

8 January 2019

Committee on the Rights of the Child
Office of the High Commissioner Human Rights
United Nations
crc@ohchr.org

re: Draft General Comment No. 24 (201x) (revised General Comment No. 10 (2007)) on
children's rights in juvenile justice

This submission is from the Wellington and Canterbury Howard Leagues for Penal Reform in New Zealand. We have a direct lineage to the English Howard League for Penal Reform established in 1866 and named after English penal reformer John Howard (1726-1780). The Howard League was first established in New Zealand in 1924. We receive no government funding and have no political affiliations.

1. We strongly support General Comment No. 24. We particularly support:

- (a) the statement that "*the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders*" (para 12)
- (b) the requirement for all professionals involved in the administration of juvenile justice to be trained to enhance equal treatment of child offenders (para 49)
- (c) the automatic removal of criminal records of children (para 80)
- (d) establishing a maximum duration of incarceration for children which is "considerably shorter than the duration of custodial sentences for adults" (para 86). We likewise oppose any use of life sentences for children (para 92)
- (e) establishing the age below which a child cannot be deprived of liberty, including pre-trial detention (para 101), and
- (f) the use of restorative justice (para 115).

2. We have the following additional comments:

- (a) We note and support reference to deprivation of liberty, including pre-trial detention, as "*a measure of last resort*" (paras 3, 5, 13, 28, 84, 96), and encourage the development of criteria to indicate what constitutes "*a measure of last resort*" in this context.
- (b) We support the requirement of a Minimum Age of Criminal Responsibility (MACR) of 14 years or older (para 33). This revises the General Comment No. 10 statement that: "*a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age.*"

It is well understood that children and young people are "not "mini-adults" and warrant different treatment. This is in line with brain science research, which shows that adolescent brains have not fully matured."¹ In light of such work, Delmage has reviewed the issue from a medico-legal perspective and concludes that a minimum age of 14 would "bring the minimum age of criminal responsibility more into line with current developmental research and civil legislation ... subject to the ... rebuttable presumption of developmental immaturity ... with the burden of proving competence resting with the prosecution."²

- (c) We similarly support the discouragement of exceptions to a MACR on the grounds of child maturity (para 35), and the discouragement of systems with two MACRs (para 43). New Zealand's MACR is 10 years (Crimes Act 1961 s21(1)). Children who are 10 years old or less than 14 years can only be convicted of an offence if they "knew that the act or omission was wrong or that it was contrary to law" (Crimes Act 1961 s22(1)). A clear signal from the UN, as occurs in the draft Comment 24, of a MACR of 14 years, including the undesirability of recourse to maturity or similar mechanism to effect a system with two MACRs, would clarify that New Zealand should revise its MACR to align with international expectations.
- (d) We support the provision of free legal representation to all children facing charges, and that appropriate assistance by someone with legal knowledge be provided at all stages, including interviewing of the child (paras 62-63). We encourage the Committee to recommend (or stress a preference for) this assistance to be provided by a lawyer to remove any ambiguity and prevent situations where family members are seen to be an appropriate substitute for legal representation at early stages of any process where a child is facing charges, or has been brought in for questioning prior to charges being laid.
- (e) We support the right of a child to their privacy being fully respected during all stages of the proceedings, including protection of their identity (paras 78-79), and recommend that where states have broadcasting standards and/or a media code of conduct that it is encouraged that a clause reflecting this right is included in relevant documents (c.f. paras 122-123).
- (f) Maintaining communication and connections with family and community is widely accepted as important to support reintegration and reduce likelihood of recidivism. We therefore support the requirement for children who are deprived their liberty to be placed in facilities "*as close as possible to the place of residence of his/her family*" (para 106). We additionally recommend that telephone calls be available to children deprived of their liberty at no cost, and that States parties investigate the viability of email correspondence, in addition to posted mail, for child inmates.
- (g) We note and support the preference given to diversion (para 24). Additionally, we note the reference to open detention facilities in the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) (Havana Rules para 30), and recommend that the Committee state a preference for open detention facilities in cases where it is determined that the deprivation of liberty is necessary (para 95).
- (h) We support the statement that "*States parties ... should treat ... children [forced to commit acts of violence] primarily as victims*" (para 112), but we additionally

¹ Taumaunu, Heemi "Rangatahi Courts of Aotearoa/New Zealand - an update" *International indigenous Therapeutic Jurisprudence Conference* (Vancouver, British Columbia, Canada: University of British Columbia, 9-10 October 2014): 11.

https://www.courtsfonz.govt.nz/speechpapers/Rangatahi%20Courts%20of%20Aotearoa%20New%20Zealand%20-%20an%20update.pdf/at_download/file

² Delmage, Enys "The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective" *Youth Justice* 13(2):108.

recommend that in all instances where adults have forced or coerced children to commit crimes, the children involved be treated primarily as victims.

- (i) We support the recommendations that States parties ensure data collection, evaluation and research occurs (paras 124-126), we particularly support the gathering of statistics on the treatment and sentencing of vulnerable groups of children in order to monitor and identify whether or not discrimination is occurring and the steps to take to reduce and eliminate this. We encourage key statistics to be collected be explicitly identified by, and reported to, the Committee to enable international comparisons to occur.

Thank you for providing this opportunity to make our submissions on the General Comment No. 24. We hope our comments and suggestions have been of assistance to the Committee.

Nāku iti noa, nā

Christine McCarthy
on behalf of the Wellington and Canterbury Howard Leagues for Penal Reform