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Many people and groups had input into the development of the report with some making substantial inputs and contributing sections and others offering advice and comment.

These groups include:

- Auckland District Law Society - Children and Young Persons Committee
- Auckland Institute of Technology School of Refugee Education
- Auckland Institute of Technology Faculty of Maori Studies - Youth Development course
- Child Protection Trust Advocacy Committee
- Children s Coalition
- Children s Rights Campaign
- Deaf Association of New Zealand.~ The Voice of Deaf People
- IHC New Zealand Inc

- Mental Health Foundation
- National Council of Women
- New Zealand Association for Adolescent Health and Development
- New Zealand Collective of Prostitutes
- New Zealand Council of Trade Unions
- New Zealand Educational Institute
- Youth Law Project/Tino Rangatiratanga Taitamariki

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Note: The contents of this report are true and accurate to the best knowledge of Action for Children in Aotearoa. However, no liability is assumed by Action for Children in Aotearoa for any losses suffered by any person arising directly or indirectly from the publication of this report.

The drawing on the cover is by Jack Haddow.

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 Taitamariki 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. We did not have the resources to undertake the consultation we would have liked to have done with young people and our applications (to the Ministry of Youth Affairs and other bodies) for financial assistance were turned down.

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 regret that we have had to adopt an adversarial tone in much of our report. We have considerable respect for the very many people in government and throughout the public service who work tirelessly for children. frequently against considerable odds and at substantial personal sacrifice. However we want to demonstrate some of the many ways in which the Government report does not represent the reality of life for children.

PART ONE: GENERAL MEASURES OF IMPLEMENTATION

a. Measures taken to harmonise national law and policy with the provisions at the Convention

31% (1,098,030) of the population of New Zealand was under 20 years of age. Over a third of the Maori and Pacific Islands populations are under the age of 15 years.

We are pleased to see that the Government report states, "New Zealand is fully committed to upholding the Convention and takes very seriously the obligations assumed upon ratification," and are aware that many people are working to make the Convention a New Zealand reality.

The Government report expresses many good intentions, yet rising child poverty, restructuring and reductions of government services have had serious detrimental effects on New Zealand children. Despite the commitment it made at the World Summit for Children, this country has no Plan of Action nor national child policy for children.

Question:

1. What steps is the Government taking to fully implement the Convention and to produce a National Plan of Action?

b. Existing or planned mechanisms for co-ordinating~ policies relating to children and for monitoring the implementation of the Convention

The restructuring of the state and the economic reforms of the last decade have had many impacts on children State reform over the last decade has separated social services into policy, delivery, and regulatory operations. This created hierarchical agencies dominated by Treasury. Ministers contract their Departments who then contract with purchasers or providers for services. The wider needs of children for accessible, co-ordinated, and focused family centred services are frequently lost.

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 the first and second government reports to the UN Committee on the Rights of the Child. We ask you to please next review New Zealand's compliance with the Convention in two years time.

The increasing needs of children, and population growth, have been responded to by widespread cutbacks in funding rather than an increase in resources. Devolution and separation of government department functions have led to the proliferation of services with inadequate monitoring and evaluation.

The Government report provides little statistical information to document the situation of New Zealand's children. There are gaps and limitations to what is officially collected. There is very little information which describes the views and experiences of children and young people. Although the annual number of referrals to the Children Young Persons and their Families Service is known, the Service's statistics don't describe how many children are seen by the service. There is no official poverty line, no measure of child poverty, no regional or national information on school truancy and inadequate service monitoring.

The Government doesn't require legislation to be reviewed for its impact on children nor the appointment of children's advocates during the planning process. There is no system for the review of children's deaths, nor any co-ordinated system for ensuring health and education services are delivered to all children. The Government report notes the work of the Commissioner for Children but hasn't increased his office's resources to match the growing work load. -

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

A recent survey in Auckland, New Zealand's largest city, found 94% of the people in Auckland didn't know of the Convention.

Questions:

- 1. What evaluation has there been or is planned concerning the effects of the state sector reforms on children?*
- 2. What measures is Government taking to make the provisions of the Convention more widely known?*

PART TWO: DEFINITION OF THE CHILD

New Zealand law doesn't give everyone younger than 18 the rights and protections required by the Convention. Protection against discrimination on account of age applies only to people over 16. The Children, Young Persons and their Families Act generally applies only to those under 17. Minors aged over 17 who commit a criminal offence are dealt with as adults.

The law as to the age at which children or young people may give or refuse consent to medical treatment is unclear - as it is in regard to a refusal being over-ruled by the child's parents.

The Government report states that children between 10 and 14 can only be prosecuted for murder, manslaughter and minor traffic offences, yet some accused of criminal offences are being taken to Youth Justice family group conferences without legal advice and assistance.

There is a lack of consistency in the use of the term 'child' and at least five different definitions of 'young people/youth/young person' which makes it difficult to obtain useful information. The problems with definition have practical effects and contribute to the lack of co-ordination between sectors.

Questions

- 1. What action is the Government taking to ensure all legislation conforms with 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 Government report refers to statutes such as the Human Rights Act but no statistics are provided on the extent of discrimination against various ethnic or other protected groups nor does the report recognise discrimination against children on the grounds of age.

Section 59 of the Crimes Act allows adults to use "reasonable force" against their children. This is a legal defence for many parents who assault children and is discriminatory as it decriminalises assault against children.

Human rights procedures are rarely used by children and young people because they don't know about the Act or what to do when discriminated against. For example, Paragraph 38 of the Government report fails to acknowledge that the Maori students were assisted and supported in making their claim of racial harassment by the Youth Law Project. The protection of the Human Rights Act will remain irrelevant to the majority of children who do not have access to such a service.

Legislation concerning discrimination on the grounds of sexual orientation and disability is new and its effectiveness isn't yet clear. The Human Rights Act offers protection against discrimination on the grounds of social origin yet, because social stratification is increasing and the cost of education is growing, inequality of opportunity increasingly disadvantages children from poorer families.

