



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Fifty-sixth session

### Summary record of the 1588th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 19 January 2011, at 10 a.m.

*Chairperson:* Ms. Lee

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*The meeting was called to order at 10.05 a.m..*

**Consideration of reports of States parties** (*continued*)

*Combined third and fourth periodic reports of New Zealand (CRC/C/NZL/3-4; CRC/C/NZL/Q/3-4 and Add.1)*

1. *At the invitation of the Chairperson, the members of the delegation of New Zealand took places at the Committee table.*

2. **Ms. Mackwell** (New Zealand) underlined that the third and fourth periodic reports, which covered the period from 2003 to 2008, had been drafted in consultation with children and NGOs and made available for public discussion for four weeks. The findings of the reports had been supplied to Action for Children and Youth Aotearoa, the umbrella group for NGOs and persons dealing with rights of the child in New Zealand, in order to help it draft a parallel report for the Committee. The observations and recommendations of the Committee would be made public through a variety of channels.

3. Since the Committee had considered its previous report in September 2003, New Zealand had, despite the recession, invested heavily in areas affecting children. The budget allocation for education, health and welfare had risen from 22 per cent to 24.5 per cent of gross domestic product between 2003 and June 2008. Since 2009, the Government had allocated an additional NZ\$ 1 billion to new projects aimed at improving the health, education and well-being of children and young people. A significant portion of those funds had been focused on children under the age of 12.

4. In the education sector, the focus had been on high-quality education and clear performance information for parents, for, although New Zealand's top students were among the best in the world according to a recent survey by the Organization for Economic Cooperation and Development, approximately 20 per cent of students performed poorly. New national assessment standards would help identify and provide support for primary-level students and schools in need of extra help. In 2007, the Government had introduced 20 hours a week of early childhood education free of charge to all 3- and 4-year-olds. In 2010, that had been extended to include 5-year-olds and children attending play centres or Kohanga Reo (early childhood education and day-care centres where teaching was conducted in the Maori language). Investment in the area had thus increased by nearly 350 per cent between 2003 and 2010. With a view to reducing historical disparities, emphasis had been placed on improving educational outcomes for Maori and Pacific Islander pupils. The proportion of Maori and Pacific Islander pupils leaving school with senior secondary qualifications or higher had risen from around 29 to 44 per cent and 42 to 56 per cent respectively between 2003 and 2007.

5. In the health sector, the Zero Fees for Under Sixes and Very Low Cost Access initiatives meant that 82.7 per cent of children under 6 had access to free primary health care during business hours. Immunization rates had risen by 20 per cent between September 2007 and September 2010, meaning that 88 per cent of 2-year-olds were immunized.

6. In line with the recommendations made by the Committee in 2003, the State party had developed an action plan aimed at improving the practices and organizational culture of Child, Youth and Family, the statutory child protection agency, reinforced training for social workers and established new guidelines on policy and practices. The performance of Child, Youth and Family had improved markedly in the previous five years in the areas of care, protection and youth justice services. For instance, the number of cases still unsolved after 90 days had fallen from 5,066 in June 2005 to 129 in June 2010 and response times had been reduced, ensuring that 98 per cent of critical cases were addressed within 24 hours. The Government worked with community-based NGOs, as they often knew better how to help families and children. Experience had shown that an inclusive approach based

on a mixture of Government and community initiatives, by addressing the underlying causes of problems, led to more sustainable outcomes for children.

7. The Whanau Ora programme, with a budget of NZ\$ 134.3 million over four years, offered a broad range of social services and aid for families, in particular Maori and Pacific Islander families, to help them care for and meet the needs of their children. The Government had launched several poverty reduction initiatives, including Working for Families, under which tax credits were awarded to families with an annual taxable income of less than NZ\$ 40,000, that had led to a significant reduction in the number of children living in poverty and reversed the trend towards a widening gap between high- and low-income households.

