



Convention on the Rights of the Child

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Committee on the Rights of the Child

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Item 4 of the provisional agenda

Consideration of reports of States parties

List of issues in relation to the report submitted by New Zealand under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Addendum

Replies of New Zealand to the list of issues*

[Date received: 3 June 2016]

* The present document is being issued without formal editing.

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1. **Please provide statistical data (disaggregated by sex, age, nationality, ethnic origin, socioeconomic background and urban and rural residence) for the past three years on the number of:**
 - (a) **Reported acts of sale of children, child prostitution and child pornography, as well as other forms of exploitation, including child sex tourism, with additional information on the type of action taken as a result, including the prosecution and punishment of perpetrators;**
 - (b) **Children trafficked from, to or within New Zealand for the purpose of sale, prostitution, engagement in forced labour, illegal adoptions, organ transfer or pornography as defined in article 3, paragraph 1, of the Optional Protocol;**
 - (c) **Children offered, delivered or accepted by whatever means for the purpose of prostitution, engagement in forced labour, illegal adoptions, organ transfer, pornography or marriage; and**
 - (d) **Child victims who have been provided assistance with reintegration or have received compensation.**

1. Reports of self-generated child exploitation material (ie images posted by subjects themselves) continues to be high with Police's specialist team – Online Child Exploitation Across New Zealand (OCEANZ) – receiving between two to three reports each week involving New Zealand children. The live streaming of the sexual abuse of children online is now an established form of offending. While the victims of this type of offending are still largely in the Philippines, New Zealand nationals have been identified as possibly being involved in purchasing this type of online material. Due to the anonymity that surrounds this type of offending it is difficult to quantify the number of New Zealand offenders who may be involved.

2. New Zealand Police has changed recording practices in recent years to provide greater information about child exploitation offending and allow this to be distinguished from similar offending involving adults (for example the supply of objectionable publications). As such, data is only available for a limited time period, with 2015 being the only full year of data. In 2015, Police recorded 58 proceedings against identified offenders for offences involving child exploitation material, 50 of which involved Police taking court action. All except one offender was male, and offenders ranged in age between 8 and 67, with 17 offenders being aged between 20 and 29. 48 offenders were European.

3. The numbers of recorded proceedings for the other types of offending mentioned are too small to be able to be counted or analysed.

2. **Please provide information on the progress made towards the establishment of a centralized system for the compilation of data within all the State party's agencies involved in child protection matters under the Optional Protocol.**

4. The Children's Action Plan (CAP) was the Government's response to the White Paper for Vulnerable Children, and set out fundamental changes to the way agencies work for vulnerable children. The CAP was released in October 2012, and the Vulnerable Children Act enacted in 2014. Together they make the five Chief Executives of the Ministries of Social Development, Health, Education, Justice and New Zealand Police jointly accountable for developing and implementing a plan to protect children from harm, as well as working with families/whānau and communities.

5. A key aspect of the CAP is to support greater information sharing to better identify children at risk of abuse or neglect. Sharing information between agencies is essential to identify risks early, address unmet needs and understand the underlying issues of the child and family/whānau.

6. In August 2015, the CAP Directorate implemented a Vulnerable Children Approved Information Sharing Agreement (AISA) to support information sharing to the Vulnerable Children's Hub (the Hub) and the Hamilton, Canterbury and Counties Manukau Children's Teams.

7. The Vulnerable Children's Hub is a contact and triage point for people to raise concerns about a vulnerable child, and was implemented as a proof of concept on 1 September 2015 to initially support the Hamilton Children's Team.

8. Children's Teams are a fundamentally different way of working with vulnerable children and their families/whānau who have complex, multiple needs but do not require statutory intervention from Child, Youth and Family (CYF). Children's Teams complement CYF by working with these families/whānau to reduce their vulnerability and prevent their needs from escalating.

9. AISA provides a legal framework to facilitate proportionate and relevant information sharing that is needed to determine whether or not a child is vulnerable and whether a referral to a statutory response or other response is required.

10. Another key aspect of the CAP is the development of a Vulnerable Kids Information System (ViKI). ViKI is a secure information management system which stores information about children referred to the Hub, supports case management and reports on outcomes. The Hub staff can source information from other specified information management systems, such as the CYF system (CYRAS), and manually input relevant information into ViKI.