The Government report ignores discrimination against Maori and Pacific Island children in education and employment, yet 40% of Maori and Pacific Islanders aged under 25 are unemployed and in the first four months of 1994 over 50% of school suspensions and expulsions were Maori and Pacific Island students.

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. Those at school report racism from other students and teachers. The inadequacy of policy on English as a Second language programmes in schools has led to racial tension. Schools are sometimes unwilling to enrol older refugee and immigrant children and impose enrolment conditions such as illegal demands for payments for enrolment and extra English tuition, twelve months school zone residence before enrolment, and the study of specified subjects.

There is no minimum wage for under 16 year olds. The Human Rights Act generally protects those aged over 16 from discrimination on the grounds of age. However where rates of pay for 16-20 year olds are concerned discrimination is permitted. Employers are only required to pay 16-20 year olds \$3.82 per hour (UK pounds sterling 1.60) which is 60% of the adult minimum wage.

Although 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 the unemployed under 18s can apply for, is the 'independent youth benefit'. It is very difficult to get this benefit unless serious violence has led to their leaving home. The government's refusal of a universal unemployment benefit for 16 year olds breaches Article 2 of the Convention.

Paragraph 40 of the 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, a lack of appropriate training and monitoring, and the failure, until very recently of NZCYPS to support Care and Protection Resource Panels.

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 the Youth Court or the representation of their whanau, hapu and iwi interests.

Questions:

- 1. Will the Government revoke legal permission for parents to assault their children?*
- 2. What steps will the government take to eliminate discrimination against young unemployed people's rights to welfare benefits?*
- 3. What and discrimination or other measures will the government take to improve the position of young Maori and Pacific Islanders in the education system?*

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 when it is, the principle is not always respected. Compliance with Article 3 is obstructed by a statutory and policy focus on the rights and responsibilities of parents and family and the state as a 'safety net', rather than on the best interests of the child. The Department of Justice (report to the Select Committee on the Domestic Violence Bill 1995) and the Social Policy Agency (submission to the Justice Department on the Discussion Paper on the Domestic Protection Act 1982) both expressed the opinion that the CYP&F Act was unable to protect children because of its focus on protection of the family rather than the protection of the child. Failure to give primacy to the child in care and protection legislation and practice has had significant detrimental effects for children.

Paragraphs 42-4 of the report describe the "best interests" provisions contained in the Children Young Persons and their Families Act 1989 (CYP&FA). Whilst s6 requires that "the interests of the child or young person must be the first and paramount consideration", decision makers are also required to have regard to Sections 5 and 13 which place an emphasis on family responsibility and the child's place in the family. This gives inadequate recognition to the interests of the child as a separate human being.

Paragraph 48 of the Government report describes the role of the NZ Children, Young Persons and their Families Service (NZCYP&FS) as protecting the child, ensuring the adequacy and stability of care arrangements and strengthening the family. In fact a policy of "minimum intervention" operates, resulting in a serious lack of high quality, out of family placements. Under resourcing of NZCYP&FS and a loss of highly qualified and experienced social workers have produced a dangerous lack of focus on the child's right to protection.

This emphasis on the family sometimes leads to a failure to perceive and deal with reports of concern and possible child abuse. NZCYP&FS is sometimes unwilling to disagree with family

group conference recommendations and in one case this resulted in a child (Craig Manukau) being kicked to death 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"

The focus on family responsibility, has resulted in a failure by NZCYP&FS to ensure there is an adequate range of residences with the result that there may be no appropriate separation by sex and age and children who have been abused may be placed with children who abuse. Many children are kept in NZCYP&FS residences without the necessary services while children in the government refugee centre are often treated in a manner which breaches Article 3.

In the Adoption Act 1955 the welfare of the child is only a consideration once parental consent to adoption is given or dispensed with. There is no provision for counseling or advice prior to consent. The Child Support Act 1991 emphasises parental responsibility and fiscal policy rather than welfare of children. Although the Guardianship Act 1968 states the welfare of the child is the first consideration, in this respect the Family Court is hampered by the reduction of resourcing for specialist reports. This carries the risk that the 'expert called on may not have the training or expertise the Court needs. The Matrimonial Property Act 1976 emphasises adult property rights rather than children's interests. The courts have almost never settled matrimonial property on children and occupation orders are rarely made for a time commensurate with the child's needs. The Status of Children Act and the paternity provisions of the Family Proceedings Act pay no regard to the best interest of the child which results in breaches of Articles 3,7,8,12 and 18.

In education, children's interests are often subordinated to the interests of school management and the school's reputation - particularly in cases of suspension or expulsion. In immigration the child's best interests are usually placed after those of the state. Central and local government have few and usually no mechanisms in regard to children's interests.

While the Domestic Violence Act 1995 permits children to apply for a protection order, no funding has been provided to ensure children have information about this right and access to representatives who can make the application for them. The failure to fund supervised access when a violent parent requests access under the Guardianship Act may result in inappropriate access arrangements.

Questions:

- 1. How does the Government intend to ensure that the best interests of the child are incorporated into national and local policy making?*
- 2. Does the Government intend to incorporate the Convention's "best interests provisions into legislation governing education, youth justice, care and protection, immigration and the provision of welfare benefits?*

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

New Zealand's under 5 year mortality rate ranks behind that of sixteen other major developed nations and in 1993 the rate of Maori babies dying from Sudden Infant Death Syndrome was four times the non-Maori rate. New Zealand was sixth highest on a table of industrialised nations for infant deaths presumed to result from abuse in the years 1985 - 1990

Unintentional injuries cause 42 percent of deaths among New Zealand pre-school children - the highest mortality rate amongst OECD countries. From 1988 to 1991, 44 percent of deaths among five to nine year olds and 44 percent in the 10 to 14 age group, were due to injury. There were 2,597 deaths among people aged 15 -24 years - 45 per cent caused by motor vehicle crashes.

In parallel with economic reform and youth unemployment, New Zealand's youth suicide rate

increased markedly from 1987. From 1991 to 1993, New Zealand had the third highest death rate from suicide and self-inflicted Injury of those aged 15 to 24.

