

15 December 2022

Supplementary Information on Aotearoa New Zealand

Submitted by the Children's Rights Alliance Aotearoa New Zealand to the United Nations Committee on the Rights of the Child

for the 92nd session (26- 27 January 2023)

Greetings to the Committee, Tēnā koutou,

Thank you for considering our written reports, and for your time and questions at the Pre-session during September 2022.

The supplementary information below includes:

- Brief updates on developments since the Pre-session.
- Advice on what we consider to be the key children's rights issues for Aotearoa New Zealand.
- Answers to the questions the Committee asked us to respond to via email.

This information has been prepared by the Children's Rights Alliance Aotearoa New Zealand, in consultation with those civil organisations who attended the Pre-session, the Children's Commissioner and the Human Rights Commission.

We trust the information below will assist the Committee to prepare for its dialogue with the New Zealand (NZ) Government. We are also happy to provide any additional information that you might find helpful for your preparations. Please direct any questions to info@childrensrightsalliance.org.nz



1. New Developments Since the Pre-session

Expected economic recession

The Reserve Bank of New Zealand expects the NZ economy to go into a recession during 2023.¹ We know from the Global Financial Crisis of 2007-2008 and its aftermath that children and their rights can be lost sight of in times of economic pressure in NZ, unless they are prioritised and planned for. Continued and strengthened efforts to embed the general measures of implementation and apply the United Nations Convention on the Rights of the Child (CRC), particularly the general principles, will be particularly important over the coming reporting period. We refer the Committee to our first priority issue (see p. 6 below).

Responses to the tragic death of 5-year-old Malachi Subecz

Malachi Subecz died in November 2021 at the hands of the person caring for him while his mother was in prison. He was 5 years old. Oranga Tamariki had received reports of concern that Malachi was being abused by his carer, but these were not properly investigated or responded to.

Malachi's death has prompted several official reviews into what could have been done to prevent his abuse and murder, and what needs to happen to avoid any other child suffering as Malachi did:

- [Chief Ombudsman's review](#)
- [Oranga Tamariki practice review](#)
- [Independent review of the children's system response to abuse](#), conducted by Dame Karen Poutasi and commissioned by the:
 - Department of Corrections / Ara Poutama Aotearoa
 - New Zealand Police / Ngā Pirihimana o Aotearoa
 - Ministry for Children / Oranga Tamariki
 - Ministry of Education / Te Tāhuhu o te Mātauranga
 - Ministry of Health / Manatū Hauora
 - Ministry of Social Development / Te Manatū Whakahiato Ora.

Oranga Tamariki has accepted full responsibility for the failings identified in its practice review and they have apologised to Malachi's family. They are making practice changes as a result of the review.

Some of the recommendations of the Independent Review have been adopted and others are being considered by the Government.²

Social work academics are cautioning against a pendulum swing towards more risk-averse decision-making in child protection, [mandatory reporting](#), and increased investigations and child removals. Instead, they suggest that what is needed is, in the short-term:

- A focus on practice changes to support decision-making about specific types of cases and information that are notified to Oranga Tamariki.

¹ <https://www.rnz.co.nz/news/national/479434/recession-what-you-need-to-know>

² A note of the recommendations and the Government's response is in this media article <https://www.rnz.co.nz/news/national/479883/malachi-subecz-panel-recommends-mandatory-reporting-information-sharing>



- Greater consensus between Oranga Tamariki and those who make reports about the kind of reports that meet the threshold for urgent intervention.
- Better communication between those who report child abuse concerns and Oranga Tamariki to build legitimacy and trust.
- A balance between national consistency and local knowledge when responding to reports.

NZ is moving from a notify-investigate child protection system towards community devolution. The longer-term response to the issues Malachi's death has raised about child care and protection in NZ needs to include a clear strategy for the transition to shared, community responsibility for child welfare that:

- Maintains children's safety while changing responsibility for that safety.
- Addresses the underlying factors that can lead to child abuse, including poverty.
- Supports self-determination for Māori families (whānau).
- Resources community-based systems of care.³

Equitable access to and outcomes from education for all children

Since the Pre-session, there has been growing concern about education and the impacts of the pandemic on children's schooling and learning, including reports of high rates of schools absenteeism with some children not returning to school or engaging with formal learning post-COVID lockdowns.⁴ Given the significance of education for the realisation of all children's rights, we suggest that the Committee may want to consider education rights as a priority issue.

