

**Action for Children and Youth Aotearoa
Incorporated**



**Report to the United Nations Committee on the
Elimination of All Forms of Racial Discrimination:**

***Some Aspects of New Zealand's Compliance with the
International Convention on the Elimination of All Forms of
Racial Discrimination***

July 2007

Report Prepared on Behalf of ACYA by

Dr Claire Breen
Senior Lecturer
Law School
University of Waikato
Private Bag 3105
Hamilton

Tel: 07 838 4466 ext 6037
Fax: 07 838 4417
Email: cbreen@waikato.ac.nz

With additional input from others including Dr Alison Blaiklock, Chair of ACYA

Action for Children and Youth Aotearoa Incorporated
P.O.Box 41532
St Lukes
Auckland
Aotearoa New Zealand
New Zealand
www.acya.org.nz

This report has been prepared by ACYA and the views expressed in it may not represent the views of each ACYA member. The contents of this Report are true and accurate to ACYA's best knowledge. However, we make the usual statement that no liability is assumed by ACYA for any losses suffered by any person arising directly or indirectly from the publication of this Report.

ACYA holds the copyright of this report. People are welcome to quote it or copy it as long as the source is acknowledged.

Table of Contents

Introduction.....	4
Children in New Zealand.....	5
Persisting Inequities between Ethnic Groups of Children	7
Te Tiriti o Waitangi – the Treaty of Waitangi	11
Maori Tamariki and Rangatahi (Children and Youth).....	14
Foreshore and Seabed Act 2004	18
Pacific Children and Youth.....	20
Asian Children and Young People.....	25
Children and Young People Seeking Asylum	28
<i>Concluding Observations</i> of the UN Committee on the Rights of the Child in 2003 and the <i>New Zealand Action Plan for Human Rights</i>	29
Conclusion	31

Introduction

1. Action for Children and Youth Aotearoa (ACYA) is most appreciative of the United Nations Committee on the Elimination of All Forms of Racial Discrimination for the opportunity to present concerns about New Zealand's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination.
2. ACYA is a coalition of non-governmental organisations and individuals interested in children's rights in Aotearoa New Zealand. ACYA's purpose is to promote the well-being of children and young people in Aotearoa New Zealand through: education and advocacy on the rights of children and young people; encouraging the government to act on the recommendations of the United Nations Committee on the Rights of the Child; and promoting opportunities for the voice and participation of children and young people. ACYA has no paid staff and relies on the voluntary contribution of people concerned for children and young people.
3. Because ACYA's focus is on children and young people, this report is about the racial discrimination experienced by many children and young people. Such discrimination may have life long consequences and entrench disparities.
4. In 2003, ACYA produced and published *Children and Youth in Aotearoa 2003*, the New Zealand NGO Report on New Zealand's implementation of the UN Convention on the Rights of the Child (NGO Report). The NGO Report was based on extensive consultation and presented to the UN Committee on the Rights of the Child in Geneva in June 2003. The Report was accompanied by a video produced by New Zealand children with the support of ACYA, which was called *Whakarongo Mai / Listen Up*. This report included sections on the three largest ethnic groups of children: Maori, Pacific and Asian children, and on refugee and asylum-seeking children.

5. Since then ACYA has advocated that the New Zealand Government act on the recommendations of the Committee on the Rights of the Child and improve the situation of children and youth. ACYA is developing a constructive working relationship with Government. ACYA also networks information about children and youth. ACYA is a member of the international coalition the NGO Group for the Convention on the Rights of the Child.
6. In 2004, ACYA produced and published a further report entitled *Some Aspects of New Zealand's Compliance with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* which was presented to the UN Committee Against Torture.
7. This report to the Committee on the Elimination of All Forms of Racial Discrimination is based largely on *Children and Youth in Aotearoa 2003*, as well as *Whakarongo Mai/Listen Up*, additional information requested by the Committee on the Rights of the Child and information developed for submissions in New Zealand.¹

Children in New Zealand

8. New Zealand is a democracy and supportive of the United Nations. For example, New Zealand constructively contributes to United Nations meetings on human rights issues, actively contributes to peace-keeping, and accepts refugees under the United Nations High Commission for Refugees quota system. As a small nation with an economy dependent on international trade, New Zealand places

¹ ACYA (2003) *Children and Youth in Aotearoa 2003*, Wellington: ACYA. ACYA Youth Video Working Group (2003) *Whakarongo Mai / Listen Up* (video), Wellington: ACYA. ACYA (2003) *An Update Since the Report Children and Youth in Aotearoa 2003 for the United Nations Committee on the Rights of the Child, June 12, 2003*. ACYA (2003) *Update and Commentary on the New Zealand Government's Response to the List of Issues to be taken up in connection with the consideration of the second periodic report of New Zealand by the United Nations Committee on the Rights of the Child, September 2003*. ACYA (2003) *Case Summaries: Parental Corporal Punishment of Children in New Zealand for the UN Committee on the Rights of the Child, August 2003*. ACYA (2003) *Right to Education in Aotearoa New Zealand - Submission to the Human Rights Commission, December 2003*.

- considerable reliance on international law. Non-governmental organisations are much freer than in most countries to express dissenting views and can usually get access to senior decision-makers in government.
9. However successive governments have often not fulfilled all their human rights obligations under international law and domestic law because of what are seen as competing demands. Te Tiriti o Waitangi (the Treaty of Waitangi), which was signed between the British Crown and Maori in 1840 and guaranteed Maori rights, has been systematically compromised to the serious disadvantage of Maori whose rights it guarantees, as successive governments have found it difficult to reconcile their obligations under Te Tiriti o Waitangi with other demands.
 10. New Zealand has a relatively young population for an industrialised country. In 2006, twenty five % of those living in New Zealand were under the age of 18 years. Compared with the adult population, a much higher proportion of children and youth belong to Maori, Pacific and Asian ethnic groups. In the 2001 Census, 14 % of the total population identified with Maori, 6% with Pacific and 6% with Asian ethnic groups. Among those under 18 years, 23 % identified with Maori (up from 20 % in 1991), 11 % with Pacific (up from 7% in 1991) and 7% with Asian ethnic groups (up from 3% in 1991).²
 11. There are also children from other ethnic groups, who because they are members of small minorities may be at increased likelihood of experiencing racial discrimination. This is illustrated by the fact that, to our regret, ACYA has not had the capacity to look into their specific issues.