The 1994 Task Force on Youth Mental Health and Suicide initiated an annual monitoring by the Ministry of Youth Affairs but the first monitoring report has just been released. This confirms that there is still little being done by government to address youth suicide. No progress at all has been made with regard to one quarter of the recommendations made by the 1994 Task Force.

Question:

1. What will the Government do to reduce the high number of children's and young people's avoidable deaths?

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

In New Zealand there are few opportunities for young people to be heard in decision making which affects their lives. They are oppressed by adults who believe they know best and deny them their rights. Adults exercise social control through a clearly defined hierarchy.

Refugee and Immigrant families lack the confidence to use official systems and frequently children come from cultures where it is inappropriate for them to express their views. The absence of social workers, lawyers and health professionals from non-English speaking backgrounds further disempowers many such children in New Zealand.

Law and its practice within New Zealand show that the obligations of Article 12 are clearly not being met.

Guardianship Act 1968

Section 3 of this Act gives guardians wide powers and includes no requirement for consultation with a child. Clarification is required as to whether mature minors may consent to medical procedures affecting them. The Government report incorrectly states that young persons over 16 may refuse medical treatment. This is only true where that person is, or has been married.

For a variety of reasons the wishes of children are not always ascertained. Psychological reports are commissioned to ascertain the views of young people in custody and access cases. Counsels often rely solely on such reports. There are severe fiscal restraints on Counsel representing children and in complex cases these result in denying the child representation. Some counsel have little or no training in child development and training programmes are only just beginning to address children's rights. Counsel for children often see their role as putting to the court what they believe is in the child's "best interests", but their function as advocates is frequently overridden by their role as case managers and mediators. Children and young people regularly complain on this issue. Many matters are settled without regard to the child's views. If the government adopted the "Guardian ad Litem" system this would show a real commitment to children and young people's rights.

The Children, Young Persons & Their Families Act 1989

Paragraph 57 of the Act should note that section 55(d) states that the weight which is to be given to the child's wishes is that which is appropriate to the child's culture.

Although these legislative measures exist, many adults do not provide an environment in which a young person can challenge the views of adults. Social workers frequently label young people as "manipulative" in order to discredit what they say. Children are frustrated and disempowered by the Service's failure to give serious consideration to their wishes.

Family Group Conferences (FGCs) are convened under the Care and Protection and the Youth Justice parts of the Act. In theory young people can participate in these conferences and their wishes are paramount, but the dynamics of the family/whanau's power often preclude a young

person from speaking.

These conferences sometimes force young people to face dysfunctional and dangerous family members. When they seek to be excused they are told they must attend.

Paragraph 59 of the Government report is very misleading. A lawyer for the child is not appointed until court proceedings are commenced. The majority of children and young people are dealt with under the care and protection provisions of the Children, Young Persons and their Families Act without court proceedings being commenced. Children and young people therefore attend FGCs without legal advice or support.

In the case of criminal procedures, the CYP&FA is concerned with taking children out of the court system, encouraging them to take responsibility for what they have done, and acknowledge the effects that crime has on them, others, and their victims.

Youth Advocates are not present at "pre-charge" FGCs (ie FGCs convened before criminal charges are formally laid) unless privately paid. If the young people admit to an offence and an appropriate penalty is agreed on, they are not charged. However, without independent legal advice, there is a tendency for offences to be admitted. A young person only has free legal advice and assistance in a "post charge" FGC (ie about 10% of all FGCs held).

The legal rights afforded to a young person by having a youth advocate present are only upheld in a minority of post charge Family Group Conferences when the appointment of an advocate is mandatory.

Other enactments also 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, there is no provision for appointment of counsel for the child and hence there is no opportunity for the child's views to be made known apart from in the report prepared by the Department of Social Welfare.

Paragraph 62 of the Government report refers to the Department's code of conduct promoting complaints procedures for residences. However, there is no adequate, independent complaint procedure in the residences of NZCYP&FS and those funded by The Community Funding. Complaints in NZCYP&FS residences must be through a staff member to the manager who investigates the vast majority of complaints. There is no standard system for recording complaints or monitoring the investigation. Children and young persons rarely request the Commissioner for Children to exercise his jurisdiction to conduct a review of the centre's investigation.

An independent 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.

Student representatives are no longer compulsory on the Boards of Trustees set up to manage and control school affairs. Contrary to Article 12 and to the implication in Paragraph 66 of the Government report, when Boards of Trustees are considering the exclusion of a student for more than a three days, the student has no statutory right to be present. Students feel afraid or ashamed to speak up at Board of Trustees hearings and The Youth Law Project confirms that many Boards take a punitive attitude towards them at the outset.

The inadequacy of the Government's provision for the needs and rights of children is illustrated by the fact that The Youth Law Project is the only community law centre in New Zealand specifically providing advocacy and advancing the legal rights of children and young persons. The centre employs 5.5 workers and has some administrative assistance.

Questions:

1. *What measures are being taken in the education system to implement Article 12 in regard to children's right to participate in decisions affecting them, their right to share in school policy, administration and curricula development, and any other educational matter affecting them?*

2. *Are the views of children and young people concerning the service they receive from The Children Young Persons and their Families Service being ascertained?*
3. *What steps are being taken to ensure new policy and laws provide for children's views to be heard?*
4. *What strategies have been used by NZCYP&FS to encourage children and young persons to participate in family group conferences? Is the effectiveness of any such strategy being researched?*

PART FOUR: CIVIL RIGHTS AND FREEDOMS

a. Name and Nationality - Article 7

Where the parents are not married the name of the father may be registered only if both parents agree or a court so orders. Thus many children are deprived of their Article 7 right to know who their father is.

Children under 16 may have their names changed by their guardian without their consent. Young people don't have the right to change their names until they attain 18.

Many refugee and Immigrant children must cast aside their traditional naming systems to fit the European, New Zealand pattern. Problems also arise when names are transcribed into Roman form and with insensitive attempts to pronounce the names of children. This is distressing for some refugee families as all they might have on arrival in New Zealand is their identity and name.

Citizenship can generally be applied for after three years residence but some refugee children and children over 14 who are adopted overseas by New Zealanders remain stateless because of the high application costs. Children adopted overseas by New Zealanders do not automatically receive citizenship and costs affect them in the same way.

