

19 November 2006

**Submission to Ministry of Justice on
November 2006 Draft of New Zealand's Fifth Periodic Report on compliance with the
United Nations Convention Against Torture United Nations Convention Against
Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Introduction

- 1 Action for Children and Youth Aotearoa Incorporated (ACYA) is a coalition of non-governmental organizations, families and individuals whose purpose is to promote the well-being of children and young people in Aotearoa New Zealand through:
 - education and advocacy on the rights of children and young people;
 - encouraging the government to act on the recommendations of the United Nations Committee on the Rights of the Child; and
 - promoting opportunities for the voice and participation of children and young people.
- 2 In 2003 ACYA produced and published *Children and Youth in Aotearoa 2003*, the New Zealand NGO Report on New Zealand's implementation of the UN Convention on the Rights of the Child (NGO Report). The NGO Report was presented to the UN Committee on the Rights of the Child in Geneva in June 2003, accompanied by a video funded by ACYA and produced by New Zealand children called *Whakarongo Mai / Listen Up*.
- 3 In 2004 ACYA made a shadow report to the United Nations Committee Against Torture,¹ met with the Committee, and attended the meeting between the Committee and representatives of the New Zealand Government.
- 4 ACYA has 100 or so members, both individual and child related organization including leading child interest groups. This submission has been prepared by the ACYA Committee and the views expressed in it may not represent the views of each ACYA member.
- 5 New Zealand has a robust and transparent justice system. In particular, New Zealand's youth justice system is, in general, based on restorative and rehabilitative principles rather than more traditional deterrent or punitive objectives.
- 6 However, ACYA and other human rights NGOs have strong concerns about a range of issues to do with New Zealand's compliance with international human rights treaties, including the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 7 Concerns that ACYA raised in 2004 in its 2004 report about New Zealand's compliance with the Convention have yet to be addressed by the Government.
- 8 The constraints of the timeframe for consultation and limited resources mean that this submission focuses only on the following areas of particular concern to the wellbeing of children and young people.

¹ Action for Children and Youth Aotearoa Inc (2004). *Report to the United Nations Committee on Torture. Some Aspects of New Zealand's Compliance with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. April 2004*. Wellington: ACYA.

New Zealand Action Plan for Human Rights

- 9 In 2004 the UN Committee Against Torture welcomed the development of the national Plan of action on human rights (para 5(i)).
- 10 The New Zealand Action Plan for Human Rights has been completed and published by the Human Rights Commission and Children's Commissioner, but not adopted by the Government. Its current status with the Government is unclear. It is not referred to in the draft of the Fifth Periodic Report

Para 155-161: Remand of young people to police cells

- 11 Under s239(2) Children, Young Persons and their Families Act 1989 a young person can only be remanded to a police cell if the young person is likely to be violent or to abscond and Child, Youth and Family have no suitable facilities for the detention of the young person in safe custody.
- 12 There has been since at least 1997 a chronic shortage of youth justice beds. While new beds have become available over the last three years the demand for places has increased and young people continue to be placed in police cells.
- 13 Lack of resources mean that there are only 108 residential youth justice beds available (Principal Youth Court Judge AJ Becroft 2006). Most of these beds are taken up with young offenders completing supervision with residence orders, so on average two young people are remanded to police cells every day.
- 14 Considerable numbers of young people are spending days in facilities designed to hold adult prisoners for short periods of time. Hon Ruth Dyson's answer to Parliamentary Question no 8068 (Hansard 28 June 2006) showed that 329 young people spent more than 24 hours in police cells in the first six months of 2006. This is an increase from the situation in 2003². In some cases remands in police cells have stretched to 12 days or even longer.
- 15 Young people in such situations are primarily fed on takeaways and junk food, suffer from a lack of fresh air and exercise and do not have access to education or family interaction. Even when young people in this situation are 'closely monitored' (para 156) front line police officers are not trained to respond to the complex needs of such young people. Young people are left in situations that are inhumane and degrading – for example, the 16 year old left in a police cell for three days without a shower or sanitary products (Green Party press release 26 May 2006).
- 16 The Commissioner for Children in 1997 and Youth Court judges over a period of ten years have publicly criticised the situation as being in breach of the prohibition on inhuman and degrading treatment.
- 17 The Human Rights Commission in its report *Human Rights in New Zealand Today* (September 2004) in a section headed "Where we need to do better" stated at page 212 "There is strong criticism about the lack of Child, Youth and Family beds for young people who need to be detained and the resulting significant number of young people detained in police cells for lengthy periods". The *New Zealand Action Plan for Human Rights* (February 2005) states as a priority for government action the need for an

² Action for Children and Youth Aotearoa Inc (2004). Ibid. Para 34.

increase in the availability of beds in Child, Youth and Family youth justice residential facilities.

- 18 Over the last few years, New Zealand has given repeated assurances to UN human rights treaty monitoring bodies that the issue of young people in police cells would be addressed. Although officials have been working on solutions, the situation for young people has not improved.