² Maharey, S., Harre, L., & Turia, T. (2002). *New Zealand's Agenda for Children – making life better for children* Wellington: Ministry of Social Development.

12. Many children in New Zealand live happy and fulfilling lives. However many experience poverty, discrimination, limited opportunities to participate, and a disregard of their rights.³
13. The focus of this report is upon the obligations that Article 2 of ICERD places on New Zealand to protect indigenous children and children from minority groups from racial discrimination.⁴ It highlights ACYA's concerns that New Zealand is failing to meet its obligations under ICERD in general and specifically with regard to the provisions contained in Articles 2 and 5 of the Convention.

Persisting Inequities between Ethnic Groups of Children

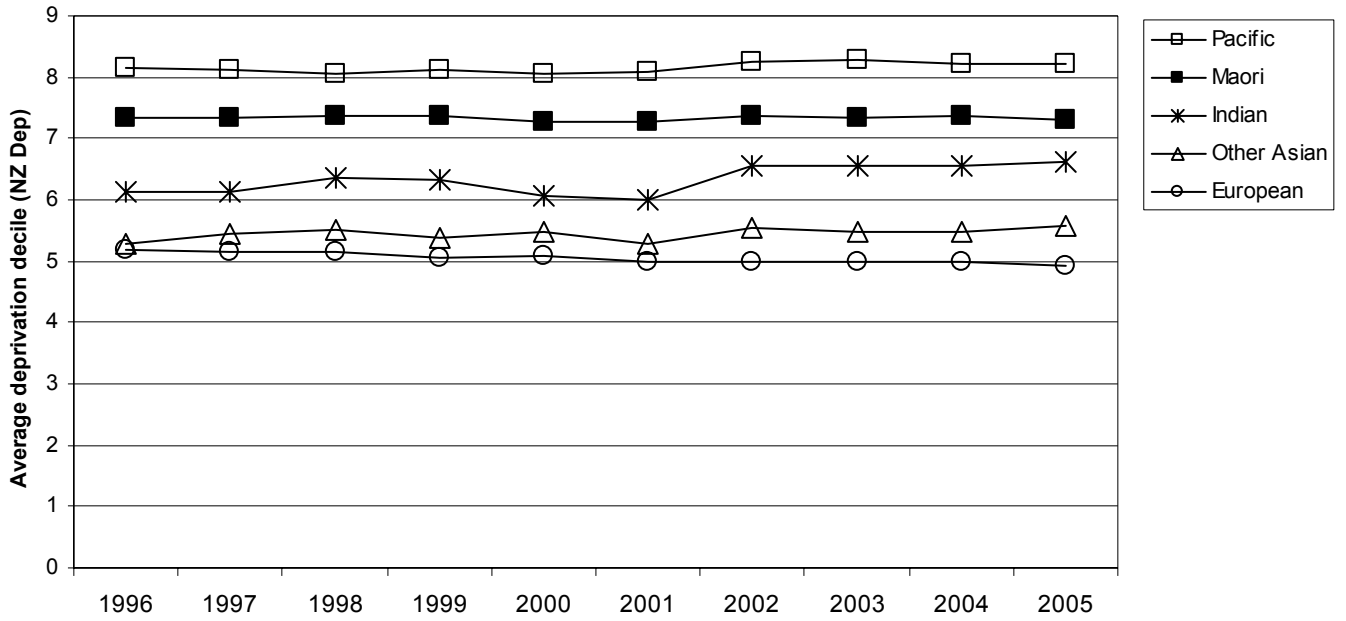
14. There is considerable evidence of persisting inequities between different ethnic groups.⁵ The effects on children can be seen, for example, in differences in socio-economic conditions, housing, educational attainment and health status.
15. Children who are indigenous or from minority ethnic groups continue to be much more likely to be born into poorer families. A measure of deprivation (called NZ Dep) is used in New Zealand is based on the characteristics of neighbourhoods which are grouped into deciles. More deprived neighbourhoods have a higher ranking. The following graph shows that Pacific children on average are most likely to be born into deprived circumstances followed by Maori and then Indian children.

³ ACYA (2003). *Children and Youth in Aotearoa 2003*, Wellington: ACYA. ACYA Youth Video Working Group (2003). *Whakarongo Mai / Listen Up* (video), Wellington: ACYA.

⁴ This report uses the term 'children' to refer to those under 18 years of age, the age range covered by the *Convention on the Rights of the Child*.

⁵ See for example, Ministry of Social Development (2006) *The Social Report 2006: Indicators of Social Wellbeing in New Zealand*, Wellington, and Ministry of Health (2006), *The Annual Report 2005/06 including the Health and Independence Report*: Wellington.