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 told of that fact while children under 20 have no right to information about their birth parents. A child has no right to be represented in an adoption application and no record of tribal or village affiliation exists for many Maori and Pacific Island children adopted in this country.

Children conceived by assisted reproductive technology will have a deemed mother, perhaps a deemed father or no man who has the legal rights and responsibilities of a father, but no right to be informed of the method of their conception nor rights to information about their genetic heritage.

Questions:

1. *Will the Government amend the Adoption Act, the Guardianship Act, and all other relevant Acts in order to ensure compliance with Articles 7(1), 8(1) and 12 of the Convention?*
2. *Has the Government any plans to ensure all refugee and Immigrant children are accorded their rights under arts 7, 8 & 30 of the Convention?*

c. Freedom of expression - Article 13

The Bill of Rights Act, the Privacy Act and the Human Rights Act are not very useful to children and young people who have little or no knowledge of the Human Rights Act. Children can complain to The Privacy Commissioner and Human Rights Commission but in practice seldom do.

A child would need to bring a civil action to enforce his or her rights . It is almost impossible for children to get legal advice, and there has been only one action initiated by a young person under the Bill. of Rights Act (this concerned the strip search of students at a secondary school).

In most schools, uniform requirements severely restrict freedom of expression in personal appearance and dress. Student s rights in this respect, depend on the attitudes of the Board of Trustees who suspend students without right of appeal if they don t conform.

in general terms Children and young people have no political voice, few avenues in which to express themselves publicly, and no right of appeal against the decisions of Boards of Trustees.

d. Access to appropriate information - Article 17

The Government report states that New Zealand enjoys freedom of the press. However, the few daily newspapers in New Zealand share the same political complexion and offer little investigative journalism.

The media image of children and young people is seldom positive, and most reporting of children is as victims of violence and abuse, or as young offenders.

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

Children and young persons freedom of thought, conscience and religion is limited in terms of the Bill of Rights and Human Rights Acts because of the difficulties they have in becoming familiar with and enforcing their rights.

Children are allowed to choose whether they attend Religious instruction in state primary schools but the lessons have a Christian emphasis and little consideration is given to children whose families support other faiths. Young people in prison are required to follow their parent s religious beliefs rather than their own.

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

While the Bill of Rights formally guarantees the right to freedom of association, in the employment context that right and some of its benefits is limited. This is because employers are able to raise obstacles to the effective functioning of workers organisations and even the right to form such organisations and join them. This affects young people as does the imposition of curfews in some New Zealand towns - such curfews are usually imposed by the local Police Commander on young people between 10.00 p.m. and 6.00 am 'on a trial basis .

The Police Complaints Authority has confirmed that police have no lawful authority to impose curfews and that the only lawful curfews are those imposed as bail conditions or by Family Group Conferences.

Pre-emptive trespass notices are frequently issued to young people by shop owners even though it isn t legally possible to issue a trespass notice unless the person concerned has broken or is likely to break the law.

g. Protection of privacy - Article 16

Although the Privacy Act has no minimum age for its application, in practice this doesn t always match legislation. Many organisations are not yet clear on its provisions and as a result, children are being placed at risk because individuals and organisations with knowledge of abuse believe the Act prevents them from reporting it.

Children's privacy is not respected by schools whose teachers, counsellors and principals sometimes demonstrate an unwillingness and hostility to the idea of a child's right to privacy.

Children and young people are often afraid to complain to their school counsellor or the Privacy Commissioner. The Commissioner doesn't issue general opinions, but adjudicates on actual complaints. Many privacy complaints have been received by Youth Law Project from students who are arbitrarily searched at school or whose "prohibited" possessions are confiscated by school authorities.

Some newly arrived refugees find there is conflict between a free press and protection of their privacy and are disturbed that the most intimate part of their lives (e.g. female genital mutilation) are discussed in the media.

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

The Government's report makes no reference to the treatment of children in school where degrading treatment undoubtedly occurs. Bullying is a serious problem even though there is insufficient funding for anti-violence programmes.

Young offenders in residential care have and do experience degrading treatment including assault, verbal abuse, and being forced to wear pyjamas in the afternoon to prevent absconding. Children in other state funded programmes have been subjected to cruel and violent treatment.

Questions:

- 1. What measures will the Government take to ensure children's civil rights are not overridden by adults?*
- 2. What steps will the Government take to prevent unlawful imposition of curfews on young people?*
- 3. What steps has the Government taken to amend the Employment Contracts Act in order to meet its obligations concerning workers' organisations and freedom of association?*
- 4. When will the Government introduce an independent complaints system for children and young people in residential care?*
- 5. What plans does the Government have to eliminate bullying in New Zealand schools?*

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 seriously undermined by government practices and policies which have greatly increased the level of poverty and placed increasing stress on many families and therefore on children.

The vision of the Department of Social Welfare social services is to ensure all families will be able to meet their care, control and support responsibilities, but the Department continually divests itself of responsibility and increases the burdens families and children have to carry.

Questions:

- 1. What have been the effects of increasing levels of poverty and labour market deregulation on parents and their children?*
- 2. What are the Social Welfare Department's "vision" and "plan" for future services to children?*

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. Full and complete coverage with readily accessible programmes are needed to break cycles of abuse, neglect and deprivation, and to promote positive parenting.

Early Childhood Care and Education

While we acknowledge the steps government has taken to improve the quality of early childhood care and education we believe the Government report fails to fully represent what is happening in this sphere. Lack of reliable and detailed statistics and the common practice of a child being enrolled in more than one service means that the statistics quoted may not be reliable and contribute to the inadequacy of planning and funding of services.

The 1993 reduction of hours available under the Child Care Subsidy to low income families, the fees charged, or requested, by services and transport costs are often cited as a significant factor in the lower participation rates for children from low and medium income families and Maori children (Future directions: Early Childhood Education in New Zealand, Interim Report, June 1996, E. Clark, Barriers to Maori Participation in early Childhood Education and Strategies to Overcome Them, Te Puni Kokiri, December 1995). Participation by Maori children in kohanga reo decreased by 6.7% between 1993-4, 58% of Maori children were not enrolled in early childhood education. (Clark ibid). Participation by three year olds decreased from 83.6% to 80.7% between 1993 and 1995 (Ministry of Education statistics 1996).

