

P.O.Box 205, Rarotonga, Ph/fax: 21133 email: lrto@pti.org.ck

Cook Islands NGO parallel Report

Convention on the Rights of the Child

29/09/11

Report prepared and submitted by Punanga Tauturu Inc.



29th September 2011

Chair

Convention on the Rights of the Child Committee

Geneva,

Kia orana,

Re: **NGO Parallel report submission**

We are pleased to submit the NGO parallel report on behalf of NGO’s of the Cook Islands.

We have captured only a fraction of the issues in relation to the CRC and its implementation and in preparing this report have also identified gaps that exist not only in Access to Justice and awareness of CRC but in the overall understanding of the State in its obligations under CRC and other Human Rights instruments.

We do hope that this reporting process of the CRC committee will contribute to the State not only recognising its obligations in terms of implementation but also to allocate funding and resources to integrate Human Rights based frameworks within its various institutions.

We look forward to discussing our report with you in the Pre-session hearings.

Yours sincerely

Ann Taruia

Vice President

Contents

[PART I 4](#_Toc305069515)

[1. Introduction 4](#_Toc305069516)

[1 Background 5](#_Toc305069517)

[2 Executive Summary 6](#_Toc305069518)

[3 Additional Information on the General Measures of Implementation 7](#_Toc305069519)

[3.1 Constitutional System 7](#_Toc305069520)

[3.2 Sources of Law 7](#_Toc305069521)

[3.3 The Cook Islands Constitution 7](#_Toc305069522)

[3.4 Human Rights Provisions 8](#_Toc305069523)

[3.5 No Definition of Discrimination 8](#_Toc305069524)

[3.6 The Statutes 8](#_Toc305069525)

[3.6.1 Common Law 9](#_Toc305069526)

[3.6.2 Custom 9](#_Toc305069527)

[4 International Human Rights Law 9](#_Toc305069528)

[5 Other Conventions and Instruments 9](#_Toc305069529)

[5.1 Reporting to the Civil and Political Rights Committee 9](#_Toc305069530)

[5.2 First Report to the CEDAW Committee 9](#_Toc305069531)

[5.3 Review of the Cook Islands Constitution and Legislation 10](#_Toc305069532)

[5.4 Ombudsman’s Office 10](#_Toc305069533)

[6 National, Regional and International Frameworks, Cooperation and Assistance 10](#_Toc305069534)

[6.1 The Cook Islands National Sustainable Development Plan (NSDP) 10](#_Toc305069535)

[6.2 The Pacific Plan 10](#_Toc305069536)

[6.3 The Millennium Development Goals (MDGs) 11](#_Toc305069537)

[6.4 The World Summit for Children 11](#_Toc305069538)

[6.5 Beijing Platform for Action 11](#_Toc305069539)

[PART II 12](#_Toc305069540)

[1 General Measures of Implementation (Articles 4, 42 and 44 (6) 12](#_Toc305069541)

[1.1 Reservations 12](#_Toc305069542)

[1.1.1 Recommendations 12](#_Toc305069543)

[1.2 Legislation and Implementation 12](#_Toc305069544)

[1.3 Law Reform Commission 12](#_Toc305069545)

[1.1.1 Recommendation 13](#_Toc305069546)

[1.4 Cook Islands Human Rights Office 13](#_Toc305069547)

[1.1.2 Recommendation 14](#_Toc305069548)

[1.5 UN Guidelines and General Comments of the CRC Committee 14](#_Toc305069549)

[1.6 Draft Legislation 14](#_Toc305069550)

[1.6.1The Employment Relations Bill 14](#_Toc305069551)

[1.6.2The Family Law Bill (“Bill”) 15](#_Toc305069552)

[1.7 The Crimes Act 1969 15](#_Toc305069553)

[1.8 Central Depository for Country Reports, Research and Studies 15](#_Toc305069554)

[1.9 The non-enforceability of international human rights conventions in the Cook Islands 15](#_Toc305069555)

[1.9.1 Recommendations 16](#_Toc305069556)

[1.10 Measures taken to make the principles and provisions of the Convention widely known 16](#_Toc305069557)

[1.10.1 Recommendations 17](#_Toc305069558)

[1.11 Coordination 17](#_Toc305069559)

[1.11.1 The Ministry of Internal Affairs and Social Services (MINTAFF), 17](#_Toc305069560)

[1.11.2 The Children and Family Services Division (CFSD) 17](#_Toc305069561)

[1.11.3 The National Advisory Body for Child Development (NABCD) 18](#_Toc305069562)

[1.12 National Plan of Action 18](#_Toc305069563)

[1.13 National Policy for Youth (15-34 years) 18](#_Toc305069564)

[1.14 National Sustainable Development Plan (NSDP) and Regional Cooperation 18](#_Toc305069565)

[1.15 Dissemination of Information and Awareness raising 19](#_Toc305069566)

[1.15.1 Recommendations 20](#_Toc305069567)

[1.16 Non Government Organisations (NGOs) 20](#_Toc305069568)

[Comment 21](#_Toc305069569)

[1.17 Regional Consultations 21](#_Toc305069570)

[1.18 International Aid – 21](#_Toc305069571)

[1.19 Country Reports 21](#_Toc305069572)

[2. Definition of the Child (Article 1) 22](#_Toc305069573)

[2.1 Recommendation: 22](#_Toc305069574)

[3. General Principles of the Convention (Article 2, 3, 12) 22](#_Toc305069575)

[3.1 Non Discrimination (Article 2) 22](#_Toc305069576)

[3.1.1 Recommendation 23](#_Toc305069577)

[3.2 Best interests of the Child (Article 3) 23](#_Toc305069578)

[3.3 Recommendation: 23](#_Toc305069579)

[3.4 Respect for the Views of the Child (Article 12) 23](#_Toc305069580)

[3.5 What do the Children say: 24](#_Toc305069581)

[3.6 Recommendation 24](#_Toc305069582)

[4. Civil rights (Articles 7,8,13-17 and 37 (a) 24](#_Toc305069583)

[4.1 Corporal Punishment 24](#_Toc305069584)

[4.2 What did the Children have to say: 24](#_Toc305069585)

[4.3 Access to Appropriate Information 25](#_Toc305069586)

[4.4 Recommendations 25](#_Toc305069587)

[5. Family Environment and Alternative Care (5, 18, 9-11; 19-21-25; 27;39) 25](#_Toc305069588)

[5.1 Protection from Violence, Abuse, Neglect and Maltreatment (Article 19) 25](#_Toc305069589)

[5.2 Alternative Care for Children 26](#_Toc305069590)

[5.3 The Cook Islands Women’s counselling Centre, Punanga Tauturu (PTI) 27](#_Toc305069591)

[5.4 The Cook Islands Police 27](#_Toc305069592)

[5.5 Baseline reviews on domestic violence – data collection 27](#_Toc305069593)

[5.6 The Pacific Prevention of Domestic Violence Programme 28](#_Toc305069594)

[5.6.1 What the students have to say 28](#_Toc305069595)

[5.6.2 Recommendations 28](#_Toc305069596)

[5.7 Raising the age of Marriage 28](#_Toc305069597)

[6. Basic Health and Welfare 29](#_Toc305069598)

[6.1 Health and Access to Health- 29](#_Toc305069599)

[6.2 The Cook Islands Family Welfare Association 29](#_Toc305069600)

[6.3 Sexual and Reproductive Health Education 29](#_Toc305069601)

[6.4 What the students said 29](#_Toc305069602)

[6.5 Breastfeeding 30](#_Toc305069603)

[6.5.1 Recommendations 31](#_Toc305069604)

[6.6 Non-communicable Diseases 31](#_Toc305069605)

[6.7 People with Disabilities – including Children 31](#_Toc305069606)

[6.8 The Te Vaerua Community Rehabilitation Centre (the Centre) 32](#_Toc305069607)

[7 Education, leisure and cultural activities (Arts. 28,29 and 31) 32](#_Toc305069608)

[7.6 Alternative Approach to Education 32](#_Toc305069609)

[7.7 Rakeitoa – 32](#_Toc305069610)

[7.8 The Creative Centre (the Centre) 33](#_Toc305069611)

[7.9 Maori Language 33](#_Toc305069612)

[7.9.1 Recommendation 33](#_Toc305069613)

[7.10 Convention on the Rights of the Child in Schools 33](#_Toc305069614)

[7.10.1 Recommendation 34](#_Toc305069615)

[8 Special Protection Measures (Article 22, 30, 38, 39, 40, 37 (b)-(d) and 32-36) 34](#_Toc305069616)

[8.1 Legal Aid 35](#_Toc305069617)

[8.1.1Recommendation 36](#_Toc305069618)

[8.1.2 Recommendations 37](#_Toc305069619)

[References 38](#_Toc305069620)

# PART I

# 1. Introduction

1. This non government Parallel Report to the United Nations Committee on the Rights of the Child responds to the Cook Islands Government’s Initial State Report and Combined Second and Third Reports for the period 1997-2008.
2. The NGO Parallel report provides additional information on the work of NGOs with Government. The majority of NGOs in the Cook Islands were established because government agencies provision of services was inadequate or did not exist. Further the report provides contextual information in relation to implementation of the specific article. It highlights priority areas, including recommendations to Government for immediate attention to further its compliance with the CRC.
3. The report provides additional information on the Constitutional system, sources of the law, national and regional frameworks, regional and international agreements and cooperation. It also provides information extracted from both national and regional reports, including published research and studies on the country situation including statistical information to provide the committee on the rights of the child with the most up to date information in order to given an accurate picture of the situation of children in the country*[[1]](#footnote-1)*.
4. This report follows the thematic structure, based on the eight clusters of articles of the State Report, as recommended by the Convention on the Rights of the Child Committee and the NGO Group for the Convention on the Rights of the Child. However, the main focus of the report is on the Implementation Measures, Juvenile Justice, and Access to Justice, Child Abuse and Protective Measures, it also takes into account the inter-connectedness of the articles.
5. The Parallel Shadow Report has been by the Punanga Tauturu following consultations with stakeholders across a number of sectors, both non-government and government and includes input from children and young people themselves[[2]](#footnote-2).
6. The national NGO Consultation on the NGO Report to the Committee on the rights of the Child, was an opportunity for both non government and government participants, who have worked collaboratively together, to review both the State Report on the CRC and the Addendum and the draft NGO CRC Report. The participants were informed of the General Comments No. 5, No. 10 and No 13 to read in conjunction with the Convention on the Rights of the Child.
7. PTI would like to acknowledge the support of Titikaveka College, NukutereCollege, Tereora College and Rakeitoa for allowing consultations with students. Crown Law, the Ombudsman’s Office, the Ministry of Health, Statistics Office, Ministry of Education, Ministry of Justice, Ministry of Internal Affairs, Gender and Development Division, Creative Centre, Te Vaerua Habilitation and Rehabilitation Centre, C.I.s Family Welfare Centre and other individuals, parents, teachers and counsellors and other participants who participated in the national NGO consultation and contributed to the information in this report.

