious violence at home. There is no benefit available to under 16 year olds even if they find it impossible to live at home and/or their parents are unwilling or unable to support them. If they are fortunate enough to find another family willing to look after them their new caregiver may apply for a benefit to assist with the child's living expenses. However this benefit is insufficient to meet the true costs of this. If they are not fortunate enough to find another family willing to take them in and their situation is not drawn to the attention of the Children Young Persons and their Families Service, or the Service fails to accept responsibility for them they may find themselves living at risk on the streets.

The Accommodation Supplement was established by Government to subsidise low income families, as Government policy moved to market rents for state houses and sold state houses. Many eligible people are not getting it.

### **'Many not getting supplement**

**One in three New Zealanders eligible for the accommodation supplement is not receiving it, according to a research report released by the Government yesterday. The baseline survey carried out by Calmar Brunton on the accommodation supplement, which was introduced last July showed only 65 per cent of people eligible for the benefit.**

**"Eighty-one percent of non-beneficiaries who are on such low incomes that they qualify do not get it said lion Annette King, Labour social welfare spokesperson.**

**New Zealand Herald, 3 August 1996**

### **QUESTION**

*1. What plans does the Government have to ensure that children receive social assistance based on the Convention rather than on the circumstances of their caregiver?*

**Reform of Social Welfare Administration The New Zealand Community Funding Agency**

A report on the Community Funding Agency Services Planning and Contracting Process was carried out by the New Zealand Council for Christian Social Services for 1995. The report notes that decreases in funding to agencies was more frequent than in previous years. Cuts to agencies funding has become increasingly frequent from 1993. Most agencies were not satisfied with the rationale for funding they were given. Three quarters did not feel the rationale related to the information supplied and conclusions reached during the Services Planning Process.

Most were dissatisfied with the negotiation process - most commonly they said they did not think there had been a real negotiation. Over two thirds had problems requiring with data requests. Half did not think that NZCYPS and the Community Funding Agency were co-ordinating their work well. Agencies uniformly said they experienced problems with the funding protocol. Most often these were confusion over whether CYP&FS or the Community Funding Agency funded a service, unfunded referrals through NZCYPS, or different interpretations of the same situation from both organisations.

#### **e. Standard of Living - Article 27**

Since the mid 1980 s Aotearoa New Zealand has been restructured in such a way as to establish a market-driven economy whose 'ultimate goal in terms of the Government report, 'has been to guarantee to all New Zealanders a higher standard of living based on sustainable economic growth. (Paragraph 272) The Government views the social welfare benefit system 'as a "safety net" for the most vulnerable groups and has instituted reforms intended to place, 'a greater emphasis on community and voluntary organisations providing assistance .

The Government and its various Ministries, departments and organisations (Inclusive of The Treasury) have promoted a public antipathy towards government intervention and assistance, suggesting It Is clumsy, ineffective and costly - that it creates dependency and dangerously Increases bureaucratic power. The contrary view that government exists for the purpose of acting on behalf of people who cannot Individually, collectively or through adverse circumstances protect or act for themselves, appears to have lost ground. This is having an increasingly adverse effect on children and on the New Zealand Government s provision for their needs and rights.

Evidence is emerging from fragmented research In academic institutions and voluntary and community agencies and many anecdotal reports from workers In health, education, justice and housing of the extent of poverty and the consequences for children, particularly those who are members of low income families

The Prime Minister has claimed that there is no poverty in New Zealand, yet the Poverty Measurement Project (1995), conducted by reputable academics and researchers, found that 32.6 percent of children in New Zealand live below a poverty threshold of 60 percent of the median disposable income. (Waldegrave C, Stephens B, Frater R. Most recent findings in the New Zealand Poverty Measurement Project.) The Poverty Measurement Project provides the best available Information on the extent of poverty in Aotearoa New Zealand. (The Project set the threshold at 60% of the medlan disposable income after focus group work.)

The study was based on 1993 figures and provides the first analysis of poverty after the major social policy changes of 1991. There has been some improvement in employment since 1993. and in benefit levels, but the Government s housing policies - particularly; in regard to the establishment of market rentals for state housing - has bitten deeply into disposable incomes and the poverty line for children has probably not shifted significantly.

The study found that 18.5% of households are below the poverty line. 60% of poor households are households with children. 73% of all single parent families live below the poverty line. The incidence of poverty is more than two and a half times greater among Maori and three and a half times greater among Pacific Islands families than it is among Pakeha families

Housing costs were the largest single cause, contributing \$518 million of the \$826 nVilion poor

people fall below the threshold. 64% of housing New Zealand tenants were below the poverty threshold.

#### QUESTIONS

1. *What action is the government taking to stop the effects of poverty on children?*
2. *What action is the Government taking to improve the affordability of housing for low income families?*

### **PART SEVEN: EDUCATION, LEISURE & CULTURAL ACTIVITIES**

#### **a. Education - Article 28**

The Government's delegation of authority to individual school boards has had a detrimental effect on the educational needs of a significant number of students - particularly children from lower socio-economic backgrounds. The Government report states that "Responsibility for school administration has ...been effectively decentralised." However it is submitted that 'local control over primary and secondary schools has led to the empowerment of the already advantaged sector of society and the disempowerment of others leading to fears of a growing stratification of Aotearoa New Zealand society in the future.

Boards of Trustees (BOT) are faced with the task of managing school funds and are frequently having to resort to fund-raising activities. The result is that students with parents experienced in decision-making roles and who are wealthy are ensured of having access to excellent facilities while students from poorer areas are not receiving the bare essentials due to lack of resources. In addition parents of children in poorer areas sometimes lack the skills, confidence and experience needed to run a school (e.g. legal, accountancy and management skills) and are not provided with proper training or support so that they can fulfil their responsibilities.

Many BOT are not meeting the needs of Maori and other students from ethnic minorities. The interests of these groups are often under-represented on the Boards themselves and consequently many BOT lack understanding and appreciation of cultural differences. These Boards are not able to ensure that all students are given an equal opportunity to reach their full potential.

#### **Free and compulsory primary education**

Many primary and secondary schools require parents to pay school fees. Although payment is voluntary many parents are unaware of this and despite the "voluntary" nature of "fees" often failure to pay results in students not receiving the normal benefits of education. Schools are increasingly seeking to distinguish between "school fees" and "activity fees" it being claimed by schools that the latter are not voluntary and must be paid by parents.

Schools have generally been unaware of the special position of asylum seekers and some have endeavoured to charge the primary school aged children of asylum seekers fees at the same rate as foreign students.

