



LOCAL GOVERNMENT:  
Respecting the Rights of our Children



This paper has been condensed from a research report written by Aaron Irving for UNICEF NZ. Aaron's paper remains a work in progress and can be viewed at [www.unicef.org.nz/article/1438/html](http://www.unicef.org.nz/article/1438/html)

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# LOCAL GOVERNMENT: Respecting the Rights of our Children

## 1 EXECUTIVE SUMMARY

The UN Convention on the Rights of the Child (“**UNCROC**” or “**Convention**”) is the most widely and rapidly ratified human rights treaty in history. UNICEF NZ (“**UNICEF**”) believes that its principles reach beyond central government and require that local government give effect to the rights contained in the Convention.

Local government is empowered by the Local Government Act 2002 which is a broadly drafted and empowering piece of legislation. UNICEF believes that in applying its provisions, local government should presume that Parliament did not intend to legislate contrary to its international obligations and should interpret the provisions of the Act consistently with the principles contained in UNCROC.

Not only do the principles of UNCROC constitute customary international law which is binding in New Zealand, our judiciary has established that rights like those contained in UNCROC must be taken into account when decisions are made that affect children.

Furthermore, as an agent of central government, UNICEF contends that local government has an obligation not to derogate from the principles by which central government is bound. This includes the principles set out in UNCROC.

Aside from the legal justifications for doing so, UNICEF believes that local government has a moral imperative to give effect to the principles of the Convention. To do so would represent a significant step forward in the progressive implementation of UNCROC in New Zealand and would serve to illustrate that as a good international citizen New Zealand is acting in accordance with the spirit and intent of the Convention.

As Dennis McKinlay, the Executive Director of UNICEF stated when commenting on the impact of local government decisions on children:

*“Local authorities are on the front line and with trends towards urbanization and government centralization they are primary actors in matters affecting children’s lives. Human skills, knowledge, creativity and time, along with the wisdom to use resources in the community effectively and appropriately, are basic to an effective child friendly approach.”<sup>1</sup>*

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<sup>1</sup> Dennis McKinlay “Foreword” in Nic Mason and Kirsten Hanna, “Undertaking Child Impact Assessments in Aotearoa New Zealand Local Authorities: Evidence, practice, ideas” (A publication commissioned by the Office of Children’s Commissioner, supported by UNICEF NZ, Institute of Public Policy, AUT University, Auckland, February 2009).



## 2 BACKGROUND TO UNCROC

UNCROC is an international human rights treaty that sets out the basic rights of children and the obligations of governments to fulfill them.

UNCROC establishes rights for the survival, development, protection and participation of children. The Convention has influenced national and international law making, policy, programmes, public and private institutions, families, communities and individuals. Its key principle is that the best interests of the child be foremost in all decisions affecting children.

UNCROC was adopted by the UN General Assembly in 1989 and within a year it entered into force as international law. Along with the other member states of the UN, New Zealand adopted UNCROC in principle in 1989. UNCROC has been formally ratified by 191 out of the 193 member states and was ratified by New Zealand in 1993.<sup>2</sup>

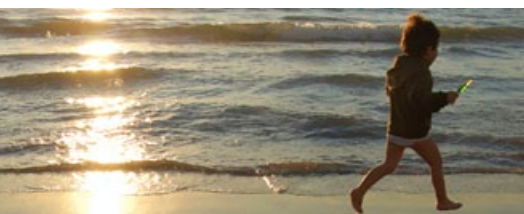
## 3 NEW ZEALAND'S OBLIGATION OF PROGRESSIVE REALISATION

Prior to New Zealand's ratification of UNCROC, a review was undertaken by various government agencies to ascertain the extent to which our domestic laws complied with the principles of the Convention. That review revealed that there were a number of areas in which our domestic laws did not comply with the principles of UNCROC. Accordingly, when UNCROC was ratified it was done so subject to a number of reservations.

