

Mandates of the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right to education and the Special Rapporteur on the independence of judges and lawyers

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(Please use this reference in your reply)

4 March 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right to education and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 53/14, 53/7 and 53/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning access to rehabilitation and individualized support of a child with disabilities, ██████████.

According to the information received:

████████ is an 12-year-old boy with multiple physical and sensory disabilities following a severe traumatic brain injury sustained in an accident at a very young age in ██████████. He has hemiplegia and part of his skull is missing, meaning he is at risk of further brain injury while being more prone to falls. His impairments also impact his mental health and learning outcomes.

In the first few months after the accident, ██████████ followed a standard recovery programme which involved minimal rehabilitation therapy. The results were limited as he could stand but had no arm and hand movement or speech.

As he acquired his impairments due to an injury, ██████████ is entitled to have his rehabilitation and support needs covered by the governmental Accident Compensation Corporation (ACC). The ACC operates as a compulsory personal insurance scheme in New Zealand, providing treatment and care for injury prevention and recovery. Coverage includes medical treatment, equipment, and home- and school-based care and rehabilitation. The system is governed by the Accident Compensation Corporation Act 2001, and contributions are made by everyone in New Zealand. As a no-fault scheme, individuals cannot sue for personal injury damages.

From early 2015 until 2023, the ACC funded an intensive rehabilitation and support programme for ██████████ which focused on improving his right hand, arm and leg function, balance, and overall independence. The medically recommended programme included intensive rehabilitation therapy blocks twice a year, weekly occupational- and physio-therapy sessions, and teacher aides and personal assistants (known as "attendant carers" in New Zealand) providing individualized support with integration and supervision to ensure safety and prevent further injury.

Attendant carers provide help with daily activities, and care and support at home. Teacher aides – hired by schools with ACC funding – help children with disabilities integrate at school and improve learning outcomes and thus constitute a key form of reasonable accommodation at school. Under specialist supervision, the teacher aides and attendant carers have also integrated relevant rehabilitation therapies into [REDACTED] daily activities, including during school hours, thus reinforcing progress made during intensive therapy blocks.

According to medical reports, [REDACTED] made remarkable progress as a result of this intensive rehabilitation programme – from paralysis on one side and loss of speech to being able to walk, talk, and use his arm and hand. His progress surpassed medically predicted expectations and enabled him to steadily progress towards independence. The programme was supported by numerous specialists on the basis of significant progress with intensive rehabilitation and support, and regress when they are reduced. For example, attempts to reduce [REDACTED] support through personal assistants were halted as reduced therapy led to stagnation or regression.

In 2022, the ACC requested a new support needs assessment to review his needs and circumstances. Such assessments are undertaken by independent assessors who are contracted by the ACC. The 2022 assessment recommended a reduction of the teacher aide and personal assistant support. On this basis, in March 2023, the ACC decided to reduce funding for attendant carers by 76%, and for teacher aide from 30 to 8 hours per week. The impartiality of the assessors has been questioned given their contractual relationship with the ACC, and therefore potential incentives to favour reductions in funding for long-term rehabilitation and individualised support to gain further contracts. The ACC also rejected to fully fund recommended assistive technology used for rehabilitation.

The decision disregarded recommendations from medical and therapy professionals (including rehabilitation medicine specialist, paediatrician, neuropsychiatrist, neurologist, general practitioner, as well occupational- and physiotherapists), who have consistently advocated for the maintenance of teacher aide and attendant carer assistant support based on [REDACTED] needs and assessed that it is in [REDACTED] best interest to continue with intensive rehabilitation and support due to the positive outcomes achieved thus far.

The reduced ACC funding for teacher aides and attendant carers meant that [REDACTED] has not been able to effectively continue rehabilitation at the same intensity and frequency as before 2023, also due to alleged bureaucratic barriers by the ACC. With less support and supervision for safety, [REDACTED] has sustained a higher number of falls, some resulting in concussions, and the strength and function of his upper and lower limbs. This also led to a significant increase in absences from school due to falls, some of which required visits to hospitals. He also faced bullying at school from other students.