#### **Different forms of secondary education**

Although the Education Act 1989 and Ministerial Guidelines state that schools should provide guidance and counselling for students, the great majority of students with psychological problems do not have access to these services. While all secondary schools in Aotearoa New Zealand have or should have trained counsellors on staff most intermediate and primary schools do not. Visiting teachers and psychologists are simply unable to provide a service commensurate with the needs of their clients due to high caseloads.

The Education Act allows for students with disabilities to attend mainstream classes however

there is no compulsory process of assessing their needs and no right of redress when their needs are not met. These students are often blocked from enrolling or informally squeezed out of schools.

The Correspondence School also provides the Ministry of Education with a convenient means of providing an education for students who have been suspended from school. However there are many factors which make it difficult for families to use this service. For example if the child is under 14 years he or she would need parental supervision. In many cases the families of these children are low income. One earning parent would be required to stay at home therefore adding to an already stressed situation. Clearly these students and their families are ill-equipped to benefit from this type of education.

Reports on government involvement in Maori education suggest that the growth in Maori participation and increase in qualifications gained have been largely achieved by the Maori community itself. Despite these initiatives, Maori continue to be disadvantaged in the mainstream education system as the gap in achievement levels between Maori and non-Maori remains wide.

The "barriers" which continue to limit Maori educational aspirations have been identified as being the shortage of teachers who are skilled in Maori language and low expectations and negative attitudes of Maori students in general.

The fact that the needs of immigrant children are frequently unmet by the current school system because the schools they attend "do not provide programmes appropriate to their abilities, culture, or learning style" and "health factors can also contribute to students being in an at risk situation" was acknowledged by the Secretary of Education in her report on "Students at risk in Education". However there was no reference to this in the Government report.

Although there has been a historical trend towards lower achievement rates for Pacific Island children in secondary schools, it is difficult to ascertain the rates of achievement of refugee and other immigrant groups as no statistics are available.

### **Educational and vocational information and guidance**

Although the Education Act and Ministerial Guidelines state that schools should provide guidance and counselling for students, the harsh reality for the great majority of students facing problems stemming from psychological or emotional sources do not have access to the services described in Paragraph 284 of the Government report. All secondary schools in Aotearoa New Zealand have or should have a trained counsellor, but this is not the case with many intermediate and primary schools and even some high schools. In many cases of inappropriate behaviour resulting in suspension the outcome may have been very different if there had been early intervention strategies implemented. Visiting teachers and psychologists are unable to provide a service commensurate with the needs of their clients. High case loads combined with limited assistance do not cater for those most in need. Parents are often informed of problems concerning their children too late, if at all.

High rates of youth unemployment would seem to suggest that the new vocational guidance programmes are ineffective. Schools need to become more actively involved in assisting students with career choices.

The aim of the National Qualifications framework of a "seamless" education and training programme is not ensuring that vocational training is equally open to all. A report by the National Advisory Council on the Employment of Women revealed that only one of the four main industries in which women are predominantly employed was included in the formal industry training network.

There has been much criticism in relation to the Training Opportunities Programme (TOPs). Key criticisms include:

- this is the only broad-based type of programme in the country, and its criteria exclude a large proportion of young people;
- they do not effectively reach their target group, many of whom need stepping-up programmes to enable them to benefit from TOPs;
- they raise expectations, but very few young people get jobs from them;
- they succeed in domestication of young people to meet employer's needs, while in fact disempowering the young people themselves (Ph D Research, Jane Higgins, Christchurch).

The New Zealand Council of Trade Unions has expressed concern about the "absence of strategic management" of Industry Training Organisations (ITO). These organisations are dependant on voluntary funding from employers. The Council points out that "...each ITO...is driven by the perceived needs of its own industry, and not from any overarching perspective on the educational needs or aspirations of those who are trained." (NZCTU). The creation and maintenance of these organisations is entirely dependent on the existence of sufficient agreement, co-ordination and goodwill within individual industries, which varies hugely.

The new ITO structure is not ensuring that vocational training is equally available to all. A recent report by the National Advisory Council on the Employment of Women identified serious concerns about its ability to improve women's access to equality of opportunity in training. Its main conclusions were that

- three or four main industries employing the largest numbers of women remain outside the formal industry training network;
- in industries where the training network has developed, there are significant reservations about the extent to which it provides training for women;
- there is no ability to monitor whether or not the traditional experience of women receiving less training and less formal training is simply continuing in the Aotearoa New Zealand environment.

### **Higher education**

Despite the increase in participation in tertiary education the Government report makes no reference to the effects economic pressures are having over access to tertiary education. It is becoming more difficult for poorer students to enter tertiary education and it is becoming more difficult for them to do well. An increasing need to engage in part-time work to survive, leaves a shrinking amount of time to devote to studies, at a time of significantly intensifying student workloads.

The introduction of student fees and proposals of future increases have made tertiary study more inaccessible than in the past. The Government report does not address the anticipated and actual burden student loans constitute for the borrower.

The Government report refers to the new funding regime for tertiary institutions, the EFTS system. One of the principal aims of the new system is to introduce a market oriented philosophy into the provision of education. Many believe that this will inevitably compromise the availability of education, as institutions are increasingly driven to view their courses as commodities, and focus resources into the most popular (and the most lucrative) areas at the expense of the less popular and less remunerative. Management of the present post-compulsory education and training regime is now essentially unco-ordinated and voluntarist, despite the rhetoric of a "seamless education and training system".

The Student Allowance Scheme has placed prolonged dependency of students on their parents - up to age 25. The changes in this area suggest that Government are shifting an increasing proportion of the cost of education onto students and their families.

In 1991 only 2% of all university students were Pacific Islanders.

### **Measures to encourage regular attendance at school and the reduction of drop-out rates**

Contrary to the BOT obligations under section 25 of the Education Act 1989, the lack of checks and balances on BOT authority has led some to restrict school attendance, for example by the excessive and increasing use of suspensions. In 1995 there were 8850 school suspensions compared with 4401 in 1990.

Some of these students never attend school again, or are so damaged by the process that they do not fully benefit from subsequent schooling; and some are treated quite unfairly in these processes.

Other students are being blocked from exercise of their right to education by being illegally sent home, removed from school, and kept Out of class for days on end. Since they are not formally suspended they are denied a proper hearing and due process and do not form part of the Ministry of Education's statistics on suspensions and expulsions. The actual numbers of students excluded from school is thus significantly greater than the Ministry's statistics indicate.