# Background

1. The Cook Islands acceded to the CRC on 6 June 1997, with three reservations. In acceding to the CRC the Cook Islands government made three reservations to Article 2, 10 and 37, as well as three declarations and a general declaration regarding Articles 12-16 on the non-direct effect of the Convention in the Cook Islands as follows:
2. **Article 2:** reserve the right not to apply the provisions of article 2 insofar as the provisions may relate the conferment of Cook Islands nationality, citizenship or permanent residency upon a child having regard to the Constitution and other legislation as may from time to time be in force in the Cook Islands; and declare that
3. **Article 2 (1**) does not necessarily imply the obligation of States automatically to guarantee foreigners the same rights as their nationals. The concept of non-discrimination on the basis of national origin should be understood as designed to rule out all arbitrary conduct but not differences in treatment base on objective and reasonable considerations, in accordance with the principles prevailing in democratic societies.
4. **General Declaration regarding Articles 12-16**: Implementation of the Convention in the Cook Islands cultural context. The Cook Islands found that Article 5, did not define the term “family”. In recognition that the Convention places great importance on culture and cultural values in respect of the rights of the child. Article 4, for example, refers to the child’s cultural life, Article 5 relates to respect for local customs and Article 30 deals with the enjoyment by a child of his/her own culture in community with others. The Cook Islands made the following general declaration: *“The Cook Islands considers that a child’s rights as defined in the Convention, in particular the rights defined in articles 12-16, are to be exercised with respect for parental authority, in accordance with Cook Islands customs and traditions regarding the place of the child within and outside the family”.*
5. **Article 37:** The Cook Islands accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is conserved by the responsible authorities to be feasible. The Cook Islands reserves the right not to apply Article 37 in so far as those provisions require children who are detained to be accommodated separately from adults.
   * On 25 March 2009, the Government of the Cook Islands informed the Secretary-General; the State agreed to a partial removal of the reservation to Article 37, with an enactment of an amendment to the Prevention of Juvenile Crime (Amendment) Act 2007 which requires the Superintendent of the prison to make arrangements as may be necessary to keep the child separate from adult inmates. Government is to be commended for the removal of this reservation.

# Executive Summary

1. It is 14 years since accession to the CRC and although the State’s Initial and Combined Report outlines a number of positive progress and change in the situation of children in the Cook Islands, there are still challenges in taking action towards translating the principles of the convention into policy, legislation and practice and including children in decision-making processes.
2. Prior to Accession, the Ministry of Foreign Affairs and Immigration (MFAI), in 1997, completed a comprehensive review of existing legislation to ensure that Cook Islands Law was in compliance with the provisions of the CRC and noted some of the laws were outdated. Legislative reform to harmonise the national laws with the Convention has not been a priority of Government
3. The passing of legislation in the Cook Islands is a slow process due to the infrequent sittings of parliament. Further country and regional reports have noted there is a lack of knowledge and awareness on human rights standards and the legal and moral obligations for compliance among members of parliament and government agencies.[[3]](#footnote-3). There is also shortage of experienced legislative drafters, and assistance has been sought from external agencies for technical assistance. Human Rights Education is mainly undertaken by NGOs.
4. The initial State Report on the CRC was completed in 2000 after consultations with both government agencies and non government organisations. NGOs were the main driving force in the awareness-raising and coordination of the national consultations with the wider community, in collaboration with government and donors. The State Report provides numerous examples of the government and NGO initiatives on the awareness raising, workshops and consultations that were undertaken, during this period.
5. However NGOs are concerned that the Initial CRC Draft Report completed in 2000, after such a concerted effort by all stakeholders, was left uncompleted until the recent review, where it was then incorporated into the combined 2nd and 3rd state party reports, including the Addendum and presented to cabinet for endorsement in 2008. During the period for the combined first and second report, a number NGOs raised their concerns at the lack of continuity of the earlier work and lack of wider consultation with NGOs, children and youth. The Government Report has not been widely circulated within its own Ministries. Since accession to the CRC very few children and parents are aware of the Convention.
6. There may have been a number of contributing factors for the slow progress, of the Cook Islands government taking over a decade to meet its reporting obligations for the CRC. The country has experienced a period of political instability, a number of coalition governments, resulting in the change of Ministers, Heads of Government Ministries and the loss of skilled workers and institutional memory. There were no effective institutional mechanisms, nor the budget allocation for sufficient financial and technical resources to progress the Convention.
7. This report and the recommendations it contains is to highlight NGO concerns and to urge Government to prioritise implementation of the CRC for Children are our future.

# Additional Information on the General Measures of Implementation

The information in this section is provided to give the Convention on the Rights Committee further information to understand the challenges that are currently being faced to progress the Convention on the Rights of the Child in the Cook Islands. It provides information on the constitutional framework, laws and relationship between the various mechanisms, agencies and development partners that have not been sufficiently covered in the initial state report and Addendum on the CRC.

## Constitutional System

The Cook Islands since 1965 has been a self-governing country in free association with New Zealand. Cook Islanders hold New Zealand citizenship and hold New Zealand passports. They have unrestricted access to reside, study, work and draw social benefits in New Zealand.

## Sources of Law

Cook Islands Law comes from a number of sources, the Constitution, Statutes, Common Law and Custom. Most of the Statutes are from the former administrations of New Zealand and Britain dating back to the early colonial administration period in the 1900s. A range of the laws have been repealed or replaced in New Zealand and Britain but remain in force in the Cook Islands.

## The Cook Islands Constitution

Parts I to IV covers the establishment and roles of Parliament, the Judiciary, including the appointment of Judges and Justices of the Peace, the appointment and role of the Queen’s Representative, electoral rights and provisions for protection from discrimination in civil and political rights and a constitutional guarantee of “*equality before the law and to protection of the law*.”

* The Head of State is Queen Elizabeth II, represented in the Cook Islands by an appointed Queens Representative and acts subject to the Constitution and on the advice of the Prime Minister and Cabinet.
* Parliament is the law making body. Executive Government lies with the Cabinet of ministers, all of who are elected members of Parliament. Cabinet signs accession to International Human Rights Instruments.
* The Judiciary comprises a Court of Appeal and a High Court, and lesser courts established by Acts of Parliament, responsible for civil, criminal and land title matters and the Children’s Court. The Judges of the High Court are appointed from New Zealand. The Justices of the Peace are locally appointed and do not have to have a legal background.

## Human Rights Provisions

The Constitution pre-dates a range of international human rights standards, including the CERD and CEDAW, although some amendments were made in 1981 to reflect aspects of these standards, the constitution is outdated and needs review**[[4]](#footnote-4)** to reflect societal change.

The Constitution Amendment Act 1980-1981; added human rights provisions to the Cook Islands Constitution. Article 64 (1) prohibits discrimination by reason of *race, national origin, colour, religion, opinion, belief, or sex* (with respect to the exercise *of)* the following fundamental human rights and freedoms:

1. The right to life, liberty, and security of person;
2. The right to equality before the law and the protection of the law
3. The right of the individual to own property and the right not to be deprived of it;
4. Freedom of thought, conscience, and religion;
5. Freedom of speech and expression; and
6. Freedom of peaceful assembly and association

## No Definition of Discrimination

There is no definition of discrimination in the Constitution, nor does the Constitution recognise the multiple forms of discrimination that are now internationally recognised, such as age, sexual orientation, and others. Protection from discrimination in employment is not covered by the Constitution[[5]](#footnote-5). However the COTONOU Agreement of which the Cook Islands is a party, refers to trade and labour standards and article 50 provides for some incorporation of these standards:

*The parties reaffirm their commitment to the internationally recognised core labour standards, as defined in relevant International Labour Organisation (ILO) Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of the worst forms of child labour, and non-discrimination in respect of employment.*

Due process and a fair trial are covered in Section 65.

|  |
| --- |
| **Comment**   * Section 64 (2) places limitations on each of these rights by: any enactment or rule of law in force for protecting the rights and freedoms of others or in the interests of public safety, order, or morals, the general welfare; or the security of the cook Islands. To this extent the statutory protections are not absolute until the limitations described are removed. * There are no provisions to incorporate international human rights law into domestic law. |

## The Statutes

The Statutes are mostly from the former administrations of New Zealand and Britain dating back to the early colonial administration period in the 1900s. A range of the statutes have been repealed or replaced in New Zealand and Britain but many remain in force in the Cook Islands.

Many of the laws affecting women and children are found in the Cook Islands Act 1915. These laws are outdated and although there have been some amendments to the Act; there is a need for law reform to modernise and to develop new laws and harmonise conflicting laws.

### Common Law

The Cook Islands Act 1915; Section 616; requires the courts to apply the rules of common law and equity, but does not stipulate that the decisions of the English courts be followed exclusively. The Court of Appeal of the Cook Islands generally follows New Zealand and English authorities.

### Custom

Custom is narrowly defined. The Cook Islands Act 1915 defines custom as *“the ancient custom and usages of the Natives of the Cook Islands,”* thus precluding the courts from recognising new or changed custom. Its legal significance is limited to interests in customary land.

# International Human Rights Law

The Cook Islands is a party to the following core international human rights instruments through New Zealand’s Accession to them namely:

* International Covenant on Civil and Political Rights (ICCPR) 1978
* International Covenant on Economic, Social, and Cultural rights (ICESCR)
* Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1985
* Convention on the Elimination of Racial Discrimination (CERD) 1966

The 2001 Joint Centenary Declaration of the Principles of the Relationship between New Zealand and the Cook Islands provides in Clause 4, that:

*Responsibility at international law rests with the Cook Islands in terms of its actions and the exercise of its international rights and fulfilment of its international obligations.*

# Other Conventions and Instruments

The Cook Islands has in its own right ratified the CEDAW and its Optional Protocol in 2006, the Convention on the rights of Persons with Disabilities and its optional protocol; the Rome Statute of the International Criminal Court (ICC); the Geneva Conventions and its optional protocols and a range of other Conventions and Declarations. Although it is reported in the CRC State report the Cook Islands via the Ministry of Police, has adopted the Stockholm Agenda for Action in 2003, the Police Department have no record or report of having done this.