By ratifying UNCROC, New Zealand made a legal and contractual commitment to the UN and the international community to take all legislative, administrative and other measures to implement the rights set out in the Convention.

Article 4 of UNCROC sets out this obligation on ratifying states to progressively implement the rights and principles of the Convention and requires that:

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



This obligation to 'undertake all [...] measures' is clearly in line with other international conventions,<sup>3</sup> which place on state parties the obligation of 'progressive realisation'. This concept of progressive realisation "constitutes recognition of the fact that full realisation of economic, social and cultural rights will not be able to be achieved in a short period of time."<sup>4</sup>

**It is UNICEF's contention that to fulfill its obligations under article 4, all levels of our government must take whatever reasonable measures are required to ensure that the principles of UNCROC are applied in New Zealand to the widest extent. This includes an obligation on local government to apply the principles of the Convention.**

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<sup>2</sup> [www.unicef.org/nz/page/325/.html](http://www.unicef.org/nz/page/325/.html)

<sup>3</sup> See *International Covenant on Economic, Social and Cultural Rights* (16 December 1966) 993 UNTS 3, Article 2

<sup>4</sup> Rachel Hodgkin and Peter Newell *Implementation Handbook for the Convention on the Rights of the Child* (3rd Ed, UNICEF Regional Office for Europe, Switzerland, 2007) 53



## 4 LEGAL STATUS OF UNCROC

In order to ascertain the legal basis by which government is required to comply with UNCROC it is necessary to understand the legal status of UNCROC as far its principles relate to both central and local government.

Our two main sources of law are legislation (or statute) and common law. Common law is the law that has been developed over time by the judicial system.

### 4.1 Legislative Status

The orthodox view of international human rights treaties is that they do not form part of New Zealand law and so are unable to be enforced by the courts, unless and until the rights contained in the treaty to which New Zealand is party, are incorporated by statute into domestic law.<sup>5</sup>



UNCROC is not incorporated by statute in New Zealand and therefore UNCROC does not form part of New Zealand's statutory law.

### 4.2 Common Law Status

Despite the position noted above it is now firmly established that New Zealand courts, when interpreting legislation and making decisions affecting children, must do so in a way that gives effect to the rights conferred by UNCROC unless the plain words of the legislation preclude such an interpretation.

There has been an increasing trend by our courts over the past 20 years to recognise and enforce New Zealand's international obligations, particularly in the case of unincorporated human rights treaties such as UNCROC.<sup>6</sup>

In *Tavita*, our Court of Appeal held that to ignore New Zealand's international obligations, simply because they are under-implemented and not fully incorporated into our statutory framework would be an "unattractive argument, apparently implying that New Zealand's adherence to the international instruments has been at least partly window-dressing."<sup>7</sup>

*Tavita* was a case involving the review of an administrative decision that was inconsistent with New Zealand's international obligations under UNCROC. In that case, the Minister of Immigration argued that the Department of Immigration was entitled to ignore UNCROC as it was an unincorporated international instrument. In response to that argument, Justice Cooke stated that:<sup>8</sup>

***"A failure to give practical effect to international instruments to which New Zealand is a party may attract criticism. Legitimate criticism could extend to the New Zealand Courts if they were to accept the argument that, because a domestic statute giving discretionary powers in general terms does not mention international human rights norms or obligations, the executive is necessarily free to ignore them."***

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5 Philip A Joseph *Constitutional Law* (Lexis Nexis New Zealand Online, 2009) Para 196

6 Rodger Haines *The Domestic Application of International Human Rights Standards in New Zealand: The Refugee Convention* (September 2004) Spring Seminar Series, Faculty of Law, University of Auckland [www.refugee.org.nz/spring.html](http://www.refugee.org.nz/spring.html)

7 *Tavita v Minister of Immigration* [1994] 2 NZLR 257, 267 (CA) Cooke P

8 *Ibid*



Despite the clear message espoused in this case, Tavita left confusion as to how to approach New Zealand's unincorporated international obligations. As Geiringer<sup>9</sup> argued, Tavita left an obligation on decision-makers to make decisions that are consistent with New Zealand's international obligations, but did not clarify how those international norms are to be invoked.