The Government report in Paragraph 300 states that BOTs may exercise their discretion as to the extent to which they involve students in the suspension process. This is not necessarily a very positive feature of the process. For example, as described above, schools often informally exclude students without formal procedures, thus denying students a fair hearing. Because BOTs have such autonomy there is little consistency in BOT decisions around the country and also a tendency for procedural irregularities and unfairness to go unchecked. Students and their families have nowhere to go if they have been treated unfairly in the exclusion process (apart from bringing expensive proceedings in the High Court or complaining to the Ombudsman which is very time consuming). Aotearoa New Zealand needs an Independent body, such as an education law tribunal to appeal school exclusions so that there is some forum to address the issues we have raised.

The disproportionate numbers of Maori and Pacific Island students represented in suspension/expulsion statistics has not been satisfactorily addressed. The increasing trend has been made clear to the government for some years now with no apparent systems or strategies to address the issue being put in place. It has been suggested by educationalists that if the Government were to hand resourcing of these areas back to the Maori and Pacific Island communities then some measure of progress might be made.

Maori in particular need a fuller measure of control in the education of their children. Te Tiriti o Waitangi guaranteed them that right and the government has that responsibility to respect and reaffirm those rights.

The participation rates and qualifications of young Pacific Islanders are known to lag behind Pakehas. There has been a trend towards increased suspension rates for Pacific Island children.

The Introduction of enrolment schemes has impacted strongly on immigrant and refugee students who have been discriminated against through bureaucratic means. Increasingly students are being refused enrolment in schools which they are legally entitled to attend. This is a particularly common experience with immigrant and refugee children because many are unable to produce the requisite legal documentation identifying their guardians. In addition enrolment schemes frequently discriminate against immigrant and refugee students by imposing residence requirements upon new students. These students are simply being discriminated against through the bureaucratic means. Some discriminatory conditions which have been suggested for inclusion in enrolment schemes are more overt forms of discrimination, in February 1995 some Auckland schools moved (illegally) to exclude young immigrant children with little background knowledge of English from enrolment at state schools. The move had the backing of the Principals Association. Schools have been generally unaware of the special position of asylum seekers. Some have endeavoured to charge the primary school aged children of asylum seekers fees at the same rate as international students.

The need for schools to change to ensure that their structure and culture enables all students to feel accepted and able to express their individuality and grow educationally was acknowledged in the 1995 Report of the Parliamentary Education and Science Committee on Children in Education at Risk through Truancy and Behavioural Problems. In practice few schools offer differing types of secondary education. Immigrant children are channelled into the programmes which teachers think are appropriate for them. The decision making processes are teacher or school centred rather than being in the best interest of the children. Often the testing procedures used are culturally inappropriate. Children are therefore labelled and channelled into options which debar them from academic progress.

The level of resourcing for English Language Support programmes in schools lags behind that provided in other comparable countries. Even when schools receive targeted funds for language support because of a lack of an adequate monitoring system the funds can easily be diverted to meet the school's latent agenda.

The fact that needs of immigrant children are frequently unmet by the current school system because the schools they attend 'do not provide programmes appropriate to their abilities, culture, or learning style and 'health factors can also contribute to students being in an at risk situation, was acknowledged by the Secretary of Education in her report on 'Students At Risk in Education. (O'Rourke NI (1994), 'Students At Risk in Education, The New Zealand Education Gazette, vol 73, no 19, 1 November 1994) However there was no reference to this in the Government report.

Youth Law Project has been approached by many immigrant students facing difficulties in enrolling in school. These include one Chinese student who had been enrolled at a school for almost a year and paying (high) fees as a foreign student. Once he was granted permanent residence and was eligible for free education the school sought to exclude him claiming that he fell outside the terms of their enrolment scheme because his 'permanent residence was not within their catchment area but in Malaysia. This was clearly not the case and firm advocacy was required to secure this student's enrolment.

The Ministry of Education has been reluctant to get involved in administering some of the provisions in the Education Act such as directing schools to enrol students who have not been accepted in any school in their area. 'This situation is in contradiction with the intention of the 1989 reforms to give students greater "choke" regarding enrolment.

While the Report refers to Government 'concern over truancy levels in New Zealand, there has been no effective measures put in place to deal with the problem. A greater commitment by the government is needed to address the real causes of truancy which may be linked to an education system these students do not find empowering, as research in the United Kingdom has found. The Education and Science Select Committee has expressed concern in its 1995 Report at the increase in the number of dysfunctional and 'at risk families who in turn produce at-risk children who are unable to benefit effectively from the schooling system and who are likely to perpetuate a cycle of disadvantage but little in the way of concrete steps has been taken to address these concerns.

The increased costs associated with higher education have detracted from the participation of children from poor immigrant and refugee communities. Families are apprehensive about the student loan schemes. Newly arrived, poor refugee and immigrant families often rely on income from family members part time work. This part time work has traditionally also funded higher education. In recent years when there have been few part time jobs available young people have been unable to participate fully in education.

### **School discipline**

School discipline is not always administered in a manner consistent with the child's dignity and sometimes even amounts to degrading treatment. For example there have been instances where students have been made to run for an hour as punishment and some students have been isolated from other students during class time. Some schools have been involved in

arbitrary searching of students and a few have gone as far as to practise strip-searching.

As mentioned earlier, suspension has become a grossly over-used tool of discipline by many BOTs, and one that has drastic effects on young peoples lives. The Ministry of Education frequently fails to intervene when this form of discipline is misused.

The description of the suspension process In Paragraph 304 states that 'Only pupils over the compulsory education age limit may be expelled and that most suspensions are for periods of up to three days. However, the Education Act 1989 provides for indefinite suspension ~pf those under compulsory school age (16). Once a student has been Indefinitely suspended the BOT must meet within seven days to decide what will happen to the student. They may admit the student back into school, with or without conditions, or may decide to extend the suspension and may suspend until after the student s sixteenth birthday. This has the same effect as permanent expulsion from that school.

Although the Government report correctly states that only those over 16 may be expelled, under 16 year olds can be permanently excluded by a long term suspension.

## **b. Aims of education**

While the rhetoric of the National Educational Goals is admirable, the reality far from matches it, and there are few avenues open to ensure adherence to these goals of equality for indigenous and ethnic groups. A number of school Boards and staff are failing to outline policies and practices to redress inequities. Maori in particular need a greater measure of control in the education of their children. Te Tiriti o Waitangi guarantees them that right and the government has the responsibility to respect and reaffirm the right. At present Te Tiriti o Waitangi hardly impacts on most school charters. Consequently the historical disadvantages of a monocultural education system continue in "Tomorrow s Schools".