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, facilities for an imprisoned parent to do this are minimal. Women may choose to have a child in prison for up to three months but there are no provisions to make this a comfortable option for mother or child.

No provisions exist for the maintenance of a child's relationship with an imprisoned father. Four habilitation centres have been set up as a form of parole but allow insufficient opportunity for maintaining family relationships and reducing family dislocation.

Immigration decisions involving separation

Some young New Zealand citizens are being separated from non-citizen parents or else have to give up the opportunity to live in their own country in order to be with their parents. For example in the case of *Elika v Minister of Immigration* (1996) 1NZLR 741, the court would not prevent the Tongan mother of three New Zealand born children being removed to Tonga as an overstayer. The eldest child was aged 6 at the time of the Immigration Service's decision and the youngest child was being breast fed. The judge commented that as citizens the children were entitled to remain in New Zealand.~ However, given their circumstances they were left with no real option but to accompany their mother to Tonga.

d. Family reunification - Article 10

Family reunion is only available to those who are able to pay or borrow the airfare for reunification. For many refugees and immigrants the system is cumbersome and difficult to access..

e. Recovery of maintenance for the child - Article 27

The Government report and the review of the Child Support Act appears to place virtually full responsibility on parents with no recognition of the responsibilities of government under the Convention.

Questions:

1. What steps is the Government taking about its responsibilities for children who are living apart from one or both parents and/or their family?
2. 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?
3. What does the Government intend to do to increase the rates of participation in early childhood education of children from lower socio-economic groups, and of Maori, Pacific Island, immigrant and refugee children?
4. How does Government intend to ensure that all centres will in future have adequate numbers of qualified teachers?

f. Children deprived of a family environment - Article 20

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

In 1995 a NZ Children and Young Persons Service care and custody review identified 361 young clients in care who were unable to be placed in a safe environment. 150 of them were Maori or part Maori. The report (full details of which appear in Appendix 1 to this report) acknowledged serious gaps in placement options and an urgent need to help these young people resolve their emotional difficulties. Currently, the NZCYP&FS is under-staffed and under-resourced. There are also serious concerns about the standard of the care, the monitoring system, a shortage of trained specialists and an inadequate complaints system.

Question

1. How does the Government propose to deal with the unmet needs of children and young people identified in the recent Care and Custody Resources Review?

g. Adoption - Article 21

New Zealand's adoption law and practice fail to comply with a number of Convention rights. The Adoption Act 1955 is insensitive to the needs of Maori and Pacific Islands peoples, fails to recognise children's rights to be treated as citizens, doesn't require adoptive parents to inform the child of the adoption and gives no rights to extended family and natural fathers. The child's birth certificate may not show that the child is adopted; children can't obtain information about their natural parents until they reach 20 years; natural parents can veto 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.

There is no provision for the child to be legally represented in the adoption process and no mechanism to ensure the child's wishes are presented in Court. The Act doesn't provide for the best interests of the child as the paramount consideration.

Question:

1. When will the Government introduce legislation that grants adopted children their Convention rights?

Inter-country adoption - Article 21

The best interests of the child is not stated as a primary consideration in all legislation and policy concerning inter-country adoption.

Question:

1. How do New Zealand authorities ensure adoptions in the child's country of origin are in

accordance with the requirements of Article 21?

Abuse and neglect, including physical and psychological, recovery and social re-Integration - Articles 19 and 39

Paragraph 172 of the Government's report fails to make clear that the Domestic Violence Act 1995 is directed towards protection for adults. The Act doesn't protect the child from violence by partners of the child's parent, or partners of another household member, or non-relatives of the child living elsewhere.

The extension of the definition of domestic violence to include psychological abuse doesn't 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 be aware of and access their right to apply for protection orders.

The Government constantly relies on community groups to back programmes to combat family violence, but only provides limited funding for them

The Children, Young Persons and Their Families Act (CYP&FA)

Recently there has been a further increase in the number of children in need of care or protection and living in detrimental environments. Family violence has been estimated to cost New Zealand \$1.2 billion annually.

The degree of protection the CYP&FA gives to children is questionable when:

- Reporting of abuse and neglect is not mandatory;
- There is inadequate follow-up of referrals, and evidence that emphasising minimum intervention and family responsibility often results in a failure to use statutory protective procedures.
- There are almost no trained and experienced social workers who can appropriately assist refugee and immigrant families.
- In Family Group Conferences, children who may have been abused by members of their families are expected to be present and to express their views in the presence of the alleged abuser - often without independent support.
- Children and young persons have very poor access to mental health or behavioural assessments and resources.
- Services are not being delivered to children and families because the current economic emphasis on family and community responsibility has over-stretched families and under-resourced providers.

Compliance with the Convention requires

- That Government give adequate resources to NZCYP&FS, the Office of the Commissioner for Children and the education, health and justice services concerned with child and family welfare.
- That local and national monitoring of programmes and protocols be conducted to ensure community and professional awareness of the rights of children and the measures available to protect them.

Corporal punishment

Section 59 of the Crimes Act 1961 ignores the proven relationship between physical punishment and family and community violence and appears to contravene Articles 2, 5 and 19 of the Convention. Section 59 allows parents and care givers to use physical force to discipline children.

The only limitation is that the force be 'reasonable' but no definition of 'reasonable' is provided.

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. Fiscal restraints have meant that the concerns expressed by the Mason report about the lack of monitoring of Family Group Conference recommendations have not been fully addressed.

Children are being placed with extended families without proper checks being made~ monitoring carried out or the families being provided with the support and assistance at risk children need. Kin-carers receive a lower level of monitoring and on-going support than was traditionally available to foster parents. Children are being returned to abusive families and inadequately monitored.

