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Universal Periodic Review (UPR)

Stakeholder Submission

Human Rights in New Zealand

Submitted by:

Edmund Rice International (ERI)

Edmund Rice Justice Aotearoa Justice Foundation

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I. INTRODUCTION

1. The following report is a joint submission of the above mentioned organizations. Taking note of the significant advances achieved by New Zealand to improve the citizens' quality of life and guarantee the full enjoyment of their rights, this report focuses on major issues affecting the **rights of the Child and Indigenous Peoples**, especially the impact of poverty on children and the incarceration rates for Māori children in New Zealand.

2. This report is a result of research and consultation process that took place over several years with workers in the field, Māori peoples themselves and academic researchers. Employing a methodology of empirical investigation, the data and information reflect the field experience of Māori elders and leaders, lawyers and para-legal workers, educators, community development workers, juvenile justice workers and youth workers, who are involved in the administration and care of children in conflict with the law, and formal and informal education of children (in the age range of 4-18 years), as well as the input of young people themselves. Information provided by children's families was also taken into account.

3. **Edmund Rice International** (ERI) is a faith-based NGO promoting and protecting human rights in 34 countries. Established in 2007, ERI is primarily concerned with the Rights of the Child, the Universal Right to Education, and Ecological Sustainability.

II. THE FIRST UPR of NEW ZEALAND

8. Edmund Rice International (ERI) welcomes the constructive participation of New Zealand in the first cycle of the Universal Periodic Review (UPR). The present submission follows on the ten UPR recommendations accepted by New Zealand in 2009 regarding the rights of Māori as the Indigenous People of New Zealand (1) and the five UPR recommendations (2) accepted by New Zealand regarding the rights of the Child.

III. THE RIGHTS OF INDIGENOUS PEOPLES

9. In the first cycle of the UPR in 2009, New Zealand accepted ten recommendations relating to Māori rights and partially supported another six. ERI welcomes New Zealand's signing of the United Nations Declaration of the Rights of Indigenous Peoples, though some senior politicians have played this down in public (see below). ERI urges to New Zealand to ratify ILO Convention No. 169, a recommendation it specifically rejected in 2009.

10. Relative to their numbers in the general population Māori are over-represented at every stage of the criminal justice process and are also much more likely to be victims of crime.¹ Though forming just 12.5% of the general population aged 15 and over, 42% of all criminal apprehensions involve a person identifying as Māori, as do 50% of all persons in prison.² This is caused by a number of complex intersecting and reinforcing factors including

¹ Recommendations 24, 26, 28, 30, 31, 32, 33, 58, 59, 61 (A/HRC/12/8).

² Recommendations 3, 46, 50, 51, 56 (A/HRC/12/8).

dispossession of land, structural disadvantage, intergenerational poverty, poor educational outcomes and a criminal justice system that poorly serves and reflects Māori interests.

11. The government has recognised this issue and has incorporated targets and commitments into a number of government strategies.³ However, the implementation of these policies could be greatly improved.

12. In particular ERI and Edmund Rice Justice Aotearoa (ERJA) are concerned that:

- The Criminal Justice system does not adequately represent the commitment made to Māori by the Crown under the Treaty of Waitangi.⁴
- Māori have poor relationships with key stakeholders in the criminal justice system, particularly police, characterised by both perceived and real discrimination.⁵
- The government does not sufficiently resource Māori programmes and providers to deliver services targeted at Māori.⁶

13. *ERI recommends that the Government of New Zealand:*

1. **Ensure that the principle of self-determination guaranteed to Māori under UNDRIP⁷ is promoted by ensuring that Māori contribute to and develop policies in the Criminal Justice System in meaningful ways.**
2. **Ensure that when introducing any new policy or legislation the government expressly considers the impact of the policy on Māori through disparate impact statements.⁸**
3. **Implement Justice Reinvestment strategies⁹ that include therapeutic jurisprudence approaches, such as the expansion of specialised courts¹⁰, and the increased use of restorative justice processes that promote community empowerment¹¹ and the role of elders (kaumatua) in the criminal justice system, such as the Rangatahi Courts.¹²**
4. **Increase the use of non-custodial sentencing options (such as community based orders, community work orders, diversionary programs, cautioning and home detention).**
5. **Resource Māori specific programmes.¹³**

IV. THE RIGHTS OF THE CHILD

14. ERI recognises and commends the government of New Zealand for a recent lowering in the rate of children and young people being charged in court. In 2012, it was the lowest in 20 years.¹⁴ However, ERI has two major areas of concern:

- *The Rates of Youth Offending for Māori:* Over half (54%) of children and young people charged in court are Māori.¹⁵
- *Statistics around child poverty:* Youth offending is caused by a number of complex intersecting factors. Key amongst these is poverty which in turn is a cause of family dysfunction, and poor educational and health outcomes. ERI and ERJA are concerned that the government is not doing enough to combat the “serious problem of poverty in New Zealand.”¹⁶

15. *ERI recommends that the Government of New Zealand:*

6. Improve relationships between key stakeholder in the justice system and Māori youth,¹⁷ communities and iwi.

7. Develop initiatives that allow Māori to exercise greater rangatiratanga over their youth. In particular, the development of Rangatahi Courts should be encouraged. ¹⁸

8. Adopt a preventative and rehabilitative approach to offending caused by drug use though the expansion of the Youth Drug Court model.¹⁹

9. Increase the use of education/ rehabilitation²⁰ as an order in the youth court. This will need to be coupled with new and innovative ways of providing education for youth who are excluded from education.