8. Under the amendment to section 59 of the Crimes Act 1961, the legal use of parental force to correct children had been abolished and children had been granted the same status as adults in cases of assault, thus more closely aligning New Zealand legislation with the principles and provisions of the Convention. In November 2010, legislation that prevented foreign children unlawfully resident in the State party from attending compulsory education was dropped. The State party would appreciate the Committee's view on whether partially lifting the reservation against article 2 of the Convention would now be appropriate.

9. The age of criminal responsibility had been lowered for certain serious offences and the jurisdiction of the Youth Court had been widened to include 12- and 13-year-olds who committed such offences, with a view to providing a range of support mechanisms for persistent offenders in that age group and to addressing the underlying causes of their behaviour. Court cases were scheduled as much as possible to limit the mixing of adult and youth appearances and so minimize age-mixing in court cells. The Courts (Remote Participation) Act of 2010 allowed greater use of audio-visual links in court proceedings, which should remove the need for some young people to attend court and be detained in court cells.

10. The possibility of lifting the reservation to article 32, paragraph 2, was directly connected to the State party's position on ratification of the International Labour Organization Convention concerning Minimum Age for Admission to Employment (No. 138), which was still under consideration. The existing policies and legislative framework in New Zealand provided effective protection for young people in employment and were appropriate, given the tradition of school children participating in part-time paid employment from an age below that provided for under the Convention.

11. Legislation had been amended to make it compliant with the obligations set forth in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and with a view to ratifying the Protocol. Work was in progress to address outstanding issues through the children, young persons, and their families amendment bill, whereby the offence of improperly inducing consent for the adoption of a child would be established and which was currently before the House of Representatives.

12. **Ms. Herczog** (Country Rapporteur) welcomed the enactment by the State party of various pieces of legislation concerning children, its ratification of several conventions, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the fact that it was considering the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The State party's efforts to implement some of the Committee's previous concluding observations were welcome but certain issues, especially with regard to discrimination, abuse and neglect of children, had yet to be addressed.

13. Most children in New Zealand lived well and in a safe and protected environment in which their rights were respected, but some problems and challenges remained. For instance, the Convention was not used as a framework for the development of strategies, there was no rights-based or comprehensive child policy, nor any department or ministry specifically responsible for child issues. Despite the availability of a wealth of data, what was still called for was a systematic method for their collection and evaluation, for calculating budgetary needs for child issues, for measuring outcomes and for comprehensive data analysis.

14. Awareness of the rights of children, the implementation of the Convention and the dissemination of its principles did not appear to be a priority for the State party. Children did not take part in decision-making and their opinions were not taken into consideration. Children themselves had apprised the Committee of their desire to be listened to and the need to raise awareness of the Convention at all levels of society and to increase the level of training and dissemination. More also had to be done to help persons working with children to implement the Convention by providing them with more information on it. Children had also drawn the Committee's attention to the needs of Maoris, Pacific Islanders, refugees, migrant children and children with disabilities.

15. The Committee welcomed the abolition of the legal use of parental force for purposes of correction but noted with concern that corporal punishment in the home was not explicitly prohibited, even though efforts had been made to provide parents and caregivers with alternative disciplining techniques.

16. **Ms. Maurás Pérez** requested clarification on the regulatory framework for the implementation of the Convention, as well as on the multi-year Pathway to Partnership plan, which was aimed at strengthening community-based family, child and youth services, and, in particular, its links to the Social Sector Forum of Chief Executives.

17. The delegation might provide more detailed information on the Government's intentions with regard to official development assistance (ODA), which, contrary to what had been stated in the report, was shrinking, and whether consideration had been given to New Zealand companies' social responsibility to respect human rights in the State party and abroad.

18. **Mr. Zermatten** noted with appreciation the progress made with regard to the reservation to article 22, concerning children who were illegally present in New Zealand, but underlined that those children's access to health-care services was still inadequate. Progress had also been made with regard to the reservation to article 37 (c) and all that remained to be done was to raise the age of criminal responsibility to 18 years.

