

## PART 3 GENERAL PRINCIPLES

### NON-DISCRIMINATION (article 2)

#### CRC/C/15/Add.2.16: Paras 23 & 24:

The Committee recommends that the State party increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and to adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.

The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29, paragraph 1, of the Convention (aims of education).

#### ***Measures and actions taken by New Zealand to promote diversity and non-discrimination relevant to children and young people***

- 3.1 The New Zealand Curriculum emphasises respect for, and understanding of, difference. A core tenet of the Ministry of Education's work in curriculum, pedagogy and governance is that both early childhood services and schools must cater for the full range of diverse students.
- 3.2 The New Zealand Curriculum requires schools to develop programmes that help students to value:
  - diversity as found in our different cultures, languages and heritages
  - equity through fairness and social justice
  - community and participation for the common good
  - integrity which involves being honest, responsible and accountable and acting ethically
  - respecting themselves, others and human rights.
- 3.3 The Ministry is also developing a climate survey tool for schools to assess bullying and harassment, a behaviour strategy and anti-bullying guidelines. It is also assisting schools to implement the new curriculum with its strong emphasis on values and valued behaviours.
- 3.4 New Zealand recognises the education system's role in fostering diversity and promoting tolerance and understanding of New Zealanders' origins. New Zealand is committed to fostering a curriculum and culture in our education system that equips children for life in a diverse society. This includes recognition of their own language, culture and beliefs, knowledge of the cultures and beliefs of others, and respect for the rights of all.
- 3.5 The New Zealand Action Plan for Human Rights highlighted actions required to ensure every child and young person in New Zealand has equitable access to appropriate quality education services. The key priority identified was piloting the concept of early childhood education centres and schools as human rights communities. This priority reflected the importance of having a comprehensive approach to the right to education, rather than ad hoc responses to problems and barriers to participation and achievement.

- 3.6 The Building Human Rights Communities in Education initiative ([www.rightsined.org.nz](http://www.rightsined.org.nz)) is a coalition of the Human Rights Commission, the Office of the Children's Commissioner, Amnesty International, the Development Resource Centre and the Peace Foundation. Its vision is that schools and early childhood centres will become communities where human rights are known, promoted and lived. As part of the initiative, a baseline study was commissioned in 2006 about human rights education in New Zealand's early childhood education centres and schools.
- 3.7 The initiative's 2007 publication *Building Human Rights Communities in Education: He Whakatū Tika Tangata-ā-lwi Whānui* made recommendations to increase understanding and better integrate human right obligations across the education sector, including national guidelines and curriculum. This initiative is now established as a stand-alone trust with the Human Rights Commission continuing to provide funding and staff resource.
- 3.8 The Human Rights Commission will continue to monitor access to education especially for vulnerable groups of students such as children and young people with disabilities, from poor communities, and from same-sex attracted, trans-sexual and intersex students. This will include analysing enquiries and complaints to the Commission about the right to education, and monitoring policy settings and initiatives that impact on their participation and achievement.
- 3.9 New Zealand's human rights framework also includes an independent Race Relations Commissioner, appointed to comment, provide guidance, accept complaints, monitor and promote harmonious race relations in New Zealand.

### ***Youth voices research***

- 3.10 The Foundation for Research, Science and Technology is funding Youth Voices: Youth Choices, a two-year project beginning in July 2008, which aims to identify the drivers and determinants of success and participation in Chinese, Pacific and Muslim youth. The project, to be run by the University of Victoria, Wellington will address two key questions:
1. how do these youth construct their identities and negotiate issues pertaining to cultural maintenance and participation in the wider society?
  2. what strategies or interventions promote positive identity, integration, cultural and social connectedness, and leadership within and between ethnic/Muslim communities?
- 3.11 The findings will be used by a range of agencies to inform strategies and policy on social cohesion, connecting diverse communities, and strategic directions for youth and, in turn, will support New Zealand's efforts to build and sustain an inclusive society.

### **BEST INTERESTS (article 3)**

- 3.12 New Zealand continues to affirm the principle of the best interests of the child. A key development during this reporting period was the passage of the Care of Children Act 2004 which modernises the framework for resolving disputes regarding care arrangements for children within families. The Act expressly states that the best interests of the child are a paramount consideration in all matters affecting the child.

- 3.13 The Act also states that decisions affecting a child should be made and carried out within a time frame that fits with the child's sense of time. It sets out some key principles that the Court must consider, where relevant, when deciding what is in the best interests of the child:
- parents and guardians should take the main responsibility for looking after children and making arrangements for their care, development and upbringing
  - there should be continuity in the arrangements for the child's care, development and upbringing
  - links between the child and their whānau or other wider family group should be preserved and strengthened
  - there should be co-operation between parents, guardians and others who are involved in looking after the child
  - the child must be kept safe and protected from all forms of violence
  - the child's identity, including their culture, language and religion, should be preserved and strengthened.
- 3.14 The other key Act relating to children - the Children, Young Persons and Their Families Act 1989 - also makes the welfare and interests of the child or young person the first and paramount consideration in care and protection matters. Relevant principles are set out in sections 5, 6, 13 and 208 of the Act. These Acts provide a model for other child-related legislation and policies in New Zealand on recognising the 'best interests of children' principle.

