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COMMISSION ON HUMAN RIGHTS
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QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Report of the Secretary-General

Addendum

SPECIFIC COMMENTS (continued)

Member States (continued)

NEW ZEALAND

[Original: ENGLISH]

[16 January 1980]

Article I

Acceptable.

Article II

We accept the general intent of Article II. However, we presume that key phrases such as "special protection", "healthy and normal manner" and "the best interests of the child" will be open, through the general terms in which they are couched, to varied interpretations and will in fact be defined nationally in terms of the laws and the child rearing practices which are adopted and acceptable in that nation.

Article III

Acceptable.

Article IV

A point of some importance which this article, and indeed all the articles raise to some degree, is the definition of a child. Does the definition begin at conception, at birth, or at some point in between? Perhaps of equal importance, in view of the special protection clause (Article II), is a definition of the end of childhood.

It seems that it would be very difficult to declare an across-the-board age and that the end of childhood would be related to specific issues (right to leave home, vote, drive a motor vehicle, have sexual intercourse, etc.) which would be covered by specific legislation in each country.

Article V

We are in agreement with the need for a clause to cover education and special treatment for the handicapped. The Department of Social Welfare's rehabilitation programme runs its own training and work experience units as well as encouraging the development of sheltered workshops by private organizations. The Department also works with the Labour, Education and Health Departments and the Accident Compensation Commission in providing a wide range of services under the Disabled Persons Community Welfare Act. The socially handicapped come within the Children and Young Persons Act 1974.

Article V, however, makes a specific requirement to provide special education for handicapped children which goes beyond the present permissive legislative authority for such services in Section 98 of the Education Act 1964. This section of the Act is under discussion as part of the current review of the Act.

Article VI

Sentences 1 and 2 are generally acceptable. However, the phrase "separated from his mother" requires qualification. It appears to preclude the choice available to many parents at present to place "the child of tender years" in the day care or child care situation where the quality of care is judged to be equivalent to or even better than that provided by the family and the mother. There is now a considerable body of evidence which indicates that such practices are not detrimental to the best interests of the child and may in fact be positively in the child's best interests. Moreover there is no principle in New Zealand law whereby a child of "tender years" shall not, save in exceptional circumstances, be separated from his mother. Both parents are entitled to custody of their child and in the event of a dispute over custody, the court is bound to treat the welfare of the child as the first and paramount consideration (Guardianship Act 1968, S. 23). Thus it would be possible for a small child to be separated from his mother if the court thought this was in the best interests of the child. In addition the Family Proceedings Bill would give equal rights to parents in custody disputes, where the paramount consideration is still the welfare of the child. To that extent our law accords with the principle of Article II, rather than Article VI.

The last sentence of the article as stated is highly debatable. We would prefer that all children, without discrimination according to size of family, were given the same financial benefits by the state. The equalization of family circumstances would be carried out through the taxation structures of the country. We would therefore suggest an alternative wording along the lines of: "Payment of state and other assistance towards the maintenance of all children should be of such a nature that no child is placed at a disadvantage because of the size of the family".

Article VII

Section 1 - The question of the definition of a child discussed within our comments in Article IV is important in the context of this section. We believe that "the elementary stages" of childhood should be defined in the terms of a stated minimum number of years.

Section 2 - Acceptable.

Section 3 - The spirit of this section could not be disputed by educationalists. However, "play" and "recreation" are not necessarily viewed in the same positive light by many members of the community, and if the convention were adopted by New Zealand this section could give rise to considerable public debate. It should also be noted that we do not fully understand the distinction made by implication between "play" and "recreation".

Problems also arise when consideration is given to particular words and phrases within the section. What is, for instance, meant by the phrase "full opportunity"? Does the phrase mean "easy physical access" or "plenty of time" or "provisions for various ages of children" or is it meant to envelop all of these possible readings? We are also unsure about the meaning of the phrase "the same purpose as education". This phrase raises the question, whether the word "same" is meant to imply the same purposes of all aspects of education, and the question of whether education is seen to be the same activity as schooling.