The problem lies in the relationship between the two models by which decision-makers could access international norms in the decision making process. These two models are:<sup>10</sup>

1. *Mandatory Relevant Consideration (the "Consideration")* – which includes unincorporated international norms as considerations that decision makers must have regard to; and
2. *Presumption of Consistent Interpretation (the "Presumption")* – where the courts will presume that Parliament did not intend to legislate contrary to New Zealand's international obligations, and will interpret empowering legislation consistently with those obligations.



Although the two models seem similar as they both invoke due regard to international norms in the decision making process, they result in different outcomes.

The Consideration is primarily concerned with process and could, in application, amount to mere box ticking. The Presumption is more "outcome-focused" and requires the decision-maker "to reach a result that is substantively consistent with the relevant international obligation".<sup>11</sup>

**UNICEF believes that both central and local government in New Zealand should employ the Presumption when interpreting legislation and in doing so, should make decisions and policy that are consistent with UNCROC.**

Further evidence of this judicial movement towards consistent interpretation between statute and treaty obligations comes from the Court of Appeal in *Puli-uvea*<sup>12</sup> which held that "the Court should strive to interpret legislation consistently with treaty obligations in New Zealand".

In addition, the Supreme Court clarified this rule in the case of *Zaoui*<sup>13</sup> by stipulating that rights will be "interpreted and the powers conferred [...] are to be exercised, if the wording will permit, so as to be in accordance with international law, both customary and treaty based".

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9 Claudia Geiringer *Tavita and all That: Confronting the Confusion Surrounding Unincorporated Treaties and Administrative Law* (2004) 21

10 Ibid

11 Ibid

12 *Puli'uvea v Removal Review Authority* (1996) 2 HRNZ 510, 516 (CA) Keith J

13 *Zaoui v Attorney-General* (No 2) [2006] 1 NZLR 289, 321 (SC) Keith J for the Court



### 4.3 Customary International Law

Customary international law requires “a general and consistent state practice as well as a sense of legal obligation to be deduced from the practice and behaviour of states”.<sup>14</sup> Customary international law forms part of domestic law unless it is in conflict with an Act of Parliament.

UNCROC is the most widely ratified Convention in history. There are commentators who believe that the wide acceptance of UNCROC indicates that the Convention simply codifies already accepted international customary norms or practices.<sup>15</sup> By way of recent example, Sir Eddie Durie (a judge of the High Court and former Chairman of the Waitangi Tribunal) said, in the context of New Zealand’s adoption of the UN Declaration on the Rights of Indigenous Peoples:

*“important statements of principle established through international negotiation and acclamation filter into the law in time, through both governments and the courts, which look constantly for universal statements of principle in developing policy for deciding cases.”<sup>16</sup>*

This statement illustrates the importance and robustness of internationally established principles such as those set out in UNCROC and suggests that those principles do, in time, become enshrined in law.

The UN General Assembly Resolution “A World Fit for Children” perpetuates the customary normative character of UNCROC.<sup>17</sup> Like the Convention, the resolution was widely accepted and resolved to implement and apply the principles of the Convention.<sup>18</sup>

*“We, the Governments participating in the special session, commit ourselves to implementing the Plan of Action through consideration of such measures as:*

- a) Putting in place, as appropriate, effective national legislation, policies and action plans and allocating resources to fulfill and protect the rights and to secure the wellbeing of children;*
- b) Establishing or strengthening national bodies such as, inter alia, independent ombudspersons for children, where appropriate, or other institutions for the promotion and protection of the rights of the child;*
- c) Developing national monitoring and evaluation systems to assess the impact of our actions on children;*
- d) Enhancing widespread awareness and understanding of the rights of the child.”*



