



He Mana tō ia Tamaiti
Every **Child** Counts

UNCROC Monitoring Group

Monitoring the Implementation of the United Nations Convention on the Rights of the Child in New Zealand

Report 1: Implementation of UNCROC (Articles 4, 42 and 44)

For: Deputy Chief Executives Social Sector Forum

Monitoring the implementation of the UN Convention on the Rights of the Child:

UNCROC Monitoring Group Report 1 - Implementation: Articles 4, 42 and 44

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Introduction

1. This is the first report of the non-government sector group ('the UNCROC Monitoring Group') established by the Children's Commissioner in February 2011 to monitor the implementation of the UN Convention on the Rights of the Child ('UNCROC')¹. The UNCROC Monitoring Group includes representation by two Independent Crown entities; the Office of the Children's Commissioner and the Human Rights Commission.
2. This report is for the attention of the Deputy Chief Executives Social Sector Forum ('DCE Social Sector Forum') given the potential role of the DCE Social Sector Forum in co-ordinating the government's ongoing work in respect of its commitment towards the progressive realisation of UNCROC in New Zealand.
3. This follows the proposed engagement process between the UNCROC Monitoring Group and the DCE Social Sector Forum set out in the Terms of Engagement document dated December 2011. This document sets out background information about the UNCROC Monitoring group and its formation (a copy of which is attached and marked 'Appendix 1').

Report 1: Implementation of UNCROC

4. This report will focus on matters relevant to the 'implementation' provisions of UNCROC, namely Articles 4, 42 and 44 (set out in 'Appendix 2'). Matters of principal concern are:
 - A. The steps the government has taken in responding to the 2011 Concluding Observations of the UN Committee on the Rights of the Child ('CRC') regarding the New Zealand Government's 3rd and 4th Periodic Reports.
 - B. The importance of a high-level co-ordinating mechanism or entity within government charged with facilitating the implementation of UNCROC.
 - C. Promoting awareness of UNCROC throughout the tiers of the government sector, from chief executive level through to service delivery levels.
 - D. The government's position regarding the ratification of the Optional Protocol to the Convention on a Communications Procedure ('OPIC').

¹ Under s12(1)(f) of the Children's Commissioner Act 2003, the Children's Commissioner has a statutory function to advance and monitor the application of the United Nations Convention on the Rights of the Child by departments of State and other Crown instruments

A. Steps taken to respond to the 2011 Concluding Observations of the CRC

5. The UNCROC Monitoring Group is unaware of any formal steps the New Zealand Government has taken to date to respond to the 2011 Concluding Observations of the CRC.
6. We note that the Ministry of Social Development website contains information about UNCROC, its reporting process and makes available for download the relevant reports and documents generated as part of the 3rd and 4th periodic reporting process. It also provides links to a number of government initiatives designed to benefit children and young people.
7. However, there does not appear to be any document that sets out the Government's position with regards to the CRC's comments and recommendations set out in the 2011 Concluding Observations.
8. A 2004-2008 UNCROC Government Work Programme was developed to address the set of recommendations arising from the 2003 Concluding Observations of the CRC. Accordingly, we would be interested to know whether MSD intends to undertake a similar approach to responding to the 2011 Concluding Observations and their recommendations.
9. Article 44 of UNCROC requires that State Parties undertake to report on the measures they have adopted which give effect to the rights contained in the Convention and on the progress that has been made on the enjoyment of those rights.
10. We consider that a specific UNCROC Plan of Action, designed to respond to the implementation gaps identified by the CRC in 2011, will enhance the Government's ability to meet its reporting obligations under Article 44².
11. An UNCROC Plan of Action would also respond to the 2011 recommendation of the CRC that the Government:

"adopt a comprehensive policy and corresponding national plan of action for the implementation of the Convention...and ensure that that there are follow-up and evaluation mechanisms that will regularly assess progress achieved and identify possible deficiencies to enable full implementation of the comprehensive police and plan of action".
12. In addition, from a civil society perspective, development of an UNCROC Plan of Action will enhance the transparency of the work undertaken by the government in meeting its UNCROC commitments.

We accordingly recommend:

- Development of an UNCROC Plan of Action to cover the period 2012-2015 towards the Government's 5th periodic report on UNCROC, due for submission to the CRC on 15 May 2015.
- Publication of the Government's official position in respect of the 2011 Concluding Observations of the CRC.