## **THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (article 6)**

- 3.15 New Zealand aims to provide every child in New Zealand with the best start in life. From prior to birth through to five years of age, each child is entitled to an integrated programme of health care and early childhood support. Since 2001, government has put significant resources into health, welfare, education, training and employment initiatives for children and young people. These are discussed in more detail in Parts 5, 6 and 7.

## **RESPECT FOR THE VIEWS OF THE CHILD (article 12)**

### **CRC/C/15/Add.2.16: Para 26:**

**The Committee recommends that the State party undertake a review of legislation and regulations affecting children, including proposed legislation such as the Care of Children Bill, to ensure that they appropriately integrate and apply the right of each child to be heard and have his or her views taken into account in accordance with article 12.**

- 3.16 Increasing emphasis has been placed on recognising the right of children and young people to have their voices heard in matters that impact upon them, whether in legislation, policy advice development or service and research design.

### ***Involving children in judicial processes***

- 3.17 Having a right to be heard was considered to be ground breaking when it was incorporated as a core element of the Child, Young Persons and Their Families Act 1989. The Act also has important provisions for telling children what decisions have been made and actions to be

taken, a duty on the Court and counsel to explain proceedings, and a duty on the Court to encourage and assist a child participate in proceedings. Since then a number of Acts have included the right for a child to express his or her views and have them taken into account.

- 3.18 One of the stated purposes of the Care of Children Act 2004 is to recognise certain rights of children, including respecting their views and, in certain cases, recognising their consent or refusal to consent to medical procedures. The Act strengthens a child's involvement in Family Court proceedings recognising that decisions under the Act may have significant effects on a child's daily life and their long-term relationships with their parents. A child is given reasonable opportunities to express their views on what should happen, and have these views taken into account on matters which are important to guardianship, day-to-day care and contact.
- 3.19 Under the Act, the Family Court continues to appoint an independent lawyer to act for a child if a dispute affecting them seems likely to go to a Court hearing. The role of the lawyer is to:
- represent the child through the Court process and in any negotiations between the parents or other parties to the case
  - find out the child's views and make the Judge aware of them
  - make sure the child's best interests and all issues affecting their welfare are put before the Court for it to consider
  - explain the Court process to the child and, at the end of the process, explain the Judge's decision.
- 3.20 A child may make various applications to the Family Court, including to place themselves under the Court's guardianship, to seek review of a guardian's decision or refusal to give consent (if the child is aged over 16 years), to vary or discharge an order or to appeal a Family Court decision.
- 3.21 The Family Court Matters Act, passed in 2008, introduces into the Care of Children Act 2004 counselling for children and family mediation to take better account of children's views. Children will be able to speak to a counsellor, or take part in a joint session with their parents, when their parents are attending counselling. Children will also be able to take part in family mediation (at the mediator's discretion) and receive counselling to help them take part. Where proceedings have been filed, a lawyer for the child may be appointed to take part in the mediation.
- 3.22 Further legislative changes that enhance a child's involvement in the judicial process were included in the Evidence Act 2006. These changes take into account the special needs and vulnerabilities of child complainants and witnesses.
- Under section 107 it is mandatory for a court to hear an application on how all child complainants are to give their evidence in both summary and indictable proceedings. Directions given cover cross-examination as well as examination in chief of the child.
  - Section 105 of the Act provides alternative ways in which a judge can direct a witness (including a child witness) to give their evidence so that the witness cannot see the accused (e.g. use of screens), from an appropriate place outside the court, or by a video recording made before the hearing.
  - Section 79 of the Act also provides that the court can direct that a child witness be accompanied by one or more supporters when they give evidence.

### ***Placing children at the centre of policy-making***

- 3.23 In 2007 the government included 'placing children at the centre of policy-making' in its UNCROC Work Programme 2004 - 2008. A report to Cabinet in 2008 found that there has been an increase in young people's involvement in the policy process. It also noted that improving younger children's participation will require ongoing effort.
- 3.24 Child impact assessments were identified as a possible tool to give effect to placing children at the centre of policy-making. In 2007, the Ministry of Social Development commissioned a report on child impact assessment use and effectiveness in overseas jurisdictions. The report concluded that there may be a case for selective use of child impact assessments where there is significant impact on children. The Ministry's continues to look at the merits of adopting similar approaches in New Zealand, including looking at learnings from the new health impact assessment process in New Zealand, and child impact assessments in local government policy-making.
- 3.25 In 2007, the Children's Commissioner also commissioned a study on child impact assessments and local authorities to examine the viability of local government agencies using a child impact assessment framework in project and policy development.