Religious instruction is being taught in some primary schools. Although children are given the choice as to whether or not they will attend, some immigrant parents encourage their children to attend to broaden their general education. However in some schools there is little monitoring of the lessons, which are often taught by religious ministers. In these schools immigrant children from non-Christian backgrounds are learning that their own religion is less important. This can be a disturbing experience for these children - and one which contradicts Article 29 of the Convention.

The measures presently being taken to educate young people in schools about human rights issues are inadequate, given the low level of awareness organisations working with young people commonly encounter. Some schools seem very reluctant to inform children of their rights -possibly because of fear that students may try and exercise them.

There is a great need in schools to focus on learning relationship and communication skills including decision making, which affects both sexuality and alcohol and drug education. There are a plethora of different programmes on offer, few of which have been properly evaluated and which are very confusing for parents, teachers and especially students. Limited resources are wasted because of this and students fail to receive education and guidance in these areas.

In practice few schools offer differing types of secondary education. Immigrant children are channelled into the programmes which teachers think are appropriate for them. The decision making processes are teacher or school centred rather than being In the best interests of the children. Often the testing procedures used are culturally inappropriate. Children are therefore labelled and channelled into options which debar them from academic progress.

## **QUESTIONS**

1. Which government body or department will take responsibility for monitoring the extent to which the Convention s provisions are being respected in practice in schools in Aotearoa New Zealand?

2. *What measures does the government intend to take to ensure that all children are given equal opportunities in the education system?*
3. *How is the Government going to address the problems relating to access to education with which many students are faced?*
4. *What measures has the government taken to implement the recommendations of the Report of the Education and Science Committee Inquiry into Children in Education at Risk Through Truancy and Behavioural Problems?*

### **c. Leisure, recreation and cultural activities (art 31)**

In its report the New Zealand Government acknowledges 'the importance in the development of children of play and participation in cultural activities'. Although the Government lists a range of organisations and activities which provide opportunities for some children and young people to participate in a variety of play, recreation and leisure experiences and draws attention to the country's favourable climate and terrain, it effectively conceals the fact that a significant proportion of Aotearoa New Zealand's children are not likely to benefit from the opportunities available. We believe that a significant number of programmes and sponsorships initiatives in Aotearoa New Zealand are targeted in such a way that they benefit only a small number of very talented youngsters only.

Where play is concerned there are few laws protecting the safety of children through the institution of national safety standards in regard to play equipment. There are too few cycle tracks, a failure to provide for the needs of children in the design of public toilets and changing facilities, poor design and lack of imagination and lack of mandatory reporting standards in children's playgrounds.

Many children live in families who are below the poverty line (a recent report estimated that up to one third of children in Aotearoa New Zealand are affected by poverty) and/or an unknown number live in homes where their parenting is of a nature that places children at a disadvantage developmentally. Benefit cuts instigated in 1991 and changes in public housing policies have led to real poverty for many families and to unsatisfactory living circumstances and the placing of children in overcrowded and unsafe circumstances. The play, recreational and cultural opportunities experienced by children vary considerably depending on their parents' income. Many simply cannot afford the equipment needed or the club fees required to enable them to take part in sporting, leisure or cultural activities.

Although a variety of programmes exist and schools encourage involvement in recreational activities (especially sport) such activities, as with any other part of the educational curriculum, are not used to their best advantage by neglected, hungry or dehumanised children. Truancy is a significant problem in Aotearoa New Zealand, especially among adolescents. Children roaming the streets out of school are not benefiting from the kinds of opportunities the Government refers to in its report.

Play is an integral part of the development of a child. The quality of play experiences a child has is very dependent on what input, equipment and experiences its parents make available - there are as yet too few programmes which reach and adequately support disadvantaged and poorly informed parents in particular those who have experienced abuse, deprivation and neglect in their own childhoods.

Pre-school experience (referred to as early childhood education in Aotearoa New Zealand) is not universally available and is not free. Good pre-school facilities provide excellent opportunities for children to learn and develop through play but a proportion of Aotearoa New Zealand children (especially Maori and Pacific Island children) start school without having attended any form of pre-school education.

The OSCAR (Out of School Care and Recreation) referred to in the Government report are not freely available. There are no subsidies available to allow children to attend such programmes. The fee makes such programmes out of reach of parents without substantial incomes of the type often generated when both parents are working. It is believed that too many children in

Aotearoa~ New Zealand are so-called 'latch key kids who go home to an empty house where their safety may be compromised and where most watch television. A 1995 report ranked the quality of children's television in Aotearoa New Zealand as being below that of other developed countries.

It is also important to note that although early childhood development programmes are highly regulated by statute in regard to health, safety and content there are no regulations governing the facilities, programming or staffing of OSCAR programmes.

There are limited activities for young people outside watching television and the sports area. Some attempts have been made to provide leisure activities, but in the main there are very few alcohol free social activities available to young people. A major area of need associated with this is the provision of public transport in both rural areas and cities, particularly at weekends and evenings.

In 1989 over 400,000 young New Zealanders petitioned Parliament to increase the amount of New Zealand music on radio. Since then the level has dropped dramatically. The youth of Aotearoa New Zealand have no radio station of their own to promote youth culture and local music. A radio network that plays the music that young people like, gives them news and information that they can use on a language and format related to their lifestyle would validate their culture and provide an outlet for their creative energies as well.

#### QUESTIONS

- 1. Which children benefit most from the opportunities provided by various programmes available in New Zealand? What research has there been into how many children have the opportunity to take part in sporting, recreational and leisure activities available in New Zealand and into the backgrounds of the children who do participate? What efforts are being made to compensate the children of poor families?*
- 2. What is known about the effects of poverty on children's participation in play, recreation and leisure activities in Aotearoa New Zealand?*
- 3. Is the proportion of money spent by Government funded agencies on sporting and cultural activities in line with the proportion of children there are in the total New Zealand population? What attempts are made to ensure equity of allocation?*
- 4. What efforts are being made to ensure that the children who most need out of school care and recreation opportunities are able to get these, and what is done to ensure that these programmes are safe, stimulating and promote healthy development?*
- 5. Which children in New Zealand miss out on pre-school education and what efforts are being made to provide free pre-school experience for those who need it?*
- 6. The Government has made SNZ \$0 million dollars above original expectation from the sale of publicly owned radio stations. Does the Government intend to support the recent proposal for a youth radio network?*

### **PART 8: SPECIAL PROTECTION MEASURES**

#### **a. Children in situations of emergency**

I. Refugee children

II. Children in armed conflicts, including physical and psychological recovery and social re-integration

New Zealand has no refugee policy and there is little co-ordination of its immigration policy. This has resulted in a lack of any resettlement programmes for migrants or asylum seekers and their families and only a six week on-arrival programme for refugees coming to Aotearoa New Zealand under the annual refugee quota programme. Children of parents who speak little English are particularly disadvantaged as there is no way for parents to gain access to information about Aotearoa New Zealand. The lack of a National Language Policy also has far reaching ramifications in ensuring children's rights are upheld.