11. The first phase of ViKI went live on 16 November 2015 to support The Hub and the Hamilton Children's Team. Both ViKI and the Hub have been extended to support Canterbury and Counties Manukau Children's Teams.¹

3. Please provide updated information on the programmes put in place by the State party and by civil society organizations to raise awareness of the Optional Protocol regularly and systematically among the general public, groups of professionals who work with children, and among children themselves.

12. New Zealand does not have programmes to raise awareness of the Optional Protocol at this stage.

4. Please provide information on the preventive measures taken to protect particularly vulnerable children who are at risk of becoming victims of the offences covered by the Optional Protocol, and especially children who are victims of domestic violence, children living in institutions, children using the Internet without proper supervision, children who use drugs, child refugees and asylum-seekers, as well as children in irregular migration situations.

¹ You can find more information on the Children's Action Plan and the Vulnerable Children Act 2014 at: www.childrensactionplan.govt.nz.

Domestic violence

13. In the case of a family violence incident, the New Zealand police conduct a risk assessment for all children who usually reside at the address. The safety of children is improved through recent police family violence practice improvements such as:

- Operational improvements regarding the disclosure of personal information to third parties where there is serious risk to a person's safety from family violence.
- A technology trial to look at capturing video evidence on mobility devices at the scene of family violence incidents, with the aim of providing better services for victims, increased efficiencies, and improved quality of information.
- The development of an improved multi-agency response to reports of family violence, in partnership with government and non-government agencies. This includes developing and testing an intensive case management approach for high risk family violence victims.

14. The New Zealand Police participate in Children's Teams which bring together practitioners and professionals from the iwi/Māori, health, education and social services sector to develop a single plan to help and support vulnerable children. Children's Teams work together to tackle all the issues a child and their family may have, rather than just address one aspect of the problem. The team approach means that the child gets extra support to ensure he or she gets everything they need.

Online safety

15. The New Zealand Police is a member of the Bullying Prevention Advisory Group (BPAG), formed in 2013. A sub-group, Online Safety Advisory Group (OSAG) was formed in late 2013 to provide advice on the online safety challenges that schools are managing.²

16. Over the last 18 months the Department of Internal Affairs (DIA) has dealt with four youths in relation to offending under Section 131A of the Films, Videos, and Publications Classification Act 1993. This resulted in one diversion and three official warnings after completing supervision programmes.

17. In 2013, DIA, New Zealand Customs and New Zealand Police signed a multi-agency agreement on working protocols. This saw a joint agency approach to Victim Identification with dedicated resources from each agency being applied. DIA took the lead in the updating of images for the Interpol Child Sexual Abuse Database (ICSE).

Child sex offenders

18. The government is putting a bill through Parliament to establish a Child Sex Offender Register. This bill requires registered child sex offenders to provide a range of personal information to the Registry and to keep it updated. This information will assist the Department of Corrections and the New Zealand Police to actively assess a child sex offender's level of risk and to monitor their activities accordingly.

Child refugees and children in irregular migration situations

19. The New Zealand Police is a key partner on the government's Refugee Resettlement Strategy. Some of the outcomes include an education and prevention component. The

² <http://www.police.govt.nz/advice/email-and-internet-safety/online-child-safety#anchor2>.

education and prevention programme has a strong focus on family violence, role of police, individual rights and care and protection. Actions include:

- Police ethnic liaison officers to assist with refugee resettlement and education in all settlement regions for refugees in New Zealand.
- Offshore orientation in the form a DVD that introduces new refugee communities to New Zealand, the role of police, family violence laws and care and protection.
- On-shore orientation in the form of a personal crime and education seminar by an ethnic liaison officer at the Mangere Refugee centre for all new refugee arrivals to New Zealand. This is conducted for both adults and children.
- Local orientation for refugee families by an ethnic liaison officer when they take up residence in their respective regions.

20. Children in irregular migration situations are able to access education. Prior to 2010, children who were in irregular migration situations in New Zealand were only able to access education on the same terms as New Zealand citizens and other lawful residents if they and their families were seeking to regularise their immigration status. Since the Immigration Act came into force in November 2010, some children unlawfully in New Zealand who are ordinarily resident, and have been in the country for at least six months are now entitled to 'domestic student status'. The reason for the six-month stand down is to discourage category hopping by fee-paying foreign students, who could otherwise just let their visas lapse to be eligible for subsidised education.

