



**HUMAN RIGHTS  
LAWYERS ASSOCIATION**  
AOTEAROA.NEWZEALAND

27 February 2015

UNCROC Public Consultation

Ministry of Social Development  
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Tena koe

## **FEEDBACK ON DRAFT FIFTH PERIODIC REPORT FOR NEW ZEALAND UNDER UNCROC**

1. The Aotearoa Human Rights Lawyers Association (HRLA) welcomes this opportunity to provide feedback on the draft Report. Below we set out comment on those issues that we feel require specific feedback.

### **Corporal punishment: paragraphs 100 and 115**

2. New Zealand has a duty to prevent "torture or other cruel, inhuman or degrading treatment or punishment" against children. The HRLA supports the promotion of positive and non-violent forms of child discipline. It is unfortunate that New Zealand has not met the Committee's recommendation that it pursue the introduction of an explicit national legal ban on all forms of violence against children in all settings (cf. Concluding observations of the Committee on the Rights of the Child, CRC/C/NZL/3-4, at para 29).
3. The Ministry may wish to revise the wording of paragraph 115, which currently reads that "physical discipline of a child is already an offence under s 59 of the Crimes Act 1961". At present a parent or person in the place of a child's parent is justified at law in using physical violence in order to prevent the child from engaging in offensive or disruptive behaviour (s 59(1) of the Crimes Act). To most readers that would be synonymous with "physical discipline". As presently worded, the paragraph is misleading.

### **Family Dispute Resolution (FDR): paragraph 126**

4. The HRLA notes the recent reforms to the Family Court with some concern, particularly those relating to FDR. Funding cuts have threatened some of the Family Court's functions, and the FDR process needs revisiting. While FDR mediators are generally supportive and professional, the caseload in smaller centres means they cannot give each family the individual support it deserves.

5. Additionally, the HRLA is concerned that families of modest means are being forced to bear the cost of mediation because they fall outside of funding criteria. While FDR is not in itself a policy which threatens the rights of families, we urge the Government to fully fund the process so that families are not placed under additional strain at this most difficult time.

#### **Separation from parents: paragraph 132**

6. New Zealand is required under art 9.3 the Convention to "respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis" (unless that would not be in the child's best interests). However, prison bed allocation frequently does not take into account a prisoner's family relationships and the barrier posed by physical distance.<sup>1</sup> Skype and similar technologies could enable contact between visits, but to date the sole New Zealand trial was abandoned due to alleged security risks.<sup>2</sup>
7. Mothers with Babies units and bonding facilities are admirable initiatives. However, there are only a limited number of units available, though almost half of female prisoners have dependent children.<sup>3</sup> None are available for fathers with dependent children.

#### **Same-sex adoption – para 138**

8. Unmarried same-sex couples remain unable to adopt children under the Adoption Act 1955. In addition to the concerns noted by the Committee that children's consent is not currently required for adoption no matter their age, and the restrictions on their access to information regarding their biological parents in some cases, the HRLA notes this unjustified breach of the right against discrimination on the basis of marital status and sexual orientation.

#### **Family Violence Courts (FVC): paragraph 143**

9. The HRLA absolutely supports the proliferation of FVCs. We do note that care must be taken in the aftermath of a person going before the FVC. We are informed that, particularly in smaller towns, there is a lag between a parent being sentenced (whether custodial or community-based) and the reconciliation of children with that parent. In some cases fathers have not seen their children for many months. We are aware of cases where parents are driven to suicide due to separation from their children and a feeling of hopelessness that the situation will not be resolved.
10. We urge the Government to ensure that justice for offences is swift, but also to ensure that the measures that go into action following FVC and other courts is just as swift.

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<sup>1</sup> Nancy Loucks "Keeping in Touch: The Case for Family Support Work in Prison" (Prison Reform Trust, 2005), available at: [www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk).

<sup>2</sup> Shane Cowlshaw "Skype Trial for Inmates Canned" Stuff (online ed, New Zealand, 16 June 2013).

<sup>3</sup> Thirteen mothers and children were housed in the Units at the time of a recent review of the policy: Andrea Elliott-Hohepa and Ruth Hungerford "Report on Phase Three of the Formative Evaluation of the Mothers with Babies Units" (Department of Corrections, 30 June 2013), available at [www.corrections.govt.nz](http://www.corrections.govt.nz), at [2.1]; Elizabeth Stanley "Human Rights and Prisons: A Review to the Human Rights Commission" (Human Rights Commission, July 2011) at 90..

### **Detention for mental health reasons: paragraph 191**

11. While children and young people subject to the Mental Health (Compulsory Assessment and Treatment) Act 1992 are technically afforded all the same rights as adults, there is a practical lack of resources available for them. There are insufficient forensic psychiatrists specialising in child psychiatry to conduct the required mental health assessments, and a lack of forensic residential placements (which exacerbates the separation of children and young people from their families).<sup>4</sup>

### **Specialist youth units in prisons: paragraph 246**

12. Prison is, simply put, no place for young people. There is no longitudinal evidence that incarceration reduces recidivism – in fact the evidence points to the opposite outcome. When in prison, New Zealand is obligated to segregate children and young people from adults. However, the shortage of spaces for youths means this is often breached in practice.
13. Youth units are not the best option for dealing with young offenders. Instead, dealing with this small number of offenders on an individual basis has been shown to reduce recidivism (in 2014 there were just 54 young people under 18 in custody, either on remand or after sentence).
14. There are currently four prisons with specialist youth units (for male offenders aged 17, and certain "vulnerable" 18 and 19 year olds) in New Zealand. None are based in Auckland Prison, despite the high proportion of young offenders from New Zealand's largest city. Again, this exacerbates the separation of young people from their families at a time when they are most vulnerable.
15. We note that low numbers of females requiring a youth unit is not an adequate justification for failing to cater adequately for those young people. The HRLA encourages the Government to make provision for female young offenders as soon as is possible. While young males have access to programmes that are targeted at youths, young females miss out on these opportunities. This must be addressed.

### **Age of criminal majority: paragraph 253**

16. The HRLA supports raising the jurisdiction of the Youth Court to include 17 year olds. While this would incur the higher front-end costs of expanding the work of the intensive and rehabilitation-focussed Youth Court (rather than the less individualised justice dispensed by the District Court), the savings in lower recidivism rates are likely to outweigh the costs. The increased cost has been estimated at a maximum of \$66.1 million per year,<sup>5</sup> to put that figure in perspective the annual cost of running New Zealand's prisons alone (let alone the entire criminal justice system) is over \$750 million.<sup>6</sup>

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<sup>4</sup> Human Rights Commission "Human Rights in New Zealand Today" (Human Rights Commission, 2010) at 161.

<sup>5</sup> "Updating the Children, Young Persons, and their Families Act 1989: Part A - Operational and Cost Implications", (Cabinet Paper from the Office of the Minister for Social Development and Employment, 2007).

<sup>6</sup> Department of Corrections "Annual Report – Part C – Annual Financial Statements" (Department of Corrections, 2014) at 95.

## **Conclusion**

17. Again we thank you for the opportunity to comment on this draft report. Should any further information be required please do not hesitate to contact us. Many positive steps have been taken but there is certainly room for New Zealand as a country to improve outcomes for our youngest and most vulnerable citizens. Their voices must not be lost.

Yours faithfully,

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