[REDACTED] mother challenged the reduction of funding decided by the ACC in April 2023 and the case is currently under review by the ACC-funded dispute-resolution contractor, Fairway Resolution. A hearing is scheduled for May 2025, i.e. more than two years after the review was requested. Whereas the ACC used

its resources to hire legal representation, the costs of representing the interests of the child with disabilities are borne by the latter's mother on ██████ behalf. Prior to the decision to reduce funding in 2023, the ACC had sought since 2019 to re-assess needs and limit funding rehabilitation and individualized support despite medical recommendations to the contrary. ██████ mother consistently disputed a reduction in support by seeking mediation and other solutions, incurring costs on legal fees and expert reports without any contribution from the ACC.

It should be noted that, in New Zealand, persons who acquire a disability through injury only have recourse to rehabilitation and financial support through the ACC and forego the right to sue for personal injury. Persons with disabilities that were acquired through injury thus fully depend on the ACC as their only legal remedy for obtaining necessary rehabilitation and support. If the ACC denies or reduces coverage, individuals are left without alternative recourse where to seek redress, while often being in a vulnerable situation in terms of health, support needs, reduced capacity for income-generating activities, etc.

For many persons with disabilities, legal and associated costs of disputing ACC decisions are extremely difficult to meet, particularly for children and their caregivers. Whereas the ACC can rely on its funding to hire legal representation and commission expertise without any caps on costs, persons with disabilities have limited access to free legal aid and must carry significant legal expenses on their own before having a chance to be awarded costs and expenses in line with existing regulations. Moreover, the current costs that can be awarded under the 2002 ACC costs and appeals regulations are far from reflecting the actual expenses incurred by applicants, particularly in complex cases. Due to this low reimbursement, many litigators are reluctant to represent claimants in ACC matters, leading to limited access to qualified legal assistance for individuals seeking reviews and appeals. In 2022, the Ministry of Business, Innovation and Employment launched a consultation process to update these regulations¹ but no outcomes of this review have been announced thus far. Some experts who contributed to the consultations argued that the proposed cost categories remained inadequate as they did not reflect the complexity and preparatory work required to pursue claims and dispute adverse decisions.

Furthermore, ██████ access to rehabilitation and individualized support has been the subject of legal proceedings at the Family Court ██████ since 2018. ██████ parents separated in 2018 pursuant to a protection order against his father on the grounds of domestic violence covering ██████, his sister and mother. The parents share custody of their son and daughter on the basis of an interim parenting order in place since 2018, pending the issuance of a final parenting order. While ██████ father was originally supportive of the intensive rehabilitation and individualised support, he has been restricting ██████ access to rehabilitation, individualised support, and prescribed health supplements in an apparent retaliation following the allegations of domestic violence made in 2018. This included, for example, (i) withdrawal of consent for ██████ to access the Court-ordered safety programme which is intended to help children with the

¹ See: <https://www.mbie.govt.nz/have-your-say/updating-accident-compensation-review-costs-regulations>

impacts of domestic violence; and (ii) systematically restricting access for [REDACTED] to his disability supports and intensive rehabilitation programme.

[REDACTED] mother has been contesting violations of the interim parenting and protection orders with respect to access to rehabilitation, health supplements, and support through teacher aides and attendant carers. A lawyer for child has been appointed to represent [REDACTED] interests in the proceedings but has reportedly failed to advocate for his rights to rehabilitation, healthcare, and education in line with international human rights law obligations. After nearly eight years since 2018, the Family Court issued a decision on 29 January 2025 proscribing the taking of health supplements at school and allowing access to medical recommended occupational therapy and physiotherapy at school only of not available outside of school hours.

Legal costs for proceedings at the Family Court and to appeal ACC's decisions have reached over 37,000 USD and 38,000 USD respectively as of February 2025, a sum that [REDACTED] mother had to borrow to advocate for his rights.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to express our concern about the alleged barriers to access rehabilitation and individualized support for [REDACTED], which also negatively affect his rights to inclusive education, reasonable accommodation, and independent living.

We wish to recall that, in line with the Convention on the rights of persons with disabilities ratified by New Zealand on 25 September 2008, children with disabilities have the right to the highest attainable standard of health without discrimination as well as the right to rehabilitation services in order to attain maximum independence and full inclusion and participation in all aspects of life. In this connection, we are concerned about the dramatic reduction in ACC funding of individualized support (in the form of teacher aides and attendant carers) to a child with disabilities against extensive and multi-disciplinary medical and therapeutic expertise from treating professionals and which resulted in the interruption of the recommended rehabilitation and support package. Reduced support through teacher aides also significantly limited the provision of reasonable accommodation at school to ensure that the child can pursue his education in a safe and inclusive environment.