14 Justice Susan Glazebrook *Human Rights and the Environment* (2009) 40 VUWLR 292, 295

15 Human Rights Commission Submission on the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill – Justice and Electoral Select Committee (Human Rights Commission, 1 March 2006) [www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/03-Jul-2009\\_11-58-43\\_Section\\_59\\_Mar\\_06.doc](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/03-Jul-2009_11-58-43_Section_59_Mar_06.doc)

16 [www.stuff.co.nz/dominion-post/politics/3608371/](http://www.stuff.co.nz/dominion-post/politics/3608371/)

17 *A World Fit for Children* GA Res, S-27/2 A/RES/S-27/2, (11 October 2002) Para 31

18 *Ibid*



Resolutions like these not only serve to reinforce the emerging customary character of the principles of UNCROC, they also serve to implement other principles and initiatives to further (or progressively implement) the Convention. This general acceptance of soft law contributes not only to a general consistent state practice when put into action, but also aids in establishing a sense of legal obligation which is necessary in the formation of customary international law.

In its submission on the Government (Auckland Council) Bill, Action for Children and Youth Aotearoa argued that these four general principles of UNCROC are emerging as internationally accepted customary norms:<sup>19</sup>

1. *The principle of non discrimination (Article 2)*
2. *The right to life, survival and development (Article 6)*
3. *The principle of respect for the views of the child (Article 12)*
4. *The principle of the best interests of the child (Article 3)*

There is a very strong case to suggest that these principles form part of customary international law and are therefore law in New Zealand.

**UNICEF contends that, as part of customary international law, both central and local government should, to the extent that there is no clear conflict with statute, have regard to the principles of UNCROC in their decision making processes in the same way as they would have regard to any other domestic law.**



To summarise, UNCROC does not form part of our statutory framework. However, it has been firmly established by our courts and by the principles of customary international law that when making decisions affecting children regard should be given to UNCROC and it should be treated as law unless in doing so there is a conflict with an Act of Parliament. By applying the Presumption in a decision making context, New Zealand's legislation can be interpreted consistently with international obligations such as those contained in the Convention.

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<sup>19</sup> ACYA NZ Submission for the Local Government (Auckland Council) Bill Association of Children and Young People of Aotearoa (25 June 2009)



## 5 LOCAL GOVERNMENT IN NEW ZEALAND

### 5.1 Relationship between Central and Local Government

New Zealand has a centralised, unitary system of government, whereby all constitutional authority remains with central government. Within this system, powers and functions of local government are derived from Parliament. While local government has been given significant regulatory and legislative authority, it is itself controlled by central government legislation.

**UNICEF contends that because local government is empowered by central government there is an obligation for local government not to derogate from the principles by which New Zealand as a State is bound. This includes an obligation not to derogate from the principles of UNCROC.**

### 5.2 Agency

When functions of an entity are connected with matters which are essentially the province of central government then an inference can be drawn that the entity acts on behalf of central government.<sup>20</sup>

From an international law perspective it is clear that local authorities are a branch of the state and so the requirement for local authorities to comply with the state's international obligations is a real one. Non-compliance could result in a breach of the state's international obligations. The ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts<sup>21</sup> provide:

- 1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.*
- 2. An organ includes any person or entity which has that status in accordance with the internal law of the State.*

These articles demonstrate that the UN community is in agreement in attributing state liability to the wrongful actions of a 'territorial unit' within the state.

**UNICEF contends that because local government is controlled by and carries out many of the functions also undertaken by central government, albeit on a local as opposed to national basis, then local government can be said to be an agent of central government. As an agent, local government must comply with the international treaty obligations that bind central government. That includes UNCROC. A failure to do so could be interpreted as a failure by New Zealand as a ratifying State to abide by its international commitments.**



20 A E Currie 'Crown and Subject: a treatise on the rights and legal relationship of the people of New Zealand as set out in the Crown Proceedings Act 1950' (New Zealand Legal Publisher, Wellington, 1953) 41

21 [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)



### 5.3 Legislation Empowering Local Government

The principle statute which governs and empowers local government in New Zealand is the Local Government Act 2002 (“LGA”).

