

18th Session of the Human Rights Council – UNIVERSAL PERIODIC REVIEW

UPR Report on Aotearoa New Zealand's Human Rights Performance

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Communication Difficulties affect a significant proportion of children and young people across the world (1). Actual figures vary, but most will report 5-19%, with some even higher. Communication affects a young person's ability to manage successfully in the world and to engage with society. This makes Communication Difficulties an issue of children's rights.

This submission comes from the 'Talking Trouble NZ' project, with support from the New Zealand Speech Language Therapists' Association (NZSTA) including members working with young children at-risk. The Project has been set up to improve New Zealand's response to one of the most significant consequences of communication difficulties in children – that is the extremely high incidence of communication difficulties in young people involved with the legal system. This incidence had been reported in the UK and Australia as over 60% (2, 3). Maori and Pacific children and young people in New Zealand may be at particular risk for communication difficulties, because of the higher incidence of ear and hearing problems in these populations in New Zealand and other risk factors. The 'Talking Trouble NZ' Project has been established to raise awareness of these issues, investigate the extent of the problem in New Zealand and develop interventions appropriate to Aotearoa.

Guided by the values espoused in Te Tiriti O Waitangi, the UN Convention on the Rights of the Child (UNCRC), the UN Convention on the Rights of Persons with Disabilities, the UN Declaration on the Rights of Indigenous Peoples and the World Programme of Action for Youth, the 'Talking Trouble NZ' project promotes:

- awareness of the challenges faced by children and young people with social and communication difficulties, particularly those who find themselves involved with the legal system
- accountability by providing a submission on our perspective of Aotearoa's compliance with UNCRC to the UN Committee on the Rights of the Child (UNCRC Committee) and the implications this has for children and young people with social and/or communication difficulties
- action on the recommendations of UN Conventions and Declarations relating to the health, education, well-being and inclusion of children and young people with social and/or communication difficulties

- opportunities for the participation of children and young people and for their voices to be heard

In preparing this submission, 'Talking Trouble NZ' has reflected on the breaches of children and young people's human rights that are experienced most frequently or that have the greatest impact. Based on our front-line experience supporting children and youth with social and/or communication difficulties and the current research literature this submission presents our perspective and makes recommendations to address what we perceive as the most serious violations of children's and young people's rights. It is likely that our experiences and perspectives are shared by other welfare organisations in Aotearoa New Zealand promoting the rights and welfare of children and young people, and so we expect our recommendations to endorse those made by our colleagues within this workforce.

Methodology and consultation process

1. 'Talking Trouble NZ' is a collaboration between a small group of passionate professionals working in the area of child and youth rights and participation. In preparation for this submission we consulted with others in the field on issues of concern regarding children's and young people's human rights in Aotearoa New Zealand and sent a representative to a workshop on the Universal Periodic Review supported by the Human Rights Commission in May 2013.

Issues affecting children's and young people's human rights that have not been adequately addressed despite UNCRC recommendations following the 2009 UPR

1. **Child poverty.** The 2009 UPR recommended that New Zealand should "take targeted action to eliminate the socio-economic disparities that persist among its population." Despite schemes designed to mitigate the effects of poverty such as the KickStart food in schools programme there has been little change in the underlying socio-economic disparities experienced in New Zealand, particularly by Maori and Pacific Island children. These disparities are not only economic, they also include poverty of opportunity and poverty of experience which lead to increased exclusion and marginalisation. Poverty is associated with heightened risk of communication and learning difficulties for children and young people. The Expert Advisory Group on Solutions to Child Poverty (December 2012) highlighted that 270,000 children are living in poverty in Aotearoa New Zealand, a clear indication that New Zealand has not responded adequately the earlier UNCRC recommendations.

Recommendation: that the New Zealand Government implement the recommendations in the Experts Advisory Group's report on Solutions to Child Poverty e.g. enact child poverty legislation,

establish effective and official measures of child poverty, set targets to reduce child poverty and increase parity for Maori and Pacific Island children etc.

2. **The Justice System.** New Zealand has had a good reputation for keeping youth out of the criminal justice system and until recently had been dealing with youth offending through family group conferences. Unfortunately in 2010 the Youth Justice legislation was changed so that prosecution of 12 and 13 year old children could take place in Youth Court rather than Family Court. In addition to this New Zealand continues to violate UPR 2009 recommendations by refusing to raise the age of criminal responsibility from 10 years to a more internationally acceptable age and by refusing to view youth between 17 to 18 years within its youth justice system. In New Zealand the youth justice system only caters for youth up to 17 years of age whilst UNCRC's definition of young people, for the purposes of youth justice, includes those youth up to the age of 18 years.