19. Efforts to bring legislation into line with the Convention were not yet completed and had not been systematic. It would therefore be useful to know how many bills aimed at harmonization of legislation were due to be considered by Parliament. Overall, the prominence given to children in legislation remained inadequate and the establishment of a ministry for children's affairs could be the way forward. Although the principles of defending the child's best interests and the right of the child to be heard had been incorporated into the domestic legal order, it remained to be established to what extent the courts, media and political decision-makers actually took those elements into account in day-to-day practice. New Zealand society appeared to have a paternalistic attitude towards its young people.

20. He would like the delegation to say what point had been reached with respect to applying the Convention to the people of Tokelau.

21. **Mr. Koompraphant** said that he was under the impression that cases of domestic violence could be prosecuted under legislation on children, youth and their family or under

legislation on domestic violence, and would therefore like to learn more details about the differences between those two bodies of legislation, particularly with regard to the treatment of offenders and how the right of children to be heard in any proceedings in which they were involved was ensured.

22. **Ms. El-Ashmawy** asked what was being done to allow girls and boys in city and rural areas, especially from vulnerable groups, access to appropriate information, and what role civil society played in that context.

23. **Ms. Ortiz**, noting with concern that certain laws did not treat persons over 15 years of age as children, asked how the State party guaranteed the rights of all persons under 18 years of age enshrined in the Convention.

24. The considerable disparities that continued to separate indigenous from other children, especially in health care, education, poverty and crime, were also a source of concern. The Committee would therefore like to know how the State party assessed the situation and what was being done to re-energize use of the Maori language. Indigenous children were also victims of harassment and discrimination in schools, along with other groups such as children with mental disabilities and young homosexuals and migrants.

25. **Mr. Puras** said that, despite the State party's genuine efforts to promote child welfare and support parents in their role, there were still significant disparities. The disappointing findings concerning emotional health, high-risk behaviour, suicide and teenage pregnancies were all signs of a lack of social cohesion and the need for a more inclusive approach so as better to integrate children and young people.

26. **Mr. Pollar** asked what grounds of discrimination were expressly prohibited by law.

27. **The Chairperson**, while welcoming the abolition of the legal use of force by parents to correct their children, noted that numerous deaths were still caused by ill-treatment each year and asked if the State party had analysed the reasons. The use of Tasers against children was also a source of concern. The statistics on poverty and life expectancy among Maoris and Pacific Islanders, as well as stagnating infant and child mortality rates over the previous 10 years, demanded explanation.

*The meeting was suspended at 11.10 a.m. and resumed at 11.30 a.m.*

28. **Ms. Mackwell** (New Zealand) confirmed that New Zealand had not had a national action plan for children since 2008 and that it was hardly in a position to establish a ministry for children's affairs given the current economic climate. The Ministry of Youth Development was, however, very active and the Social Sector Forum of Chief Executives had been in place for four years.

29. **Ms. Herczog** (Country Rapporteur) expressed the view that a laudable initiative such as the Forum made it all the more imperative that a comprehensive long-term strategy should be adopted to avoid conflicting or overlapping activities.

30. **Ms. Mackwell** (New Zealand) said that the transfer of primary responsibility for the promotion of the Convention from the Ministry of Youth Development to the Ministry for Social Development ensured smooth coordination.

31. Funds set aside for children's issues were not easily quantifiable because budget allocations were disaggregated by sector, such as education, health and so on.

32. **Ms. Maurás Pérez** said that she would provide the delegation with information on interesting budget strategy trials carried out in Latin American countries that made it possible to identify how much of the budget in each sector went to children's affairs.

33. Instead of creating a ministry for children's affairs, a children's section could be established within the framework of the Forum. Either way, a comprehensive policy must be put in place and the State party had the means to do so.

34. **Ms. Mackwell** (New Zealand) said that the opinions and rights of children were taken into account, for example in the framework of consultations, especially with 12- to 14-year-olds, that took place in social networks, and that the representation of young people in local and territorial authorities was ensured. Moreover, every two or three years, young people participated in the Youth Parliament in Wellington to become acquainted with the political decision-making process.

