

Comment on the United Nations Periodic Review Draft Submission

To the Universal Periodic Review (Period October 2004-2008)

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Executive Summary

We are providing information under Sections B, C and D as stated in the General Guidelines for preparation of information to the Universal Periodic Review.

Section B discusses the lack of progress of ratification of Section 138, and policy measures that would engender this.

Section C discusses issues of children's health and safety in their working environments.

Section D makes recommendations for action.

A. Background

1. The New Zealand Work and Labour Market Institute is a research institute located within the Auckland University of Technology (AUT) Business School. It seeks to provide national and international leadership in multi-disciplinary research focusing on the analysis of work over the life course. Research and analysis is drawn from the disciplinary perspectives of Employment Relations, Law, Labour Economics, Human Resource Management, Labour History, Sociology, and Organisational Studies in the development of integrated research programs. The Institute will contribute significantly to research-informed public policy development in New Zealand and internationally to improve the well-being of New Zealanders and others.
2. Dr Felicity Lamm is Associate Professor of Employment Relations at AUT University. Danaë Anderson is a Masters of Philosophy student researching Child Labour in New Zealand.

B. NORMATIVE AND INSTITUTIONAL FRAMEWORK

1. Scope of international obligations

Removal of Reservations to the Convention on the Rights of the Child: Convention 138: Concerning the minimum age for admission to employment.

There are a number of UN conventions that relate directly to child labour. The rationale behind these conventions is the protection of children by minimising their exposure to hazardous working environments and conditions. While it is acknowledged that the New Zealand government has ratified a number of UN conventions pertaining to the welfare of children, currently there is no statutory minimum age of access to employment or minimum

wage for employees who are under 16 years of age. The United Nations and in particular, its Committee on the Rights of the Child, has criticised New Zealand's lack of progress on child labour issues on a number of points:

- 1) New Zealand continues to place a reservation on Part 138 of the Convention on the Rights of the Children relating to minimum age of access to employment;
- 2) New Zealand has failed to legislate a minimum wage for child workers; and
- 3) children are poorly represented in occupational health and safety matters (e.g. there is no workers' compensation for child workers).

With the Government report to the United Nations Convention on the Rights of the Child (UNCROC) on child labour due at the end of 2008, and the initial United Nations Universal Periodic Review report covering 2004-2008, issues surrounding New Zealand's young workers require further investigation. While New Zealand ratified the UN Convention on the Rights of Children it still has a reservation on ILO Convention 138: Minimum Age Convention (1973) 'Minimum age of access to employment- (article 32(2)). This is in spite of the fact that the United Nation's Committee on the Rights of the Child has repeatedly asked New Zealand to remove it. The reservation relates to the United Nation's Convention on the Rights of Children (UNROC) Article 32(2) requiring:

'States Parties shall...

- a) *Provide for a minimum age or minimum wages for admission to employment;*
- b) *Provide for appropriate regulation of the hours and condition of employment;*
- c) *Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article'.*

(United Nations, 1999)

There has also been a lack of progress by the New Zealand government in clarifying **minimum age** requirements under UNROC and **removing the existing reservation**. It is stated in the recent report *Implementation of the International Covenant on Economic, Social and Cultural Rights (Draft)* (2008: 88), that 'New Zealand has not ratified this Convention and has adopted a similar *position* to that with respect Article 32 of UNCROC. That is, New Zealand cannot comply with the Convention because *'it is both acceptable and common practice for children to engage in work outside school hours'*. This reiterates the commonly held view that children's work in New Zealand as *'...socially desirable, since it prepares them for independence and greater responsibility in a way which complements their formal education'* (Chetwin, 2002: 2).

Further, the Human Rights Commission believes that any minimum wage distinction between 16 and 17 year olds and the rest of the labour force is not justified. It is difficult to reconcile why a person aged 16 or 17 be paid substantially less, until they attain 18 years of age. The validity of paying a 17 year old 60% of the income of an 18 year old for no other reason than age, regardless of qualifications and capabilities, is difficult to justify in terms of the HRA. 'Equal pay for work of equal value' is an underlying theme here; the justifications for children being paid less for doing the same work are weak.