Questions

- 1. When is the Government going to ensure that NZCYP&FS and other services are sufficiently resourced to protect children?*
- 2. How much funding does government provide to teach parents and care givers non-abusive ways of giving children direction and guidance?*
- 3. What action has government taken in response to those children who truant because they don't feel safe at school?*

PART SIX: BASIC HEALTH & WELFARE

a. Survival and development - Article 6

There are far too many avoidable deaths 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.

A major Issue is the lack of support for children who are 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. Some early childhood centres and schools ignore the rights of children with disabilities to enrol. Tertiary institutions are funded In a way that doesn't allow for the extra support that may be needed by students with disabilities.

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. Changes in the child care subsidy programme include new eligibility criteria which prevent parents from accessing it at the full rate. There is minimal state funded access to equipment for many children with disabilities. 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.

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

Question

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

c. Health and health services

Infant and child Mortality.

There are far too many avoidable deaths. See Part 3 (c).

Medical assistance and health care, especially primary care

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.

There is a partial subsidy for primary medical care. However a recent study showed there are serious flaws in the Community Services Card which is the main way of providing subsidised care to low income families. Health professionals report many families are delaying visits to the doctor or delaying getting a prescription filled until the illness is quite advanced.

The state of mental health services for children and young people is a major concern. A review of child, adolescent and family mental health services commissioned by the Ministry of Health found existing services sparse and under-resourced and indicated 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"

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, young people and their families?*

Combating disease and malnutrition

3.4% of all school children are perceived to be regularly hungry. Over 5% 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 hungry¹. Many local groups provide food for hungry school children.

Question:

- 1. What action is the Government taking about hungry 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. The implementation of the new maternity service contracts has been accompanied by an outcry from some providers who believe that the new system could be unsafe.

Question

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

Traditional practices

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.

Health education, preventive health care and family planning

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 this is reflected in statistics of smoking, teenage pregnancies and abortions and sexually transmitted diseases. Other priority issues for young people are the prevention of injuries, violence, self-harm and drug and alcohol abuse. There are only limited programmes for the specific needs of young people.

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

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?*

c Social security and child-care services and facilities (Articles 26 & 18)

The complexity of the system makes it difficult for those in need to access the provisions available and appears to confuse even those administering them.

There is little consistency among the various targeting measures. Different definitions of income apply for different targeting measures. 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, 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 care giver 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 falls 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. One in three of those eligible people are not getting it.

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. They report cuts to agencies funding has become increasingly frequent from 1993. Most agencies were not satisfied with the rationale for funding they were given. Half did not think that NZCYPS and the Community Funding Agency were co-ordinating their work well.

d. Standard of Living - Article 27

The 'ultimate goal (of the market-driven economy) has been to guarantee to all New Zealanders a higher standard of living based on sustainable economic growth. The Government views the social welfare benefit system as a "safety net" for the most vulnerable groups and has endeavoured to place, 'a greater emphasis on community and voluntary organisations providing assistance .

The Government, its institutions and organisations, have promoted public antipathy towards government intervention and assistance, suggesting these to be costly, clumsy, ineffective, and that they create dependency and increase 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.

The concepts of children's welfare being to a large extent dependent on the accident of the market place and private provision of welfare, and of a social welfare system as a 'safety net' contradict Article 27, paragraph 1 which requires that states parties to recognise the right of every child to a standard of living adequate for the child's full and complete development.

The Prime Minister has claimed that there is no poverty in New Zealand, yet the Poverty Measurement Project found 32.6 percent of children in New Zealand living below a poverty threshold of 60 percent of the median disposable income. Maori and Pacific islands children were particularly affected. Market rentals for state housing have bitten deeply into disposable incomes and further affected the quality of life for children.

Questions:

- 1. What actions is the government taking to eliminate the effects of poverty on children?*
- 2. What actions 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 school boards has had a detrimental effect on the education of a significant number of students from lower socio-economic backgrounds, has led to an enhanced empowerment of the advantaged and the disempowerment of others and to fears of a increasing stratification of New Zealand society in the future.

Boards of Trustees (BOT) which are tasked with managing school funds, frequently have to resort to fund-raising activities. The result is that students with wealthy parents experienced in decision-making are assured of access to excellent facilities while students from poorer areas receive the bare essentials.

Many BOTs are not meeting the needs of Maori students and children from ethnic minorities. The latter are often under-represented on many of the Boards which consequently lack understanding and appreciation of cultural differences, and are unable to ensure equitable outcomes for all students.

Free and compulsory primary education

Many primary and secondary schools require parents to pay school fees which legally are 'voluntary only. However, non-payment, can lead to students being excluded from some of the school's educational activities. Schools are often unaware of the special position of the children of asylum seekers and have charged children of asylum seekers fees at the foreign student rate.

Different forms of secondary education

The Education Act allows for students with disabilities to attend mainstream classes but circumstances often squeeze these students out of school or prevent them from enrolling. The Correspondence School which offers education to students who have been suspended, is often difficult to access

The growth in school participation by Maori has been achieved by the Maori community itself but the gap in achievement between Maori and non-Maori remains wide.

The Secretary of Education has acknowledged that the needs of immigrant children are frequently unmet by the school system, but the Government's report makes no reference to this.

Educational and vocational information and guidance

Although the Education Act 1989 and Ministerial Guidelines state that schools should provide guidance and counselling, the majority of students with psychological problems don't have access to these services.

High rates of youth unemployment suggest the new vocational guidance programmes are ineffective. Schools need to be more actively involved in assisting students with career choices. The evidence suggests the National Qualifications framework for a "seamless" education and training programme, is not making vocational training equally open to all.

Vocational education

Research suggests the Training Opportunities Programme (TOPs) - the only broad-based

programme of its type in the country - excludes a large proportion of young people, is largely concerned with domesticating them to meet employer's needs, and disempowers young people themselves.

The new industrial training structure is not ensuring vocational training is equally available to all. The National Advisory Council on the Employment of Women recently identified serious doubts about its ability to improve women's access to equality of opportunity in training.