## Reporting to the Civil and Political Rights Committee

In March 1985, the Minister of Foreign Affairs presented the Cook Islands’ initial report on the International Covenant on Civil and Political Rights to the United Nations (ICCPR). One of the concerns raised by the ICCPR Committee was the discriminatory provisions in the Cook Islands Religious Organisations Restrictions Act of 1975 which limits the introduction of new religions to the only four authorised by the Act. To date the Act has not been revoked or amended.

## First Report to the CEDAW Committee

The Cook Islands presented its first report to the CEDAW Committee in August 2007, and was commended for its withdrawal, of all reservations held upon accession, namely to article 11 (2) (b) on the provision of maternity leave; articles 2 (f) and 5(a) with regard to inheritance of chiefly titles; and in general as regards recruitment and service of women in the armed forces. The principal areas of concern to and recommendations from the Committee are also relevant to the implementation of the Convention on the Rights of the Child. The Committee’s concerns have been addressed under the relevant and corresponding Articles of the CRC in this report.

## Review of the Cook Islands Constitution and Legislation

The CEDAW committee commended the Cook Islands for commissioning, in 2005, a comprehensive review of the consistency of its legislation with the CEDAW, to identify areas in need of reform. It welcomed the establishment of a Law Reform Committee to carry out the reform process, which will include relevant line ministries and non-governmental representatives in consultation with the Crown Law Office, and appreciates the clear timeline for completion of the process*[[6]](#footnote-6)*.

Further in the CEDAW Report the priorities that have been identified by the government for reform are the laws relating to: safety and security (including reform of criminal laws on sexual offences), labour and employment protections, marriage and family life, equality and protection from discrimination, and protection of vulnerable women and girls, such as those with disabilities, migrant women and Outer Islands Women*[[7]](#footnote-7)*.

## Ombudsman’s Office

Under the Cook Islands Disability Act 2008, the Ombudsman’s jurisdiction was further extended to investigate complaints of the discrimination against people with disabilities. The Cook Islands is the first Pacific Island Country to develop a rights-based disability policy and Action Plan.

# National, Regional and International Frameworks, Cooperation and Assistance

## The Cook Islands National Sustainable Development Plan (NSDP)

The Cook Islands National Sustainable Development Plan (NSDP) sets out the national vision and goals; it is aligned to sector strategies, corporate plans and the budget. Its main focus is on economic growth and development. It is also closely aligned with regional plans, strategies and policies inspired by the Pacific Plan, the NZAID Pacific Strategy (2007-15) and the Cook Islands Joint Country Strategy, the Pacific Aid Effectiveness Principles, the MDGs and other regional and international development strategies.

As partners in development and recipients of aid, CSOs and NGOs National Action and Work plans are also expected to align with the NSDP, however there is a lack of recognition in how development goals and the MDGs links to human rights.

## The Pacific Plan

In October 2005, Pacific Island Forum leaders adopted the Pacific Plan of Action for strengthening Regional Cooperation and Integration (the Pacific Plan)[[8]](#footnote-8). The goal of the Pacific Plan is to develop a region “*respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values, and for its defence and promotion of human rights”.*

The link between the Pacific Plans strategic objectives and the need to protect and promote human rights is explicitly stated. Fourteen of the strategic objectives are directly connected to provisions contained in the principal international human rights treaties. Initiative 12.5 of the Pacific Plan, explicitly promotes the ratification and implementation of international human rights treaties.[[9]](#footnote-9)

## The Millennium Development Goals (MDGs)

The eight Millennium Development Goals (MDGs) are linked to the overall objectives of the Pacific Plan. The Cook Islands Government has made some progress in achieving the MDGs, however progress on gender equality and empowering women, has been slow and some indicators such as the proportion of seats held by women in parliament, will not be met by 2015[[10]](#footnote-10) despite the high level of education, women are still underrepresented in public office and all levels of decision making.

## The World Summit for Children

The 1990 World Summit for Children set several goals for children. They include indictors for reducing infant and child mortality and maternal mortality rates, reducing malnutrition among children under the age of five, and ensuring that all children have access to basic education, clean water and sanitation. The Cook Islands have met most of these goals[[11]](#footnote-11).

## Beijing Platform for Action

The Cook Islands has also participated in, and reported upon, progress in implementing the Beijing Platform for Action (BPFA, BPFA+5, BPFA,+15), the international policy framework for making progress for women and girls and the MDGs.

**NGO Comment**

* There is a lack of knowledge of Cook Islands decision makers on the Pacific Plan and how development goals are also human rights and intrinsically linked to human rights instruments.
* The NSDP does not use the CRC or CEDAW Framework to guide the development of the NSDP and human rights indicators for monitoring progress of the progressive realisation of the principles and provisions contained in the CRC or CEDAW. NGOs have had to lobby and advocate for the inclusion of their issues in the NSDP.

# PART II

# General Measures of Implementation (Articles 4, 42 and 44 (6)

The Convention has not been widely disseminated and implementation is slow due to a lack of political commitment, an insufficient budget allocation, and an absence of institutional mechanisms for coordinating and monitoring compliance. There is a lack of a comprehensive data collection and analysis, a children’s national action plan will need to be developed and a programme for awareness raising and training and the development and implementation of appropriate strategies to promote and implement the convention and achieve compliance with its provisions at all levels of government, including the Judiciary,

## Reservations

NGOs commend the Government for the partial removal of the reservations to Article 37.

|  |
| --- |
| Recommendations  * Government be urged to remove the remaining reservations. Government removed all the reservations to CEDAW in 2007. |

## Legislation and Implementation

The State report mentions the proposed *Sexual Offences Bill,* which is also mentioned in the CEDAW report; however, neither the Crown Law nor the Police have sighted the Bill.

Under the various articles in the Government Report, there is recognition that the laws need to be reviewed to better protect children and to ensure that at all times “*the best interests” of the child is taken into consideration.”*  However, there is no specific commitment from Government nor a resolution as to what priority measures will be taken.

Further the Report takes the view ...*currently not a problem in the Cook Islands and will be addressed when there is a problem[[12]](#footnote-12).* This is a very ad hoc way of implementing the Convention and a more holistic approach, by taking preventative measures to ensure compliance should be adopted, especially in light of the fact that legislative reform in the Cook Islands is a very slow process.

Parliament does not sit often enough to pass Bills into legislation, as the following figures from parliament show. Priority is given to legislative reform relating to the economy and economic development.

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Year | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
| No days | 11 | 23 | 23 | 12 | 38 | 11 | 33 | 28 | 22 |

## Law Reform Commission

The Law Reform Commission was established by the Law Commission Act in 2007, to carry out the law reform process, in areas in need of reform identified in the 2005 comprehensive review of Cook Islands legislation and its consistency with the CEDAW[[13]](#footnote-13). Currently the Law Commission is reviewing the Family Law Bill and the Crimes Act.

The Law Commission consists of two lawyers and the Chief Justice. There is active legislative reform occurring without the Law Commission and driven by the relevant Ministries and non government organisations. There is no NGO representative on the Law Commission.

|  |
| --- |
| Recommendation  * The Law Commission should develop an agreed systematic programme and a national strategy for law reform and to prioritise legislative review of the various specific targets and timelines and to ensure harmonisation with international human rights instruments such as CRC and CEDAW. * Government prioritise and allocate a sufficient annual budget to carry out their mandates, to include the resources for public consultations with all stakeholders. * The Law Commission is sufficiently resourced to amend and develop new legislation and to use Human Rights Law as a framework, i.e. CRC and CEDAW, ICESCR and other UN Human Rights Instruments. * This includes resources for public consultations with all stakeholders on the Family Law Bill and the review and Amendments to the Crimes Act and public reports on progress. |

## Cook Islands Human Rights Office

In November 2007 by way of CM (07) 694, Cabinet approved “the appointment of the [Ombudsman] to be in charge of the Cook Islands Human Rights Office” as a result of a recommendation made by a former Minister of Justice who attended the Pacific Regional Consultations for Members of Parliament on the Pacific Plan and Human Rights Conventions & Standards and their application to Domestic Law, Policy & Practice that was held in Auckland in 2007.

One of the findings of the regional meeting was that there was a lack of knowledge and understanding on human rights standards and compliance among Members of Parliament and government agencies.  Furthermore, Government was mindful of the obligation of Forum countries under the Pacific Plan to “establish human rights mechanisms to support the implementation of Forum Principles of Good Leadership and Accountability”, as well as “support for reporting and other requirements” under human rights conventions, covenants and agreements.

There was consideration by Government on whether to establish a “stand alone” Human Rights Office however decided that it would be more cost effective to “house” such an office within an existing one and decided that the Ombudsman Office would be the most suitable to incorporate this function given the Ombudsman’s independence as an officer of Parliament.  However, the Ombudsman was not provided with any terms of reference indicating how this would be done or allocated any extra resources to meet this obligation despite subsequent requests each year for modest resources.  As a result, the Ombudsman deferred this responsibility until FY 2011-12 following her discussion with the Budget Support Group.  The Ombudsman agreed to initiate the establishment of a Human Rights Office within the confines of its existing resources by firstly developing a 3-year strategic plan which will identify the role of such an Office and how it will fit into the existing Cook Islands Human Rights framework.  An immediate task is to ensure that Human Rights is recognized within the National Sustainable Development Plan 2011-2015 which is currently being reviewed.

|  |
| --- |
| Recommendation  * The Government prioritise the establishment of the National Human Rights Commission and provide a mandate, with guaranteed resources both financial and technical assistance to get the office up and functioning. * The National Human Rights Office as part of its mandate should develop a Human Rights, National Action Plan to identify positive measures for the future and to address human rights issues that impact on children and young people, women, people with disabilities migrant families and other vulnerable groups, with all stakeholders together with civil society and government agencies. * The National Human Rights Office should be sufficiently resourced to mount a national human rights education programme, to include awareness raising and capacity building with and among government agencies to foster understanding of the international human rights instruments and the linkages to economic and social development via the NSDP, Pacific Plan and the MDGs. |

## UN Guidelines and General Comments of the CRC Committee

The government has not kept abreast of the related international reports and standards, including the 13 General Comments of the CRC committee that should be read in conjunction with the Convention to further guide the development of national action plans and legislative reform. In particular the General Comment no. 5 (1978) and General Comment No. 10 on Juvenile Justice, including the Beijing Rules, the UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) and A World Fit for Children and the UN Secretary General’s report on Violence against Children.

The Human Rights Office could as part of its function gather and consolidate all the international human rights instruments and General Comments and Recommendations from the treaty bodies and disseminate to all government agencies, members of parliament, the legal fraternity, judiciary and civil society.