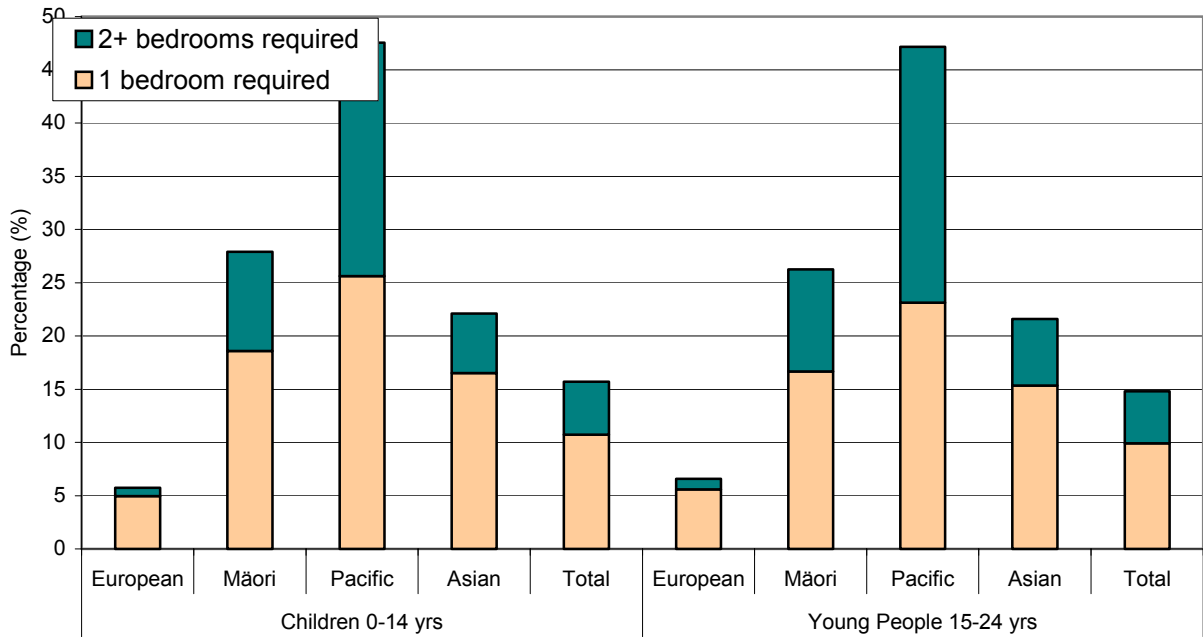
Figure 1: Average deprivation among babies of different ethnic groups, 1996 – 2005



Source: Birth Registration dataset from NZ Health Information Service via New Zealand Child & Youth Epidemiology Service

16. A similar pattern is seen in the homes that children live in as illustrated by the household crowding using the Canadian Crowding Index.

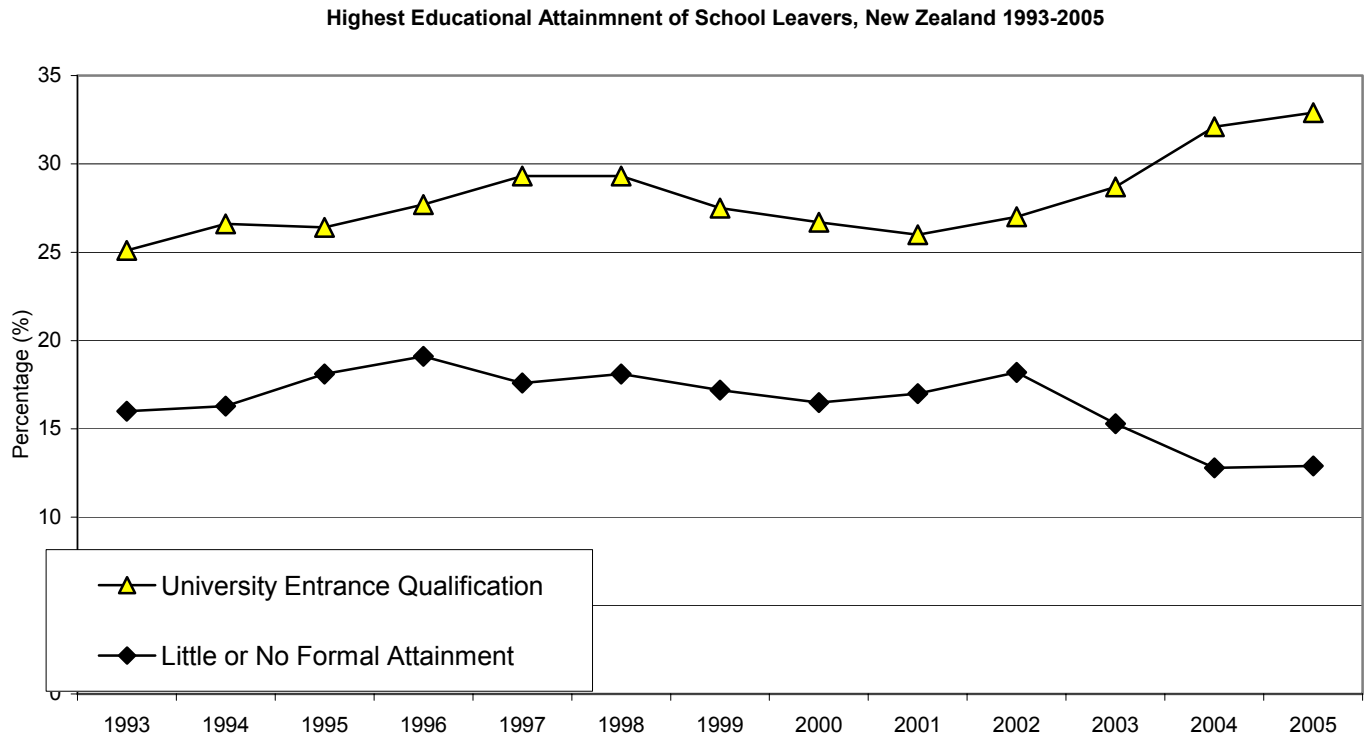
Figure 2: Proportion of children and young people living in crowded households, 2001



Source: Statistics New Zealand 2001 Census via New Zealand Child & Youth Epidemiology Service

17. Inequalities are also seen in education. Young people from all ethnic groups have become less likely to leave school with little or no formal qualification and they also have become more likely to qualify for entry to university. However, Maori and Pacific young people continue to be more likely to leave school with little or no formal qualifications and less likely to leave school qualified to enter university.