² We also note the current development of the National Human Rights Action Plan by the Human Rights Commission and the Government, which is expected to include the implementation of recommendations by the various UN treaty bodies

B. High-level co-ordinating mechanism to implement UNCROC

13. Under Article 4 of UNCROC, State parties are required to *“undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in [UNCROC]”*.
14. In considering the New Zealand government’s performance in meeting this obligation in the 2011 Concluding Observations on New Zealand, the CRC noted the role of the Forum of Social Sector Chief Executives on co-ordinating the work programmes of departments in the social sector. However, the CRC expressed its *‘regret’* at the *‘absence of a co-ordinating mechanism specific to children’s rights’*.
15. The CRC accordingly issued the following recommendation at paragraph 13:

“In line with its previous recommendation (CRC/C/15/Add.216, paragraph 11), the Committee recommends that the State party establish a permanent mechanism to ensure high-level and effective co-ordination of the implementation throughout the State party.”
16. There is yet to be any formal commitment from the government regarding this issue. However, there are opportunities that currently exist to develop such a co-ordinating mechanism.
17. Firstly, there is the potential role of the DCE Social Sector Forum, acting on delegated authority of the Forum of Social Sector Chief Executives to co-ordinate an UNCROC Plan of Action (administered by MSD) and regularly monitor its process.
18. Secondly, the Green Paper on Vulnerable Children envisages a legislative framework, perhaps in the form of a Children’s Act, that would create cross-agency accountability in respect of outcomes for children through allocation of responsibility to a group of government chief executives. If such a group was designated as a legislative entity, it is feasible that it could have a role in implementing a cross-sector government UNCROC strategy.
19. In summary, we concur with the view of the CRC that a permanent co-ordinating mechanism would enhance the implementation and progressive realisation of UNCROC in New Zealand. We are interested in the DCE Social Sector Forum’s view on this issue.

We accordingly recommend:

- That steps are taken towards establishing a UNCROC co-ordinating mechanism within government, per the 2003 and 2011 recommendations of the CRC.
- That the DCE Social Sector Forum is designated as an interim co-ordinating mechanism, pending any legislative outcomes as a result of the Green Paper/White Paper on Vulnerable Children policy process.

C. Promoting Awareness of UNCROC amongst the public sector

20. In assessing the New Zealand government's performance of its Article 4 and 42 obligations, the CRC recommended in its 2011 Concluding Observations that *"the State party should develop and further strengthen systematic education and training on the principles and provisions of the Convention for all professionals"*.
21. Following this recommendation, UNICEF New Zealand conducted an inquiry to establish a baseline of UNCROC education and training available for professionals working with and for children³.
22. The inquiry focused on training and education for professionals working for government departments. This included surveying a number of government departments and Crown entities on whether UNCROC training is made available to staff⁴.
23. It made a number of key findings⁵, including:
 - There is no evidence of any government or departmental investment in formal UNCROC training. Despite CRC recommendations (since 1997) it has not been given any priority.
 - Training for public sector professionals is inconsistent and irregular.
 - There are no formal mechanisms that public sector professionals must use to check for the consideration of children's rights in decision making.
24. In addition, there is a risk that inadequate public sector awareness of UNCROC and other international human rights treaty obligations may result in policy and legislative proposals are not progressed in sufficient compliance with requirements of the New Zealand Cabinet Manual⁶.
25. The UNICEF inquiry made a number of recommendations regarding the role MSD, as the government department with principal responsibility for UNCROC implementation, can play in developing professional awareness and application of UNCROC across the public sector⁷. These include:
 - Promoting educational resources, including development of generic training resources for professionals and establishment of an on-line UNCROC information 'clearing house'
 - Development of a detailed UNCROC implementation guide
 - Development of a national strategy for UNCROC education and training for professionals

³ UNICEF New Zealand, United Nations Convention on the Rights of the Child: Education and training for professionals working with and for children in New Zealand, September 2011

⁴ Ibid Appendix 3

⁵ Ibid page 8

⁶ See paragraphs 7.60-7.61 New Zealand Cabinet Manual.

⁷ Ibid pages 26-33

We accordingly recommend:

- That the DCE Social Sector Forum consider the UNICEF recommendations as a basis towards enhancing public sector UNCROC awareness, responsiveness and capability

We would be interested in the DCE Social Sector Forum's views on the UNICEF findings and recommendations and would welcome any information regarding any current work that is being done to respond to the Inquiry's findings.

