

GETTING IT RIGHT FOR CHILDREN IN AOTEAROA

Commentary on the Children's Convention
 Judge Andrew Becroft, Children's Commissioner

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“Me huri kau koe i ngā whārangi o neherā; ka whakatuwhera i tētahi whārangi hōu mō ngā mea o te rā nei, mō āpōpō hoki.”

You must turn over the pages of the past; you must open a new page for the things of to-day and to-morrow. - Sir James Carroll

Before I took up this role, I thought I knew the United Nations Convention on the Rights of the Child 1989 (the Convention) fairly well, thanks to my time in the Youth Court. But even then, I had a lurking and growing suspicion that I was not getting the best out of the Convention or applying it as fully as I could for young offenders.

However, I must confess that it was not until I started in this role that I sat down and read the Convention in complete detail from beginning to end. Knowing that a key statutory obligation for the Children's Commissioner is to raise awareness and understanding of the Convention and to advance and monitor the application of the Convention by the Departments of State and other instruments of the Crown¹, I read the Convention three times in a row! So began my real understanding of the significance of the Convention and its promises for our children.

It is an exciting document - even 28 years after its adoption by the United Nations, it still speaks powerfully. In fact, it is a charter of guaranteed entitlements which all children deserve and which, when faithfully applied and upheld, will ensure that our children flourish, prosper and thrive.

Worryingly, in my experience in this role, I believe we have little understanding of the Convention in New Zealand, and do not take it seriously. Frankly, many government departments are unaware of its provisions, and still less of how the provisions might relate to those departments' work programmes and their day-to-day business.

Other countries take the Convention much more seriously than we do, as I realised

when I attended New Zealand's fifth examination by the Committee on the Rights of the Child as to our country's compliance with the Convention in September 2016.

In other countries, especially European countries, the Convention is the starting point for most discussions about children.

In New Zealand, it is seldom mentioned or discussed in government circles - indeed, the reverse is often the case.

For instance, senior Government personnel have said to me, more often than you might expect, "does the Convention really have any relevance to New Zealand?" Or, "we do pretty well for our children, don't we? Is there anything that the Convention can really help us with?" And, more worryingly still, "isn't the Convention mainly for less developed countries such as Somalia, Bhutan, or Mongolia - isn't that where the Convention can really be of importance?"

I do not think we can afford to take these points of view, for at least three reasons.

Firstly, New Zealand formally ratified and adopted the Convention on 6 April 1993. The Convention is the most widely signed international instrument in history (with the exception of the United States, every country in the world has signed it). We must take our international obligations seriously. We cannot sidestep them or classify them as irrelevant.

Secondly, there is a statutory obligation in the Children's Commissioner's Act which at least assumes that the Convention will be faithfully and actively applied by departments of State and other instruments of the Crown - otherwise my monitoring role

¹ Section 12(1)(d) and (f) of Children's Commissioner Act 2003.

to check how well it has been applied would be meaningless.

And thirdly, there is much in the Convention that can improve the quality of our policy and processes. For example, Article 12.1 of the Convention directs that:

"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

If this practice was ingrained in government departments and community groups, there would be a significant change in the way policy is created here – for example in areas of education, health and housing, and in the way we respond to child poverty.

In short, children's voices need to be heard in our country. We are very bad at seeking out their voices, listening to them, factoring them into our decision making and then reporting back to children the decisions made.



I have noticed that as I talk about the Convention to community groups and New Zealanders generally, it seems to me that the phrase "children's rights" tends to alienate New Zealand audiences.

Perhaps with our colonising past, we still believe that children are simply "potential adults" whose views need not be taken seriously until they are adults. Perhaps also talk of "rights" invokes the spectre of legal action, as in the United States, where it is not entirely unknown for children to sue parents for breaching their rights.

In New Zealand, we have a unique context with Te Tiriti o Waitangi, to apply the Children's Convention for all children. As a country, I think we need to be much more enthusiastic and positive about child rights – rooted in the context of their family, whānau, hapū, iwi and community. Talk of children's rights does not mean ousting the fundamental importance of family and whānau in the life of a child.

And as Professor Michael Freeman reminded us in his 2016 seminar at Otago University, with every right there is a responsibility. We should teach children this.

For instance, if a child asserts a right to be

free from bullying, then equally children must be taught and encouraged not to bully others.

As Professor Freeman also observed, we still have a long way to go to fully develop the thinking and principles behind the Convention. It was his view that were the Convention to be adopted by the United Nations today, then, for instance, the voting age would definitely include 16- and 17-year-olds. Also, the absolute age limit of the 18th birthday constituting the beginning of adulthood would be modified.

The Office of the Children's Commissioner and our partners in the UNCROC Monitoring Group have just released a report on New Zealand's response to the Convention on the Rights of the Child, to raise awareness and understanding of the Convention.

Starting from April 2018, we will provide a yearly "Report Card" of the Government's compliance with the Convention, and progress in adopting those areas where we fall short - identified every five years by the Committee on the Rights of the Child in Geneva.

We need to be much more positive about the Convention and its benefits - if faithfully understood, applied, and adopted for our New Zealand children.

We know that most of our children do well, and some do outstandingly well. But 20% are struggling, and 10% do as bad if not worse, than most comparable OECD countries.

All our children would benefit significantly if New Zealand were fully applying the Convention, but especially the 30% whose needs are not being met.

This report on the Convention helps to fulfil and publicise my statutory monitoring role. In a small way, I hope it also serves as notice to New Zealand and the Government, that we must take our Convention obligations seriously.

As part of my statutory duty, we will ensure that there are regular reports and that our progress in applying the Convention is honestly and transparently monitored.

We need to be far more committed to applying the Convention and honest about reflecting on our progress in implementing it. I hope this report appropriately launches this commitment.