It is argued that this is an idealised description of children's work as it does not portray the reality of what is actual occurs nor does it acknowledge the fact that New Zealanders have a strong culture of encouraging their children to work, even from a very young age (McKechnie, 1999). Moreover, there is a public perception in New Zealand that exploitative employment practices occur mainly in so-called "under-developed" countries and rarely in New Zealand (Day, 2004). In their report entitled *The State of the World's Children: Focus on Child Labour* (1997: 18), UNICEF argue that this is a misconception as children routinely work in hazardous conditions in all industrialised countries and that most of the world's child labourers operate within the informal labour market working predominately in small businesses located rural settings, family business or in the home. Given that New Zealand has a significant informal labour market and that 98 percent of all New Zealand businesses are small, many of which are farms, it would be a misnomer to state that exploitation of children does not occur.

C. Health and Safety of Children

While it is surmised that '... our existing policy and legislative framework already provides effective age thresholds for entry to work in general, and for safe work', (Govt 3rd & 4th periodic report, United Nations Convention on the Rights of the Child, draft: 13) this statement overstates the protection current laws provide child workers; particularly with reference to those under the age of 16.

Child labourers are not only susceptible to all the dangers faced by adult workers when placed in the same situation, but also they are more seriously affected because they differ from adults in their anatomical, physiological and psychological characteristics (IPEC, 2008). There is evidence that young workers have a higher risk of being injured compared to adult workers, often because they have a lack of work experience, limited awareness of existing or potential risks; and physical and emotional immaturity (Ehrlich, McClellan, Hemkamp, Islam & Ducatman, 2004: 786). There is growing evidence that workers, many of whom are children, employed in informal work arrangements also have an above average level of injury and illness compared to workers employed in more formal working arrangements (Quinlan, Mayhew & Bohle, 2001).

In addition, statistics on work-related injuries for 2006 show that around 300 children under 15 years old visited their general practitioner for a work injury. ACC entitlements or rehabilitation assistance, such as physiotherapy subsidies, are paid to around 10 children under 9; around 15 children in the 10-14 age bracket, and between 1000-2000 young people in the 15-19 age group (ACC, 2006). New Zealand children are significantly represented in the work-related fatal injury statistics (Lilley, Feyer, Langley & Wren, 2004: 1). Many injuries and fatalities occur when children accompanying their parents to their places of work. The most common location of a fatality is on a farm, where home and work activities overlap, and where informal participation in farm work is commonplace amongst NZ children (Lilley *et al*, 2004: 6).

However, it must be noted that while these injury statistics indicate that there is cause for concern, there is a general paucity of injury data and what data that does exist is inconsistent and unreliable. This is especially so for children and child workers. Moreover, there is widespread under-reporting of accident compensation claims, particularly in the informal labour market, where injuries may be attributed to non-work accidents as a way of avoiding increased ACC premium. There is also a lack of detail; that is, there is often little or no

information on the ethnicity of the injured child worker or under what circumstances the accident occurred. Thus, ACC figures provide only a partial picture, covering those injuries that were officially reported or led to compensation claims. Not only are the injury statistics compiled on child workers a concern, we are also concerned that the current level of occupational health and safety protection for workers under 16 does not entirely conform to the principles and provisions of the UN Convention on the Rights of Children and related ILO conventions on occupational health and safety.

D. Recommendations

There has often been a tendency to focus on the visible forms of work, but these can obscure the other ways in which children are employed. New Zealand's employment legislation in fact has inherent inequalities, in which children are not given the same rights or protection as adults. That is, the rights of the child are often not given resonance, or minimised in New Zealand discourse, where child labour is generalised as developing country's problem. Further, the status of New Zealand's child workers is of particular concern given that there is no legislation specifically covering the wages or conditions of children under the age of 16 years (see Minimum Wage Act 1983, Health and Safety in Employment Act 1992, Employment Relations Act 2000). In addition, there is insufficient regulation of hours of work and conditions: 'there is no law preventing an 11 year old doing 30 hours work each week as long as it is not in school hours, or working a 12 hour day on a Saturday' (Parkinson, 2001: 1). Moreover, the level of legal protection in the area of employment for children varies considerable and is based entirely on the age of the worker – that is, adult workers are afforded protection while children are frequently omitted (Boyden et al, 1998). However, it is debatable whether the core labour standards of the ILO are seen as fundamental rights instruments is unclear: it may be more appropriate to describe the ILO core standards as giving 'practical application' to the grand principles of the Universal Declaration of Human Rights. There is logic of a normative approach: 'best practice' should identify set of universal rights, where duty to accept and implant these rights falls on all states that are part of the ILO to use regulatory power and action (Murray, 2005).