In addition, this section states that "the society and the public authorities shall endeavour to promote the enjoyment" of the right of the child to have full opportunity for play and recreation. We wonder whether the department promotes such enjoyment by providing children access to schools outside normal school hours, and whether the play and recreation schemes and equipment provided by schools are sufficient to be classed as a "full opportunity". At present, the implementation of these schemes occurs at a local level, and the question would arise if New Zealand were to adopt this particular article of whether the "public authorities" i.e. central government departments and bodies such as education boards would be willing to work through local government, and whether the local government bodies would have sufficient resources to handle this task.

Article VIII

Acceptable.

Article IX

As well as the general provisions afforded by criminal law, there are detailed provisions in the Children and Young Persons Act 1974 about the care, protection and control of children who are deprived, neglected, disturbed or ill treated. Furthermore, the provisions of the Adoption Act 1955 prevent any possibility of "baby-farming".

We attach an appendix listing the legislation and regulations covering the employment of children in New Zealand. There is no evidence that child labour is being exploited in New Zealand. The employment of children on agricultural work is allowed only during hours which do not prejudice their work at school, with a maximum of 8 hours per day. The introduction of legislation prohibiting young persons (under 15) from engaging in occasional or part-time employment such as the customary fruitpicking, sale of confectionery in cinemas during intervals and milk and newspaper vending, would have neither parental nor public support in New Zealand. Given the provisions of the Education Act 1964 fixing at 15 the age at which a child may leave school, and the various Acts and Regulations (see appendix) narrowing substantially the fields in which persons under 15 may be employed, New Zealand could be considered to fulfil the general obligation under Article IX, section 2.

Article X

The New Zealand Human Rights Commission has recommended that discrimination on the grounds of sex be specifically stated in the first sentence of Article X. Practices fostering discrimination on the basis of sex are often unrecognised and it is necessary to emphasize that sex is as much a ground for discrimination as race and religion so that sex discrimination can be recognised and steps taken towards its elimination.

The present first sentence is also impracticable because of the use of the word "may" and we believe that this word should be omitted. The question also arises that if the practices referred to in the first sentence were to occur in the home of the parents of the child who would decide that the child should be protected, and how the protection would be given? In New Zealand if a child is physically ill-treated the Department of Social Welfare can remove the child from the detrimental environment. We wonder if this is the sort of protection envisaged by the authors of the article.

Clearly this article has implications for school and classroom practices. For example, in the light of the terms of the article the withdrawal of children from religious instruction could be construed as fostering discrimination. The article's practicability depends on what are seen to be desirable and practised values in the society. Some of the New Zealand curriculum is orientated towards the stated terms, and many schools would say they are meeting them. However, it is important to recognize the school is only one educational force in society and that the influence of the home, mass media, the peer group and other models can overwhelm the force of the school.

Finally while we recognise the claims of customary international legal usage, we would prefer that the use of "his" throughout the text of the Draft Convention be replaced by "the child", or by the plural "children". It would be unwise for a convention of this type to be open to criticisms of perpetuating sex-role stereotyping.

APPENDIX

EMPLOYMENT OF CHILDREN AND

YOUNG PERSONS

1. Education Act 1964

All persons between six and 15 years are to be enrolled on a school roll - a child of 14 can be exempted by the Director-General of Education from obligation to enrol at school under certain circumstances (S.109).

2. Factories Act 1946

(a) Sec. 37 - No boy or girl under 15 years can be employed in a factory.

(b) Sec. 38(2) - No woman (female irrespective of age), boy (male under 16 years), youth (male over 16 but under 18) can be employed in any process -

(i) making white lead

(ii) melting, casting, pasting, burning of lead or any material containing lead or any work involving use or movement of or contact with any oxide of lead.

(c) Sec. 38(3) - No boy or girl (under 16 years) can be employed in any room where dry grinding in the metal trade is carried on.

(Note: Sec. 38(5) 1972 Am'd Governor-General can extend to cover any process where undesirable that persons under 16 years be employed.)

(d) Sec. 19(2) - No person under 16 years can be employed in a factory between 6 p.m. and 7 a.m. or on a Sunday or Holiday.