## Draft Legislation

### 1.6.1The Employment Relations Bill

This Bill has been delayed for over a decade, due to resistance from the Business Sector on the proposed maternity protections provisions. There is currently no protection for women in the private sector, whether in the form of paid maternity leave, preservation of employment during pregnancy or after birth.

### 1.6.2The Family Law Bill (“Bill”)

The “Bill” has been drafted with the assistance of UNDP. A third draft has been prepared. The Bill is comprehensive. It consolidates all the legislation concerning families, Separation, Divorce, Care of children, Child Support, Paternity, Adoption, Care and Protection and domestic Violence. It provides for mediation and promotes agreement on matters in dispute i.e. parenting plans and adoption.

It legalises de facto relationships but does not recognise same sex relationships. It provides for no fault divorce and a separation period of 12 months if there are children of the relationship.. It leaves relationship property disputes with the Matrimonial Property Act 1976 and does not repeal the Marriage Act but amends the age for consent and provides for informed consent to Marriage.

The care and protection of children is given legislative support with the setting up of a legal process for ensuring children are protected from abuse and neglect. It raises the age of a child to 18 years. It provides for Protection Orders and Police Safety Orders which can be used to protect victims of domestic violence immediately. The Bill also provides that the interests of the child are paramount, and that the views of the child must be taken into account. Decisions must be made in the child’s sense of time and where practicable the child must not be removed from their community. It also provides for family meetings to help resolve family matters and provides that the meeting is managed within legal parameters.

## The Crimes Act 1969

The Crimes Act is being reviewed with the assistance of the Australian Attorney-General’s office. That office has produced a policy document with recommendations for amendment or repeal or maintaining the current Crimes Act provisions. There are recommendations for the complete overhaul of the sexual offences provisions, raising the age of consent to 18 and providing for offences involving child pornography, computer crimes, domestic violence (prepared in consultation with the drafter of the Family Law Bill, people smuggling and trafficking and numerous other offences such as property offences, money laundering and other matters.

## Central Depository for Country Reports, Research and Studies

There is also no central depository for national, regional, and international reports on the outcomes and commitments made by country representatives neither at consultations, nor on research and studies on situation of women and children in the Cook Islands, for information sharing and exchange between and within agencies. The State report claims; the *Cook Islands signed on to the Stockholm Declaration and a Sexual Offences Bill is currently sitting with Crown Law,* the Police Department, response was that it is the role of Ministry of Foreign Affairs they cannot validate the claim. From further enquiries there is no *Sexual Offences Bill, sitting with Crown Law.*

## The non-enforceability of international human rights conventions in the Cook Islands

The Government Report states: there have been no known cases of a Cook Islands Court having rendered decisions involving treaties and their domestic applicability. In light of this, the Cook Islands made the following general declaration on the non-direct effect of the Convention in the Cook Islands. The Cook Islands declares that domestically the Convention does not apply directly. It establishes State obligations under international law that the Cook Islands fulfil in accordance with its national law, which conforms with the Convention.

In 1999, there was one case before the Cook Islands High Court where there was a reference to the ICCPR. A New Zealand Judge of the High Court of the Cook Islandshas applied the strict non-enforceability approach. In R v Smith the High Court held in response to the applicant’s reference to **the International Covenant on Civil and Political Rights[[14]](#footnote-14),** which New Zealand ratified on behalf of the Cook Islands in 1978 that it could not apply the convention because **“…that Covenant has not been enacted as part of the law of the Cook Islands and so has no legislative effect”.**

The outcome of this case further strengthens the need for the Cook Islands Government to develop a domestic human rights regime to implement its human rights obligations under international law.

|  |
| --- |
| Recommendations  * There needs to be a commitment from Government to prioritise the development of a national action plan for legislative reform with clear timelines and an annual budget allocation to achieve compliance with the CRC and CEDAW. * The CRC should be used as a framework to harmonise all national laws with the principles contained in the CRC and other UN Human Rights Instruments. * Provide clear directives and mandates, with a budgetary allocation to the various committees and Commissions that have been established to enable them to operate effectively and efficiently. * Government to prioritise the provision for the enactment of international human rights instruments into domestic law. |

## Measures taken to make the principles and provisions of the Convention widely known

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

The State Report highlights the lack of an effective national mechanism and commitment to implementing the principles of the CRC namely:

*An ineffective National Advisory Body for Child Development formed in 1997, to be re-established*

From the NGO Consultation with both government and non government participants and consultations with students, from three secondary schools and one alternative school, it was found that knowledge about the Convention is still deficient among children and youth, parents, teachers and caregivers and other government stakeholders and the report has not been widely available.

Students from all schools had not heard of the Convention on the Rights of the Child. Only 11 Students knew laws were made by Parliament. The rest of the students did not know the role of parliament, the sources of law and thought the Members of Parliaments job was to look after the village. They did not know what the MPs role was in Parliament.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| The outcome of Consultations with 106 school children in 3 secondary schools and one alternative school was that none of the children had heard of the Convention on the Rights of the Child. | | | | | | | |
| *Students consulted on the Convention on the Rights of the Child, Sources of the Law, the Laws,Law Making processes and procedures in the Cook Islands- September 2010* | | | | | | | |
| *Age* | *11* | *12* | *13* | *14* | *15* | *16* | *17* |
| *Male* | *2* | *5* | *10* | *22* | *13* | *14* | *3* |
| *Female* | *1* | *6* | *15* | *8* | *24* | *7* | *1* |
| *Total (106)* | *3* | *11* | *25* | *30* | *37* | *21* | *4* |

|  |
| --- |
| Recommendations  * The Government, in partnership with children and youth, develop and implement strategies to ensure children and youth know about the Convention. * The Government should establish a Youth Parliament as a platform to mentor and encourage children and youth to develop leadership skills and to participate in the decision-making processes on decisions affecting their lives. * The MINTAFF should be encouraged to develop a data-base on the number and type of youth and children’s organisation in the Cook Islands, to include membership of the number of 18 year olds and under (disaggregated data). |

## Coordination

### The Ministry of Internal Affairs and Social Services (MINTAFF),

MINTAFF is responsible for Social Welfare and Women’s Affairs, Children and Family Services Division (CFSD), Youth and Sport, People with Disabilities and Non government Organisations (NGOs).

### The Children and Family Services Division (CFSD)

The CFSD is responsible for all juveniles under the age of 16, most are referred from the Children’s Court, the Juvenile Crime’s Prevention Committee (JCPC) or the Police. The CFSD is currently focusing on developing preventative programmes and working on strengthening partnerships and coordination between the various agencies, families, the community and working closely with the school counsellors, the police and the Juvenile Prevention Committee. The development of a Children’s National Plan of Action which strengthen and support the development of programmes and strategies related to Children and Youth at risk consolidated under one plan. Statistical data from police, CFSD and probation JCPC data currently do not align, so it is difficult to assess the number of children and youth at risk.

### The National Advisory Body for Child Development (NABCD)

The Body was formed in 1997 and moved to MINTAFF in 2000. The State Report says, it is under consideration to re-establish. It was not a regulatory body and there was no clear mandate as to its continuing roles and responsibilities with regards to the implementation of the Convention

MINTAFF does not have sufficient allocation of budget, material resources and personnel for the establishment of the CRC body, the development of a national plan of action for the promotion; implementation and monitoring of CRC.

## National Plan of Action

The MINTAFF 2008-strategic Framework does not specifically mention the CRC nor has the CRC been used as a framework and guide in the development of the plan. There is no specific Children’s National Policy or Plan of Action. However, the MINTAFF Strategic Plan links to the National Sustainable Development Plan (NSDP) and links to the National Council of Women (NCW) strategic plan.

## National Policy for Youth (15-34 years)

The Policy was developed in 2000 with financial assistance from the Commonwealth Secretariat and Secretariat of the Pacific Community (SPC). The purpose of the Youth Policy is to coordinate and facilitate a multi sectoral approach towards youth development issues and develop appropriate strategies to meet their needs. The plan is linked to the Commonwealth Youth programme. One of the concerns about this policy, is that normally the ages of the Youth running the programmes are over 20years. Disaggregated data on the age of participants in the development of the Youth policy and participants in their activities should be undertaken, to ensure representation of 18 years and under.

## National Sustainable Development Plan (NSDP) and Regional Cooperation

The Cook Islands National Sustainable Development Plan (NSDP) sets out the national vision and goals; it is aligned to sector strategies, corporate plans and the budget. It is also closely aligned with regional plans, strategies and policies inspired by the Pacific Plan, the NZAID Pacific Strategy (2007-15) and the Cook Islands Joint Country Strategy, the Pacific Aid Effectiveness Principles, the MDGs and other regional and international development strategies.

As partners in development and recipients of aid, CSOs and NGOs national Action and Work plans are also expected to align with the NSDP.

The link between the Pacific Plans strategic objectives and the need to protect and promote human rights is explicitly stated. Fourteen of the strategic objectives are directly connected to provisions contained in the principal international human rights treaties. Initiative 12.5 of the Pacific Plan, explicitly promotes the ratification and implementation of international human rights treaties.[[15]](#footnote-15)

The eight Millennium Development Goals (MDGs) are linked to the overall objectives of the Pacific Plan. The Cook Islands Government has made some progress in achieving the MDGs, however progress on gender equality and empowering women, has been slow and some indicators such as the proportion of seats held by women in parliament, will not be met by 2015[[16]](#footnote-16) despite the high level of education, women are still underrepresented in public office and all levels of decision making

## Dissemination of Information and Awareness raising

There is a lack of coordination between all the agencies and NGOs working on children and youth on the type of activities that are targeted at children and youth. There is a lack of awareness on human rights standards and government’s obligation to comply with human rights instruments. There is a lack of knowledge and understanding on the linkages between Human Rights and Development, Human Rights and the MDGs and Human Rights and the Pacific Plan.