10. Adopt recommendations made by the Office of the Commissioner for Children, Child Poverty Action Group and UNICEF and develop a National Plan for ending child poverty that is resourced so as to be effective and expedient.²¹

Appendix One - REFERENCES:

(1) Recommendations 24, 26, 28, 30, 31, 32, 33, 58, 59, 61 (A/HRC/12/8).

(2) Recommendations 3, 46, 50, 51, 56 (A/HRC/12/8).

¹ The Department of Corrections notes,

“this state of affairs represents a catastrophe both for Māori as a people and, given the position of Māori as tangata whenua, for New Zealand as a whole. The effects on racial harmony are also pernicious. The figures lend themselves to extremist interpretations: at one end, some accuse the criminal justice system of being brutally racist, as either intentionally or unintentionally destructive to the interests and well-being of Māori as a people. At the other, there are those who dismiss the entire Māori race as constitutionally “criminally inclined.”

Department of Corrections (Police Strategy and Research Group), *Over-representation of Māori in the Criminal Justice System: an Exploratory Report* (September 2007) at 6.

² The true scale of Māori over-representation is greater than a superficial reading of such figures tends to convey. For example, with respect to the prison population, the rate of imprisonment for this country’s non-Māori population is around 100 per 100,000. If that rate applied to Māori also, the number of Māori in prison at any one time would be no more than 650. There are however currently 4000 Māori in prison - six times the number one might otherwise expect. Department of Corrections (Police Strategy and Research Group), *Over-representation of Māori in the Criminal Justice System: an Exploratory Report* (September 2007) at 6.

³ Note for example, the Department of Corrections ‘Māori Strategic Plan 2008-2013’, which states that “to succeed overall, we must succeed for Māori offenders.” Department of Corrections, *Māori Strategic Plan 2008-2013* (2008) at 4. See also, Ministry of Justice, *Youth Offending Strategy* (April 2002).

⁴ The Law Commission in its *Delivering Justice for All* report found during their consultation that a high degree of frustration was expressed about the cultural inflexibility of the current system. Specifically it found that

“[t]hrough consultation with Māori, we heard a strong, and universal view that the mainstream courts are failing Māori because the processes, language and culture are

mysterious and intimidating...Many Māori feel that outcomes for Māori would improve if the courts were more reflective of Māori cultures and values.”

Law Commission, *Delivering Justice for all: a Vision for New Zealand Courts and Tribunals*, Report 85 (March 2004) at para 178.

Donna Hall has also argued that:

"Māori have little concept of the NZ legal system belonging to them. They read about Her Majesty's Judges, Queen's Counsel, British justice and the laws of England. Little wonder that there is no sense of ownership by Māori in the system. [We] must turn this attitude around so Māori have a stake in the legal system and like other people, can appreciate and claim ownership of it."

Ms Donna Hall, Barrister & Solicitor, Ngāti Rangiteaorere o Mokoia Island. Aug 2000. Quoted in, P Doone, *Report on Combating and Preventing Māori Crime* (Ministry of Justice, 2000) at 19.

⁵ Owens for example found in her research on Māori youth offending that,

“[m]any felt that discrimination still played a role in the over-representation of Māori in the criminal justice system, which – combined with a lack of understanding of the system – only led to worse outcomes for Māori.”

V Owens, ‘Whanake Rangatahi: Programmes and Services to Address Māori Youth Offending’ (July 2001) 16 *Social Policy Journal of New Zealand* 175, at 181. See also Te Puni Kokiri and NZ Police ‘*Challenging Perspectives: Police and Māori Attitudes Towards One Another*’ (2001).

It has also been acknowledged that the key organisations involved in the judiciary system “lack knowledge of and sensitivity to Māori values, culture, history and beliefs.”P Doone, ‘Report on Combating and Preventing Māori Crime (Ministry of Justice, Wellington, 2000) at 19.

⁶As Tauri has noted, during the now defunct Effective Interventions Initiative (2006-2007), Te Puni Kōkiri officials were informed by crime control agencies that Māori initiatives (which are likely to include programmes such as counselling derived from non-Māori theoretical sources) received less than 10% of the sector’s spending on therapy and other forms of intervention. Tauri, Juan Marcellus & Webb, Robert, ‘A critical appraisal of responses to Māori offending (2012) 3(4) *The International Indigenous Policy Journal*, 1-16, at 12.