35. **Mr. Zermatten** asked what say children had when administrative, civil or criminal law decisions concerning them had to be taken, noting that in some countries children considerably younger than 12 years old could make themselves heard.

36. **Ms. Ortiz** said that the Government of New Zealand appeared to be focusing on problems encountered in a certain age group when, in fact, children should be able to express themselves at any age and in any context (at home, in the community, church and school, and before local authorities). She wished to know what was being done to encourage municipal authorities to respect the provisions of the Convention, which applied to everyone under the age of 18 years.

37. **Ms. Mackwell** (New Zealand) said that the Ministry of Youth Development advised municipal authorities on how to involve young people.

38. **Mr. Keith** (New Zealand) said that the best interests of the child took priority in court proceedings and programmes. In court, children were represented by legal counsel, of their own choice or appointed by the court. In the previous five years, the Convention and the conclusions of treaty bodies had been invoked in about 50 High Court rulings. In criminal matters, it was obligatory for children to be represented by legal counsel. Children had the right to the free services of a youth defender, an independent legal specialist who acted in accordance with the wishes and abilities of the child in question. Legal aid was also free of charge in other areas such as family law. In immigration proceedings, children were treated either as distinct individuals or as members of the family. It was up to the court and family to decide whether children needed separate counsel, paid for out of public funds. Some years previously, the Office of the Children's Commissioner had examined laws for their compliance with the Convention and had produced a reference document used to amend national legislation.

39. **Ms. Hinton** (New Zealand) said that the territory of Tokelau enjoyed broad autonomy, which allowed it to decide whether treaties ratified by New Zealand, such as the Convention, were applicable there. As the New Zealand Government contributed to Tokelau's budget, it was also involved in the protection of children there.

40. **The Chairperson** said that ODA could serve the cause of human rights and that New Zealand ought to open a dialogue with the Tokelauns so that the approximately 600 children in the archipelago might also enjoy the rights enshrined in the Convention.

41. **Mr. Keith** (New Zealand) said that, despite the reservation to article 2, children in an irregular situation had access to primary education as well as emergency and primary health care free of charge. Persons in an irregular situation, however, did not have access to welfare benefits or social housing and the reservation would not be lifted, because the Government was not planning to remove those restrictions. The reservation to article 37 (c) would doubtless be lifted soon, given the improvement in the situation.

42. It was common for children over 12 years of age to work in family businesses or do paper rounds, but their working conditions were governed by particularly tight legislation that aimed to prevent any negative impact on their studies and prohibited them from doing

any dangerous work. Discussions with ILO with regard to Convention No. 138 had led to the conclusion that current practices made it impossible for New Zealand to consider its ratification.

43. **Mr. Zermatten** underlined that ILO Convention No. 138 authorized the employment of persons aged 13 to 15 in light forms of work under certain conditions, which was not contrary to the situation that had just been described.

44. **Mr. Tuohy** (New Zealand) said that all children were entitled to primary health care free of charge but that district health boards sometimes tried to recoup costs, especially for major surgery. The system of benefits and rehabilitation for accident victims also covered children. The Ministry of Health was working with the boards to review guidelines on eligibility for public health care, which until now had not mentioned vaccinations or health-care services for children, irrespective of their situation. The new regulations would oblige the boards to cover those costs, which were already completely covered for infants under 5 years of age. Foreign women, even if separated from their New Zealand husbands, would be entitled to health-care services during pregnancy if the separation was in the best interests of the unborn child. Child victims of human trafficking or in need of protection would also be eligible for public health care, as refugees already were. The State also planned to provide services for the prevention of mother-child HIV transmission.