Figure 3: Highest educational attainment of school leavers by ethnic group, 1993-2005



Source: Ministry of Education via New Zealand Child & Youth Epidemiology Service

18. Inequities are also seen in health status. There are higher rates of death and disease among Maori and Pacific children compared with European children. Although these measures generally show better health statistics for Asian children, there are some diseases for which this is not so.

19. Some of the inequities in health status are of very serious concern, including rates of cot death, pertussis, bronchiolitis, brochiectasis, rheumatic fever and tuberculosis which are several times higher among Maori and Pacific children and youth compared with European children and youth.

Table 1: Ethnicity and Child and Youth Health Outcomes, 2001-2005 (Hospital admissions) and 1999-2003 (Deaths)

Relative risk of admission or death for Maori, Pacific and Asian / Indian children and youth compared with European children and youth.

Health indicator	Maori	Pacific	European	Asian / Indian
Infants				
Pertussis (whooping cough) admissions in infancy	2.7	3.6	1.0	0.4
Bronchiolitis admissions in infancy	3.5	5.0	1.00	0.6
Infant mortality from SIDS (cot death)	5.7	1.7	1.0	0.7
Children 0-14 Years				
Admissions which were potentially avoidable with primary care	1.4	2.04	1.0	0.9
Asthma admissions	2.1	3.1	1.0	1.2
Pneumonia admissions	2.1	5.1	1.0	1.1
Skin infection Admissions	2.8	4.5	1.0	0.9
Children and Young People 0-24 Years				
Meningococcal Disease Admissions	2.3	4.5	1.0	0.3
Bronchiectasis Admissions	4.2	11.3	1.0	0.5
Acute Rheumatic Fever Admissions	24.2	54.6	1.0	1.2
Tuberculosis Admissions	10.2	43.2	1.0	50.3

Source: New Zealand Child and Youth Epidemiology Service, 2007

Te Tiriti o Waitangi – the Treaty of Waitangi

20. Maori are a tribal people with at least a millennium of indigenous occupation and a more recent 167-year history of a treaty-legitimised colonisation. Following the Maori 1835 Declaration of Independence, the British made a treaty with Maori in order to establish a colony. Te Tiriti o Waitangi (the Treaty of Waitangi) was signed between Maori and the British Crown in 1840. Under the terms of Te Tiriti

o Waitangi Maori granted administrative authority to the British agents of the Crown and a monopoly right to buy land from Maori. In return the Crown promised to protect Maori sovereignty and taonga (treasures), and to protect Maori and ensure that they have the same rights as British citizens. The Treaty of Waitangi (English version) said that Maori ceded sovereignty to the Crown. However this is not in the Maori version and under international law, the contra preferentum rule and article 33 of The Vienna Convention, the version of the indigenous people (Te Tiriti o Waitangi) prevails. Successive governments' lack of recognition that Maori did not surrender sovereignty has been a source of ongoing difference with Maori.

21. Although Te Tiriti o Waitangi clearly defined the rights and responsibilities of Maori and the Crown, a fairly standard colonial history ensued in Aotearoa New Zealand: war, appropriation of large tracts of native lands, marginalisation of indigenous communities, and erosion of cultural customs, language and values. The gap between Maori and non-Maori in health, education, housing, economic, and other statistics demonstrate that the Crown has not fulfilled its obligations to the protection and rights of Maori under Te Tiriti o Waitangi.
22. The Government appears to have moved away from what commitment it did have to the Treaty. This reduction of commitment can be seen in the removal of references to the Treaty from Government policies and documents. Not only that, the Government has been supportive of consideration of a Private Member's Bill in Parliament which aims to delete references to the Treaty of Waitangi in all legislation.
23. The Waitangi Tribunal is a permanent commission of inquiry which makes recommendations on claims brought by Maori relating to breaches of the Treaty of Waitangi. Unfortunately, the Government has at times ignored the Tribunal's reports, at other times there has been limited and flawed implementation by the

Government of the Tribunal's recommendations; and the Tribunal is also substantially under-funded for its task.

24. Issues and examples of the Government's not fulfilling its obligations under Te Tiriti O Waitangi are described in other shadow reports to the Committee from the collective of Iwi Authorities in Tai Tokerau, Peace Movement Aotearoa, the AIR Trust, and the Maori Party.
25. To Maori, the rights of children and youth are not divisible from the Maori collective, and the rights of Maori children will not be fully realised unless the collective rights of Maori families and Maori as a people are fully realised. The Government usually interprets international human rights instruments from a western paradigm of human rights and hence places greater emphasis on the individual than the collective. Progress in addressing the rights of Maori of children and youth must be resolved within the context of Maori rights as stated in Te Tiriti o Waitangi. Current Government policies and practice do not explicitly acknowledge of Maori children and youth as part of the indigenous collective. Policies and processes need to be reoriented towards the integration of both their individual and collective rights.
26. The rights of Maori children and young people are to be found in New Zealand law and international human rights instruments ratified by the New Zealand Government which describes their human rights, including:
 - *Te Tiriti o Waitangi* which describes their special rights as Maori, to which the signatories are Maori and the Crown, and which is a commitment that has existed since 1840.
 - The *International Convention on the Elimination of All Forms of Racial Discrimination*
 - The *Convention on the Rights of the Child*, which describes their human rights as children and has been ratified by the New Zealand Government.

- The *Draft Declaration on the Rights of Indigenous Peoples Rights* which describes their rights as indigenous people.