*"This stuff we've been talking about looks really good on paper, but the complexity is too much for us...sometimes the basic problems are ignored."  
[male, 14, youth stream, UNCROC Forum 2006]*

### **Children and young people's participation in the policy process**

- 3.26 It is important to involve children and facilitate their participation in decision-making fora and policy work and in designing and advising on research and services. Effective youth participation is an integral part of the Ministry of Youth Development's work programme and the positive youth development approach outlined in the Youth Development Strategy Aotearoa.
- 3.27 As part of the work arising from the Agenda for Children, tools were developed to encourage children's participation. These include: Involving Children: A Guide to Engaging Children in Decision-making (2003); a web-based toolkit for local government officials; and a 2006 guide for Children, Youth and Family staff on involving children and young people in decision-making.
- 3.28 The Ministry of Youth Development has a number of different ways of engaging with young people. These include regular fora that connect young people directly with Ministers. Recent forum topics have included transport, diversity, educational achievement and connecting young and old.
- 3.29 The Ministry also hosts a range of web-based channels that enable young people to network with each other as well as providing opportunities to directly engage with government decision-makers and to participate in government processes. Channels include Provoke National Youth Network, National Youth Councils Network, National Student Decision-makers Network and National Youth Health Network. The channels are actively supported through tailored youth-friendly resources, online discussion fora and regional training sessions. The Police recently used the Ministry of Youth Development networks for the Police Act Review, as did the Ministry of Education for 'Schools Plus' – a new policy initiative which aims to keep young people connected to school, education or training until the age of 18.

- 3.30 Activate is a youth advisory group convened by the Ministry of Youth Development. It provides advice on policy initiatives and has drafted and presented submissions to Select Committees on a range of Bills including: the Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill, Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill, Employment Relations (Probationary Employment) Amendment Bill and Minimum Wage (Abolition of Age Discrimination) Amendment Bill.
- 3.31 Youth Week is an annual event organised by New Zealand Aotearoa Adolescent Health and Development, which seeks to break down negative stereotypes and celebrate youth. In 2008, there were over 200 events nationwide, many of them organised by youth for youth. The Ministry of Youth Development hosted Young Person's Question Time as part of Youth Week, to provide young people between 12 and 15 years of age with the opportunity to address questions to Ministers about issues concerning them.
- 3.32 In 2007, the Ministry of Youth Development hosted the fourth successful Youth Parliament (the third was held in 2004). The event had its own youth press gallery and 24 international observers from seven Pacific nations, who were learning about Youth Parliament so they could organise similar events in their own countries.
- 3.33 In 2007, the Ministry of Social Development facilitated a workshop with a group of young people aged between 15 and 17 with experience of the care and protection and youth justice systems. The purpose of the workshop was to seek their views on how the Children, Young Persons and Their Families Act 1989 should be updated. These young people's views were considered in developing the Children, Young Persons and Their Families Amendment Bill (No. 6).
- 3.34 In 2007, New Zealand attended the United Nations General Assembly High Level Plenary Session to commemorate the fifth anniversary of the World Fit for Children programme of action. The two young New Zealanders who attended the 2002 United Nations World Fit for Children Special Session represented New Zealand again. They brought continuity to the event and were able to provide insight and guidance to youth delegates from other countries because of their previous experience. One of our young people gave a speech to the General Assembly on behalf of the New Zealand delegation (a formal document was also tabled). His speech received significant attention.

### **Local government and youth consultation**

- 3.35 Territorial Local Authorities are very experienced in engaging with their communities. Councils use a range of mechanisms to solicit views and many have youth councils to advise them and to provide opportunities for young people to participate in, and contribute to their communities. Many councils also have youth policies and child/youth advocates or workers.
- 3.36 A nationwide initiative to engage children in council processes and activities is the Kids Voting project. A resource has been developed for use in schools to help young people understand how decisions are made in their communities, with the aim of increasing young people's active engagement with local

*"I became a youth councillor because I wanted to make a change in Wanganui. As I had recently moved from Australia I was already bored and so were my friends, so I decided I could use my skills and ideas to help to bring some youth life to Wanganui and stop the weekend boredom" [Youth Councillor, 15]*

government.

## **FACTORS AND DIFFICULTIES**

- 3.37 Involving young people in policy development that impacts on them is becoming more commonplace at central and local government level. There has been much progress over the reporting period in providing young people opportunities to express their views, and in encouraging government agencies to listen. The challenge remains for agencies, both inside and outside government, to go beyond listening and to act on young people's concerns. Further work is required to extend such opportunities for active participation and decision-making into the wider community and the non-government sector.