There has been no major analysis and little research about the position of refugee and

Immigrant children in Aotearoa New Zealand. For example the 1994 publication *15 to 25 - A Youth Statistical Profile* published by the Ministry of Youth Affairs reported separately on the position of young European, Maori and Pacific Islanders but lumped all "others" together maintaining they are made up of many small and diverse sub groups.

The work of the New Zealand Immigration Service (NZIS) is specifically exempted from the Human Rights Act (1993). This can result no avenue of redress for children of asylum seekers or refugees coming on the refugee quota programme who are discriminated against by the Immigration Service..

Despite it being illegal to discriminate against children on the basis of race, few refugee or immigrant families are likely to use the formal avenue of complaint through the Human Rights Commission. This is especially so if they come from countries where any official body engenders fear.

Refugee children's needs have not been met by school support systems, even though 'every state school has a responsibility to ensure that students get good guidance and counselling. (O'Rourke M (1994), 'Students AtRisk in Education', *The New Zealand Education Gazette*, vol 73, no 19, 1 November 1994; s77 Education Act 1989) In fact, teachers report being ill-equipped and under resourced to deal with the mental health problems of young refugees. For example, research on Cambodian secondary school students found that although teachers thought the students were happy, many were desperately unhappy and some suicidal. (Lyons D op.cit.)

This also contravenes Article 39 whereby children who have suffered maltreatment, neglect or detention or armed conflict are to receive appropriate treatment and rehabilitation.

Many young refugees and immigrants complain that because of the lack of resettlement resources they experience many barriers in language and communication. This leads them to feel they have fewer rights than others and that they are worthless. Frequently also teenagers are not given accurate information or told what is happening to them or what decisions have been made on their behalf. They are rarely consulted about class placement on arrival in Aotearoa New Zealand. Students report that inaccurate information early on in their lives in Aotearoa New Zealand means that they are unable to see things clearly. When they discover later that they have been basing their assumptions upon inaccurate information they feel betrayed and stressed. Their trust has been shattered and they are likely to be distrustful of further advice.

Some newly arrived refugee groups find there is a conflict between a free press and protection of their privacy. Even though they have come from countries where there is strict control over the media it means that people's private lives are protected from scrutiny. It is a shock for them to discover that the most intimate parts of their lives can be openly discussed in the media. This has been the experience of the Somali people over reporting of female genital mutilation.

Refugee children are extremely vulnerable to abuse. They are new to society and as the whole of the resettlement system is based upon voluntary sponsorship refugee families are frequently very trusting of all who approach their family. There has been an increasing number of reports of suspected child abuse among the poorest and most vulnerable families but because of cultural differences and a shortage of skilled social workers parents are reluctant to cooperate with authorities, meaning charges are rarely pressed, leaving children open to further abuse. Training and resources are not available to address the special needs of refugee children.

Children born to asylum seekers in Aotearoa New Zealand will be New Zealand citizens, yet pregnant women asylum seekers, or the wives of asylum seekers are quizzed as to their status before being offered care. This is a discouragement to them following up on treatment and is therefore detrimental to the child's health. Such women rarely have the cultural knowledge or communication skills to access the Patient Advocate and the advocate does not have the time nor skills to predict their needs.

As noted in the Government report, legislation has been introduced to make it illegal to either perform female genital mutilation in Aotearoa New Zealand or to take children, or adults overseas to seek such a procedure, although there is no evidence that female genital mutilation is occurring in Aotearoa New Zealand. To date there has been no resourcing of any education programme to ensure the law is effective, this is despite overwhelming evidence from elsewhere that this is needed to ensure attitudinal change.

The majority of young refugees arriving in Aotearoa New Zealand have gaps in their schooling and little knowledge of English. They are expected to enter the examination orientated school system which makes little allowance for their needs. The decentralisation of school administration has failed to meet the needs of small minority groups. Parents from these groups are rarely elected or co-opted to Boards of Trustees and thus their voice is unheard. On the whole, small communities fall outside the model because of their low numbers.

Refugee children coming to Aotearoa New Zealand as part of the refugee quota programme take part in an on arrival education programme run by Auckland Institute of Technology at the Mangere Refugee Resettlement Centre. Contrary to the assertions in the Government report there are no social work services available at the Centre.

The Government report maintains that the special needs of refugee children in schools are met through a system of resource teachers working with a national co-ordinator. There are currently only six resource teachers working throughout Aotearoa New Zealand. They are expected to meet the needs of all refugee and immigrant children. The position of national co-ordinator was disestablished in 1989 as part of the education reforms. Although the Ministry of Education has a national Equal Educational Opportunities Officer the person in the position maintains the post is operational and can therefore not influence policy. Thus there is no direct channel through which the educational policy needs of refugee and immigrant children can be addressed.

The Introduction of Targeted Funding for Educational Achievement (mentioned above) in 1995 recognised that higher rates of educational under achievement were not uniformly distributed across the country and that there were high levels of need in Auckland. Yet, although 70% of immigrant children live in Auckland there is only one funded resource teacher position to meet their needs.

The Government report also states that it is open to accepting unaccompanied refugee children as part of the refugee quota. Its performance does not bear out its willingness. No unaccompanied minors have been accepted, nor are there adequate support systems in place to support any who are accepted.

Some children who come to Aotearoa New Zealand to join family members after many years of separation sometimes find themselves in the same position as unaccompanied minors. Their family relationships are frequently tenuous at best and often breakdown. There is little support for these young people.

Although there is now a small, specialised mental health service for refugees in Auckland its level of resourcing does not allow it to meet the needs of refugee children. There is no similar service in other parts of the country.

## **b. Children in conflict with the law**

### **i. The administration of juvenile justice - Article 40**

In order to discuss Juvenile Justice, the Government report refers to particular statutes (i.e. the CYPFA, New Zealand Bill of Rights Act, and the Criminal Justice Act) and current modes of police and court procedures. It is our contention that the Government's treatment of this area has overlooked several aspects. This is due, firstly, to confusion and limited analysis of the legislation involved, and secondly, an insufficient investigation of the reality concerning court and police actions.

The CYPFA applies to those up to 17 years old whereas the Convention applies to all those below

18. Article 3 (best interests of the child) is not adhered to by the Government in the area of juvenile justice as decision makers are not required to be guided by the best interests of the child under this part of the Act.