Youth Justice

Public and political concern has grown about youth offending after an ongoing series of 'ram-raids' carried out by children and young people in the community.⁵ (Ram-raids refer to the use of a stolen vehicle to break into and burgle a shop or other premises).

This [media interview](#) with two young people involved in 'ram-raids' provides an insight into the multitude of issues and systemic failings that have led to this point in their lives.

However, the language being used and the positioning of children and young people who offend in public and media discourse is often unhelpful, with youth being over-associated with violent crime and gangs. This can lead to pressure on Government to be seen to be doing something to punish youth offending, rather than adopting evidence-based responses.

Recent research found that existing systems are failing children who offend and that changes are needed across Government, not just in the youth justice system.⁶ (See paragraphs 244 to 252 of the Children's Rights [Alliance Report](#)).

³ <https://reimaginingsocialwork.nz/2022/10/14/smarter-not-harder-decision-making-policy-swings-and-the-malachi-subecz-report/>; <https://reimaginingsocialwork.nz/2022/10/16/haere-whakamua-haere-whakamuri/>

⁴ For example: <https://www.1news.co.nz/2022/10/26/school-absenteeism-rise-a-perfect-storm-truancy-officer/> See also paragraphs 212 to 215 of the [Alliance report](#).

⁵ <https://www.rnz.co.nz/news/national/477044/hundreds-of-arrests-over-ram-raids-smash-and-grab-robberies-police-data>

⁶ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system'](#), Research and recommendations. Michael and Suzanne Borrin



We are concerned that youth justice issues may become politicised in next year's General Election, with calls to get tough on youth crime leading to more punitive approaches to young people who offend, contrary to NZ's CRC obligations.⁷

Supreme Court decision on lowering the voting age

In November 2022, the Supreme Court made a declaration that the legislative provisions setting a minimum voting age of 18 years are inconsistent with the right to be free from discrimination on the basis of age in section 19 of the New Zealand Bill of Rights Act 1990.⁸ Under NZ law, Parliament must now consider and respond to this declaration of inconsistency.⁹ The Prime Minister has advised that Cabinet has decided to draft legislation to reduce the voting age to 16. This will then be considered by Parliament, with a 75% majority required to change the voting age for Parliamentary elections and a lower 50% majority required to change the voting age in local government elections.¹⁰ The voting age is also being considered in the Electoral Review¹¹ and in the Review into the Future for Local Government.¹²

Child Poverty Monitor 2022 released

The [Child Poverty Monitor 2022](#) has now been released. The Monitor shows that the Government is on track to meeting its overall child poverty reduction targets, but highlights continued inequities for certain groups of children – Māori, Pacific and disabled children, and those in sole parent families. The Government is not on track to meeting its poverty reduction targets in relation to these groups of children. For example, the

Foundation, New Zealand Law Foundation & University of Auckland. This report contains a detailed discussion of how the existing systems fail children who offend and at p. 4. says: *This research clearly showed that child offending does not occur in a vacuum but, in the vast majority of cases, was preceded by significant child welfare concerns. IDI data showed very high levels of abuse, reports of concern to Oranga Tamariki, out-of-home placements, stand-downs and suspensions from school, and indicators of social deprivation among children who offended. These were significantly worse relative to their non-offending peers. ... It is therefore critical that efforts to improve systemic responses to child offending are not restricted to interventions focused only on offending behaviour; we must seek to prevent, or at least better address, the welfare concerns of children and their families that underlie the development of offending. ... Overall, key stakeholders described a child welfare system that is currently reactive, not proactive, and fails to effectively address the needs of children even though these are often well-known to services.*

⁷ For example, the main opposition political party, National, has released policy stating that it is going to establish Young Offender Military Academies (YOMA) if it gets into power, whereby children aged 10 to 17 years who have committed a serious offence will be sentenced to up one year at a YOMA, run by military personnel on military bases. https://www.national.org.nz/combating_youth_offending. The Labour Party, currently in government, is targeting 10-13 year olds who it identifies as repeat offenders taking a needs based approach. <https://www.beehive.govt.nz/release/circuit-breaker-introduced-stop-children-re-offending>

⁸ *Make it 16 Incorporated v Attorney-General* [2022] NZSC 134. The relevant provisions are in the of the Electoral Act 1993 and the Local Electoral Act 2001.