Section 10 of the LGA outlines the purpose of local government in New Zealand and states:

*The purpose of local government is:*

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and*
- (b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.*

Section 14 of the LGA sets out the principles by which local government is required to act in the performance of its role. Of relevance for our purposes are the obligations on local government to:

- (a) make itself aware of, and have regard to, the views of all of its communities;<sup>22</sup>*
- (b) take account of future and current communities when making decisions;<sup>23</sup> and*
- (c) take account of the reasonably foreseeable needs of future generations when taking a sustainable development approach.<sup>24</sup>*

## 6 THE LGA AND UNCROC

When enacting domestic legislation central government is obliged to ensure that such legislation is consistent with, and is capable of being interpreted in accordance with, UNCROC. As the LGA is the principal Act empowering local government in New Zealand, local government is obliged to interpret its provisions consistently with UNCROC.

Sections 6.1-6.3 below set out a discussion on the concepts of ‘community’, ‘sustainability’ and ‘accountability’ and how these concepts, as imparted on local government by the LGA, place clear and specific obligations on local governments to perform their functions in accordance with the principles set out in UNCROC.



**As a broad and principle based Act, UNICEF believes that local government should apply the ‘Presumption’ described in section 4.2 of this paper when interpreting and applying the terms of the LGA. This would ensure that the principles contained in UNCROC are put into effect at a local level.**

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22 Section 14(1)(b) Local Government Act 2002

23 Section 14(1)(c)(iii) Local Government Act 2002

24 Section 14(1)(h) Local Government Act 2002



## 6.1 Community

The LGA places clear and unambiguous obligations on local government to ‘enable democratic local decision-making and action by, and on behalf of, communities’,<sup>25</sup> ‘to promote the social, economic, environmental and cultural well-being of their communities’<sup>26</sup> and ‘make itself aware of, and have regard to, the views of all of its communities’.<sup>27</sup>

Children are not only members of families within communities they also make up their own demographic within a community. Local government decisions are often imposed on children. This is contrary to both the right set out in UNCROC which entitles children to be consulted on and have the right to participate in community decisions<sup>28</sup> and the LGA requirement for community outcomes to be reached ‘by, and on behalf of, communities’.<sup>29</sup>

Children are a particularly vulnerable group of the population. They have different needs and respond differently to community factors than other members of their communities.<sup>30</sup> UNCROC was born out of this recognition and has made provision for the special needs of children.

**UNICEF contends that it would be directly contrary to Parliament’s intention for local government to act in a manner that did not take account of the interests, views and rights of children when considering issues involving communities and that there is an implied obligation within this concept of ‘community’ in the LGA for local government to do so consistently with UNCROC.**

## 6.2 Sustainability

The LGA requires local government to take a ‘sustainable development approach’<sup>31</sup> in the performance of its functions. Section 14(1)(h) of the LGA states that in taking a sustainable development approach, a local authority should take into account:

- (a) the social, economic, and cultural well-being of people and communities;*
- (b) the need to maintain and enhance the quality of the environment; and*
- (c) the reasonably foreseeable needs of future generations.*

There is a natural convergence between the principles of sustainable development and children’s rights.<sup>32</sup>

The interrelationship between sustainable development and children’s rights was first articulated in the ‘Plan of Action from the 1990 World Summit for Children’ and in the ‘Agenda 21 Action Plan’ (“**Agenda 21**”) which was endorsed by the 1992 Rio de Janeiro Earth Summit.<sup>33</sup>



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25 Section 10(a) Local Government Act 2002