21. This legislative change does not mean that children in irregular migration situations in New Zealand are automatically eligible to enrol in New Zealand schools, or for free. Generally, foreign nationals must have an entitlement to study in New Zealand under immigration law. The Minister of Education determines whether a foreign national child unlawfully in New Zealand is eligible to enrol in a New Zealand school on the same terms as New Zealand citizens and residents, following the process in the Education Act 1989, and the Education (Domestic Students) Notice 2013 (and amendments). Any child who does not meet the domestic student criteria may apply to a school in the compulsory education sector to enrol as an international fee-paying student.

22. It remains an offence for education providers, other than those who provide compulsory education, to enrol foreign nationals who are unlawfully in New Zealand. However, as the definition of "compulsory education" in the Immigration Act is very broad, this provision exceeds the obligation under the United Nations Convention on the Rights of the Child. Under the Education Act 1989, it is compulsory for every 'domestic student' aged between 6 and 16 to be enrolled and attend school (unless exempt). However, as domestic students are entitled to free enrolment and free education in state-funded schools from the age of 5 until the first of January after their 19th birthday, the primary and secondary schools (including registered private/independent schools) that provide education to this broad range of students are collectively known as "the compulsory education sector".

23. To ensure that irregular migrants in New Zealand are not deterred from enrolling their children in compulsory education, immigration officials' powers of entry and inspection of education providers' records cannot be exercised in relation to a foreign national child undertaking compulsory education. The powers also cannot be exercised to locate any member of that foreign national's family. This means that foreign nationals do not have to be concerned that the information they supply to an education provider in the compulsory education sector will be used for immigration compliance purposes.

Guardian policy/visa

24. The intention of the guardian policy is primarily to protect the children concerned, by ensuring that their guardian stays in New Zealand.

25. A guardian visitor visa can be granted for the guardian of a foreign fee paying student for a stay in New Zealand of a period consistent with the student's visa (or up to 12 months). They can be granted for a guardian to accompany a student who is 17 years old or younger or is enrolled in school years 1-13. Students aged 13 and under will only be issued a visa if they are living with a parent or guardian or enrolled in a school hostel, (or enrolled in years 7 or 8 in a programme with prior approval).

26. Guardian visas are not available for the guardian of a child in in an irregular migration situation.

Engagement in the Bali Process

27. New Zealand is active in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process). It is the regional framework for policy discussions among source, transit and destination countries and the delivery of practical activities to strengthen regional capacity to address the challenges of irregular migration (adults and children). New Zealand is a member of the Bali Process Trafficking in Persons Working Group (TIP WG) which is co-chaired by Indonesia and Australia. The TIP WG forward work plan, which was agreed in March 2015, outlines a range of issues for priority action including prevention measures of vulnerable groups, including irregular migrants and children.

5. **Please specify the measures taken to prevent child sex tourism and to publicize the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, developed by the World Tourism Organization, among others, and to establish a mechanism for notification of cases of child sex tourism committed in other countries by nationals or foreign residents of the State party. Please also indicate whether cases of child sex tourism have been tried by the courts of the State party.**

28. New Zealand Police, as part of the Virtual Global Taskforce, is working on a South East Asian law enforcement capability building project focused on child exploitation. It is anticipated that in the long term this will have a positive impact on reducing the incidence and impact of transnational sex offenders offending in Asia.

29. In 2012 there was one conviction for sexual conduct with children and young people outside New Zealand and one conviction for organising or promoting child sex tours. Both offenders were sentenced to three years imprisonment.

30. In 2013 and 2014 there were four prosecutions for sexual conduct with children and young people outside New Zealand. None of these were successful.

6. **Please indicate whether all the offences referred to in the Optional Protocol are legislatively defined as well as distinct, and separately indictable offences. In doing so, please elaborate on how these are differentiated from those under the State party's legislation on human trafficking.**

31. In accordance with policy, New Zealand only ratified the protocol once it passed the legislation required to implement it. Accordingly, all offences in the protocol are offences under New Zealand law. This includes section 98AA of the Crimes Act which creates an offence for people dealing with children for the purpose of sexual exploitation, the removal of body parts, and engagement in forced labour.

32. New Zealand's trafficking framework includes a specific trafficking offence in section 98D of the Crimes Act as well as other offences including abduction, kidnapping and exploiting workers.

33. The trafficking offence applies to both adults and children, and the fact that the victim is under 18 years is an aggravating factor on sentencing.