⁹ [New Zealand Bill of Rights Act 1990, ss7A & 7B](#).

¹⁰ <https://www.rnz.co.nz/news/political/479195/voting-age-16-law-to-be-drafted-requiring-three-quarters-of-mps-to-pass-ardern>

¹¹ <https://electoralreview.govt.nz/> In May next year, the Panel will release an interim report with draft recommendations and invite feedback on these. Its final recommendations are due with the Government in November 2023.

¹² Review into the Future for Local Government (2022) [He mata whāriki, he matawhānui: Draft report](#), Wellington: New Zealand. The draft report which is open for consultation until February 2023 also recommended that the voting age for local government elections be lowered to 16 (see pp 171-172).



Monitor shows that approximately 45,400 children live in homes that are always damp. Māori and Pacific children are three to four times as likely, respectively, to live in homes that are always damp, as European children.¹³ A group of children presented a [Taitamariki Youth Declaration](#) to the Children’s Commissioner in response to the Child Poverty Monitor 2022, making a specific set of demands to improve the situation for children in New Zealand.

Homelessness and human rights: A review of the emergency housing system in Aotearoa New Zealand

The Human Rights Commission is conducting a Housing Inquiry and on 14 December 2022 released a [report on emergency and transitional housing](#). This report found that human rights standards, including for children, are not being met in the emergency housing system. There has been a significant increase in the number of children living in emergency housing over the reporting period, which is deeply concerning. We understand the Human Rights Commission has provided the Committee with supplementary information about the findings of its report and we urge the Committee to have regard to this. (Please also see the [Alliance report](#) paragraphs 199-203).

2. Follow-up information from the Pre-session – Key issues

Use of Māori language

We wanted to respond to comments on the use of Māori words in our reporting after learning this posed some difficulty for Committee members. As the Children’s Commissioner, Human Rights Commission and civil society in Aotearoa NZ, we are committed to upholding all rights of every child, including the rights of Māori children as indigenous peoples and in accordance with NZ’s constitutional arrangements under the Treaty of Waitangi/Te Tiriti o Waitangi. (Please see [Rights of Tamariki Māori in Aotearoa New Zealand Thematic Report, submitted by Te Puna Rangahau o Te Wai Ariki | Aotearoa New Zealand Centre for Indigenous Peoples and the Law](#) for more information on the nature of these constitutional arrangements and the rights of Māori children). We also note that as an indigenous language, te reo Māori is undergoing a revitalisation in NZ (after being threatened for a long time) to strengthen the knowledge and use of the language. This has important connections to children’s rights – especially for the rights of Māori children who are indigenous people of NZ.

The children’s rights issues associated with non-discrimination and Māori children are much more than being able to live together with their families (whānau). There are larger spiritual connotations and cultural perspectives that have implications for the rights of Māori children.

We appreciate the importance of communicating clearly with the Committee and that using the current official UN languages facilitates this. However, we anticipate that there will be times in the future when it may be necessary, in order to respect the rights of Māori children, to use Māori words and to provide a glossary. We are grateful for the Committee’s understanding of this issue as we believe that respecting all the rights of Māori children is central to NZ meeting its obligations under the United Nations Convention on the Rights of the Child (CRC) and addressing the disparities for Māori children in experiencing their rights under the CRC.

¹³ <https://www.childpoverty.org.nz/measures/home>



Overall Message: Some progress, but continued and stronger efforts required on children's rights

in general, our reporting demonstrates that children and their rights remain largely invisible in government policy and initiatives, despite NZ being well placed to plan for and prioritise children, their daily experiences and their future lives. We believe there is a continued, and increasingly urgent, need for NZ to take a holistic, co-ordinated approach to upholding **all** children's rights across all areas of Government activity, especially in relation to the changing climate and the other socio-economic pressures and uncertainties being faced in NZ and globally. (Please see paragraphs 19 to 31 of the [Alliance report](#)).