In summary, there is a large under age working population in New Zealand who are treated differently in law. Therefore, if the Government accepts child labour as a legitimate aspect of the socialisation of children and youth, it is obliged under the UN conventions to ensure that this group of workers are protected from exploitation and discrimination (HRC, 2000: 4). Finally, it is acknowledged that not all work is harmful, and that "children's work needs to be seen as happening along a continuum, with destructive or exploitative work at one end and beneficial work - promoting or enhancing children's development without interfering with their schooling, recreation and rest - at the other. And between these two poles are vast areas of work that need not negatively affect a child's development" (UNICEF, 1997: 12).

Recommendation 1: That the Government moves towards making an appropriate timeframe for introduction of a minimum age for work, and removes the reservation on Part 138. It might be more appropriate to set a minimum age of employment at 14, that is the age to which parents are allowed to leave children unsupervised at home, (FCTU, 2003).

Recommendation 2: There is a need to increase the level of regulatory protection concerning the number of hours children can work and their exposure to hazardous working conditions. Under the Health and Safety in Employment Act, 1992, the basic tenet is that all workers,

irrespective of age or occupation, must be covered by health and safety regulations. With respect to New Zealand's child workers, this is not always the case.

Recommendation 3: That the Government ensures that the New Zealand's employment laws are compatible with ILO Convention 138, ensuring that all workers irrespective of age, are paid equitably. At a broad level, setting the youth minimum wage must be considered in the context of the Government's overall policy direction in relation to the implementation of the United Nations Convention on the Rights of the Child (UNCROC), and possible ratification of International Labour Organisation (ILO) Convention No. 138 on the Minimum Age for Admission to Employment. At a domestic level, policy makers are obliged to consider compliance with sections 21 and 22 of the Human Rights Act, which, subject to an existing minimum wage exception in section 30, broadly prohibit discrimination (against persons over the age of 16) on the grounds of age in employment (HRC, 2000: 2). It is recommended that the Human Rights Act is amended to remove unfair discrimination against those under 16 years of age, as currently it allows for discrimination simply on the basis of age. An example of the effect of this is that there is no minimum wage for those under the age of 16 years.¹

¹ The Government position is that with minimum age school leaving set at 16 years, setting a minimum wage beneath this age limit undermines the school system. The reality is that society accepts that young people gain from part time employment but there is no safeguard from exploitation.

References

Accident Compensation Corporation (2006, 1st ed.). *ACC Injury Statistics 2006*, Section 3.1: All Work-Related Claims. Retrieved 13 July, 2008, from http://www.acc.co.nz/about-acc/acc-injury-statistics-2006/SS_WIM2_062980

ACYA (2003). *Children and Youth in Aotearoa 2003: the second non-governmental organisations' report from Aotearoa New Zealand to the United Nations Committee on the Rights of the Child*. Retrieved July 12, 2008, from www.acya.org.nz

Bellamy, C. (1997). *The State of the World's Children 1997: Focus on Child Labour*. Oxford: Oxford University Press for UNICEF

Boyden, J. & Ling, B. (1998). *What Works for Working Children*. Florence: Rädda Barnen and UNICEF ICDC.

Bradford, S. (2007, 21 November). *Full review of Child Labour Laws needed* [Press release]. Wellington: The Green Party.

CARITAS (2003). *Protecting Children at Work: Children's Work Survey*. Thorndon: CARITAS.

Caspi, A., Moffitt, B., Wright, B., Silva, P. (1998). Early failure in the labor market: child and adolescent predictors of unemployment in the transition to adulthood. *American Sociological Review*, 63, 424-451.

Chauby, J., Perisic, M., Perrault, N., Laryea-Adji, G., & Khan, N. (2007, March). *Child Labour, Education and Policy Options: Working Paper*. New York: United Nations Children's Fund.

Chetwin, J. (2002, 12 June). *Speech on the Global Report: A Future without Child Labour*. Retrieved July 18, 2008, from <http://www.dol.govt.nz/pdfs/ILC%2002%20Global%20Report%20Speech%20Future%20without%20Child%20labour.pdf>

Child Poverty Action Group (2003, 2nd ed.). *Our Children: The Priority for Policy*. Auckland: Child Poverty Action Group.

Ehrlich, P.F., McClellan, W.T., Hemkamp, J.C., Islam, S.S., Ducatman, A.M. (2004, May). Understanding work-related injuries in children: a perspective in West Virginia using the state-managed workers' compensation system. *Journal of Paediatric Surgery*, 39(5), 768-772.

European Environment and Health Information System (2007, 8 May). *Work injuries in children and young people*. Retrieved October 6, 2008, from http://www.enhis.org/object_document/o4737n27389.html

Gasson, R., Gasson, J., Linzey, T., & Powell-Chalmers, J. (2003). *Young People and Work*. Dunedin: Dunedin College of Education.