Higher education

Despite increased participation in tertiary education the Government report makes no reference to the effects economic pressures are having on the increasing difficulties poorer students have in entering tertiary education and doing well, nor does it address the present and future burden student loans constitute for the borrower. The Government is shifting an increasing proportion of the cost of education on to students and their families and the Student Allowance Scheme has made young people dependent on their parents up to age 25..

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

Lack of checks and balances on BOT authority has led to school suspensions increasing from 4401 in 1990 to 8850 in 1995 - an increase of more than 100%. Other students are blocked from school attendance by being illegally kept out of class for days on end. Since they are not formally suspended they are denied a proper hearing and due process. An independent body, such as an education law tribunal to appeal school exclusions is needed to address these problems.

The disproportionate numbers of Maori and Pacific Island students represented in suspension and expulsion statistics have not been satisfactorily addressed.

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

School enrolment schemes frequently discriminate against immigrant and refugee-students through questions over documentation, the imposition of residence requirements, and because of their lack of ability in English.

The Government expresses concern over truancy levels in New Zealand, but hasn't introduced measures that deal effectively with the problem.

School discipline is not always administered in a manner consistent with the child's dignity and sometimes amounts to degrading treatment as in the case of arbitrary and strip-searching of students.

b. Aims of education - Article 29

A number of school Boards are failing to redress inequities affecting indigenous and ethnic groups. Maori, need a greater measure of control in the education of their children. Under the Treaty of Waitangi, the government has the responsibility to ensure it. At present Te Tiriti o Waitangi hardly impacts on most school charters and the historical disadvantages of a monocultural education system continue in 'Tomorrow's Schools'.

Voluntary religious instruction, largely Christian, is given in some primary schools - usually with little monitoring and the result that non-Christian immigrant children assume their own religion is unimportant or inferior.

The measures schools are taking to teach human rights are inadequate. Some schools seem reluctant to inform children of their rights.

Programmes related to sexuality and to alcohol and drug education are available but few have been properly evaluated and resources are often wasted, leaving children in a state of confusion.

Many schools need to change their structures and cultures so that students will feel accepted, free to express their individuality, and develop educationally.

Most secondary schools offer the same education programme and immigrant children are placed in programmes the school thinks appropriate for them. Decision making is school centred rather than in the best interests of the child and testing procedures are often culturally inappropriate.

Question

1. What steps does the government intend to take to ensure that all children are given equal educational opportunity?

c. Leisure, recreation and cultural activities - Article 31

The Government report acknowledges 'the importance in the development of children of play and participation in cultural activities'. It lists a range of organisations and activities which provide opportunities for children and young people to participate in play, recreation and leisure experiences, but conceals the fact that a significant proportion of New Zealand's children are not likely to benefit from the opportunities available. A significant number of programmes and sponsorship initiatives in New Zealand benefit only a small number of very talented youngsters.

There are few safety standards to protect children using play equipment. The quality of public toilets and changing facilities is poor and there are insufficient cycle tracks and similar facilities.

The families of many children live below the poverty line and an unknown number live in homes where they are at a disadvantage. Benefit cuts in 1991 and changes in public housing policies have led to increased poverty and placed children in overcrowded and unsafe situations.

Pre-school experience is not universally available and isn't free. A good proportion of children (especially Maori and Pacific Island children) start school disadvantaged by a lack of pre-school education.

Out of School Care and Recreation referred to in the Government report, is not freely available. The fees required make such programmes out of reach of parents without substantial incomes. Many children in New Zealand go home to empty houses where their safety may be compromised.

There are limited activities for young people outside sports and watching television. Some attempts have been made to provide leisure activities, but in the main there are very few alcohol free social activities for young people. A major factor associated with this is adequate public transport - particularly at weekends and in the 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. There is no radio station to promote appropriate culture and news for young people.

Questions

1. What does government intend to do to enable the full participation of all children and young people in sport, recreational and cultural activities?.

2. What efforts are being made to ensure that children who most need out of school care and recreation opportunities receive them?

3. What efforts are being made to provide free pre-school experience for those who need it?

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

Little or no help is given to asylum seekers and their families while New Zealand's six week resettlement programme for refugees is insufficient. Children of parents who speak little English are particularly disadvantaged as they have minimal access to services and information. The lack of a National Language Policy also has a serious detrimental effect ensuring children's rights are upheld. There has been no major analysis on the position of refugee and Immigrant children in New Aotearoa Zealand. The New Zealand Immigration Service is exempted from the Human Rights Act, which prevents redress against the Service being available for children of asylum seekers or refugees.

Only a small number of schools teach the major New Zealand minority languages.

Refugee teenagers are often not given accurate information, told what is happening to them or what decisions have been made on their behalf, and are rarely consulted about class placement on arrival in New Zealand.

Refugee and immigrant children have a lower participation rate in early childhood education than do other groups.

Support of Somali women who have been victims of female genital mutilation and who find the process of childbirth in New Zealand unnecessarily stressful, is inadequate and few health professionals have been trained to respond to their needs. Many Immigrant and refugee children are denied adequate primary health care services because interpreters aren't available. Children having to attend the school dental nurse are in a similar situation. Young refugee children rarely benefit from the government's "well child care" services. As the report notes, in New Zealand it is illegal to perform female genital mutilation or to take children or adults overseas to seek it, but no educational resources have been made available to ensure the law is effective.

Some immigrant and refugee children are denied access to education owing to a lack of documentation identifying their guardians. This can prevent informally adopted children enrolling in the school of their choice and contravenes the Government's intention of giving students wider enrolment choice. In February 1995 several state schools backed by the Principals Association, illegally planned to exclude young Immigrant children from enrolment because of their limited knowledge of English. The majority of young refugees arriving in New Zealand have gaps in their schooling and little knowledge of English, but are expected to enter an examination orientated school system which makes little allowance for their disadvantages. Resource levels for English Language Support programmes in New Zealand schools lags behind those in comparable countries.