We wish to emphasise the importance of recognising the diverse nature of the child population in NZ. It is clear from our reports that some groups of children (such as Māori, disabled, Pacific, rainbow, refugee and migrant) face significant barriers to experiencing their rights. (Please see the [Child Poverty Monitor 2022](#), for example). These groups of children must not be lost sight of within the community of all children.

NZ does not have a national plan to implement children's rights, nor to ensure their rights are upheld in times of crisis. The Child and Youth Wellbeing Strategy is not a comprehensive strategy to implement the Convention. (See paragraphs 44- 46 of the [Alliance report](#)).

NZ lacks the practical mechanisms to give effect to children's rights, and to strengthen and support the general measures of implementation. Such mechanisms could include, for example: a strengthened connection between the Child and Youth Wellbeing Strategy and implementation of children's rights; children's leads in all government departments; processes to encourage well-informed and considered decision-making, such as routine and comprehensive Child Rights Impact Assessments on all public spending and policy developments; research and evaluation of the situation of children, and groups of children, including by listening to children themselves about their experiences of their rights; and increased awareness and understanding of children's rights, especially within Government.

In summary, although there are a large number of initiatives and changes currently underway in NZ which offer potential to advance children's rights, there are not the necessary mechanisms in place to ensure all children, including different groups of children, are planned for and prioritised in Government policy. (Please see paragraph 23 of the [Alliance report](#) for a list of initiatives). This results in shortcomings, and sometimes a complete failure, to consider or prioritise children and their rights in relation to policy issues, including policy issues that have significant children's rights implications, such as: the changing climate; responses to the housing crisis; education reform, including the ongoing impact of COVID on education; health system reform, children's access to healthcare services, public health (the determinants of good health as well as pandemic responses), and mental health.



Suggested questions for the Government:

- General measures of implementation - What structures and processes are in place across Government to ensure children and their rights are planned for and advanced by laws and policies? How is work impacting children co-ordinated across Government? What mechanisms are in place to ensure that policy intent is operationalised in ways that are consistent with children's rights? What evaluation is there of the likely and actual impact of legislation and policies on children?
- Oranga Tamariki/Ministry for Children - Noting that, despite its name, Oranga Tamariki/the Ministry for Children is primarily responsible for care, protection and youth justice, not children's issues more broadly, which other Ministers or Government ministries/departments/agencies hold responsibility for children's issues and how is this work co-ordinated across Government? How are these Government agencies actively upholding the CRC in the policies, legislation and practices that sit within their mandates, and how is the CRC integrated into their ways of working?
- How does the Child and Youth Wellbeing Strategy advance children's rights and assist the Government in meeting its CRC obligations? What is the relationship, in practical terms, between the Child and Youth Wellbeing Strategy, the Committee's previous recommendations and the Government's CRC work programme?
- What sources of data, including disaggregated data, does the Government use to assess and monitor the situation of children and different groups of children?
- What gaps, if any, has the Government identified in the data on children and what is it doing to address them?

Key Children's Rights Issues

As noted in the consolidated children's rights report prepared by the Children's Rights Alliance Aotearoa New Zealand, as civil society we have identified the following issues as priorities for NZ:

1. Greater efforts to respect and uphold all rights of tamariki Māori, recognising tamariki Māori rights in te ao Māori/as Māori, under the Treaty of Waitangi/Te Tiriti o Waitangi, the UNDRIP, and the CRC.
2. Greater efforts to protect all children from violence and abuse, in all circumstances, including through initiatives to better understand, prevent and respond to violence.
3. A supportive environment for families, so that all children can know and, as far as possible, be cared for by their families and whānau. We want to see children's rights advanced and upheld in:
 - a. Oranga Tamariki changes.
 - b. Adoption and surrogacy law reform.
4. An adequate standard of living and good health for all children, with a priority focus on:
 - a. Children's mental health and wellbeing.
 - b. Timely access to quality health services for all children.
 - c. Warm, safe, affordable housing.
 - d. Nutritious food.



5. Mechanisms to ensure that children and their rights are central to climate change policy (mitigation and adaptation) and climate justice initiatives; and that children are listened to and respected as active change agents on climate change.
6. Adequate protections for children who work and the removal of Aotearoa's reservation to Article 32(2).
7. An immediate increase to the minimum age of criminal responsibility to 14, and to 16 over time; inclusion of all 17-year-olds in the youth justice system; an end to the detention of young people in Police custody and the use of physical restraints in detention; and the removal of Aotearoa NZ's reservation to Article 37(c).