Health and Safety in Employment Act (1992). Retrieved 15 October, 2008, from <http://www.osh.dol.govt.nz/law/hse.shtml>

Health and Safety Executive (2007). Preventing accidents to children on farms. Retrieved 12 October, 2008, from, <http://www.hse.gov.uk/pubns/as10.pdf>

Human Rights Commission (2000, 11 April). *Submission of the Human Rights Commission on the Youth Minimum Wage*. Retrieved July 18, 2008, from <http://www.hrc.co.nz/index.php?p=13681&format=print&id=13689&keywords=&month=&year=&Submit=>

International Programme on the Elimination of Child Labour (2008). *Hazardous Child Labour*. Retrieved 11 October 2008, from <http://www.ilo.org/ipecc/facts/Hazardouschildlabour/index.htm>

Kahn-Freund, O. (1974, January). On Uses and Misuses of Comparative Law, *Modern Law Review* (37), 1- 27.

Lilley, R., Feyer, A.M., Langley, J., Wren, J. (2004, 21 May). The New Zealand child work-related fatal injury study: 1985-1998. *The New Zealand Medical Journal*, 117(1194): 151-157.

McKechnie, J., & Hobbs, S. (1999, February). Child Labour- The view from the North. *Childhood- A Global Journal of Child Research*, 6(1), 89-100.

Mayhew, C., & Boyle, P. (2001). The Global Expansion of Precarious Employment, Work Disorganisation and Occupational Health: A Review of Recent Research, *International Journal of Health Services*, 31(2):335-414.

Mizen, P., Pole, C., & Bolton, A. (2001). Why be a school aged worker. In P. Mizen, C. Pole & A. Bolton (Eds.). *Hidden Hands: International Perspectives on Children's Work and Labour* (pp.37-54). London: Routledge Palmer.

Murray, J. (2005). *Working Paper 6: External Powers and the Role of the EU in Labour Matters: Work in Progress*. Oxford: Institute of European and Comparative Law, University of Oxford. Retrieved 12 September, 2008, from <http://www.competition-law.ox.ac.uk/iecl/pdfs/working6murray.pdf>

New Zealand Government (2008). *Implementation of the International Covenant on Economic, Social and Cultural Rights (Draft). : Third periodic reports submitted by States parties under articles 16 and 17 of the Covenant*.

Parkinson, P. (2001, September). The Child Labour Problem in Australia. Defence for the Child International. Retrieved 13 September 2008, from <http://www.dci-au.org/html/parkinson.html>

Roth, P. (2008, 27 March). Child labour in New Zealand: a job for the nanny state? Retrieved 15 June, 2008, from <http://www.nz-lawsoc.org.nz/lawtalk/708Roth.htm>

United Nations Convention on the rights of the Child- Article 32 (1989, 20 November). Retrieved 12 July, 2008, from <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

Appendixes

A. Defining Child and Youth: It is important that there is greater clarity of definition in discussion, as the terms that are used to define ‘child’ are contentious and inconsistent.

International conventions define children as aged 18 and under, for example the United Nations Convention on the Rights of the Child defines a child as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier (Convention on the Rights of the Child, 1989, p.6), a definition acceptable to the International Labour Organisation (ILO). As discussion focuses around UN Part 138 ratification; it would be appropriate to use UN and ILO definitions, while acknowledging and discussing the difficulties and inconsistencies in use.

The ILO does not have an explicit focus on adolescents as a category, and there is also no officially used definition of adolescents. However, the ILO does focus on the adolescent age group (10-19 years) in relation to the categories of child labour and youth activities, mainly youth employment. The ILO follows the UN definition of youth as the age group between 15-24 years, but it also recognises that the operation definition varies according to the cultural and institutional factors in each country.

It is worth noting that these definitions are further complicated by attempts to define ‘child labour’ or children’s work; which have myriad of alternative definitions. Terms such as "child", "adult" and "labour" resist universal definition because of cultural and societal differences from one country to another. Some international organisations and social scientists delineate between ‘child work’ (not objectionable) and ‘child labour’ (objectionable) (Chauby, Perisic, Perrault, Laryea-Adji, & Khan, 2007). However, it is important that discussion does not become embroiled in semantics, so for the purposes of discussion the United Nations and International Labour Organisation definition will be adhered to; as dialogue will be centred on ratification of UN Part 138 by New Zealand.