As the consequences for the child's healthy development can be irreversible – in terms of health, educational outcomes, as well as physical, mental, and social ability – we are concerned that critical decisions over care and support funding are not overseen by multi-disciplinary expertise, including from treating specialists, but rather by individual assessors that are directly contracted by the ACC.

In this context, we are concerned about reports claiming that the ACC system, including assessors, privilege the medical model of disability by focusing on recovery and “fixing” impairments and therefore reducing and ending entitlements despite long-term needs as well as social and other barriers persons with disabilities face. Cost-containment strategies do not align with the requirement to provide services and support according to needs and barriers experienced by individuals with disabilities. We wish to especially recall that decisions concerning the support and education of children with

disabilities must be guided by their best interest and not by economic considerations as clearly formulated by the Committee on the Rights of the Child (CRC/C/GC/15). Here, we underline that the Committee on Economic, Social and Cultural Rights expressed concerns about inadequate budget allocations for the realization of the Covenant rights, and also recommended to strengthen the allocation of resources for the provision of reasonable accommodation and any additional support needed towards inclusive education (E/C.12/NZL/CO/4).

While recognizing the ACC's unique model of a comprehensive accident insurance scheme for everyone in New Zealand regardless of residence status, we are worried about concerns over the lack of access to justice, including limited legal aid funding, to pursue claims and appeal decisions on coverage and entitlements, especially for persons with long-term and complex rehabilitation and support needs. Similar concerns were noted by the CRPD Committee in its first review of New Zealand's implementation of the Convention already in 2014 (CRPD/C/NZL/CO/1).

We are particularly concerned that persons with disabilities must bear significant financial costs of legal representation to dispute ACC's decisions without having access to adequate and timely legal aid. This is particularly alarming for children with disabilities and their caregivers, as seeking funding and legal assistance might significantly impact on their standard of living and financial stability. There appears to be a stark imbalance with the ACC, which can use its budget to litigate claims by persons with disabilities. We are deeply concerned that such imbalance of power and resources impedes access to justice, including the right to an effective remedy.

In [REDACTED] case, the ACC has allocated significant resources to dispute claims concerning rehabilitation and individual support needs (attendant carers and teacher aides). We particularly note that the request for reviewing the decision on significant reduction of funding for individualised support has been pending since April 2023. This has created significant legal costs and debt for the child with disabilities and his mother. We wish to stress that the speedy and fair processing of claims and related review requests is imperative to secure timely and effective rehabilitation and support and prevent regression of functional abilities and further injury, especially for children with disabilities.

We are equally concerned that access to timely and effective rehabilitation and support has been further impeded by the lack of decision and prolonged proceedings at the Family Court since 2018 (two thirds of [REDACTED]) regarding the enforcement of the parental order in place. Such lengthy proceedings, particularly in the context of an existing protection order against [REDACTED] father, raise further questions regarding effective access to justice and protection of the rights of a child with disabilities. We note that a number of international human rights mechanisms have raised concerns regarding access to justice for women and children claiming remedies for violations of their rights, including specifically the Family Court.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please clarify the steps being taken to guarantee that [REDACTED] has his rehabilitation and support needs met in a timely and effective manner in the home and school environments both in the ACC system and the Family Court, including best interests of the child, reasonable accommodation and individualized support, and to continue progress towards independence and maximum functional ability, in line with articles 7, 19, 24(2), 25, and 26 of the CRPD.
3. Please clarify what mechanisms are in place to monitor and ensure that the ACC (regulations, policies, and processing of claims) and the Family Court proceedings comply with relevant international human rights standards, particularly the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.
4. Please provide information on accountability mechanisms for human rights violations by the ACC and Family Court, particularly with respect to access to effective remedy and redress.
5. Please provide information on legal aid and review costs available to persons with disabilities disputing and appealing decisions by the ACC to ensure their effective access to justice, including the status of updating the 2002 Review Costs Regulations and measures to ensure that awards of legal costs are transparent and reflect actual costs of legal representation and related expertise.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Heba Hagrass
Special Rapporteur on the rights of persons with disabilities

Farida Shaheed
Special Rapporteur on the right to education

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both ratified by New Zealand on 28 December 1978, the Convention on the Rights of the Child (CRC), ratified on 6 April 1993, and the Convention on the Rights of Persons with Disabilities (CRPD), ratified on 25 September 2008.