3. Machinery Act 1950

Sec. 12(1) - No person under 15 years to be employed in working or assisting at or with machinery.

(2) - No person under 18 years can be employed cleaning, etc. of machinery.

(3) - No person under 18 years can be left in charge of or control of stated machinery.

4. Shops and Offices Act 1955

Sec. 13(1) - No person under 16 years can (a) be employed in connexion with business of a shop or (b) delivery of milk or newspapers - before 7 a.m.

BUT this hour becomes 6 a.m. where the worker (i) is not less than 14 years and is employed on delivery of milk, (ii) not less than 12 years on delivery of newspapers.

(2) - No person under 18 years can be employed in a shop after 10.30 p.m.

5. Coal Mines Act 1925

No female and no boy shall be employed in any capacity in or about any mine (section 66). (NOTE: By section 2 "boy" means a male person under the age of 14 years.)

No youth shall be employed at any time as lander or banksman at the top of any shaft in a mine, or no head banksman at the surface of any mine where coal is raised by mechanical dip haulage, or as an onsetter at the entrance to a shaft, and no youth under the age of sixteen years shall be employed underground in any mine (section 67) (NOTE: By section 2 "youth" means a male person not under the age of 14 years and under the age of 18 years.)

6. Mining Act 1971

No person under 15 years of age shall be employed in any capacity in or about a mine, no woman or girl shall be employed below ground in a mine except to do occasionally any class of work that she usually does above ground and a person under 16 shall not be employed below ground in any mine nor be employed on any dredge, etc. S.179.

7. Petroleum Regulations 1939

Sec. 14(1) No person under the age of eighteen years shall be employed in the drilling of any well. (2) Nothing in this regulation shall apply to persons engaged solely in clerical employment or to persons engaged solely as nurses or charwomen.

8. Sale of Liquor Act 1962

No person under the age of 20 years (other than the wife of the licensee) shall be employed by the licensee in any capacity in any bar in any hotel or tavern or tourist house premises at any time while the bar is open for the sale of liquor (S.191). Exceptions are when the person is engaged on meal preparation or service or any person 18 or over performing in any musical entertainment and not involved in sale or service of liquor.

9. General Harbour (Ship Cargo and Dock) Safety Regulations 1968

No person under eighteen years of age shall be employed as a driver of a crane or winch, whether driven by mechanical power or otherwise, or to give signals to a driver or to attend to cargo falls on winch-ends or winch bodies (Regulation 29).

10. Transport Act 1962

..... No person shall employ or permit any other person to drive a motor vehicle on any road unless the person so employed is the holder of a motor-driver's licence (Section 25(b)).

A motor drivers' licence shall not be issued to any person who is under the age of 15 years (Section 26(:)).

11. Infants Act 1908

Section 29 - Any person who causes or procures:

(a) Any child being a boy under the age of fourteen years or being a girl under the age of sixteen years, to be in any street for the purpose of begging or receiving alms, or of inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise; or

(b) Any child, being a boy under the age of fourteen years or being a girl under the age of sixteen years, to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between nine in the evening and six in the morning; or

(c) Any child under the age of ten years to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing for profit, or offering anything for sale -

is liable on conviction in a summary way, at the discretion of the Court, to a fine not exceeding \$50 or alternatively, or in default of payment of the said fine, or in addition thereto, to imprisonment for any term not exceeding three months.

12. Boilers, Lifts and Cranes Act 1950

No boiler, steam engine or crane shall be left in charge of a male under 18 or female under 20.

No lift (other than automatically controlled passenger lifts) shall be left in charge of a male attendant under 18 or a female attendant under 20. An attendant shall mean a person who has been specially employed to operate the lift. (S.30)

13. Agricultural Workers Act 1977

No child under the age of 15 shall be employed on agricultural work during such times as the child is required to attend school pursuant to S.109 of the Education Act 1964 or be required to lift any weights or perform any task likely to be injurious to his health or work for more than 8 hours in any one day on agricultural work. (Section 57)