B. Profile of child workers in New Zealand:

The quality and breadth of information on child workers in New Zealand is extremely poor, with most research emanating from non-government sources (Caspi, Moffitt, Wright & Silva, 1998; Gasson, Gasson, Linzey, & Powell-Chalmers, 2003;), and activist organisations (Child Poverty Action Group 2003; Action for Child and Youth Aotearoa Incorporated, 2003; Catholic Justice, Peace and Development Agency, 2003, 2007). This segment of the labour market is extremely vulnerable to exploitation for two reasons: their rights are not upheld with supporting legislation; and they are an ‘invisible’ segment that is largely ignored in statistic reporting and analysis.

That is, there are few, if any government data sets that capture information on child workers. Nonetheless, based on overseas data, it is possible to report that child workers can be found in family run businesses, such as primary sector (agriculture, horticulture, etc), as well as the retail and hospitality industry sectors. They also constitute a substantial part of the informal labour market “... *often working for very low wages and at times in dangerous and/or illegal*

working conditions” (Caritas, 2003: 11). However, there is still few empirical studies on the child labour within the context of New Zealand (ICFTU, 2003), and those interested in the topic are reliant on overseas studies, most of which are located in the discipline of economics (see for example, Basu & Van, 1998; Contreras, 2007; Grossmann & Michaelis, 2007; Rogers & Swinnerton). Discourse centres on the economic reasons for child labour and economic solutions. There is also some interest in child labour within the discipline of public health (see for example, Marlenga *et al*, 2007; Roggero *et al*, 2007).

Recent research instigated by the Department of Labour on casual and temporary employment compliments research on child labour. However, there has been little discussion involving all key stakeholders: Government, employers, unions, community organisations, parents and children themselves (Bradford, 2007). Gasson *et al* (2003: 12) note that this research “...has enquired differently into young people and work whether longitudinal as in the case of Caspi *et al.*, historically and socio-contextually as did Blaiklock or more specifically socio-contextually as was the orientation of Action for Children and Youth Aotearoa Incorporated”.

In the last two decades there has been a considerable increase in part-time work by children in New Zealand (Statistics New Zealand, 2001). It is apparent that without statutory protections such as minimum wages and working conditions, young workers risk marginalisation (Human Rights Commission, 2000: 1). Initial research indicates that there is some evidence that child labour does exist in New Zealand, although information is not routinely collected about this sector of the labour market (Roth, 2008), and the statistical information available is difficult to analyse. For example, in a survey of nearly 5000 children in 2003, Catholic Justice, Peace and Development Agency, (Caritas) reported that some children were being forced to work to support their families, often for very low wages and at times in dangerous and/or illegal working conditions. They concluded that:

- Children were working in age restricted employment, including those working with heavy machinery, with alcohol, or caring for other children.
- There were concerning issues of the health and safety of children, particularly those who reported injuries which had the potential to cause serious harm, including road accidents, broken bones and burns.
- Children were often working unsupervised; particularly the younger children aged 11-12 who were more likely to work without adult supervision than older age groups.
- There was lack of contracts and union coverage of children’s work.

There is evidence to suggest that children may be utilised in replacement of adult workers that may compromise their education. Mizen, Pole and Bolton (2001) found children were often chosen as employees as they offered flexible, low-paid labour and helped keep maximise profit margins. Such employment usually leaves children largely powerless in the employment relationship (Gasson, Gasson, Linzey & Powell-Chalmers, 2003), as the sectors which child workers congregate typically have little or no trade union presence (IFCTU, 2003). Further, child workers are predominately employed on casual, part-time or temporary

basis, and few would be protected under either an individual or collective agreement. This is acknowledged in article 1.15 (Govt 3rd & 4th periodic report, United Nations Convention on the Rights of the Child, draft: 15), where *'research has found that children have a general lack of awareness about (and potentially non-compliance with) their employment rights.'* The Children's Employment Work Programme seeks to redress these issues, but there are still significant areas of concern in which little progress has been made; in spite of talk of *'ongoing dialogue'* (Govt 3rd & 4th periodic report, United Nations Convention on the Rights of the Child, draft:15).

Kahn-Freud (1974) notes that national labour laws are the products of local forces and power relations – 'the habitat of industrial relations' and child labour generally thrives in areas and industries where unions are weak or non-existent (Gasson *et al*, 2003). Meriting further discussion is the role of unions in collective bargaining to establish appropriate conditions under which children can safely undertake work, as *'Trade unions are especially well placed to extend protection to working children and to advocate children's right to adequate education, while at the same time asserting the rights of adult workers to adequate remuneration, thereby reducing poor families' reliance on child labour'* (Myrstad, 1999: 77).