Most of the awareness raising and training is undertaken by NGOs subject to financial and human resources and materials, with the support of intergovernmental organisations and development partners.

|  |
| --- |
| Recommendations  1. The government to develop a monitoring and evaluation framework to make accountable its own agencies and agents to strengthen national systems for the collection of statistical data (aggregated and disaggregated data on children and youth) for planning, reporting, monitoring and evaluation compliance with the CRC and other related UN human rights instruments. Further, to develop a monitoring and evaluation framework to ensure the activities they are required to implement are being carried out. 2. To develop a data-base on the number and type of Youth and Children’s Organisations in the Cook Islands, to include membership (aggregated and disaggregated data). 3. The Government prioritise the development and implementation of a National Agenda and National Action Plan for Children, with specific goals, strategies and guaranteed resources, using the CRC as a framework and ensure that they are aligned with the National Sustainable Development Plan (NSDP) and the Strategies of the various sectors of government: (Education, Health, Welfare, Justice, Police, including the newly established Law Commission and Human Rights Commission). 4. The Government allocate a specific Children’s Budget to the Ministry of Internal Affairs, Children and Family Welfare Division and the required human and material resources to ensure the development of the Children’s National Plan of Action, the establishment of the National Committee for Children, the development of a mandate, a comprehensive disaggregated data-base and monitoring mechanisms, awareness raising, capacity development and training on the CRC. 5. Capacity building and training to improve and strengthen multi-sector, sector wide collaboration at all levels of government agencies and with civil society organisations, including NGOs to use the CRC, CEDAW and other human rights instruments as a tool to inform their work, foster understanding of and the implementation of the Conventions. 6. To create synergies between the different agencies, for information exchange and sharing, to improve and strengthen coordination and cooperation through a consultation process to develop the Children’s national plan of action and to consolidate information, coordinate and align activities and identify the materials and information on the Convention that is currently available. |

## Non Government Organisations (NGOs)

The MINTAFF is the Ministry responsible for NGOs, in the Cook Islands. However, there is no mandate, policy or data base. There is an estimated 141 registered NGOs in the Cook Islands, with the Ministry of Justice. It was difficult to obtain information on the number of children and youth organisations in the Cook Islands.

Non – government organisations are recognised by Government and development agencies as key partners in development. In the Cook Islands they play a pivotal role in the provision of services in the health and education sectors, where government is not providing services for the most vulnerable in the community, women, children, youth and people with disabilities namely; violence against women and children counselling, mental health services, reproductive health services and care and in education, includingother areas where there is a gap in the government services.

A number of NGOs have entered into a Memorandum of Understanding (MoU) with Government ministries and work collaboratively on sector based initiatives. Ministries either provide financial or technical assistance and sometimes both to a number of NGO programmes and services.

|  |
| --- |
| Comment  * There is concern by NGOs that Government has a history of establishing Committees as outlined in the State Report, however many are inactive. There is a lack of qualified, knowledgeable and committed people, resources and technical support to carry out their roles and mandates. Many also lack monitoring and evaluation frameworks to ensure that the activities they are required to implement are being carried out. |

## Regional Consultations

In 2007, the first *Pacific Regional Consultation for Members of Parliament on the Pacific Plan[[17]](#footnote-17), Human Rights Conventions & Standards & their Application to Domestic Law, Policy & Practice* was held in Auckland, New Zealand. There was a total of twenty-five Pacific Members of Parliament from 11 Pacific Island countries, including the Cook Islands. It is intended to be an annual consultation for Members of Parliament.

The meeting identified that there is very little knowledge about the Pacific Plan and that the promotion, protection and realisation of human rights is connected to all Strategic Objectives in the Pacific Plan. It was important for legislators to have some knowledge of human rights issues when discharging their functions in lawmaking, oversight; and representation. The state has an obligation to respect, protect, promote and fulfil the human rights of the people.

## International Aid –

The focus of International Aid[[18]](#footnote-18) programmes to the Cook Islands is sustainable economic and social development and one of the priority themes include: “*building safe and secure communities”.* Seven priority areas were identified for support to Civil Society organisations; domestic violence; gender and development; reproductive health; mental health; young people (those aged 15-24); elderly people and People with Disabilities. Cross cutting issues included Human Rights.

## Country Reports

A number of intergovernmental, regional organisations and Aid development partners have assisted the government in producing reports and studies on development trends in the country and how these affect the well-being of women and children.

These reports provide a useful reference for national bodies, the public and other development partners to guide programmes and to assist in monitoring and evaluating progress of development outcomes. The reports also identify barriers and challenges in achieving the goals. However, these reports are rarely disseminated and read by ministry staff.

Unfortunately there is no central depository for country reports and no mechanism for the country reports to be reviewed and the information consolidated into a central data-base easily accessible to both government and non government organisations, individuals and civil society organisations in general.

The Reports are useful for updating work plans and Action plans; research on sector based issues or preparing country reports to meet their reporting obligations to international and regional agreements. In the preparation of this report was very difficult to access information and statistical data from the Ministry of Justice (Criminal Division) and from the Police Department statistical division. The Statistics Department, the Ministry of Education and Ministry of Health are very responsive to requests for statistical data and information.

# 2. Definition of the Child (Article 1)

The provisions of the Cook Islands legislation prescribe various ages for children depending on the matter involved. Some of these are New Zealand laws that applied to the Cook Islands prior to self-government, but are still in force today. In general, the upper age limit for a child, defined by the various laws in the Cook Islands is sixteen years. There is concern amongst the community on the age of criminal responsibility, in light of the level of aggravated assaults and sexual offences by children under 16.

The draft Family Law Bill raises the age of the Child to 18. The draft Amendments to the Crimes Act 1969 raises the age of the child to 18.

|  |
| --- |
| Recommendation:  * Government to standardise the age of the child throughout policies and legislation and to use the definition as defined in the Convention. |

# General Principles of the Convention (Article 2, 3, 12)

## Non Discrimination (Article 2)

There is no provision in the Constitution prohibiting discrimination on the grounds of “age”, or the other multiple forms of discrimination identified in international human rights instruments. Children are discriminated against in various statutory provisions. The Cook Islands Protection of Children’s Ordinance Act 1954 regarding action for neglect, discriminates between a boy child (14 years) and a girl child (16 years)[[19]](#footnote-19) The Crimes Act prohibits assault by a female against a boy child, but not against a girl child. Discrimination against adoptive parents – a European couple may adopt a Cook Island Child; however, Cook Island parents are prohibited from adopting a European child.

***The Concluding Comments from the CEDAW Committee states:***

*While noting that article 64 (1) (b) of the Constitution of the Cook Islands guarantees equality before the law without discrimination on the grounds of sex, the Committee is concerned that neither the Constitution nor other appropriate legislation embody the principle of equality between women and men, nor contain a definition of discrimination against women, both direct and indirect and extending to acts of both public and private actors.*

|  |
| --- |
| Recommendation  * The Government incorporate into the Constitution and other appropriate legislation, the principle of equality between women and men, girls and boys and a definition of discrimination. * There be effective legislation to enforce the prohibition of discrimination. |

## Best interests of the Child (Article 3)

The Courts in the Cook Islands take the “best interest” of the child into consideration when making decisions with regards to family law matters. Further, the Police, the Children and Family Services Division have also indicated that the principle of the Convention in terms of the “Best interests” of the child informs their work.

The Juvenile Crime Prevention Committee (JCPC), have been identified in the Government Report as being ineffective. However, in the area of Juvenile Justice, there are problems in the coordination between agencies. One of the problems that have been identified is when a child or young person is apprehended by the police, it has been difficult to get a sitting of the JCPC, because members have not been available. An amendment was made to the Act to address this problem. Another problem that has been identified is the weakening of the extended family unit, working parents and the responsibilities of parents, guardians and caregivers, who will not take responsibility for the actions of their children and are reluctant to participate in the family group meetings.

Children who are in the care of other family or community members often have no financial support and there is no financial support available to the caregivers and their families taking care of children at risk.

|  |
| --- |
| Recommendation:  * There needs to be a review of the JCPC to see how efficient and effective they are in addressing the concerns of children, young people and their families. * The Welfare Division needs to extend the benefits to assist caregivers and children at risk and victims of all forms of abuse. |

## Respect for the Views of the Child (Article 12)

In the Cook Islands, the traditional practice has been that children do not question their parents or elders as it is considered to be disrespectful. This practice is slowly changing. However, children are still noticeably absent from decision-making processes and are not given the opportunity to express their views or give their opinion on issues that may affect them.

One of the teachers in response to concerns about children’s lack of knowledge about civics education had this to say: “*Papa puts the food on the table, a roof over their heads, clothes on their back. They’re going to follow who papa votes for.”*

There are no mechanisms or forums to enable children to raise issues of national concern and although there are student councils and student representatives at schools, response from students that the final selection is by the teachers. The student representatives seem to have been to monitor behaviour, dress, hair and mobile phones.

The three secondary schools on the island have student councils, comprising of students elected by the students. Students from the three schools indicated that in practice the final selection of the representatives was by the teachers. Most students did not know how to use the counsellors to address issues and three of the counsellors from one school were not sure what their roles were, there was no support to assist them in their roles and did not have training or guidelines to represent the views and interests of students to be effective. (See also Education Articles 28 and 29)

### What do the Children say:

Adults are not interested in our views or the views of children.

|  |
| --- |
| Recommendation  * Government take steps to ensure the voice of children and youth are taken into consideration in decision making processes. * Government support and provide the resources for the establishment of an annual youth parliament to build leadership capacity and involve children and youth in decision-making processes. |

# 4. Civil rights (Articles 7,8,13-17 and 37 (a)

## Corporal Punishment

There is to be an Amendment to the Education Act to prohibit Corporal Punishment in schools. The Bill is currently before Crown Law. Schools have been notified there is a new Bill Abolishing Corporal Punishment and prior to the Bill being passed into legislation; Corporal Punishment is now abolished in Schools.

In the new Bill that is currently with Crown Law corporal punishment becomes illegal. The wording from the new Bill is:

* A person who is at an educational institution must not:
* Verbally abuse any student who is enrolled at or attending the educational institution
* Use force by way of correction or punishment, against any student who is enrolled at or attending the educational institution.

## What did the Children have to say:

One third of the students agreed that corporal punishment should be abolished in schools. The majority of students felt it was a more effective deterrent than detention or withdrawal of privileges. The majority of children did not support Corporal Punishment being abolished in the family and throughout the country. “*Corporal punishment is okay, how else children are going to learn. Children belong to their parents so they can decide how to treat them”.*

Students have reported that there is what they consider to be bullying and inappropriate remarks by a couple of teachers at two of the schools. “*They’re mean and pick on you because they don’t like you or make remarks like, ‘you’re too fat you need to lose weight.”* There is also bullying and harassment by students – peer pressure to smoke and drink.

It appears that there are no programmes on parenting and non violent forms of disciplining children and youth.