The Human Rights procedure is rarely used by children and young people. Without better education, information and more support being available concerning the Human Rights Act, and without better advocacy services for children, the protections and rights afforded by the Act will remain largely irrelevant and unenforceable by the majority of children and young people.

Although the term 'children' is defined in relation to the Act, it should be made clear that children cannot be brought before the Youth Court unless charged with either murder or manslaughter. (This is briefly mentioned in Paragraph 352, but should be elaborated on here.) They must be 10 years and over for this to occur.

The converse of this is that children (defined as those under 14 in the CYPFA) who allegedly commit offences are dealt with in a quasi-judicial way through Family Group Conferences. A twelve year old suspected of theft cannot be formally charged with this offence. The CYPFA prohibits under 14 year olds being charged with such an offence. However a 12 year old might be required to attend a Youth Justice family group conference. Although they have no right to legal advice or independent representation the child could be held accountable for his or her actions in this forum and punishment imposed through the Family Group Conference plan. Although the child would not have a criminal record as a result of attendance at a family group conference they may be labelled locally as a "criminal" notwithstanding the fact that he or she may have lacked legal capacity to commit the offence, has had no legal advice and has not been convicted in a court of law with due process.

Furthermore, this lack of representation for such children is not discussed in Paragraph 345 of the Government report. This Paragraph deals with the right of a child under the CYPFA for counsel or a youth advocate. More emphasis is needed here on the Family Group Conference system, and how it affects this right of representation. Under the conference system, a child is only entitled to a representative if a charge has been laid. 90 % of FGCs take place in pre-charge circumstances, therefore the child more often than not has no legal advice whatsoever and nobody to advocate for them or support them at the Family Group Conference.

There are several inconsistencies within Paragraph 344 of the Government report-

- A young person may be given the opportunity for an appropriate support person and a legal advisor - not and/or.
- We are concerned about the ability of most independently nominated persons to effectively carry out the role contemplated by the statute. Many such nominated persons will be out of their depth and/or intimidated by the process.
- Section 224 of the CYPFA states - 'No statement shall be inadmissible pursuant to s 221 of this Act on the grounds that any requirement imposed by that section have not been strictly complied with or has not been complied with at all, provided that there has been reasonable compliance with the requirements imposed by that section. This covers a child's rights before being questioned by an officer to consult with a barrister, solicitor, nominated person and parent/guardian (Sections 215, 222 ). We submit that the reasonable compliance provision completely detracts from this right. It significantly weakens the right, a right that should in all respects be specifically enforced.

Paragraph 346 refers to the appointment of lay advocates under the CYPFA. Their role and process of appointment needs to be defined more precisely.

Paragraph 354 claims that 80% of youth offending is dealt with through the Police diversion process. It subsequently follows that there should be procedures whereby invalid police actions can be tested. The major concern is the lack of checks and balances - no legal advice being available to these children and young people. We also wonder why so many cases are diverted under this scheme when FGCs are provided for under the CYPFA, whereas the Police

diversionary process is outside the ambit of the Act.

The Government report does not consider the issue of recidivist offenders. Under Section 283 (n) of CYPFA, the maximum period of supervision in a residence is 3 months coupled by 3 months further supervision outside a residence. Our contention is that there needs to be provision for facilities that provide for longer term custodial needs.

This also affects those charged with serious offences. It means that where the court is dealing with a young person on very serious charges, perhaps involving violence, the legislation would not allow a Youth Court to impose a longer sentence, which in some instances would not only be justified, but necessary to enable rehabilitation of a young person. Therefore the only option the Court has is to transfer the young person to either the District Court or the High Court for sentencing, thereby removing the young person from the ambit of the CYPFA to the sentencing provisions of the Criminal Justice Act.

### **c. Children in situations of exploitation, including physical and psychological recovery and social re-integration**

#### **i Economic exploitation, including child labour**

The Government report ignores the possibility of full time employment of children after school and in weekends. The Education Act prohibits employment which interferes with the child's attendance at school and there is no provision concerning employment which might have a negative effect on the child's personal development or performance at school. Weekend work, long after-school hours and night work would not infringe this provision.

There is a \$1,000 fine for infringements of the conditions of child employment but this isn't a serious deterrent to employers and the police normally have more important matters to deal with..

Regulations concerning place of work and conditions of employment are vague and difficult to enforce and employers are required only take 'all practical steps to avoid employing children at night.

#### **Appropriate regulation of hours and conditions**

Hours and conditions of work for children are controlled by employment contracts between the worker and the employer - contracts which in the case of children and young people, disempower them in favour of the employer as both parties are not equally able to look after their interests. during the contracting process.

Many of the statutes which regulate conditions of work are out of date or so obsolete as to be unworkable. For example, no penalty can be imposed upon an employer who does not provide a written employment contract to the worker.

The Health and Safety in Employment Act imposes on the employer performance standards, which in their interpretation and application are solely the preserve of the employer, and which therefore are unlikely to be challenged by a child or young person..

The Government report refers to maximum fines of \$100,000 and imprisonment for infringements but legal action is unlikely to be taken by young workers who are unlikely to be aware of their rights or what avenues are open to them for redress.

The difficulties of policing health and safety legislation are great and the inspectorate which is responsible for it, prefers offering employers advice and education rather than taking action against them.

In Paragraph 370, the Government report refers to the ability of workers (under section 57 of the Employment Contracts Act 1991) to have their employment contracts set aside if they were

obtained by harsh and oppressive conduct, undue influence or duress but it is unlikely because of their youth and inexperience, that young workers will avail themselves of this provision..

In reality employers can impose extremely unfair, onerous and even illegal contracts on vulnerable children and young naive workers. Free advice and 'helplines provide little substantive assistance.

The protections available to young workers are deficient in that they can be legally paid almost half the rate that adult workers receive, simply because they are younger. The niggardly nature of the minimum wage means social pressure compelling young people to find work can effectively put them into an exploited position and keep them in a state of poverty.

## **ii. Drug abuse**

The most common drugs used by children and young people are tobacco, alcohol and cannabis.

A 1991 study found a third of mothers smoke in pregnancy. A third of women in the 15 to 24 year old age group smoked in 1991.<sup>28</sup> (Our health, Our Future, 1993. Public health Commission.) Smoking is common among teenagers and many younger children also smoke. But although tobacco advertising has been banned, tobacco companies still find ways to circumvent the law - such as large price notices which are effectively advertisements - and target young people with brand names such as 'Holiday and 'Pacific'. The law needs strengthening.