27. However, as the aforementioned shadow reports describe, the New Zealand Government is among those wanting renegotiation of the text of the Draft Declaration in a way which would restrict and define the rights of indigenous peoples as being less significance than those of non-indigenous peoples, rather than recognising and protecting the rights of indigenous peoples,

Maori Tamariki and Rangatahi (Children and Youth)

28. Indigenous Maori children occupy a unique place in their ancestral lands. They cannot be separated out from their people. For Maori, the collective protects individual rights. A *Draft Charter of the Rights of the Maori Child –Te Mana o Te Tamaiti Maori* based on the Convention has been produced by the Government's Early Childhood Development service. It describes how, like all children, the Maori child has human rights that are the basis of freedom, justice and peace; needs special care and attention; grows up best within a loving family; needs legal and other protection; and will flourish in an environment that acknowledges and respects his or her cultural values.

29. *Te Mana o te Tamaiti Maori* also states that, in addition the Maori child:

- has the right to be and feel empowered as a valued and unique individual, and as an integral member of whanau (family), hapu (subtribe), iwi (tribe) and the society of Aotearoa overall;
- is a whole person and has the right to be treated in the wholeness of intellect, spirit and being;

- descends from a unique culture and history based on strong genealogical links, relationships, and has the right to be respected within the full context of those links and relationships;
- exists within a society of extensive relationships, and has the right to know, contribute positively to, and benefit from those relationships;

30. A quarter of the children and young people in Aotearoa New Zealand under 18 years of age are Maori. The chronic legacy of colonisation is seen in the disparities between Maori and the dominant culture. Generations of Maori tamariki (children) and rangatahi (young people) have not had access to the tribal lands and resources once possessed by their ancestors. Many Maori tamariki and rangatahi are unable to communicate in their tribal language and many are unaware of the dynamics of Maori society.

31. The extensive reforms of the economy and the state that began in the mid 1980s and continued for more than a decade were a double-edged sword for Maori who were seriously affected by the increases in inequalities but welcomed the opportunities to develop Maori services. Maori have developed much greater capacity to provide health, educational and social services. Programmes are delivered in a way that is uniquely Maori; Maori workers are able to address the wider issues affecting whanau; interventions focus on promotion of well-being; and programmes are Maori driven.

32. Poverty and poor quality housing have particularly affected Maori children and young people. Poverty affects tamariki and rangatahi across their whole lives, impacting on them physically, mentally and spiritually as well as influencing their whanau, hapu, and iwi relationships. It is an intergenerational problem. Where the whanau has low levels of educational achievement, this impacts on the attitudes and lives of tamariki and rangatahi and affects their standard of living, access to basic living requirements such as housing and food, access to education, and ability to make the most of education.

33. Maori family structures have also changed. More tamariki live in one-parent households. This denies many Maori the benefits of strong social support.
34. Despite some gains in the health of tamariki Maori over the last decade, their health status is generally poorer than non-Maori. They are much more likely to die from a wide range of causes including injuries, Sudden Infant Death Syndrome (SIDS or cot death), respiratory conditions, and infectious diseases – all potentially preventable. They are less likely to be immunised. They are much more likely to be admitted to hospital for respiratory conditions, injuries and poisoning, and communicable diseases. They have more oral health problems. They are more likely to have hearing problems and other disabilities. They are more likely to smoke and Maori women are more likely to smoke in pregnancy. Young Maori women are much more likely to be young mothers.
35. The rapid gains in Maori health can be largely attributed to improved access to 'by Maori for Maori' health service provision, acceptability of the messages and messengers, community focussed health promotion and prevention strategies. Maori organisations in Aotearoa New Zealand, with the key objective of improving the well-being of Maori whanau, work against a backdrop of political, socio-economic and cultural unrest.
36. Tamariki participation rate in early childhood education is much less than non-Maori participation, retention of Maori children at secondary school level is much lower; and there are substantial disparities in the achievement of school qualifications. In 2003 there were 670-licensed kohanga reo (Maori language nests for those under five years) and a high demand for this type of early childhood education. But in spite of this, many children have not had access to kohanga reo in their area, there is a shortage of qualified teachers and adequate resources and there has been a decrease in the number of kohanga reo in recent years.

37. Maori language is essential for the transfer of knowledge and the education of tamariki and rangatahi in their culture and language heritage. For many Maori there has been no choice because of insufficient capacity within the current education system and there are few opportunities for immersion education. However, here are successful examples of iwi based educational programmes such as the programmes offered at Ngati Whatua o Orakei. These programmes provide additional tuition and supervised study for tamariki Maori and opportunities to learn about their tikanga (rules for living as a Ngati Whatua person).

38. Under Te Tiriti o Waitangi and the *Convention on the Rights of the Child*, the status of tamariki and rangatahi should be comparable with other children because one can address their human rights and the other their indigenous rights. Despite noticeable improvements over the last few years, tamariki and rangatahi still experience substantial disparities in contrast to other New Zealand children. Urgent action is needed.

39. To that end, in 2003 in its report to the Committee on the Rights of the Child, ACYA recommended that the New Zealand Government:

- honour its obligations to tamariki and rangatahi under Te Tiriti o Waitangi as well as the Convention on the Rights of the Child;
- take urgent action to address the disparities between Maori and the dominant culture. This includes attention to the historical and cumulative issues that impact on the well-being of tamariki and rangatahi, and support for the right of all tamariki and rangatahi to enjoy their culture and language;
- establish effective systems for the development and co-ordination of services for tamariki and rangatahi. This should be done in partnership with tamariki and rangatahi, whanau, hapu and Iwi;

40. ACYA also recommended that:

- the Ministry of Maori Development Act 1991 be amended to include specific responsibilities for the Ministry to promote the rights of Maori tamariki and rangatahi, and provide an annual report to Parliament on the state of Maori tamariki and rangatahi.
- the responsibilities of the Commissioner for Children be expanded to include promoting understanding of the rights of tamariki and rangatahi under Te Tiriti o Waitangi.