## Access to Appropriate Information

Children should be provided with information on the Convention on the Rights of the Child and other human rights and civics information to assist and inform them of their rights and obligations of government to provide them with the basic necessities in life to help in their development and to prepare them for decision-making processes.

|  |
| --- |
| 4.4 Recommendations  * There needs to be more programmes and awareness raising on non-violent forms of discipline and child rearing. * Politicians, government agencies and people working with children need to familiarise themselves with the UN Study on violence against children and to use as a guide to inform their work. |

# Family Environment and Alternative Care (5, 18, 9-11; 19-21-25; 27;39)

The Cook Islands Protection of Children Ordinance 1954 gives explicit recognition to Cook Islands custom whereby parents, extended family members and community have or may have certain rights and responsibilities to provide direction and guidance to children. One of the problems identified by agencies is the lack of responsibility of parents in addressing and accepting responsibility of the actions of their children’s anti-social behaviour. Few parents take an interest in attending parent teacher meetings. Some of the contributing factors include the weakening of the extended family unit, the passing on of culture and genealogical connects to family and land, as both parents working grandparents are working . Migrant workers are now the main caregivers of working parents, and children are learning the culture and language of their caregiver. There are no formal government supported day care centres or crèches for children under the age of 2 of working parents. There is no school holiday programmes or after care facilities.

## Protection from Violence, Abuse, Neglect and Maltreatment (Article 19)

The special needs of children are recognised in the legal system and the interests of the child are paramount. However, for serious cases of neglect or abuse, the Crimes Act 1969 provides some protection to children, but the penalties are small and rarely imposed. Recommendations have been made to repeal the provisions of the Protection of Children Ordinance 1954, however no progress has been made due to insufficient resources and other the government priorities

There is concern about the large number of children who suffer some degree of neglect, often left alone at home while their parents work, play sport, housie and pursue other interests. The main responsibility for the welfare of a child rests with parents or parent of the child/children. Corporal punishment is an acceptable form of punishment in many Cook Islands families.

A study[[20]](#footnote-20) undertaken in 2007, on the Commercial Sexual Exploitation of Children and Child Abuse in the Cook Islands and Violence against the Girl Child found:

The perpetrators of violence and sexual assault against children are often close male relatives or friends of the family. Parents and relatives do not report the matter to the police because of the shame and stigma that it will bring on the family.

Health workers, parents and teachers often talk about teenage pregnancies as being the outcome of sexual experimentation by young teenagers, but reports to the PTI have shown they often involve older men and situations of abuse, rape and incest.

Children do not report the matter to the police or their mother, because the mother in the majority of cases refuses to believe the daughter or the daughter is blamed for the sexual assault. The daughter is more than likely to get a beating from the mother. Another reason is the main income earner in families is the father and a custodial sentence would mean a loss of income to the family.

It is difficult to assess the extent of the problem because of the blanket of silence around this issue and the lack of information. More research needs to be undertaken.

The special needs of children are recognised in the legal system and the interests of the child are paramount. However, for serious cases of neglect or abuse, the Crimes Act 1969 provides some protection to children, but the penalties are small and rarely imposed. Recommendations have been made to repeal the provisions of the Protection of Children Ordinance 1954, however no progress has been made due to insufficient resources and other the government priorities. [The Crimes Act 1969 is currently being reviewed for Amendment and provisions for the protection of children have been included in the draft Family Law Bill.]

A majority of sexual abuse of children are carried out by adults who are tried in the Hight court. There is concern surrounding the length of time in the laying of the complaint to prosecution process. In a number of cases may take up to 2 years. A number of reasons have been given for the delay ranging from lack of Judges sitting, investigation period and also the lack of legal counsel for the defendent. During this time the victim is most likely being pressured to drop the complaint. The trial itself provides a deterrent as the victim is likely to be further victimised as a process of the judicial system.

## Alternative Care for Children

When a child has been abused, it has been very difficult to find a placement. The warrant authorizes any person to receive and hold such a child until the complaint has been disposed of. (usually with a family member, or member of a church group) – stipulate who child will go with and measures for checking the safety of the child in alternative care. However, with the weakening of the extended family it is becoming more difficult to find a family member to provide support for a child. Further, the coordination of services needs to be improved between police, the JCPC, the Children and family Services Division, Health authorities and PTI.

There are no government funded day care centres or creches for children under 2years old and under for working parents, who often have multiple jobs. Government should consider providing a subsidy to assist working parents or providing day care centres for working parents.

## The Cook Islands Women’s counselling Centre, Punanga Tauturu (PTI)

The PTI, has been at the forefront of addressing Violence against Women and Children and Women’s Human Rights. One of the objectives of the organisation is to conduct research and disseminate information and raise awareness on human rights instruments and to lobby for law reform. The Government report states that PTI was instrumental in the development of the Family Law Bill. They have for a number of years worked on a number of collaborative initiatives with the Cook Islands Police, the MINTAFF and other agencies. They have a memorandum of understanding (MOU) with the Cook Islands police on collaborative initiatives on Domestic Violence. NZAID has funded the Domestic Violence Programme and Programme for People with Disabilities in the Cook Islands for a number of years.

## The Cook Islands Police

The Cook Islands Police, supported by development partners, set up the Domestic Violence Unit in 1995 in response to the incidence of domestic violence in the country. Over the years the police have progressively conducted up-skilling of the Community Policing Unit to deal with gender based violence, with support from the New Zealand police. The Cook Islands Police, policies, practices and procedures in dealing with Domestic Violence also extends to abuse and sexual abuse of children and adolescents. One of the major obstacles for the low level of reporting abuse to the police is the close relationships in small communities. The problem is hidden because of the shame, the stigma and the fear of the perpetrator of the violence getting a custodial sentence, especially if the person is the main income earner in the family.

In 2005 the Cook Islands Police, became part of the Pacific Prevention of Domestic Violence Programme (PPDVP), a five year programme funded by the NZAID. The overall goal of the PPDVP is ‘*a safer Pacific free from domestic violence’*. A safe and secure Pacific is also in line with New Zealand’s foreign policy objectives evidenced by the Pacific Security Fund. One of the major achievements of the programme was the establishment of a domestic violence data-base, which has been extended beyond domestic violence. However, this is still being developed; it was difficult to access disaggregated data and information for this report. The police have also identified the laws, policies and practices that need to be reviewed and amended.

## Baseline reviews on domestic violence – data collection

Two baseline review updates have been carried in the Cook Islands on Domestic Violence. The aim of the first review was to gather baseline data and to engage agencies and communities in reflection on domestic violence. The second review was to ascertain the current state of data available in each country, the extent of domestic violence and people’s responses to it and agencies and communities views of domestic violence, particularly how things had changed since the first baseline reviews. However, these reports are not circulated and not everyone knows the results of the findings. The data-base is still work in progress.

## The Pacific Prevention of Domestic Violence Programme

The Pacific Prevention of Domestic Violence Programme is an initiative of the New Zealand Aid Programme under the international development Group of Ministry of Foreign Affairs and Trade New Zealand Police (NZPOL) and the Pacific Islands Chiefs of Police (PICP). The programme builds on from earlier NZAID and NZPOL support for domestic violence prevention in the Pacific. It is an important component of the regional effort to address Sexual and Gender Based violence, which includes domestic violence and family violence. The PPDVP also complements other bilateral and regional policing programmes and regional law & justice programmes[[21]](#footnote-21).

### 5.6.1 What the students have to say

Students have indicated that; there should be more community services like Community policing to support children and families.

|  |
| --- |
| Recommendations  * There needs to be a concerted effort, with partners for a multi-sector and sector wide approach. To include; the GADD, health, education, social services, Crown Law, Justice, the Police, CW, NGOs and other key groups for a more coordinated and effective response to end violence against women and violence against children to achieve development goals. * Government to develop a National Plan of Action for Violence against Women and Violence against Children as recommended in the UN Secretary Report on both issues. * Government establish a sector-wide national system for the consolidation of data collection, analysis and dissemination, and research agenda on the number of cases and the extent of violence, sexual abuse, neglect, maltreatment on children within the family, schools, institutional care and other care; * The Government develop a national strategy to prevent and address all forms of violence against children and introduce a national legal ban on all forms of violence against children in all settings. * The Government to take measures to ensure agencies develop programmes for public education on non violent parenting, the provision of adequate support services for families with children. * The Respecting the participation rights and legal representation needs of children and young people; A prioritising of investigations of complaints and prosecutions of complaints made by Women and children in relation to sexual crimes and court process be expedited to ensure reduced stress and harm to the complainants |

## Raising the age of Marriage

In the CEDAW concluding Comments to the Cook Islands the committee recommended raising the age of marriage for women and children to 18 years. In the Marriage Act 1973, the legal minimum age of consent for marriage is 16 years, but can be younger with the consent of a parent or guardian.

# Basic Health and Welfare

### 6.1 Health and Access to Health-

NGOs play a pivotal role in the provision of health care and health services and receive funding from regional and international donors to achieving progressively full realisation of the rights recognised in meeting international commitments in the Pacific Plan, Beijing Platform for Action, CRC and CEDAW.

A number of NGOs work in partnership and collaboration with the Ministry of Health, the Ministry of Education and the Ministry of Internal Affairs, Family Welfare Division and Disability office. Some NGOs have MoU with Ministries, for technical assistance and financial assistance.

The health facilities in the Cook Islands range from public Health (inclusive of primary care) to secondary care services. The services are provided by private and publicly funded providers.

### 6.2 The Cook Islands Family Welfare Association

(Incorporated) – A Member of the International Planned Parenthood Federation (IPPF), Malaysia. Works closely with the Ministry of Health and receives technical support for community health programmes, including sexual and reproductive health education, planned parenthood programmes.

### 6.3 Sexual and Reproductive Health Education

The high level of teenage pregnancies highlights the need to provide more information, education and services to young men and women. Consideration should be given to introducing Sexual and Reproductive Health Education in schools. However, the programme needs to take a more holistic approach and deal with, relationship counselling, protection against self-harm, and relationships and the law regarding underage sex. The majority of youth suicides are as a result of a relationship issue, even between youth and parents.

The Cook Islands Act 1969 is quite explicit on sexual intercourse or indecency with a girl under the age of 12, or a girl between 12 and 15 carries a heavy term of imprisonment, and that the girl has consented is not defence, nor that the person charged believed the girl was over the age of 12 or 15 as the case may be.

However, it is against the law to give contraceptives to students under the age of 16. Currently the Ministry of Health is giving students in schools between the ages of 13-15 tablets to treat the STI, Chlamydia. A number of parents raised their concerns during interviews in preparation for this report. There were no statistical data available for the number of STIs in this age group. There was insufficient information handed out on the type of medication, whether it was preventative or curative and the side effects, a majority of the children who took the tablet became ill and were sent home.