7. Please indicate whether the legislation of the State party establishes extraterritorial jurisdiction for all offences that constitute the sale of children, child prostitution and child pornography when committed abroad by a citizen of New Zealand or a person who resides habitually in New Zealand or when the victim is a child who is a national of New Zealand. Please also indicate whether the Optional Protocol may be used as a legal basis for extradition.

34. Under section 7 of the Crimes Act an offence is deemed to be committed in New Zealand if any part of the offence is committed in New Zealand.

35. In addition, section 7A of the Crimes Act creates extraterritoriality for specified offences with transnational aspects. This includes the offence in section 98AA of for people dealing with people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour. This will ensure that sale of children is an offence if it occurred completely outside New Zealand and was committed by either a citizen of New Zealand or a person who is ordinarily resident in New Zealand.

36. Section 144A of the Crimes Act creates an extraterritorial offence for New Zealand citizens and residents who have sexual conduct with people under 18 outside of New Zealand. This explicitly applies to child prostitution offences occurring outside of New Zealand.

37. Extraterritoriality for child pornography offences exists in section 145A of the Films Videos, and Publications Classification Act 1993. Offences occurring outside of New Zealand can be prosecuted under that Act if the alleged offender is found in New Zealand, and is not extradited because they are a New Zealand citizen.

38. New Zealand does not have extraterritorial jurisdiction under section 7A of the Crimes Act if the victim is a national of New Zealand.

39. New Zealand does not need a treaty to extradite or receive extradition requests. Dual criminality is required, and includes that the offence is punishable by 12 months or more imprisonment in both the requested and the requesting country. All of the offences under the protocol reach this threshold.

8. In respect of child victims and witnesses of the criminal offences covered by the Optional Protocol, please provide information on the measures taken to protect the rights of such children at all stages of the legal process and of the treatment provided to victims, particularly as concerns psychological support, rehabilitation, reintegration and compensation, including in establishments offering specialized care. Additionally, please describe the programmes introduced for perpetrators of the offences covered by the Optional Protocol.

40. The Evidence Act provides protections for all child witnesses allowing for an application to be made to give evidence in an alternative way, and apply to have a support person in court.

41. The Evidence Amendment Bill was reported back by Select Committee in November 2015. This Bill will introduce a legislative presumption that witnesses under the age of 18 give their evidence in an alternative way, for example, via CCTV or a video

record of their evidential interview. The Bill will also introduce a right for all child witnesses to have a support person with them when giving evidence.

42. The Child Protection Protocol is an agreement between Police and CYF. This protocol stipulates requirements about making children safe when going through the legal process and receiving specialised support as required.

43. The Department of Corrections offers a range of programmes and treatments that can address some of the offending covered by the optional protocol, primarily child pornography and child prostitution:

- The Department of Corrections have two 60-bed special treatment units (Te Piriti at Auckland Prison and Kia Marama at Rolleston Prison) that deliver high intensity treatment programmes for child sex offenders. These programmes are delivered by psychologists for prisoners who are at highest risk of sexual re-offending.
- The Department of Corrections psychological services offer individual assessment and treatment work that address this type of offending behaviour. Psychologists can be engaged for both prisoners and offenders subject to community-based sentences.
- The Department of Corrections also funds places at community-based sex offender programmes such as STOP (a service based in the South Island), WellStop (based in the lower North Island) and SAFE (based in the mid to upper North Island) where these types of offending can also be addressed.

9. Please indicate the measures taken to ensure that, in practice, foreign child victims of any of the offences under the Optional Protocol have access to assistance and protection services which meet the same quality standards as those provided to children who are nationals of New Zealand.

44. If any of the offences under the Optional Protocol are committed in New Zealand then the foreign child victims are afforded exactly the same assistance and protection as those who are New Zealand nationals.

45. The Health and Disability Services Eligibility Direction 2011 (Eligibility Direction) sets out the eligibility criteria for publicly funded health and disability services in New Zealand. For foreign nationals, eligibility is largely based on immigration status. Where children are not automatically eligible, provision is made in the Eligibility Direction for them to receive a number of publicly funded health services, such as acute services in emergencies, vaccinations on the Immunisation Schedule, Well Child/ Tamariki Ora services, available from birth to five years, services relating to infectious diseases or quarantinable diseases and compulsory treatment services under certain Acts.