26 Section 10(b) Local Government Act 2002

27 Section 14(1)(b) Local Government Act 2002

28 See Article 12 UNCROC

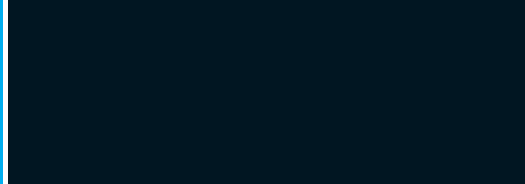
29 Section 10(a) Local Government Act 2002

30 Sheridan Bartlett, Roger Hart, David Satterthwaite, Ximena de la Barra & Alfredo Missair, *Cities For Children: Children’s Rights, Poverty and Urban Management* (UNICEF, Earthscan Publications Ltd, London, 1999)

31 Section 14(1)(h) Local Government Act 2002

32 Sheridan Bartlett, Roger Hart, David Satterthwaite, Ximena de la Barra & Alfredo Missair, *Cities For Children: Children’s Rights, Poverty and Urban Management* (UNICEF, Earthscan Publications Ltd, London, 1999) 16

33 Ibid



The Agenda 21 objectives state that:

*“The specific interests of children need to be taken fully into account in the participatory process on environment and development in order to safeguard the future sustainability of any actions taken to improve the environment.”<sup>34</sup>*

It further states that governments should take active steps to:

*“Establish procedures to incorporate children’s concerns into all relevant policies and strategies for environment and development at the local, regional and national levels, recreation needs, and control of pollution and toxicity in both rural and urban areas.”<sup>35</sup>*

The World Summit on Sustainable Development held in Johannesburg in 2002 (“WSSD”), reiterated and built upon the principle of sustainable development, acknowledging the close relationship between sustainable development and children’s rights, especially on addressing issues of poverty eradication, health and education.<sup>36</sup> In all of these plans children are acknowledged as having the greatest stake in the application of sustainable development, because these processes affect their lives today and have implications for their futures.<sup>37</sup>

The WSSD produced the ‘Johannesburg Declaration on Sustainable Development’, which is a non-binding declaration asserting a commitment by state parties to work towards greater sustainability, and the ‘Johannesburg Plan of Implementation’ which outlines the commitment of state parties to fully implement Agenda 21.<sup>38</sup>

In an article about the lessons to be learnt from the Johannesburg summit, Verchick<sup>39</sup> noted the advantages that local government had in implementing sustainable development, but also that they needed the support of central government in doing so.

Evidence of New Zealand’s commitment to sustainable development can be seen in the language used in both the LGA and the Resource Management Act 1991 (“RMA”). The use of the language ‘future generations’ refers to our descendants and in this regard is consistent with the principles of ‘kaitiakitanga’<sup>40</sup> and the ‘ethic of stewardship’<sup>41</sup> that are outlined in the RMA. Yet the ‘future generations’ language is also an express acknowledgement of the increased stake that children have in sustainable management in New Zealand.



**UNICEF contends that the wide language of both the LGA and the RMA is intended to incorporate New Zealand’s international rights obligations in relation to sustainable development and that consequently local governments should be taking into account the rights of children when taking a sustainable development approach. This could best be achieved by observance to the principles of UNCROC given the obvious connection between sustainability and children’s rights.**

34 Ibid

35 Ibid

36 Bhaskar Nath, *Education for Sustainable Development: The Johannesburg Summit and Beyond* (2003) Environment, Development and Sustainability 5(2): 231-254

37 Ibid

38 Ibid, 232

39 Robert R.M.Verchick, “Why the Global Environment Needs Local Government: Lessons from the Johannesburg Summit” (2003) 35 Urb. Law. 471

40 Section 7(a) Resource Management Act 1991

41 Section 7(aa) Resource Management Act 1991



### 6.3 Accountability

Section 3 of the LGA promotes the ‘accountability’ of local authorities to their communities. Being accountable requires local authorities to act in a manner that is transparent and democratic.

Under the Local Electoral Act 2001 only enrolled voters (persons over the age of 18 years) qualify for election to a community board. This means that children are precluded from having any active participation on issues that affect them in local government decision making. This is inconsistent with article 12 of UNCROC which requires the participation of children in the decision-making process on issues that impact on them.