### 6.4 What the students said

The students in one of the schools reported they were “forced” to take the tablet even though their parents had not signed the consent form, as well as students who did not have a consent form.

A large number of parents thought it was inappropriate to give it to such a young age group, many of whom are not sexually active. There needs to be more innovative measures in the awareness raising, with a focus on counselling on healthy relationships. The number of youth suicides has been as a result of a relationship problem. The issues are all interrelated.

In 2003-2004, the ante-natal clinic dealt with eight pregnancies to girls aged 16 to girls aged 16 or less; one 14 year old; four 15 year olds; and three 16 year olds. Give girls were from Rarotonga and three from outer islands. During the same period there were, three were five pregnancies to girls aged 15 or less on another island, none of whom were seen at the Rarotonga Clinic.

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Number of Teenage Pregnancies by Age Group | | | | | | | | | | | | |
| Year | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |  |
| 15 | 1 | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 0 |  |
| 15-19 | 34 | 38 | 41 | 35 | 38 | 44 | 43 | 37 | 35 | 53 | 31 |  |
| Ministry of Health 2010 | | | | | | | | | | | | |

### 6.5 Breastfeeding

The MOH has a breastfeeding policy (and within that is a provision that they do not advertise or promote or accept samples of BM substitutes) the MOH are still working towards being baby friendly – policy is enforced (ie not bottle allowed in maternity ward) an issue is nurses keep changing and identifying someone to drive it.

In terms of infants the MOH encourage and promotes exclusive breastfeeding for 6 months and introduction (timely) of appropriate foods as well they encourage breastfeeding for up to two years and try to celebrate this every year in the first week of August (pending funds).

The draft Maternity Leave Provisions within the Private Sector, for inclusion in the Employment Relations Bill includes provisions for Breastfeeding.

The Rarotongan Hospital in 2008-2009, had a crèche for working mothers at the hospital, it also enabled mothers to breastfeed their babies up to one year. The crèche has now closed as a result of financial constraints. Government should put in place a policy that enables mothers to breastfeed their babies for the first year. There is no support within government ministries for working mothers, who breast feed their infants. Young mothers are told “breast is best” and encouraged to breastfeed however they are then told by their Heads of Ministry, who is often a male, that it would be unfair to the other women in the office if they were given time off. It makes it very difficult for young working mothers, because they are not given the support to breastfeed or the facilities for childcare of children under 2.

|  |
| --- |
| 6.5.1 Recommendations  * The Government develop a policy to make provision for working mothers to take time off work to breastfeed their babies, not to penalise them. * The Education and Health Ministries to review inter-sectoral strategies to address sexual and reproductive health and relationship education. There are currently no linkages to addressing the teenage pregnancy, STIs, family and personal relationships counselling and the law relating to underage sexual practices. * Priority attention should be given to education programmes on mental health, self-harm and suicide prevention to address the problem of youth suicide. * There is ongoing support for school based counselling services. * Children should be more involved in decision-making processes in the assessment and development of appropriate strategies on matters affecting their sexual and reproductive health care. |

## Non-communicable Diseases

Non-communicable diseases (NCDs) such as obesity are a major concern among young children, attributed to junk food, sweet drinks and lack of exercise. Another factor mentioned was one of over indulgent grandparents giving their children the wrong types of food. The MOH for school children carry out physical assessment every 2-3 years of all school children on Rarotonga and also do this when the opportunity arises to visit outer islands. They also work with the MOE to implement School Healthy Food Policy (both secondary and primary level) and also with the Health and Physical wellbeing curriculum at primary level. The challenge has been to encourage parents not to provide their children with junk food and fizzy drinks for school lunches. However this has been a problem with overindulgent grandparents.

## People with Disabilities – including Children

The Cook Islands Government was one of the first governments in the Pacific to develop a National Policy on Disability using the Biwako Millennium Framework for Action towards an Inclusive, Barrier-free and Rights based Society for All People in Asia and the Pacific. The policy consultation process commenced around 2001 and was completed in 2003 when the Government endorsed the policy, The National Policy on Disability and Action Plan 2003-2008.

The Cook Islands signed the Convention on People with Disabilities in 2009 as a result of active lobbying by NGOs. The Cook Islands National Disability programme should be used as a model to replicate how the National Policy and Action plan was developed using the Biwako Framework and the Convention on People with disabilities and was aligned with international and regional instruments.

The People with Disability programme should be used as a model that other programmes should replicate. The NSDP, the Disability National Workplan, NGO workplans, are aligned and the Regional Frameworks and the CPWD have been used as frameworks to develop their plans of action and to monitor and evaluate progress[[22]](#footnote-22).

## The Te Vaerua Community Rehabilitation Centre (the Centre)

The Centre was established with the aim to provide a community rehabilitation unit within the Cook Islands using a multi-disciplinary approach to cater for the needs of persons with disabilities, their caregivers and families and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs in partnership and collaboration with service providers, caregivers and other stakeholders at different sectors and at all levels. There is a shortage of skilled workers, physiotherapists, occupational therapist and speech therapists. They source funds to bring in external health professionals and work in partnership with the Ministry of Health and Ministry of Internal Affairs, the Creative Centre and other organisations. They are dependent on funds from the Ministry of Health and MINTAF for technical assistance, including development funds and community fundraising initiatives.

The Centre also advocates promoting and protecting the rights of people with disabilities in accordance with the Biwako Millennium Framework of Action and the United Nations Convention on the Rights of Persons with Disabilities and its optional protocol. Te Vaerua’s achievements have been in its advocacy to lobby government to sign the United Nations Convention on the Rights of People with Disabilities and its optional protocol, as a registered Disabilities People organisation (DPO) it aims to build the capacity of people with disabilities and their families to run the organisation, and in collaboration with the MINTAFF developed the National Disability Data-base. It works collaboratively with other NGOs and community organisation and government ministries.

# Education, leisure and cultural activities (Arts. 28,29 and 31)

## Alternative Approach to Education

Although progress has been made in the area of education, the system has not been able to provide adequate support for young persons, or children who do not fit into the formal education system, which has led to civil society providing alternative educational opportunities to meet the varying needs of young persons. Parents are continually fundraising for additional school resources.

The Ministry of Education provides support to these alternative educational opportunities; the Cook Islands Sports Academy: a vocational sports programme for students beyond school age; Tumanava - is a programme for youth beyond school leaving age who perhaps lack some life and work skills and need scaffolding back into opportunities – this is funded by DNHRD under the NZAID programme. These non government organisations are dependent on ongoing financial, material and technical support from government, development partners and the community, because government is not providing these services to meet the needs of these young person’s to enable them a continuing education and to develop life skills.

## Rakeitoa –

is an alternative school programme offered by the Cook Islands Sports Academy supported by the Ministry of Education and National Human Resources Department. The intent of Rakeitoa is to provide a hands-on-approach to learning. It is initiated to serve at-risk young people, including those whose family’s academic, social, or religious values diverged from the mainstream as well as those who for some reason are not succeeding at the regular education schools system.

Rakeitoa has links to the Tereora College Learning Centre, Cook Islands Trade Schools, Ministry of Agriculture, Justice Department and Ministry of Internal Affairs. for boys of compulsory school age for whom the standard schooling system is not working and they are at high risk. This programme is fully funded by the Ministry of Education. Find out when formed vision/mission statement, the number of boys, brief outline of the programme.

## The Creative Centre (the Centre)

The Centre is the only provider of specialist vocation and related training for adults and young people with disabilities in the Cook Islands and is registered as a private school, as a provider of special services under the Ministry of Education. The Creative Centre has achieved a number of positive results for people living with disabilities; through capacity building and life skills training, aimed at improving skills for independent living, achieving personal goals, gaining employment to improve their economic situation and for inclusion in community life and activities. They work collaboratively with other NGOs and government ministries (Health and Education). It has an MoU with the Ministry of Education and has received technical assistance and funding from government.

## Maori Language

For many years the Education Department has been promoting the importance of the preservation of the Maori Language and encouraging non-speakers to learn the language. However there are NO Maori language resources (both readers and audio language tapes) available to buy from local bookshops, or from local libraries. There is no commitment from government in the allocation in the budget for the development of maori language resources, both written and audio, for all levels, pre-school to secondary school.

|  |
| --- |
| 7.9.1 Recommendation  * Civics and Human Rights Education and Gender Advocacy should be a compulsory component of the Education Curricula, guided by UN Human Rights Instruments. (e.g. CRC and CEDAW) * The Government prioritise and make available a budget allocation for the development of Maori language resources, both written audio targeting children at all levels. * The Government allocate an annual budget and MoU for non government organisations support of essential services in health and education. |

## Convention on the Rights of the Child in Schools

In response to questions about the Convention on the Rights of the Child the Ministry of Education Policy Division response was as follows:

* When the proposed Amendment to the Bill was circulated for discussion, in community meetings the CRC was referred to by the MOE when some communities wanted to Ministry to leave Corporal Punishment in the Education Act.
* Schools in the Cook Islands are required to have a range of polices that are broadly grouped under Student Wellbeing – this includes physical and emotional safety.
* There are school based Guidance Counsellors, currently 3, available to students, teachers and families to provide any support required.
* Guidelines around suspensions and expulsions and the responsibility of the school to ensure continuing education to anyone of compulsory age are very clear.
* There are Teacher Professional Standards, which all teachers attest to annually, the dimensions around maintaining a positive and safe learning environment and effective communication support the intentions of the Convention. These include strategies around positive reinforcement, promoting student engagement, ensuring student safety, being an attentive listener and maintaining confidentially and trust.
* **In terms of the Convention being in the school curriculum.** The Cook Islands responsibility as a regional and global citizen through adhering to such international agreements would be part of Senior Social Science programmes – the actual conventions and contexts a school uses to teach this would be up to the individual school.

|  |
| --- |
| Recommendation  * To involve and mentor children in the decision-making processes of the school. * Civics education and human rights education should be a mandatory in the school curriculum. * To allocate sufficient budget for after school care and school holiday programmes. * Allocation of budget for after school care and holiday programmes. |

# Special Protection Measures (Article 22, 30, 38, 39, 40, 37 (b)-(d) and 32-36)

Although Government has made a partial removal of the reservation on article 37. The separation of juveniles from the adult prison population has meant placing them in the isolation facilities of the prison which is not conducive to their age

The Cook Islands Police are working towards strengthening their Community Relations Division through capacity building and development with the assistance of the New Zealand police. The community based services and programmes have been developed in village communities, with the involvement of all stakeholders, on alternative dispute resolution and the development of a prevention and diversion programme for any person under the age of 16, rather than criminalizing a child for behaviour.