Foreshore and Seabed Act 2004

41. In 2003, ACYA made a submission on Government Proposals for Consultation on the Foreshore and Seabed. This submission was motivated in part by Article 30 of the Convention on the Rights of the Child which states that an indigenous child “shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture.”
42. Respect for the views of children and young people is one of the principles of the Convention on the Rights of the Child. In its submission, ACYA expressed its regret that children and young people appeared to have been excluded from the consultation process on this important issue.
43. ACYA noted that many New Zealand children, youth and families – including Maori and non-Maori – placed high value on their relationship with the natural environment and on access to beaches and the sea. Consequently, ACYA believed that it was very important for children and youth to be able to enjoy and respect the natural environment, including the foreshore and seabed. It noted that many children had only very limited opportunities to do so – often for reasons of poverty and environmental degradation.

44. In its submission, ACYA noted that some parts of the foreshore were inaccessible because of private ownership. It also noted that Maori generally had, in the traditions of kaitiakitanga (sharing of resources with respect for the natural environment) and reciprocity, made the areas of foreshore and seabed that they control available to tauwiwi, except in special circumstances such as ensuring respect for urupa.
45. ACYA submitted that the Government's proposals, and the process being undertaken by the Government, raised issues that were of special importance to Maori tamariki and rangatahi. Their special relationship with the natural environment as tangata whenua was part of their cultural heritage and thus was protected under the Convention on the Rights of the Child. However, in ACYA's opinion, this special relationship appeared to have not been taken into account by Government.
46. ACYA also submitted that the Government had obligations to non-discrimination under various international human rights treaties including the Convention on the Rights of the Child. The Government's proposal to legislate appeared to be discriminatory because Government had previously allowed the sale of land adjacent to the foreshore and seabed into private ownership (which has often led to everyone being denied access). In response to the possibility that the courts could rule that Maori have rights to the foreshore and seabed, the Government introduced legislation to remove those rights, before they had even been established in the courts, and despite the fact that Maori land owners generally allowed access.
47. ACYA was also concerned that the process that has been instituted by Government does not fit with the Crown's obligations under the three articles of Te Tiriti O Waitangi.

48. ACYA believed that the difficulties were soluble and noted that Maori had proposed solutions to ensure the access of all to the foreshore and seabed while respecting Maori customary rights. These included proposals such as reciprocal commitments, recognition of the Maori concept of kaitiakitanga, and other ways forward consistent with the tikanga of different hapu and iwi.
49. ACYA encouraged the Government to resolve issues around access to the foreshore and seabed through using processes that are in accord with the Crown's obligations under Te Tiriti O Waitangi and international law. Nevertheless, the Foreshore and Seabed act was passed in 2004.

Pacific Children and Youth

50. *Children and Youth in Aotearoa 2003* described the vision for Pacific children and youth as '*Healthy Pacific children and youth achieving their fullest potential*'. The key principles in achieving this are: children are a valued gift from God, children are our assets, an investment in our future, our heritage; justice; fairness; and trust. Pacific peoples believe the values which drive the accomplishment of the vision are centred around family, church; culture, language; and familiarity with the environment. Therefore, for Pacific peoples, the design and development of any programme must encompass these values for the assurance of an environment where children are encouraged to pursue their full potential and their sense of destiny in God.
51. The term 'Pacific' is used here to describe the migrants or descendants of seven major Pacific sovereign nation states with distinct cultures, customs and languages: Samoa, Cook Islands, Tonga, Niue, Fiji, Tokelau, and Tuvalu, recognising there are others. Pacific peoples in New Zealand are a young and rapidly growing group with in 2001 nearly two in every five being under 15 years

of age. Pacific children made up 11 percent of children in New Zealand in 2001 and will make up 21 percent of all children by 2051.

52. Pacific children and youth are one of the most disadvantaged groups with disparities in health, education and economics. They are more likely to live in low income households and in homes with higher occupancy rates. In 2001 thirty percent of Pacific children lived in one parent families. Pacific peoples are less likely to live in homes that have access to amenities like a motor vehicle, a telephone or the internet. New Zealand-born Pacific peoples have slightly higher levels of access to such amenities than overseas-born Pacific peoples.
53. The needs of young people in the 17 years age bracket upward requires special consideration as they often fall between the gaps in service provision and policy development. The youth population in New Zealand is ethnically diverse and changing. Pacific parents would probably define youth as not being confined to an age group – rather, young until marriage – and so if not married, individuals are regarded as youth. Youth specific services with an holistic and intersectoral approach can achieve desired outcomes.
54. Families are usually the most important people in a young person's life. Pacific children and young people cannot be defined in isolation of their families. Their very existence is derived from and continues through their families. This interdependency is crucial to the totality of the Pacific child and young person. Government initiatives such as *Strengthening Families* and *Family Start* offer a Pacific friendly foundation for the implementation of wrap-around services that meet the needs of families.
55. Churches provide a vehicle for the expression of people's spirituality. There is much activity within Pacific churches such as worship, fundraising and celebration of events. To Pacific peoples, family, community and Government are divinely appointed to carry out the ministry of nurturing and developing of

people. To care and nurture a child represents the development of the total community. A child is not merely an individual or independent entity; but a projection and extension of the personality of the parents, family, community; village and nation.