We wish to first refer to article 7 of the CRPD which provides specific protections for the rights of children with disabilities, including that in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. Any determination of the best interests of a child with a disability must consider the child's own views and individual identity, the preservation of the family, care, protection and safety of the child, any particular vulnerability, and the child's right to health and education (CRPD/C/GC/4, para. 47). The CRC also contains specific guarantees for the rights of children with disabilities in article 23, notably to ensure effective access to education, and health care and rehabilitation services.

The best interests of the child represent a guiding principle of the CRC (article 3), which provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. It further provides that States shall ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 12 of the International Covenant on Economic, Social and Cultural Rights affirms the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Under article 25 of the CRPD, persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination, and States parties shall take all appropriate measures to ensure access for persons with disabilities to health services, including rehabilitation. States should also provide health services designed to minimize and prevent further disabilities, including among children. Article 25(f) requires prevention of discriminatory denial of health services on the basis of disability. The Committee on the Rights of Persons with Disabilities highlighted that healthcare must include access to physiotherapists, psychiatrists, and other professionals in a variety of settings, including hospitals as well as at home (CRPD/C/GC/5, para 89).

Furthermore, article 26 stipulates that States parties shall take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, through comprehensive habilitation and rehabilitation services and programmes in such a way that they begin at the earliest

possible stage and are based on the multidisciplinary assessment of individual needs and strengths. We stress that the right to rehabilitation and the obligation to guarantee health services are interconnected and complement each other, and also include the availability, knowledge and use of assistive devices and technologies.

The Special Rapporteur on the rights of persons with disabilities observed that persons with disabilities have the same health needs as others, while also facing additional specific health needs as well as significant barriers in access to healthcare and rehabilitation services due to discrimination, social exclusion violence and poverty (A/73/161). She further noted that early access to health and rehabilitation services ensures better health outcomes and reduces the costs incurred by health and social care systems associated with poor health.

The right of the child to the enjoyment of the highest attainable standard of health is further elaborated in article 24 of the CRC. The Committee on the Rights of the Child noted that children's right to health is an inclusive right and extends to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health. It highlighted that States have an obligation to ensure that children's health is not undermined as a result of discrimination, including on grounds of disability and age, which is a significant factor contributing to vulnerability (CRC/C/GC/15). Earlier, the Committee also underlined that States should establish systems of "early intervention, including treatment and rehabilitation providing all necessary devices that enable children with disabilities to achieve their full functional capacity [...] free of cost, whenever possible, and the process of acquiring such services should be efficient and simple avoiding long waits and bureaucracies (CRC/C/GC/9, para 57).

We further recall that the Committee on the Rights of the Child underlined that the best interests of the child must be the primary consideration in all actions affecting children, including in all decision-making with regard to providing, withholding or terminating treatment. It stressed that States must place children's best interests at the centre of all decisions affecting their health and development, including the allocation of resources. The best interests of the child must guide treatment options, superseding economic considerations (CRC/C/GC/15, para 13). In 2023, the Committee on the Rights of the Child expressed deep concerns about persisting discrimination against children in situations of vulnerability in New Zealand, including children with disabilities, noting especially their restricted ability to benefit from basic services, including health and protection and to enjoy an adequate standard of living (CRC/C/NZ/CO/6, para 15). Moreover, the Committee on Economic, Social and Cultural Rights expressed concerns that New Zealand was not adequately considering its ICESCR obligations in the budget process and that budgetary allocations for areas relating to ICESCR rights remain insufficient (E/C.12/NZL/CO/4, paras 14-15).

The right to education is enshrined in Article 26 of the Universal Declaration of Human Rights, article 13 of the ICESCR, article 23(3) of the CRC, and article 24 of the CRPD. Additionally, article 2 (definition of reasonable accommodation), article 5 (equality and non-discrimination), and article 7 (children with disabilities) of the CRPD are closely related to the right to education.