The Children’s Court hears cases involving children aged from around 10 to 16 years. The minimum age for criminal responsibility is 10-14 years, for trial in court 12 years with special judicial procedures for children up to the age of 18 years.

The Crimes Act 1969 provides that a child under 10 years cannot be criminally responsible. A child between 10 and 14 years can be criminally responsible if s/he understands that what s/he did was unlawful, or wrong. A child over 14 years is criminally responsible, and subject to the process for juveniles pursuant to the Prevention of Juvenile Crimes Act 1968 which provides for Children’s Courts, can be convicted and sentenced in the High Court.

The Juvenile Crime Prevention Committee (JCPC) was established in 1997 to deal with juvenile offences and complaints. The Committee is made up of 3 members selected and appointed by the Minister of Justice. There are no criteria for the selection of the Committee. It has no powers to impose penalties, but only provides counselling, such as conferences with family members to help resolve matters without going into court. Depending on the severity of the offence, the case may be withdrawn, or the offender reprimanded placed under Supervision and or sent to the Children’s Court.

The Secretariat of the JCPC is with the Probation Division of the Ministry of Justice; however the implementation and administration is with the MINTAFF, Children and Family Services Division. The Children and Family Services Division has identified that it needs to come under one Ministry as it makes their work difficult to monitor.

The State Report indicates that the JCPC is ineffective, but does not indicate the reasons why it is ineffective or what measures will be taken to make it more effective.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Juvenile Crime Prevention Committee (JCPC) | | | | | | |
| Year | Sitting | Case | Crime | How was it dealt with | Sex  M F | |
| 2002 | 2 | 3 | Absconding/Truancy | Warned | 3 |  |
| 2003-4 | 6 | 6 | Truancy | Warned | 4 | 3 |
| 2004-05 | 1 | 4 | Truancy | Warned | 4 |  |
| 2006-07 | 1 | 1 | Theft | Referred to Children’s Court | 1 |  |
| 2008 | 1 | 1 | Burglary | Under Supervision |  | 1 |
| 2009 | 6 | 6 | 5 theft  1 swearing in public | Warned | 5 | 5 |
| Source: Ministry of Justice- Probation Services | | | | | | |

The Children and Family Services Division, has changed it approach in dealing with Juveniles. One of the main strategies is to take a multi-sector, sector wide approach with both government and non government agencies in working with preventative measures in dealing with Juveniles. It is currently working with the school counsellors, the alternative school Rakeitoa, the police and the JCPC, Juveniles their families and the community in trying to identify some of the root causes of the problems and developing appropriate strategies to address them. There is still a problem with truancy and which agency is to take the lead in addressing this problem.

## Legal Aid

The Legal Aid Act 2004 provides for the granting of legal aid to criminal offenders who cannot afford private legal representation. There is no legal aid for victims of domestic violence non-molestation order applications or for family matters such as custody of children.

There is no provision for children to be represented by state appointed lawyers. The Family Law Bill provides the legal grounds for the appointment by the Court of a lawyer for children, and it is envisaged this would be a cost to the State. There is no provision for registration of custody, access or maintenance orders in New Zealand courts so they can be enforced there. There is no provision for New Zealand custody, access and maintenance orders to be registered in the Cook Islands Court so they can be enforced here. These are being addressed in the Family Law bill. The Cook Islands has not acceded to or ratified the Hague convention on child abduction; however the Family Law bill addresses the issue of child abduction.

Cost of access to the Courts is high and is a barrier for both women and men in family law matters (e.g. custody, maintenance).

|  |
| --- |
| 8.1.1Recommendation  * A review should be undertaken to identify the core problems and to assess how effective the JCPC has been. Develop a criteria for selection. * Eligibility for Legal Aid should be reviewed. Provision for legal aid should be made for Family Law matters and for victims of all forms of violence. * Children have their own legal representative in Court and provision for legal aid be available. * The Juvenile Justice system (include JCPC, the Children’s Courts and Police) undertakes a study to identify shortcomings in the system and consider the effectiveness of diversionary practices and processes. In improving the procedures and processes, ensure that it is in accordance with the Convention that promotes diversionary options. The current diversionary system is not well developed and coordinated between the various agencies. * An evaluation of the Family Group Conferencing should also be carried out. To include a review of the current grievance procedures and introduce statutory or regulatory requirements to ensure that complaints procedures will provide an effective means by which children and youth can raise concerns and know that these will be considered and addressed, promptly, efficiently, and confidentially. * A prioritising of investigations of complaints and prosecutions of complaints made by Women and children in relation to sexual crimes and court process be expedited to ensure reduced stress and harm to the complainants |

**Study on the Commercial Sexual Exploitation of Children (CSEC) and Child Sexual Abuse (CSA) in the cook Islands- A overview Report[[23]](#footnote-23). (refer to Article 19)**

In 2006 the study, set out to examine the prevalence, awareness and knowledge of CSEC and CSA among children, young adults and service providers within island communities and groups.

The researchers found that they needed to explain the CSEC to participants. Participants were more vocal on CSA. The findings of the research were that there was a small portion of CSA and even less of CSEC, occurring in the Cook Islands. (although there is no evidence to substantiate the claim of CSEC).

The report stated that there was an important need to conduct in-depth research in order to understand the prevalence and the different forms of sexual abuse, the short and long-term effects of victims, the perpetrators, and the potential risks to children and young people.

The study found that the children most at risk are those whose home life is peppered with alcohol abuse, violence, parental neglect and lack of parental supervision. Underlying factors contributing to the risk include financial hardship, the inability to afford basic daily needs, peer pressure, and a cycle of abuse and neglect already present in the family. Other factors include acceptance of corporal punishment of children, a tradition of reciprocity that makes refusal of favours in return for gifts very difficult, and unquestioned themes of sexual abuse.

The main perpetrators of violence were found to be male, and often known to the victim; either family members or family friends. While most victims were female, some young men had been abused by other men. More training and better collaboration with relevant professionals including social workers and law enforcers are needed in order to ensure the appropriate provision of care and protection for children.

The barriers identified in the study for reporting CSEC and CSA in the Cook Islands was because of the lack of confidence that victims and their families have in the police and because the present law is inadequate. Law enforcement agencies can respond only to cases that are reported to them, and they are generally under-staffed and under-resourced. Many cases go unreported.

|  |
| --- |
| Recommendations The Government ensure that:   * Child friendly approaches be developed to child witnesses in child sexual assault prosecutions. * Enact legislation Employment Relations Bill and ensure provisions affecting child workers to ensure compliance with the Convention to provide for minimum age of employment, with exceptions for light work, in family businesses, entertainment. Regulate the hours and conditions of child employment. |

# References

1. Cook Islands – A Situation Analysis of Children, Youth and Women, Government of the Cook Islands with assistance from UNICEF – 2004.
2. The Cook Islands Progress Report, Beijing +5, The 1995 Beijing “Global Plan of Action” (GPA), 2000, Ministry of Internal Affairs, Women’s Division, funded by UNIFEM.
3. Violence against the Girl Child in the Pacific Region -2006, UNIFEM, UNICEF, and Fiji Women’s Crisis Centre.
4. Pathways to Development – A report on Cook Islands Legislation and consistency with the Convention on the Elimination of All Forms of Discrimination against Women. Prepared by Joy Liddicoat in consultation with the Cook Islands and New Zealand governments.
5. Independent Evaluation Report – Pacific Prevention of Domestic Violence Programme, 2007.
6. The Commercial Sexual Exploitation of Children and Child Sexual Abuse in the Cook Islands: An Overview Report – A Study conducted by Punanga Tauturu Inc and ECPAT New Zealand for the UNESCAP and ECPAT International – 2007.
7. The Cook Islands 2008 Social and Economic Report – Equity in Development, Pacific Studies Series Publication, by the Asian Development bank to provide the governments of its Pacific developing members countries with analyses of economic and other issues.
8. United Nations Office of the High Commissioner for Human Rights (OHCHR) – Regional Office for the Pacific – Pacific Islands Forum Secretariat – Ratification of International Human Rights Treaties: Added Value for the Pacific Region.
9. The NSDP
10. The Pacific Plan

1. Listed in references [↑](#footnote-ref-1)
2. From three secondary schools and Alternative school. [↑](#footnote-ref-2)
3. RRRT Regional Human Rights Mechanisms consultation report… [↑](#footnote-ref-3)
4. Pathways to development [↑](#footnote-ref-4)
5. Pathways to Development [↑](#footnote-ref-5)
6. UN CEDAW, Concluding comments of the Committee on CEDAW, 10 August 2007 [↑](#footnote-ref-6)
7. Ibid, p.6 [↑](#footnote-ref-7)
8. United Nations Office of the High Commissioner for Human Rights (OHCHR) Regional Office for the Pacific. P.vii [↑](#footnote-ref-8)
9. Ibid. P.12 [↑](#footnote-ref-9)
10. The MDG Pacific Report 2010 [↑](#footnote-ref-10)
11. Ibid. p. 12 1.2.2 [↑](#footnote-ref-11)
12. Cook Islands CRC State Report addendum p.13 [↑](#footnote-ref-12)
13. CEDAW Concluding comments of the CEDAW Committee, 2007 [↑](#footnote-ref-13)
14. The Cook Islands made its first Report to the ICCPR Committee in 1985. [↑](#footnote-ref-14)
15. Ibid. P.12 [↑](#footnote-ref-15)
16. The MDG Pacific Report 2010 [↑](#footnote-ref-16)
17. The Pacific Plan was adopted in 2005, developed in 2004 [↑](#footnote-ref-17)
18. NZAID, ADB, EU, UNDP, UNIFEM, UNICEF WHO and FAO and UNPFA and work closely with NGOs and government ministries. [↑](#footnote-ref-18)
19. CISs Report on CRC p. 57-334 [↑](#footnote-ref-19)
20. Undertaken by Punanga Tauturu, in collaboration with ECPAT New Zealand for the ESCAP Pacific and ECPAT international in 2007. [↑](#footnote-ref-20)
21. Independent Evaluation Report – Pacific Prevention of Domestic Violence Programme – July 2011- prepared for NZAID by Beverley Turnbull, an independent consultant. [↑](#footnote-ref-21)
22. An overview of the programme is included in Appendices. [↑](#footnote-ref-22)
23. PTI and ECPAT NZ and UNESCAP conducted a study on *the Commercial Sexual Exploitation of Children (CSEC) and Child Sexual Abuse (CSA) in the Cook Islands: An Overview Report.*  [↑](#footnote-ref-23)