56. The notion of human rights in relation to physical, social, mental, cultural, spiritual and emotional nurturance is generally undisputed across cultures. However, for Pacific peoples the notion of rights is generally considered within the context of family. People require such nurturance in order to become and remain active and sound participants in their respective societies. Pacific parents are expected to make informed decisions in the best interests of their children, hence the saying that children are 'seen and not heard'.
57. Health outcomes for Pacific children and youth still lag well behind those for other ethnic groups, in infant mortality, perinatal mortality, hospitalisation rates, infectious disease, hearing problems, and dental problems. Government has recognised this in the *Pacific Health and Disability Action Plan (2002)* which includes priorities to improve outcomes. One of the goals in the Government's *Youth Health: A Guide to Action* is to seek a 'measurable improvement in the health of Pacific young people'. Despite these initiatives the current health status of Pacific children clearly highlights disparities and gaps in service delivery and policy development where there are major barriers to access and eligibility because of, for example, Government rules around non-residents.
58. The continuation of positive initiatives such as the support given by government to language nests, Pacific education facilities and having more Pacific teachers, needs to progress with adequate and appropriate support and resources. With sound foundations to build upon, the education aspirations of Pacific peoples will lead to many s to celebrate

59. Pacific peoples who have continued their journey to New Zealand for a better life, wish to contribute in a positive way to their new home. The Government's Reservation to Article 22 of the Convention on the Rights of the Child, concerning the non-provision of benefits to children unlawfully in New Zealand, is of concern to Pacific peoples living in New Zealand. For some Pacific children and young people, their immigration status – neither citizens nor residents – means inequitable access to health, education and welfare services. Children and young people from Samoa, Tonga and Fiji who are not citizens or permanent residents are treated differently from children from Niue, Tokelau and the Cook Islands. The latter are New Zealand citizens. However, due to recent policy changes their citizenship grants them little advantage over their relatives from Samoa, Tonga and Fiji, in that they must prove residency within a certain time frame in addition to having New Zealand citizenship status.

60. To that end, in 2003, ACYA recommended that the New Zealand Government:

- undertake an urgent review of immigration policy to address gaps identified with children of non-resident parents.;
- continue to work with Pacific peoples in further development of robust intersectoral policies that address the rights of Pacific children and youth in the context of family, church and culture and work *with* Pacific peoples in the implementation of the United Nations Convention on the Rights of the Child;
- ensure that initiatives targeting Pacific children and young peoples are actively implemented with timelines, adequate and specific funding and regular reporting back to Pacific peoples on the achieved outcomes;
- recognise, and respond accordingly, that in the context of Pacific families, definitions of children and youth, are made by parents and families as opposed to an age specific status;
- recognise in policy development and service provision that Pacific children and youth in New Zealand come from a diversity of Pacific nations, and

that their diverse cultural heritage, birthplaces (New Zealand, a Pacific nation, or elsewhere) and their families' varying experiences of migration, forms their identity as Pacific children and youth.

- support and enables children to develop a strong sense of identity through their families, churches and school systems including teachers 'adding value' to the culturally specific skills that children bring from home;
- take a positive approach when reporting on and responding to the strengths and needs of Pacific children and their families. This means recognising and building on strengths rather than focusing on deficits and supporting the provision of ethnic-specific role models of all ages for Pacific children and young people;
- acknowledge and build on:
 - # The strengths of extended families to optimise children's education and health. Families are the most basic unit for Pacific children's healthy development, providing opportunities for mentoring, support and guidance from older people. Pacific youth who are at risk have highlighted the need to have a significant adult in their lives who could provide stability and connectedness, listen and respond to young people's concerns;
 - # The strengths of churches to support the healthy development of Pacific children and their families – churches provide the spiritual dimension of health that is often ignored in NZ health policies and provision
 - # Pacific concepts of healthy development that incorporate social, emotional, physical and spiritual well-being, not just of the child but of the extended family.
- extend youth advocacy services, given the importance of this service for Pacific youth, especially in terms of negotiating between parents and their children in difficult situations.;

- provide translations of the Convention on the Rights of the Child into languages of the Pacific, namely Samoa, Tonga, Cook Islands, Niue, Tokelau, Fiji and other languages as required.

Asian Children and Young People

61. The number of Asian children and young people has increased rapidly in the last few years. Asian children and youth include those born in New Zealand, recent migrants, and international students. In 2001 seven percent of those under 18 years identify with Asian ethnicity and this proportion is expected to continue increasing. The Asian population is the third largest ethnic group in New Zealand. However Asian children and youth are generally overlooked in government policies and practices, and are not included in the Government report to the UN Committee on the Rights of the Child, *Children in New Zealand (2000)*.
62. Asian children, young people and their families experience discrimination and sometimes feel like 'second class citizens'. Sometimes services for children, young people and their families appear to not recognise the existence of Asian people or respect Asian cultures and values. For example, sectors do not usually have strategy for Asian peoples; some key services have few Asian staff; there are limited opportunities for Asian children and youth to learn and speak their mother tongue in a school setting; some Asian children and young people are bullied and harassed for speaking in their own language during school recesses and leisure activities; it is somewhat rare for information from government departments to be available in Asian languages and access to interpreters is limited; and Asian children and young people sometimes experience discrimination because of religious beliefs or stereotyping. There are various mechanisms for complaints about discrimination. However, the current complaints frameworks may not be responsive to Asian means of resolution and do not recognise the value placed by Asian people on harmony and unity.

63. Government policies and agencies still assume that the norm of a family is the western nuclear family model. Many Asian people have a different perspective – placing considerable value on extended families, not necessarily seeing the family as a finite group, and regarding child rearing practices as involving family consultation, especially in family breakdown situations where the best interests of the child are seen as being the highest priority.
64. There are some family situations which may cause special difficulties for Asian children and youth in New Zealand, including 'parachute kids' where young people are left in New Zealand while their parents return to their home country and visit New Zealand periodically; 'astronaut families' when one parent stays in New Zealand with the children and the other works in their homeland; international students where the children and young people leave their family to attend educational institutions in New Zealand as 'foreign fee paying students'; and parents working very long hours – to make a living or because they are reluctant to apply for benefits.
65. Many New Zealand schools have foreign fee paying students, almost all from Asian countries. Most of the foreign fee paying students under 18 years live with 'home stay' families. Children and Youth in Aotearoa 2003 raised concerns about anecdotal reports of young unaccompanied children coming to New Zealand for schooling, and of children in 'home stays' being left unsupervised, being expected to do unreasonable amounts of household chores, and experiencing abuse and neglect. It reported that compliance with the Government's *Code of Practice* for education providers with foreign fee paying students and Guidelines about accommodation for those under 18 years, relied heavily on the providers. It noted that this may cause conflicts of interest between the provider's responsibility for student well-being and their source of income.