D. Optional Protocol on a Communications Procedure

26. The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure ('OPIC') was opened for signature on 28 February 2012 in Geneva.
27. OPIC establishes a communications procedure under UNCROC whereby individuals or groups of individuals may submit a written communication to the CRC in respect of an alleged violation of their rights by a State party under UNCROC, the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the involvement of children in armed conflict.
28. OPIC also contains a number of procedural requirements and safeguards to mitigate the risk of misuse of the communications procedure.
29. The New Zealand government has ratified similar communications procedures under other international human rights treaties, including the Optional Protocol to the International Covenant on Civil and Political Rights (ratified May 1989) and the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women (ratified September 2000).
30. The UNCROC Monitoring Group considers that OPIC is an important instrument towards enhancing the status of the human rights of children and we would encourage the New Zealand government to take steps to ratify OPIC, in reflection of the government's commitment to progressive realisation of UNCROC and to upholding human rights principles generally.

We accordingly recommend:

- That the government gives priority to proceeding with ratification of OPIC.

We would be interested in the position of the DCE Social Sector Forum as regards ratification of OPIC and would welcome any information regarding any progress made to date towards its ratification.

APPENDIX 1

Monitoring Implementation of the UN Convention on the Rights of the Child:

OCC UNCROC Monitoring Group - DCE Social Sector Forum: A Process for Regular Engagement

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Purpose of this Document

31. The purpose of this document is to establish a process for regular engagement between the Deputy Chief Executives Social Sector Forum ('DCE Social Sector Forum') and the non-government sector group ('the UNCROC Monitoring Group') established by the Children's Commissioner to monitor the implementation of the UN Convention on the Rights of the Child ('UNCROC').

Background

32. On 21 February 2011, the Children's Commissioner convened a meeting of representatives from the non-government sector to address the 2011 Concluding Observations of the UN Committee on the Rights of the Child on New Zealand. This meeting established the UNCROC Monitoring Group, whose non-government members include representatives from the following organizations:
 - UNICEF New Zealand ('UNICEF')
 - Action for Children and Youth Aotearoa ('ACYA')
 - Save the Children New Zealand ('SCNZ')
 - Every Child Counts ('ECC')
 - Child Poverty Action Group ('CPAG')
33. Representatives from the Office of the Children's Commissioner and the Human Rights Commission also participate in the UNCROC Monitoring Group. All the above organizations, bar CPAG and ECC, were all part of the former UNCROC Advisory Group that was established by the Ministry of Youth Development during the 2004-8 UNCROC reporting period.
34. Following correspondence between the Children's Commissioner and the Ministry of Social Development that occurred after the 21 February meeting, on 31 August 2011 members of the UNCROC Monitoring Group met with the DCE Social Sector Forum to discuss:
 - How the DCE Social Sector Forum can co-ordinate the implementation of UNCROC; and
 - How the UNCROC Monitoring Group can have regular access to the DCE Social Sector Forum or a delegated DCE.
35. Further to that meeting, this document sets out below a process under which the DCE Social Sector Forum and the UNCROC Monitoring Group can engage in future for the purposes of monitoring the Government's implementation of UNCROC.

The Process for Engagement

36. It is proposed that an annual process for engagement between the DCE Social Sector Forum and the UNCROC Monitoring Group occur as follows:
- The UNCROC Monitoring Group meets quarterly.
 - Out of these meetings, the UNCROC Monitoring Group produces a report which measures the Government's progress in implementing UNCROC and makes recommendations.
 - The DCE Social Sector Forum provides the UNCROC Monitoring Group with a written response regarding the Government's position regarding the report and its recommendations.
 - A meeting is convened between the UNCROC Monitoring Group and the DCE Social Sector Forum, or a delegated DCE or DCEs, the outcome of which is minuted and circulated.
 - The report and engagement meeting process between the UNCROC Monitoring Group and the DCE Social Sector Forum should conclude prior to the year ending 30 June.
37. It is anticipated that the UNCROC Monitoring Group will generate its first report and have its first engagement meeting with the DCE Social Sector Forum by 30 June 2012.
38. This process is straightforward and allows for one regular engagement meeting per year between the UNCROC Monitoring Group and the DCE Social Sector Forum. It is a starting point for engagement, and may be subject to amendment as a result of changes to policy and legislation that could occur as a result of the Green Paper on Vulnerable Children.
39. The outputs of this process – the reports and written responses – will document the progress of UNCROC implementation for the period to the submission of Fifth Periodic Government report to the UN Committee on the Rights of the Child due on 5 May 2015.
40. This process will be subject to agreed terms of reference setting out principles for engagement.

APPENDIX 2

UN Convention on the Rights of the Child

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.