Recommendation: that the New Zealand Government raise the age of criminal responsibility to the more internationally acceptable age of 12 years and adopt the UNCRC definition of a young person as being anyone under the age of 18.

b) Interactions with officials within the criminal justice system are particularly challenging for children and youth with communication difficulties. There are links reported in the literature between language capacities of young people and the severity of criminal behaviour (3). Young people accused of committed crimes are less able to explain their circumstances and behaviour, which will have consequences for their treatment. The efficacy of many interventions carried out by youth justice professionals depend upon communication skills of comprehension and expression, hence their likely success is compromised. International research has established that most of the communication difficulties in this group are undiagnosed and untreated (3, 2). This means that assessment and intervention services for young people in the criminal justice system is an issue of their rights. At present, there are no services in NZ. However there are examples in the UK of the provision of such services for young people within the justice system.

c) The high incidence of language and communication difficulties experienced by young people involved in the legal system frequently is undetected or misunderstood by professionals working with them. These professionals need training in how to adapt their communication style and adopt appropriate communication strategies to enable young people to participate.

The profession best positioned to manage this training and the services needed for young people is speech language therapy

Recommendation: that the New Zealand Government institute a speech language therapy service to assess all those young people entering the youth justice system as part of the health and

psychological assessments, and to treat communication difficulties in young people in the justice system. Such a service should also have a mandate to provide training on communication difficulties for those services who work most closely with the young people.

d) Children and youth being questioned either as witnesses or as defendants do not have adequate, or at times, any access to an advocate who could enable questions or responses to be reframed in a way that they can be understood or more accurately present information. Ignoring the impact of poor social and/or communication skills in these critical situations creates the obvious risk of miscarriages of justice. A report by Hanna et al. (2010) sponsored by the New Zealand Law Foundation and the AUT Institute of Public Policy demonstrated that criminal courts in New Zealand were not enabling justice for child witnesses (7). The report found that children were waiting over a year for their cases to be heard that the children often experienced inappropriate and/or forensically unsafe cross examination. These poor practices result in children and young people who have experienced crime being deprived of the means and opportunity to effectively give evidence against those who have committed crimes against them. The potential for a court intermediary system similar to that from the UK but adapted for NZ was demonstrated in that research. Although Cabinet accepted in principle the provision of intermediaries for child witnesses in October 2011 (9), this has yet to be implemented.

Recommendation: that the New Zealand Government implement a court intermediary system to assist the fair process for children and young people as witnesses or complainants, taking into account both developmental limitations in communication skills, and the proper assessment and provision for communication difficulties that may exist in this population.

e) Maori over-representation in Youth Justice System. According to the 2010 Social Report Māori constitute 50% total number of youth offenders, this indicates a disproportionate level as only about 17% of that age group within New Zealand are Maori. Given this worrying statistic Becroft (2005), the Principal Youth Court Judge, advocated that the programmes that work for Māori youth “take a holistic approach, involve whanau, and incorporate tikanga and whanaungatanga (relationships within the extended family, or family type relationships), are tailored to the needs of individuals and their whanau, and enhance cultural pride.” (6) The continued over-representation of Maori within the youth justice system indicates that New Zealand has not adequately actioned the 2009 UPR recommendation (34) that New Zealand should “continue efforts to ensure that people belonging to minority groups are not discriminated against in the criminal justice system.” Given the reported high incidence of hearing difficulties amongst Maori, and reported links between hearing and self esteem/anti-social behaviour, it is important that communication difficulties are investigated as a factor contributing to offending amongst Maori children and young people.

Recommendation: In addition to the need for commitments to reduce poverty and increase educational access and achievement the New Zealand Government should adopt and adequately resource best practice initiatives such as those proposed by Becroft (2005).