In 1992 alcohol brand advertising was introduced in the broadcast media. Although this is not allowed to be shown before 9 pm, research shows that on a typical evening 12% of 5 to 14 year old children would be watching after 9 pm (Maskill C, Wyllie A, Casswell S. (1994) Public opinion on alcohol advertising: February 1994, Alcohol and Public Health Research Unit, University of Auckland) The average 5 to 14 year old was exposed to alcohol television advertisements 214 times a year and the average 10 to 17 year old 317 times. ( Casswell S, Wyllie A, Jones S. (1994) Alcohol advertising expenditure and exposure, Alcohol and Public Health Research Unit, University of Auckland) A 1994 survey showed that the majority of the public were opposed to children being exposed to television advertising. ( Maskill C, Wyllie A, Casswell S. (1994) Public opinion on alcohol advertising: February 1994, Alcohol and Public Health Research Unit, University of Auckland )

A recently released report ( Wyllie A, Millard NI, Zhang JF. (1996) Drinking in New Zealand: A National Survey, 1995, Alcohol and Public Health Research Unit, University of Auckland ) shows that, although takeaway alcohol sales are prohibited to persons under the age of 20, 38% of 14 to 19 year olds had purchased takeaway alcohol in a 12 month period and had only been refused on 596 of occasions. Among 14 to 17 year olds 25% had bought takeaway alcohol and been refused on 9% of occasions. The data also indicated that underage drinking on licensed premises was also a problem. 30% of 14 to 17 year olds had consumed alcohol on licensed premises in the 12 month period and on only 12% of occasions were they refused. (Fourteen to seventeen year olds are legally allowed to drink on licensed premises under certain circumstances if drinking with meals.) Almost a quarter of 16 to 17 year old males and one in ten females of the same age reported drinking enough to feel drunk at least once a week.

A 1990 survey showed that 25% of males and 17% of females in the 15 to 17 age group had used marijuana in the previous 12 months. ( Black S, Casswell S. (1993) Drugs in New Zealand: A Survey, 1990, Alcohol and Public Health Research Unit, University of Auckland )

## **iii. Sexual exploitation and sexual abuse**

The problems of the CYP&FS and the serious shortage of mental health services have been described elsewhere in this report.

The New Zealand Prostitutes Collective (NZPC) is a non-government organisation funded by government health authorities to provide an HIV/AIDS and STD prevention programme to workers in the sex industry throughout Aotearoa New Zealand. NZPC carries out this work by using peer educators to access sex workers at their place of work, including visits to massage parlours, escort agencies, and street sexwork sites. NZPC also provides community drop-in centres in five of the main centres throughout Aotearoa New Zealand. They comment.~

The overwhelming number of sex workers are female, although there are some male and transgendered sex workers. Most are aged between twenty and thirty. However, there are smaller numbers of sex workers who are either younger or older. Throughout its eight year history the NZPC has had some contact with small numbers of sex workers and opportunistic sex workers aged fourteen to seventeen in Auckland, Wellington and Christchurch. Most contact with these people has occurred as they have been found round known street sexwork sites. We have also had contact with sexworkers between the ages of sixteen and seventeen who work from escort agencies and sometimes in massage parlours.

Anecdotal evidence suggests that these young people seek work in the sex industry because they may be affected by the following:

homelessness (absconded from home and school or Social Welfare care owing to, unsatisfactory conditions) experiencing problems with poly drug abuse (cannabis, alcohol, pills, inhalants)

- coercion by an older person
- peer pressure to seek excitement and independence from authority figures
- pressure to survive and earn money to support themselves
- pressure to support older partners or mends, It is our impression that the majority of youth who work on the streets are Maori, with non-Maori youth generally working from escort agencies and massage parlours. The Massage Parlour Act 1978 is designed to prevent people under the age of eighteen from working in parlours although sometimes this is difficult for anyone to enforce. There is no such legislation for escort agencies.

NZPC is concerned that there are very young people who are working in the sex Industry. While their numbers are small, we feel they should not be disregarded. Youth are at greater risk of acquiring HP//AIDS and STDs because they lack knowledge and experience in terms of keeping themselves safe. They are more vulnerable to violence and coercion from clients and other people. They are less likely to access support services including sexual health clinics.

**d. Children belonging to a minority or an indigenous group This section was written by Maori lawyer, Moana Sinclair of Ngati Raukawa**

The Government has in its report glossed over crucial issues that impact on Indigenous Maori children In their ancestral homelands. Indigenous Maori children are the First Nations children of Aotearoa (NZ) - Tangata Whenua, and therefore they possess Inherent rights to more than special protection measures by virtue of their Tangata Whenua status. Indigenous Maori are like the Indigenous bird, Kakapo, threatened with extinction.

Indigenous Maori simply cannot be categorised with minorities who arrived recently by plane or on English or French boats last century. Indigenous Maori children occupy a unique place as Tangata Whenua in their ancestral lands. They cannot be separated out from their people. It is against all Maori philosophy that a sector of our people be separated away from their people as a collective and given rights - the people as a whole have an inherent collective right which is inextricably connected to the land. For Maori, the individual rights are protected by the collective.

Paragraph 393 states, *'In New Zealand, the economic and social situation of the Maori people continues to give cause for concern* . This is an understatement. The Issue is simply one of justice. Colonisation just last century led to the theft of Maori land There is less than 3 million acres out of a total of 66 million acres held by Maori today. The 'special measures the 1990 s Government report talics of to protect and promote the interests of Maori children and young

people come now as a result of that huge loss of land and the fragmentation of Maori society as they knew it. The Children Young Persons and Their Families Act and Youth Justice are band aid measures which on a superficial level pretend to be addressing the injustice. However, underneath these measures the power relationship between the Crown and Indigenous Maori stays the same. The Crown supreme and Maori subservient. The Government's policies and law maintain their own dominance.

Paragraph. 394 states, *'the government has committed resources to promoting a bicultural approach to the work of its agencies. Te Puni Kokiri (the Ministry of Maori development) is a specialist agency for formulating Maori policy and monitoring the work of other government departments in catering for Maori needs. Te Puni Kokiri has as its main purpose to assist in developing an environment of opportunity and choice for tangata whenua, consistent with the Treaty of Waitangi.*

The above statement is absolute nonsense, especially in view of recent government activity which works to extinguish the Treaty of Waitangi, 1840, and therein the inherent rights of Indigenous Maori under the guise of 'Treaty settlements which are 'full and final'. (Tainui Waikato settlement, 1995) other examples include the Government's Sealords agreement which works to extinguish 'exclusive fishing rights to Maori under the Treaty of Waitangi 1840, Article 2, by way of a money deal between the Government, a multinational company and government selected Maori. The Fiscal Envelope (an envelope with a limited amount of money in it) otherwise known as The Treaty Settlement Process, now administered by Minister of Justice Doug Graham works in a similar manner to the Sealords Agreement to extinguish 'exclusive land rights to Maori under the Treaty of Waitangi 1840, Article 2, is again by way of 'full and final', cash settlements and miserable in terms of any fair and reasonable Treaty of Waitangi Interpretation.