At the end of the Pre-Session we were asked to identify **three to four key issues** for the Committee. While emphasising the importance of all the issues noted above, and in our reports, we suggest that the following issues are key to the ongoing implementation and realisation of children's rights in NZ.

In highlighting these issues, we wish to emphasise that in Aotearoa NZ, children are regarded in the context of their family when implementing children's rights. Children's experience of their rights cannot be separated from family wellbeing and the wellbeing of those who care for children, or the wellbeing of the wider community environment in which children grow. NZ's experience with the removal of newborn children¹⁴, as well as responses to recent youth justice issues (proposals to reintroduce "boot-camps" in response to media coverage depicting a spike in youth offending)¹⁵ underscore the importance of a holistic, co-ordinated, child-rights approach across government to:—

- plan for and develop policy settings that create a supportive environment for families and communities to raise their children in an atmosphere of happiness, love and understanding; and
- ensure holistic, culturally appropriate supports are available to children and their families when needed.

For Māori children this means understanding and applying their rights under the CRC in conjunction with their rights as indigenous peoples and under the Treaty of Waitangi/te Tiriti o Waitangi. As discussed in the [Rights of Tamariki Māori](#) thematic report and other reports to the Committee, for Māori children this means services designed and provided by Māori. Māori children are the aspirations and dreams of their ancestors and hold a wide range of rights and protections afforded to them as Māori, under Te Tiriti and as children and indigenous peoples under international law. The rights of Māori children are exercised and experienced collectively, within their family/whānau, family group/hāpū and tribe/iwi.

¹⁴ See appendix 2, p. 122 of the [Alliance report](#).

¹⁵ See page 3 above.



We submit that at this time, the key 4 issues for children in NZ in relation to the CRC are:

1. **Embedding the general measures of implementation and general principles** – There is a continued and urgent need to address discrimination, including racism,¹⁶ and advance equity and equality in children’s experience of rights in Aotearoa. NZ needs to get the foundations in place to actively work towards all rights, for all children, in all circumstances, including with respect to the changing climate.
2. **Protection of all children from violence and abuse, in all circumstances**, including through initiatives to better understand, prevent and respond to violence. Violence against children and the high levels of intergenerational trauma caused to children (disproportionately Māori) who were abused while in the care of the State and religious institutions, is being highlighted through the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions. It will be critical that the Government respond to and implement the recommendations of the Royal Commission (due July 2023) to address this intergenerational trauma and prevent any future abuse to children in the care system.
3. **An adequate standard of living and good health for all children, including with respect to the changing climate**, with a priority focus on:
 - a. Children’s mental health and wellbeing.
 - b. Timely access to quality health services for all children.
 - c. Warm, safe, affordable housing.
 - d. Nutritious food.
4. **Equitable access to and outcomes from education for all children** - There are reports of high rates of school absenteeism with some children not returning to school or engaging with formal learning post-COVID lockdowns.¹⁷ Given the significance of education for the realisation of all children’s rights, we suggest that the Committee may want to consider education rights as a priority issue, to ensure education in NZ:
 - Is consistent with children’s rights.
 - Encourages regular attendance at school, reduces drop-out rates, and enables children to continue to access education if they leave school at 16 years of age.
 - Is inclusive - provides reasonable accommodations and supports, and is safe for disabled children.
 - Is based on a curriculum which reflects and advances children’s rights, especially those set out in Article 29 of the CRC. (We note that children have called for strengthened climate change education and that this requires integration of environmental and climate change issues into the national curriculum, supporting the professional development of teachers, and developing resources for Māori or Pacific communities on climate).
 - Includes funded dispute mechanisms for when problems occur or issues arise at school.

¹⁶ Racism is an overwhelmingly strong theme the Office of the Children’s Commissioner gets from mokopuna/children in their engagements (regardless of the topic) – see [The New Zealand Children’s Commissioner’s report to the United Nations Committee on the Rights of the Child](#) p. 21.

¹⁷ <https://ero.govt.nz/news/children-are-missing-school-more-in-new-zealand-than-other-countries-and-it-is-getting-worse>