Para 144: Death of Liam Ashley

Part III page 60 – Juveniles in conflict with the law held separately from adults in pre- and post-trial detention

Part III page 62 – Age of responsibility in juvenile justice legislation

- 19 The 2004 report from ACYA to the UN Committee Against Torture in 2004 said: “In New Zealand, criminal responsibility begins at the age of 10 years. Children between 10 and 13 years can be prosecuted only for murder and manslaughter. For serious crimes, young offenders may be transferred to a higher court where they are subjected to adult sentences and punishment. The *Children, Young Persons and their Families Act 1989* is the main piece of legislation for youth justice, and unlike the *Convention on the Rights of the Child*, does not apply to 17 year olds.
- 20 “The Committee on the Rights of the Child has twice asked the government to raise the age of criminal responsibility.³ This has not happened for political reasons, as “the weight of public opinion seems to favour lowering the age limit”.⁴ In 2003, the Committee noted its concern that the minimum age of criminal responsibility at 10 years was too low and that all children under 18 in conflict with the law are not afforded special protection”.⁵ The Committee recommended that the government “raise the minimum age of criminal responsibility to an internationally acceptable level and ensure that it applies for all criminal offences” and ‘extend the *Children, Young Persons and Their Families Act* of 1989 to all persons under the age of 18.’⁶ ”⁷
- 21 In 2006 the Government voted in favour of a motion that a Private Members Bill, the *Young Offenders (Serious Crimes) Bill*, be referred to a Parliamentary Committee. The effect of this Bill would be to significantly lower the age of criminal responsibility. The Government has to date given no indication whether it will or will not support the Bill when it is returned to Parliament. This Bill is contrary to the recommendations of the UN Committee on the Rights of the Child and the UN Committee Against Torture and would exacerbate problems in the youth justice sector,
- 22 Government legislation currently before Parliament (*Children, Youth Persons and Their Families Amendment (No 4) Bill*) would (a) give the Police the power to arrest young people for breach of a bail condition, (b) enable the Youth Court to send young people aged 15 years to the District Court for sentence thus enabling harsher penalties to be imposed on them, and (c) allow the courts to remand under-18 year olds facing serious charges to adult prisons pending trial of their case or sentencing.

³ *Concluding Observations of the Committee on the Rights of the Child: New Zealand*, CRC/C/15/Add.216. 3 October 2003. Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: New Zealand*, CRC/C/15/Add.71, 1997.

⁴ Ministry of Youth Affairs (2000). *Children in New Zealand. United Nations Convention on the Rights of the Child: Second Periodic Report of New Zealand. December 2000*. Wellington: Ministry of Youth Affairs, p. 9.

⁵ *Committee on the Rights of the Child (2003)*, supra n 6, para. 20.

⁶ *Ibid.*, para. 21.

⁷ *Action for Children and Youth Aotearoa Inc (2004)*. *Ibid.*

- 23 Despite requests from the Committee on the Rights of the Child in 1997 and 2003,⁸ and the concerns of the Committee Against Torture in 2004 (para 6(e)) New Zealand has also failed to withdraw a reservation to Article 37 (c) of the Convention on the Rights of the Child permitting the mixing of young people and adults in penal institutions.
- 24 The Department of Corrections has prepared a “test of best interests”, setting criteria by which it will determine when young male prisoners will be separated from adult prisoners, as a precursor to lifting the reservation on Article 37(c) of the Convention on the Rights of the Child. The result will be that a number of under-18 year old male prisoners will be mixed with 19 and 20 year old prisoners. This is in breach of the United Nations Convention on the Rights of the Child, and against the clear recommendation of the UN Committee on the Rights of the Child (2003 CRC/C/15/Add.216 para 50 (b)) and the UN Committee Against Torture.
- 25 The Department of Corrections has established youth wings in four of the adult male prisons. These wings are also used to house vulnerable prisoners aged under 20 years of age. Thus a 14 year old could be forced to share with a 19 year old (Principal Youth Court Judge 2006). There is a complete lack of separate youth facilities for young female offenders.
- 26 The housing of young offenders with adult offenders puts young offenders at a greater risk of suicide, physical and sexual abuse and other forms of intimidation. In the recent case referred to at para 144 of the draft Report, a 17 year old was killed by a violent adult prisoner with whom he was being transported. This tragic case illustrates the importance of ensuring that special custodial measures are implemented for young people.
- 27 The efforts of the Ministry of Social Development to establish community-based advocacy services and strengthen grievance panel procedures for young people held in youth justice residential facilities are encouraging. It is hoped that these initiatives will improve the situation of young people in Child, Youth and Family Services residential care, an issue that has been of pressing concern – see for example the ACYA reports to the UN Committee on the Rights of the Child in 2003 and the UN Committee Against Torture in 2004.

Part III: Amend legislation to prohibit corporal punishment in the home

- 28 Children’s advocates and human rights advocates have given strong support for the Private Member’s Bill to repeal Section 59 of the Crimes Act. This Bill is in line with the recommendations of the UN Committee Against Torture and the UN Committee on the Rights of the Child.
- 29 The Government could have given the Bill support, but has instead decided it will be decided on a “conscience” vote.

Appreciation

- 30 We are very appreciative to the officials who have obviously done considerable work in developing the draft report. We know from experience that this is an enormous task!

⁸ *Concluding Observations of the Committee on the Rights of the Child: New Zealand, CRC/C/15/Add.216.* 3 October 2003. Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: New Zealand, CRC/C/15/Add.71*, 1997.

- 31 We are also most appreciative for the opportunity to comment on the draft and look forward to seeing the final report which will provide a very useful overview of the Government's approach to ensuring compliance with the Convention.