Increased costs are reducing the level of participation of poor immigrant and refugee families in higher education. This is because refugee and Immigrant students often rely on income from the part-time work of family members and are therefore unwilling to take up student loans. A lack of part-time jobs available has made the situation worse.

b. Children in conflict with the law

The Government report has overlooked some aspects of the existing legislation. The CYP&FA legislation applies to those up to 17 years while the Convention applies to all those below 18. Article 3 of the Convention is not adhered to in the area of juvenile justice where decision

makers are not required to be guided by the best interests of the child. Without better education and more support becoming available, the protections afforded by the Bill of Rights Act remains irrelevant and unenforceable by the majority of children and young people.

Children (defined as under 14 in the CYP&FA) who allegedly commit offences, are dealt with in a quasi-judicial way through Family Group Conference. The law prohibits under 14 year olds being charged with most offences but could require a child under 14 to attend a Youth Justice family group conference. The child has no right to legal advice or independent representation but could be held accountable in this forum and punishment imposed. This lack of representation for such children is not discussed in Paragraph 345 which deals with the right of a child for counsel or a youth advocate.

The Government report doesn't consider the issue of recidivist youth offenders or that custodial facilities should be available for them for longer than three months.

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

i. Economic exploitation, Including child labour (art 39)

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 and long after school hours would not infringe this provision. Regulations concerning place of work and conditions of employment are vague and difficult to enforce.

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.

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 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 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 and ineligibility of under 18 year olds for unemployment benefit mean 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

Advertising alcohol by brand is permissible after 9 p.m. but 12% of 5 to 14 year olds watch television after 9 p.m. and the majority of the public has opposed such exposure.

Takeaway alcohol sales are prohibited to persons under the age of 20, but 38% of 14 to 19 year olds, and 2596 of 14 to 17 year olds are known to have purchased take away alcohol in a period of twelve months. The data also shows underage drinking on licensed premises is a problem.

Almost a quarter of 16 to 17 year old males and ten percent females of the same age have reported experiencing drunkenness at least once a week. 25% of males and 17% of females in the 15 to 17 age group are known to have used marijuana over a period of 12 months.

iii. Sexual exploitation and sexual abuse

The New Zealand Prostitutes Collective (NZPC) is a non-government organisation funded by government health authorities to provide an HPV/AIDS and STD prevention programme to workers in the sex industry. It comments that most sex workers are female and between 20 and 30 years of age while a few are 14 to 17. The latter work in the sex industry because they have absconded from unsatisfactory homes, because of drug usage, coercion, peer pressure, the need to earn money or to support others. It is believed the majority working on the streets are Maori.

d. Children belonging to a minority or an indigenous group

The Government report glosses over the issue of indigenous Maori children as the children of the First Nation of Aotearoa (NZ) being entitled to more than 'special protection measures'.

Maori children cannot be categorised with minorities who arrived more recently because they occupy a unique place as Tangata Whenua of the country (the People of the Land) and their individual rights are included in Maori collective rights.

The government has designed 'special measures to promote the interests of Maori children and young people who have been grossly disadvantaged by 19th and 20th century losses of Maori land and resources, and the subsequent fragmentation of society. Government legislation is so far insufficient to address these injustices and in spite of the Treaty of Waitangi partnership between Maori and Crown, Government policies and law dominate. -

Te Puni Kokiri (the Ministry of Maori development) which was set up to assist in developing an environment of opportunity in accord with the Treaty of Waitangi, is seen by many Maori as inconsistent with government activity they believe is intended to extinguish the 1840 Treaty of Waitangi under the guise of 'full and final settlements. They believe the Minister of Justice's Treaty Settlement Process is intended to extinguish Maori's 'exclusive Treaty land rights by inadequate cash settlements that run counter to the Treaty's provisions and intent.

Maori believe the Treaty Settlement Process, if carried through as it seems to be designed, will deny present and future generations of Maori children their wider spiritual, cultural, financial and resource rights as Tangata Whenua and as described in the Treaty of Waitangi.

Paragraphs 395, 396 and 397 of the report refer to the government's support of Kohanga Reo, Kura Kaupapa and Whare Kura (Maori pre-school education, primary, and secondary school). These are Maori initiatives, originally funded by Maori and Maori parents and intended by them to remain under Maori control. The report however, implies that credit for their existence belongs to government rather than Maori and that these educational initiatives were undertaken by the Ministry of Education rather than Maori - which is seen by Maori as an unfair representation. The Ministry is negotiating with some of the mainstream schools for their conversion to this educational concept and Maori fear that without their supervision and control, the philosophy and intent of this development will be compromised.

The report describes how government is funding Kura Kaupapa teacher training and successful Maori education initiatives. Maori believe the funding of these should come through Maori rather

than government structures. This is because a government ministry providing funding retains social, cultural and political dominance, disempowers Maori and contravenes their Treaty rights to manage things Maori and their own affairs in a Maori way.

Paragraphs 401, 402 and 403 of the report lead away from the Treaty of Waitangi concept of 'partnership', towards multi-culturalism - a development which is increasingly unacceptable in terms of justice, the Treaty and growing world opinion.

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 Convention 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 its obligations under Te Tiriti o Waitangi and devolve authority and necessary resources to Maori to care for their children and young people?

APPENDICES (not included)

1. The Long Report

2. Child Offenders: A Report to the Minister of Justice, Police and Social Welfare by Gabrielle Maxwell and Jeremy Robertson, Office of the Commissioner for Children.

3. Report of the Inter Agency Monitoring Group on Youth Mental Health and Suicide Prevention, prepared for the Minister of Youth Affairs and the Associate Minister of Health. April 1996

4. The Prime Minister and the Schoolboy - various media clippings.

5. 'Show Me Your Poor', by Nicola Legat - an extract from North and South, August 1996.

6. Rights, Needs and Responsibilities of Youth, by Alison Thom, New Zealand Children and Young Persons Service.

7. Child, Adolescent and Family Mental Health Services by Dr Peter McGeorge, Consultant Psychiatrist. Pub. Mental Health Horizons, January 1995.

8. The report of the Child Protection Trust 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. October 1994

9. A Study of Notifications for Care and Protection to the Children and Young Persons Service. Jeremy P Robertson and Gabrielle M. Maxwell March 1996.

10. Children at Risk. A Report of the Education and Science Committee. Inquiry 1994 into Children in Education at Risk through truancy and behavioural problems.

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