45. **Ms. Mackwell** (New Zealand) said that the State party did not have the financial resources to assess all social programmes. Only the most significant ones were monitored. In the areas of health care, education and family support, the Government, which had to be formed with budget constraints, had adopted a novel approach that would allow it to make more of its available resources by working more closely with communities and service providers that, by virtue of their proximity to end-users, were better placed to understand the families' needs. The State had set up commissions made up of public bodies and community and service-provider representatives that met in each community to identify where funding was needed and advise the Ministry of Social Development on how best to improve the quality of services. State bodies had previously not always been able to assess the efficiency of services on the ground.

46. Without wishing to renege on its responsibilities, the Government was interested in exploring new kinds of partnership with private companies, especially in underprivileged areas such as those with Maori and Pacific Islander communities, in which projects would be awarded to community-owned businesses with a view to helping breathe new life into them.

47. The New Zealand authorities took the matter of ill-treatment and neglect very seriously. Given that reports of ill-treatment had doubled in the past five years, the Government had taken measures to help vulnerable children, for example by increasing the number of social workers and tightening cooperation between them and health professionals with a view to better identifying and dealing with cases of ill-treatment. Awareness-raising and public information campaigns had been run in the media, including the "Never, Ever Shake a Baby" campaign aimed at preventing infant deaths. The authorities favoured placing ill-treated children with foster families rather than in institutions.

48. **Ms. Herczog** (Country Rapporteur) asked why the Government had chosen to provide 20 hours a week of free early childhood education when working parents needed establishments to be open longer. She wondered how parents who could not afford to take leave without pay in order to look after their children managed, given the short duration of maternity leave and the fact that, according to some sources, the number of free places available in public day-care centres, which the State provided for the neediest, particularly

unemployed, parents, was insufficient. Additional information on the availability of day care for infants up to the age of 3 would be welcome.

49. Since the school day ended early, she would like the delegation to indicate whether after-school recreational and sporting activities were offered free of charge. She also wished to know whether the State party did anything to promote breastfeeding, especially among women in underprivileged communities, given that relatively few women breastfed. She would also like to hear what initiatives aimed at preparing vulnerable families, especially young and single parents, to assume their responsibilities.

50. The State party should take a closer look at the relationship between poverty and failure rates at school. That 20 per cent of pupils failed and the same percentage of children lived in relative poverty seemed to suggest that there was a link between the two phenomena.

51. **Ms. Al-Asmar** asked what the State party was doing to prevent bullying in schools and obesity.

52. **Ms. Varmah** asked why the State party still had not revised the Adoption Act of 1955, which was not in compliance with the Convention, especially with regard to taking into account the best interests of the child. It appeared that no progress had been made on the matter, which seemed to be a low priority for the authorities. Moreover, some sources had indicated that intercountry adoptions took place without any State supervision.

53. **Mr. Puras** asked what measures had recently been taken to reduce infant mortality and increase immunization coverage. According to the periodic report under consideration, pupils with special needs or behavioural problems were placed in special schools, begging the question of whether, as in other countries, the State party was once again adopting more repressive and punitive practices towards problem children, for example through systematic institutionalization. He also wished to know what was being done to improve the integration of children with disabilities into the mainstream school system and to ensure that children were not imprisoned with their mothers.

54. **Ms. Ortiz** asked whether the State party had concluded agreements on the recovery of maintenance with any countries aside from Australia, for example with the countries of origin of major immigrant communities. She would like data on the number of children who were wards of the State, disaggregated by the institutions in which they were placed, and wished to know whether the State party recognized traditional adoption between indigenous people and had passed legislation on the matter, as Australia had done.

55. **Ms. Maurás Pérez**, noting information from UNAIDS suggesting that the rate of HIV infection was higher among Maori women and homosexual men, although the overall level of AIDS infection was quite low in the State party, asked the delegation to spell out what was being done to halt the spread of HIV among those communities. With regards to the prevention of sexually transmitted diseases, among them HIV/AIDS, it would be useful to know if sex education was provided in secondary schools and whether information campaigns on sexual and reproductive health were conducted.

*The meeting rose at 1 p.m.*