3. **Social and communication skills**. UNCRC states that children have the right to get and share information and to express their ideas and views freely in all matters affecting them. Furthermore children must be given the opportunity to be heard and to have their opinions count when adults are making decisions that affect them. New Zealand makes inadequate provision for children and youth with social and/or communication difficulties to represent themselves and their views functionally and positively across a range of contexts such as at home, in school, or in their communities. Speech language therapy services are only available through the public system to those with the most severe needs in NZ. Many young people of primary school age over the 8 receive no services and services for adolescents are very limited except for those with complex, multiple needs. Communication difficulties change their presentations over time as the demands of the environment increase and change. There is increasing evidence that difficulties do not disappear but have long-term impacts on the individual and society, such as increasing chances of school failure, mental health difficulties, unemployment, relationship breakdowns and crime (3, 9).

Recommendation: the New Zealand Government expand the speech language therapy and other specialist communication services available to children and young people through the health and education systems, particularly to extend the age of services to include those under the age of 18.

4. **Disability**. It is internationally acknowledged that children with disabilities are amongst the most vulnerable members of a society as they are more likely to live in poverty, less likely to have access to adequate education and are at a greater risk of abuse. Communication difficulties including hearing difficulties are common, particularly amongst Maori and Pacific New Zealanders. There is a paucity of research into the numbers of children with disabilities in New Zealand and the impact these disabilities have on the children, their families and their communities. However the Children's Commissioner Expert Advisory Group on Solutions to Child Poverty (2012) report suggests that there are approximately 107,000 children with disability in New Zealand (4).

Recommendation: the New Zealand Government should establish mechanisms to carry out comprehensive and on-going research into the number of children with disabilities in New Zealand, and on the impact these disabilities have on the children's lives, their families and their communities. Furthermore this research should identify the resources needed to enable these children and their families to be included and to participate within civil society. The New Zealand Government should then make a commitment to the funding and provision of culturally-appropriate, well co-ordinated, and high quality disability support services.

5. **Access to education and educational achievement**. Access to educational resources are fundamental to realisation of children and young people's human rights. The Social Report (2010) identified that Māori are less likely to leave school with qualifications of NCEA Level 2 or above than non-Māori and so are at a greater risk of unemployment (4). Educational outcomes for Māori and Pasifika young people continue to be significantly worse than for Pakeha, European and Asian children and young people. The Education Amendment Act demonstrates a lack of commitment to tackling educational outcome inequality in Aotearoa. The introduction of Partnership/Kura Hourua schools will draw public funding from schools that need resources and will create schools that are not required to meet educational standards in respect of staff, curriculum or policies. The Government's commitment to The United Nations Declaration on the Rights of Indigenous People (UNDRIP) would be supported by an investment in developing and maintaining Kaupapa Māori early intervention services as these enable Māori to have the choice of accessing Kaupapa Māori services and fits neatly with Article 3 of UNDRIP where indigenous peoples' claim to self-determination is interpreted as the right to freely determine their political status and freely pursue their economic, social and cultural development. Further, an investment in Ohomairangi Trust Early Intervention Service is consistent with Article 29 (goals of education) and Article 30 (children of minorities/indigenous groups) of The United Nations Convention on the Rights of the Child, and would complement the work the Government is already doing on provision of Kohanga Reo and Kura Kaupapa (UNCROC).

Recommendation: That the government withdraws public funding from Partnership/Kura Hourua and commits to investing in achieving better outcomes for Māori and Pasifika young people in the state education sector including Kohanga Reo, Kura Kaupapa and the Ohomairangi Trust Early Intervention Service and confirms that pupils' human rights to integrity of the person cannot be violated by search for and retention of items in schools.

Promotion and protection of human rights on the ground: implementation of international human rights

1. 'Talking Trouble NZ' calls for the Government to protect and promote children and young people's human rights through explicit acknowledgement of those rights in legislation, in policy development and in parliamentary processes.
2. 'Talking Trouble NZ' fully endorses the HRC recommendation that there be full and effective incorporation of ratified international human rights instruments into domestic legislation, including through explicit statutory recognition of economic, social and cultural rights.
3. 'Talking Trouble NZ' fully endorses the HRC recommendation that New Zealand develop and implement a human rights education strategy, to ensure development of policy and legislation is

informed by a human rights approach and decision making is consistent with New Zealand's human rights obligations.

4. 'Talking Trouble NZ' urges the New Zealand Government to adopt the use of child impact statements as a means of evaluating proposed legislation's impact on children and young people.
5. Talking Trouble NZ fully endorses the HRC recommendation that the government commit to (a) formal tabling of all concluding observations from UN treaty bodies in Parliament; and (b) establishing a human rights select committee or designating an existing select committee or committees to conduct comprehensive human rights analysis of all legislation both primary and secondary.

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