**Committee on the Rights of the Child**

**Draft General Comment No. 24**

**on children’s rights in juvenile justice**

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# Introduction

1. The New Zealand Human Rights Commission (“the Commission”)[[1]](#footnote-2) welcomes the opportunity to provide the Committee on the Rights of the Child (“the Committee”) with feedback on the draft General Comment No. 24[[2]](#footnote-3) (“the draft general comment”) on children’s rights in juvenile justice.
2. The Commission supports the draft general comment. Our submission focusses on supporting an increased age of criminal responsibility and suggests enhancements in relation to the State obligation to support customary justice systems.

# Minimum age of criminal responsibility

1. The Commission supports the draft general comment’s revision of the absolute minimum age of criminal responsibility from 12 years old to 14 years old.
2. The Commission considers that this proposed revision is more in line with updated understandings of children’s brain development and best practice systems.[[3]](#footnote-4)
3. The revision would also provide useful guidance to New Zealand. New Zealand’s current criminal justice policy settings concerning the age of criminal responsibility are not yet fully consistent with international human rights standards.
4. In New Zealand, children aged 10 - 13 years old[[4]](#footnote-5) (inclusive) can be charged with serious offences[[5]](#footnote-6) but cannot be convicted of an offence unless they knew the act or omission to be wrong or contrary to law. [[6]](#footnote-7) This means that there are children under 14 who are still subject to the criminal justice system.
5. Children aged 14 - 18[[7]](#footnote-8) can be both charged and convicted of any criminal offence, as if they have full adult capacity. There is no absolute or rebuttable presumption of incapacity for children aged 14 - 18.
6. This practice conflicts with the general comment, which presumes absolutely that children under 14 cannot have capacity to infringe the criminal law. However, New Zealand’s youth justice and child offending jurisdictions do confer special protective measures on children aged under 18, in accordance with Article 40 of the Convention on the Rights of the Child.
7. The approach of New Zealand’s criminal law is also inconsistent with New Zealand’s civil law, where children under the age of 18 are presumed incapable of entering into most contracts, unless proven otherwise.[[8]](#footnote-9)
8. The Commission would support an absolute minimum age of criminal responsibility of 14 years being introduced in New Zealand. This would ensure alignment between the age of criminal responsibility and the coverage of New Zealand’s youth justice system which applies to children aged 14 years and over.
9. The proposed revision of the age of criminal responsibility in the draft general comment would serve to reinforce law reform advocacy efforts in New Zealand concerning this issue.

# Customary justice systems

1. The Commission supports the draft general comment’s revision relating to integration of customary justice systems and the State justice system.
2. The Commission recommends that the comment go further to encourage States to develop authentic customary justice systems to work equitably and in conjunction with State justice systems.
3. The Commission recognises the impact that colonisation has had on the continuation and development of authentic customary justice systems by many indigenous populations.
4. In 2008, Ngā Kōti Rangatahi[[9]](#footnote-10) and Pasifika Courts were introduced to the New Zealand youth justice system. The courts operate within and in the same way as the mainstream Youth Court[[10]](#footnote-11) however they are held in more culturally appropriate spaces and follow cultural processes relevant to Maori and Pasifika youth respectively.[[11]](#footnote-12)
5. While the Courts are designed to help young Māori and Pasifika people to better engage with the youth justice system, they are currently restricted to dealing with case management and disposition following a *not denied* (guilty) plea and, accordingly serve as a voluntary mitigation option. First appearances; opposed bail hearings and defended hearings, including fitness to plead matters, take place in the regular Youth Court.
6. Development of authentic customary justice systems is a vital part of the range of targeted responses to address over-representation of indigenous children in the criminal justice system. In New Zealand, as elsewhere, indigenous children are in contact with the justice system at vastly higher rates than other population groups.[[12]](#footnote-13)
7. The extent of this disparity has been discussed by the Committee in its General Comment on Indigenous Children,[[13]](#footnote-14) and by the Expert Mechanism on the Rights of Indigenous Peoples in its Study on Indigenous Peoples’ Access to Justice.[[14]](#footnote-15)
8. The Commission would support further comment from the Committee that, where possible, States support the development of authentic customary justice systems, where these systems are likely to contribute favourably to the outcomes for indigenous children.

# Conclusion

1. The Commission supports the draft general comment. The Commission recommends that the Committee progress the draft general comment, with revisions in relation to customary justice systems suggested by the Commission.
2. The Commission would be happy to provide any further information on the matters we have raised here.
1. The Commission is New Zealand’s national human rights institution (“NHRI”). It has ‘A’ status accreditation. [↑](#footnote-ref-2)
2. Replacing General Comment No. 10 (2007). [↑](#footnote-ref-3)
3. See for example [*It’s never too early, never too late: A discussion paper on preventing youth offedning in New Zealand*, Office of the Prime Minister’s Chief Science Advisor, 12 June 2018](https://www.pmcsa.org.nz/wp-content/uploads/Discussion-paper-on-preventing-youth-offending-in-NZ.pdf)andthe research cited by the [UK Houses of Parliament Parliamentary Office of Science and Technology in its June 2018 research briefing PostNote number 577](http://researchbriefings.files.parliament.uk/documents/POST-PN-0577/POST-PN-0577.pdf). [↑](#footnote-ref-4)
4. Section 22 of the Crimes Act 1961. [↑](#footnote-ref-5)
5. Defined as murder and manslaughter under s 272(1)(a) of the [Oranga Tamariki Act 1989](http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM153418.html?search=sw_096be8ed817ca4ae_272_25_se&p=1&sr=3) or offences for which the maximum penalty available is life imprisonment or at least 14 years under s 272(1)(b) of the Oranga Tamariki Act 1989. See also s 272(1)(c) [↑](#footnote-ref-6)
6. Section 22 of the Crimes Act 1961. New Zealand does not use the term *doli incapax* however this is implied for children in conflict with the law, under this section. [↑](#footnote-ref-7)
7. Young person is defined by s2 of the Oranga Tamariki Act 1989 as a person over the age of 14 years but under the age of 17 years. As at 1 July 2019, a young person will be defined by s2 of the Oranga Tamariki Act 1989 as a person over the age of 14 years but under 18 years old. [↑](#footnote-ref-8)
8. Section 86, Contract and Commercial Law Act 2017. [↑](#footnote-ref-9)
9. Ngā Kōti means the courts and rangatahi means young person, in te reo Māori. [↑](#footnote-ref-10)
10. Both Courts are presided over by Youth Court Judges. [↑](#footnote-ref-11)
11. See [Rangatahi Courts & Pasifika Courts](https://www.youthcourt.govt.nz/about-youth-court/rangatahi-courts-and-pasifika-courts/). [↑](#footnote-ref-12)
12. National Iwi Chairs Forum, (2018), [*Rangatahi Māori and Youth Justice: Oranga Rangatahi*](https://iwichairs.maori.nz/wp-content/uploads/2018/02/RESEARCH-Rangatahi-Maori-and-Youth-Justice-Oranga-Rangatahi.pdf)*.* [↑](#footnote-ref-13)
13. UN Committee on the Rights of the Child, (2009), *General Comment No. 11: Indigenous Children,* CRC/C/GC/11, 12 February 2009. [↑](#footnote-ref-14)
14. UN Expert Mechanism on the Rights of Indigenous Peoples, (2014), [*Access to Justice in the promotion and protection of the rights of Indigenous Peoples*](https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Followupstudyonaccesstojustice.aspx), A/HRC/27/65. [↑](#footnote-ref-15)