Te Puni Kokiri is, as the Government report says, a government agency; it has some Maori staff but in the main they play a subaltern role. Te Puni Kokiri went round eleven different marae selling the Government's Treaty Settlement Policy. It was unanimously rejected by Maori throughout the country. The Government has used the information gathered at the various 'consultation hui (gatherings) and now administers government defined negotiations with various hapu (sub tribes) via the Office of Treaty Settlements. Maori claimants under the threat that the fiscal cap will reach its limit and they will run the risk of missing out if they do not hurry to the Government's table are coaxed into behind-closed-door money deals which do not come under hapu (sub-tribe) or Iwi (tribe) scrutiny in exchange for the negation of their Inherent rights under the Treaty of Waitangi, 1840.

What does this have to do with Indigenous Maori Children? It has everything to do with the denial of present and future generations of Indigenous Maori children to their land and all its resources; this includes the seas, lakes, rivers and all the animals within them, The Government thinks it can throw money at Maori and make speeches (as in the Tainui Confiscated Lands settlement speech by Minister of Justice Doug Graham) about Maori now being able to build an economic base. This is entirely erroneous. Decolonised Indigenous Maori children are taught that their economic base lies in the lands and the seas, not in individualistic western designed corporations which focus on profits and over-exploitation of the land and its resources.

Paragraphs 395, 396 and 397 make reference to the history of Kohanga Reo (pre-school education), Kura Kaupapa Maori (primary school) and Whare Kura (secondary school), and the Government's 'wish to ensure they continue. It has recently given funding to these schools and as of 1989 legislation was enacted for the establishment of these special kura. It must be remembered that these schools have ever eventuated as a result of the good will of the Government; they exist today as a result of the struggle that Maori parents and children sustained in fighting for the right to take back control of the education of their children. They worked in garages and sheds with no money or resources and voluntary teachers to ensure that their children would be taught in the Maori language by means of Maori pedagogy and philosophy. Initially the Government resisted this reclaiming of their children by trying to ignore what was happening, but the founders of Kura Kaupapa Maori are strong in their stance. The Ministry of Education is now working to co-opt and steal this concept which has developed from

Indigenous Maori knowledge. They have been negotiating directly with mainstream schools that want to be redesigned as Kura Kaupapa Maori without the input or consultation with the original Maori founders of these kura (schools).

A recent letter ( A letter received by Dr Pita Sharples, head of the Runanga Nui o Kura Kaupapa Maori o Aotearoa (Elders of Maori Philosophy Schools) from an employee of the Ministry of Education to Te Runanga Nui o Nga Kura Kaupapa Maori o Aotearoa (TRNKKM) (elders of Maori Philosophy Schools) talks of 'synchronising philosophies and redesigning mainstream schools as Kura Kaupapa Maori type schools. 'This is clearly theft of a Maori concept which has at its base a concept called Aho Matua. This concept is developed from a Maori philosophy. It can never ever be owned or controlled by a Ministry of Education.

Paragraphs 398, 399 and 400 describe how they are funding Kura Kaupapa Maori teacher training and how they are building on successful existing Maori education programmes. The dominant subservient power relationship is clearly seen when dominant power funds anything of the subservient party. It is played out with all Maori initiatives, education is no different. It works like this: Maori desire to run their own affairs in their own country, but because they are stripped of their lands and resources they are impoverished, they work and struggle going without and resisting money from the dominant power because they know that once they take that money it will only be a question of time before the Government wants total control. But things are hard running an underfunded school with tired children and parents. So they sit down with the coloniser in the hope that something can be worked out and they can secure funding without too many compromises. It is this very scenario that TRNKKM are confronted with now. Therefore glowing accounts of how much money the Government is putting into anything Maori always comes with a price. The price of losing control of their children's education again is too high. Maori are still paying today.

Apart from the mention of the historical disparities between Maori and non-Maori, Paragraphs 401, 402 and 403 are really talking about a government desire for multiculturalism with its Maori Treaty partner let alone move step ahead into multiculturalism. Indigenous Maori children will not be lumped into the Maori and Pacific Island basket together, nor are they an ethnic minority; they are First Nations Peoples of Aotearoa. This talk of multiculturalism is a diversion from the unfinished business the Crown has with its Indigenous Maori partner.

The restructuring of the State sector has meant that jobs have been lost and huge numbers of people have been made redundant. These are the factors which have brought about a situation where Maori and non-Maori are staying at school or going back to tertiary institutions. It is not because of any government good will to Indigenous Maori children.

Apart from section 404 which talks of training Maori girls to overcome racism and sexism, an indictment on the coloniser in itself, Paragraphs 405, 407 and 408 are advocating that multiculturalism is where the Government's interests lie. Indigenous Maori children are unique to the islands of Aotearoa, they are First Nations children, they occupy a unique place in their ancestral lands, they are not a minority and they are not an ethnic group.

### **The Draft Declaration on the Rights of Indigenous Peoples**

The following is an apt statement of the Maori view of how they want their children raised and nurtured. It is from Sharon Venne, a Cree Indian Jurist. The paper was given at the Open-ended Inter-sessional working group on a draft United Nations declaration on the rights of Indigenous Peoples 20 November - 1 December 1995.

'In relation to draft Article 6 regarding indigenous children, Mr Chairman, we consider children to be gifts from the Creator. Children are to be raised by their parents in the best possible way for the benefit of the community. It is the responsibility of the community to see to the proper upbringing of the children. Children are gifts to the community and not to the settler society to be assimilated away from their people. In the eurocentric western legal system, the criteria often used to justify the taking of our children is the value-laden term: best interests of the child. We need the provision of draft Article 6 of the declaration to ensure that our children are raised as Indigenous children and not as by-products of the settler society

**QUESTIONS:**

1. Does the government intend to conduct research into the Youth Justice Family group Conference process to ensure that It accords children and young persons their Convtn don Rights?
2. Does the government intend to monitor and regulate the employment (Including pay rates) of children and young people to ensure young workers are accorded their convention rights?
3. Does the government intend to honour us obligations under Te Tiriti o Waitangi and devolve authority and necessary resources to Maori to care for their children and young people?

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