The Committee on the Rights of Persons with Disabilities provided guidance on the implementation of the right to inclusive education in its general comment 4 (CRPD/C/GC/4). Therein, the Committee stressed that for the right to inclusive education to be implemented, students should be entitled to the support they require to facilitate their effective education and enable them to fulfil their potential on an equal basis with others. It clarified that the denial of reasonable accommodation constitutes discrimination on the basis of disability. The Committee highlighted that individual support and reasonable accommodation should be free of charge at all compulsory levels of education. And the Committee also observed that States “must take effective measures to provide habilitation and rehabilitation services within the education system, including healthcare, occupational, physical, social, counselling and other services and that they are required to take all appropriate measures to provide protection from violence and abuse against persons with disabilities, including bullying in school.”

We note that the Committee on Economic, Social and Cultural Rights noted disparities in educational outcomes for children with disabilities and recommended that New Zealand strengthen resource allocation for reasonable accommodations and any additional support needed (E/C.12/NZL/CO/4). Moreover, during its Universal Period Reviews in 2019 and 2024, New Zealand received and supported recommendations to ensure the right to inclusive education for children with disabilities.

Article 19 of the Convention on the Rights of Persons with Disabilities recognizes the equal right of all persons with disabilities to live independently and be included in the community. Article 19(b) affirms the right to access individualized, assessed support services, including personal assistance. For many persons with disabilities, access to a range of individualized support services is a precondition for independent living within the community. The existence of individualized support services, including personal assistance, is often a precondition for the effective enjoyment of CRPD rights. In 2022, the Committee on the Rights of Persons with Disabilities specifically drew New Zealand’s attention to its general comment No. 5(2017) on living independently and being included in the community. The Committee notably recommended that New Zealand allocates resources to support services for all persons with disabilities, including personal assistance and that funding for personal assistance should be based in individualized needs assessments that adhere to human rights standards and account for unique life circumstances (CPRD/C/NZL/CO/2-3). Moreover, in the context of the Universal Periodic Review 2024, New Zealand has received recommendations to strengthen community-based support and care services provided to children with disabilities, including to mitigate disparities in living standards and access to development outcomes, and to improve the coordination of efforts and the allocation of resources to eliminate difficulties faced by children with disabilities. New Zealand supported all of these recommendations (A/HRC/57/4).

Finally, we wish to recall that the ICCPR guarantees the right of access to justice through articles 2(3) (right to an effective remedy); 14 (rights to equality and fair hearing before a competent, independent and impartial tribunal, right to legal assistance), and 26 (rights to equality before the law and equal protection of the law). Under article 13 of the CRPD, States are required to ensure effective access to justice for persons with disabilities on an equal basis with others. Moreover, the Committee on the Rights of Persons with Disabilities affirmed that States have an obligation to ensure

that persons with disabilities can access to legal representation on an equal basis with others (CRPD/C/GC/1). With respect to New Zealand, the Committee expressed concerns over the lack of free independent advocacy and legal representation for persons with disabilities (CRPD/C/NZL/CO/2-3, paras 23-24).

We further recall that the Human Rights Committee stated that an important aspect of the fairness of a hearing is its expeditiousness. While the issue of undue delays in criminal proceedings is explicitly addressed in ICCPR article 14, paragraph 3(c), delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice (CCPR/C/GC/32, para 27).

Furthermore, the Committee on the Rights of the Child has emphasised that States should ensure and facilitate access to courts for individual children and their caregivers and take steps to remove any barriers to access remedies for violations of the children's right to health² and other rights (CRC/C/GC/15). The Special Rapporteur on the independence of judges and lawyers has noted that children lack financial autonomy and means, so court proceedings represent a heavy financial burden, as do the costs of initiating and pursuing proceedings, including lawyers' fees. Moreover, the Special Rapporteur clarified that access to justice involves access to the judicial system as well as to other justice mechanisms, including national human rights institutions and mediation institutions (A/HRC/29/26).

Finally, we note that international human rights instruments expressed concerns over violence and abuse in the family experienced by children, including children with disabilities (E/C.12/NZL/CO/4; CEDAW/NZL/CO/8), as well as the limited access to child-friendly reporting channels, physical and psychological rehabilitation and health services (CRC/C/NZL/CO/6). In 2018, the Committee on the Elimination of Discrimination Against Women noted particular barriers concerning access to justice through the Family Court (CEDAW/NZL/CO/8, para 47) and reiterated its concern that gender-based violence is often not taken into account in court decisions on child custody and visitation rights and that women have limited access to legal aid in divorce proceedings (CEDAW/C/NZL/CO/9, para 44).

² Committee on the Rights of the Child, general comment No. 15(2013) on the right of the child to the highest attainable standard of health.