In its submission on the Auckland Unitary Council Framework,<sup>42</sup> UNICEF suggested that the council should include a ‘Children’s Issues Desk’ or an ‘Office for Children’ or some other mechanism that serves to address children’s issues specifically as a way of maintaining compliance with UNCROC. This would enable the council to act in a manner which is more aligned with both the accountability required by the LGA and the right to participate that is granted to children by UNCROC’s article 12.

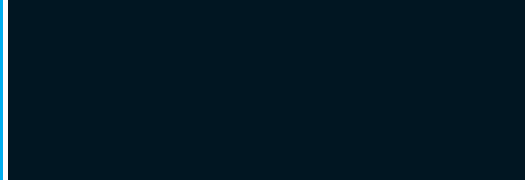
Given that children make more use of some public facilities than adults (for example, parks, sports grounds, cycle paths) it would seem only sensible to allow children to have a voice on issues that in many cases affect mainly (if not solely) their demographic. Added to this is the fact that children are affected by almost every decision that is made at local government level on subjects ranging from transportation to waste management. By way of example, record numbers of children are being killed by cars in New Zealand driveways. If city planners were to take into account a child’s right to protection, for example, then housing complexes and developments could be designed with children’s needs in mind.



Something like a Children’s Issues Desk would allow children the opportunity to be heard at local government level and would allow New Zealand to set an enviable example to the global community on how it values the views of its children.

**UNICEF contends that in order to be ‘accountable’ to its community, local government must act in a manner that is transparent, democratic and in accordance with best practice. To act in accordance with the principles of UNCROC (particularly article 12) and allow children to have a voice through an appropriate mechanism would ensure that local government is acting accountably.**

<sup>42</sup> See UNICEF “The United Nations Convention on the Rights of the Child (UNCROC) and Local Government in New Zealand: The Legitimisation of UNCROC at Local Government Level” (Feedback to Auckland Transition Agency on the Discussion Document – Organisational Structure and Staff Transition 2 November 2009) [www.unicef.org.nz/store/doc/RelationshipbetweenUNCROCandAKLCouncil.doc](http://www.unicef.org.nz/store/doc/RelationshipbetweenUNCROCandAKLCouncil.doc) (accessed 06/03/2010).



## 7 THE MORAL CASE

In addition to the legal arguments, UNICEF believes that there is a moral imperative on New Zealand as a ratifying State to ensure that it complies with the principles of the Convention at both local and national levels of government.



Not only does article 4 of UNCROC place a moral obligation on New Zealand to take measures to progressively implement the Convention, UNICEF believes that it would also be in line with the spirit and intent of the Convention to do so.

The UN Committee on the Rights of the Child (“**UNCRC**”) which has the authority to receive national reports and to make recommendations, has also made an express indication in the UNCROC Implementation Guide that child participation extends to local government decision-making.<sup>43</sup> The UNCRC encourages the participation of children “in the planning, implementation and monitoring of local services”.<sup>44</sup> In the concluding observations on both the Norway and Sweden reports, the UNCRC

recently expressed their concern that local authorities in those countries were not well informed about the rights of children enshrined in the Convention.

It is evident from the many resolutions, guides, plans and initiatives which address UNCROC that the global community desires a better outcome for children across all levels of all societies. Accordingly, the morally conscious stance requires that local government respect the rights of children by giving effect to UNCROC. This is particularly so given the proximate nature of the relationship between the actions of local government and the lives of the children living in their communities. In the future, UNICEF would like to see the Convention become integral in the running of other organisations that impact on the lives of children, such as District Health Boards and Boards of School Trustees.

43 Rachel Hodgkin and Peter Newell *Implementation Handbook for the Convention on the Rights of the Child* (3<sup>rd</sup> Ed, UNICEF Regional Office for Europe, Switzerland, 2007) 164

44 *Ibid*

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