66. Asian children and young people often experience difficulties in the education system, especially if English is a second language. Schools often lack policies and processes to prevent racial harassment or systems to support students experiencing racial harassment. There are barriers to their families being involved in schools and many Asian children and youth experience the education system as not providing opportunities for them to develop to their full potential because of the dominance of western culture and values.

67. To that end, in 2003 ACYA made the following Recommendations with respect to the Government's obligations under the Convention on the Rights of the Child:

- A plan of action be developed and implemented – with the participation of Asian children and youth and their families and communities – to ensure they are able to enjoy all their rights under the Convention without discrimination;
- Legislation, government policies and practices, and service provision recognise the importance of extended families and valuing of collective responsibility to Asian children and youth, and ensure that the funding and provision of services is able to cater to different family profiles;
- Intersectoral and community development strategies that are intended to improve the situation of children, youth and families involve Asian communities;
- The Commissioner for Children carry out an urgent review of the situation of the safety and well-being of children and youth in New Zealand as international students;
- The Ministry of Education give urgent attention to assisting schools develop and review strategies for protecting children from racial harassment and bullying, and review the measures taken by schools to assist students for whom English is a second language;
- Asian children and young people's right to enjoy their own cultures, religions and languages be protected and encouraged in all aspects of government and New Zealand life. This requires more thorough and sensitive planning,

preparation and integration of, as well as support for, Asian children, youth, families and communities.

Children and Young People Seeking Asylum

68. ACYA notes that the definition of racial discrimination contained in Article 1 of ICERD does not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens or that nothing in the Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
69. Nevertheless, ACYA wishes to encompass the rights of asylum-seeking children in this report on the basis that all human rights treaties make reference to the fact that they are: *inherent* and therefore they belong to everybody because of their common humanity; *inalienable* so that no one can give up his or her human rights or be deprived of them by governments; and *universal* and, as such, they apply regardless of distinctions such as race, sex, language or religion or *other status*. It would be somewhat incongruous if the more generous provisions of human rights treaties were to be regarded as excluding asylum-seekers.
70. Changes in the New Zealand Immigration Service procedures for refugees that occurred following September 2001 were made without consultative debate. The changes included amendments to the *Immigration Act 1987* so that detention can apply for longer than 28 days. In September 2001 the Mangere Refugee Resettlement Centre, a facility for the reception of quota refugees, became a detention facility for asylum seekers. From September 2001 until late 2002, some families with children who arrived as asylum seekers were being detained at the

Mangere Refugee Reception Centre. New refugee quota arrivals must now live in a designated detention facility for their first six weeks in New Zealand.

71. The New Zealand Refugee Council and the Human Rights Foundation took a legal challenge regarding the practice of detaining refugees at the Remand Prison or the Mangere Detention Centre without right to apply for bail. This practice was ruled unlawful in an interim judgment of the High Court. The Court found that the practice breached both provisions of the *New Zealand Bill of Rights Act 1990* and Article 31.2 of the 1951 *Convention Relating to the Status of Refugees*. This decision was overturned on appeal. However the Government has changed operating procedures. Children seeking asylum are now generally not kept in detention but stay in a designated hostel or on conditions in the community. Issues relating to the treatment of asylum seekers were also raised in the parallel report of the Human Rights Foundation to the Committee Against Torture.
72. The shadow report to the Committee from the Human Rights Foundation gives further information and concern about the situation of people seeking asylum in New Zealand.

Concluding Observations of the UN Committee on the Rights of the Child in 2003 and the New Zealand Action Plan for Human Rights

73. In 2003 the Committee on the Rights of the Child raised concerns about discrimination against children and recommended New Zealand take action. The Committee stated:

“[It] is concerned that, as acknowledged by the State party, discrimination persists against vulnerable groups of children such as Maori children, minority children, children with disabilities and non-citizens. The

Committee is particularly concerned at the comparatively low indicators for Maori, Pacific Island and Asian children.”⁶

74. The Committee recommended that:

“the State party increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and to adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.”⁷

75. The Committee requested:

“that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29, paragraph 1, of the Convention (aims of education)”⁸.

76. In March 2005 the Human Rights Commission and Children’s Commissioner publicly released the *New Zealand Action Plan for Human Rights*. The *Plan* was based on analysis and review of human rights issues in New Zealand and widespread consultation. ACYA and many others were hopeful that implementation of the *Plan* would address many human rights issues including racial discrimination experienced by children and young people.

⁶ *Concluding Observations of the Committee on the Rights of the Child: New Zealand*, CRC/C/15/Add.216. 3 October 2003, para 22.

⁷ *Ibid*, para. 23.

⁸ *Ibid*, para 24.

77. However the *New Zealand Action Plan for Human Rights* has yet to be formally adopted by Government and its status remains unclear.

Conclusion

78. In submitting a shadow report to the Committee on the Elimination of All Forms of Racial Discrimination, ACYA welcomes this additional opportunity to highlight the continuing disadvantages experienced by indigenous children and children from minority groups. ACYA is of the opinion that the continuing existence of such disadvantages constitutes a violation by New Zealand of the general obligations flowing from its ratification of ICERD. In particular, ACYA believes that the data contained in this shadow report indicates that New Zealand is failing to meet its obligations under Articles 2 and 5 to protect indigenous children and children from minority groups from racial discrimination.