⁷ *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), Articles 3 and 5. See also, *International Covenant on Economic, Social and Cultural Rights*, Article 1.

A major issue raised in the last Universal Periodic Review was the fact that the New Zealand government has refused to adopt the UNDRIP. Since then New Zealand has become a party to the Declaration. However, ERJA is concerned that the New Zealand government does not take their responsibilities under the Declaration sufficiently seriously. Comments from Prime Minister John Key indicate that he sees the document as both unimportant and merely affirming and validating what he sees as New Zealand’s already proud record in indigenous rights. For example, Prime Minister John Key has stated,

“I think it is important to understand that the Declaration on the Rights of Indigenous Peoples is just that—it is a declaration. It is not a treaty, it is not a covenant, and one does not actually sign up to it. It is an expression of aspiration; it will have no impact on New Zealand law and no impact on the constitutional framework...The reality is that New Zealand has a very proud record when it comes to indigenous rights, and for New Zealand not to have affirmed the declaration, when Crown Law’s advice was quite clear that this was a non-binding aspirational goal that would have no impact on New Zealand’s law or New Zealand’s constitution, looked to me to be a bit churlish.... That really is the point about New Zealand affirming the United Nations Declaration on the Rights of Indigenous Peoples. New Zealand has a very proud record. It has nothing to be ashamed of in this area. We have a strong legal basis and constitutional framework.”

New Zealand Parliamentary Debates (20 April 2010, Vol. 662; 10238).

ERJA submits that the New Zealand’s record in indigenous rights has failed on a number of counts to live up to the principles articulated in UNDRIP, with the *Foreshore and Seabed Act 2004* being an excellent example. Furthermore, as raised in this report, the poor socio-economic position of Māori is a major concern. The ERJA therefore recommends that the government reconsider the current record of New Zealand’s indigenous rights and the place of UNDRIP as a standard by which to measure our performance.

⁸ Disparate impact statements assess the likely nature and extent of disproportionate outcomes resulting from new criminal justice policies and practices prior to their introduction....The utility of disparate impact statements lies in their ability to help criminal justice agencies understand how policy choices, which appear neutral, nevertheless impact differently on different ethnic groups (Matravers and Tonry 2003). Disparate impact analyses have been introduced in Australia as a response to the over-representation of Aboriginal people in custody. In Australia these are known as Aboriginal Impact Statements. Within New Zealand it is not common practice to include ethnic disparity statements in either legislative or Cabinet proposals although the Cabinet Guide (2008) generally notes that proposals must avoid discrimination insofar as they are required to comply with the *New Zealand Bill of Rights Act 1990*, and the *Human Rights Act 1999*. Bronwyn Morrison, *Identifying and Responding to Bias in the Criminal Justice System: a Review of International and New Zealand Research* (Ministry of Justice, November 2009) at 146.

ERJA believes that introducing disparate impact statements would make the obligations on the government to reduce Māori over-representation clearer, both to the policy makers and the public.

⁹ Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma explains justice reinvestment as:

“a localised criminal justice policy approach that diverts a portion of the funds for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services in communities where these issues are most acute in order to address the underlying causes of crime in those communities.

Justice reinvestment still retains prison as a measure for dangerous and serious offenders but actively shifts the culture away from imprisonment and starts providing

community wide services that prevent offending. Justice reinvestment is not just about reforming the criminal justice system but trying to prevent people from getting there in the first place.

Justice reinvestment is a model that has as much in common with economics as social policy. Justice reinvestment asks the question: is imprisonment good value for money? The simple answer is that it is not. We are spending ever increasing amounts on imprisonment while at the same time, prisoners are not being rehabilitated, recidivism rates are high and return to prison rates are creating overcrowded prisons.”

Tom Calma, *Social Justice Report 2009 Aboriginal and Torres Strait Islander Social Justice Commissioner* (2009) at 9.

¹⁰ The Youth Drug Court in Christchurch has already shown positive results, see: Dr Sue Carswell, *Process Evaluation of the Christchurch Youth Drug Court Pilot* (Ministry of Justice, 2004). Currently adult Drug Courts are being trialled in Auckland.

¹¹ A good example of an initiative designed to empower communities and based on principles of restorative justice is the recently trialled ‘Community Justice Panel’. The government evaluation of this initiative found that:

“The Community Justice Panel (CJP) in Christchurch is an effective alternative resolution that contributes to reducing the number of prosecutions for low level offending. The CJP initiative saves Police case processing time, has a reasonable level of offender compliance, and strong community involvement. There are indications that re-offending is reduced for those who go through the CJP process, and most victims are reported as satisfied with the process.”

New Zealand Police, *Community Justice Panel in Christchurch: an Evaluation* (November 2012).

¹² See EN 18. Kaipuke Ltd, *Rangatahi Court: Evaluation of the Early Outcomes of Te Kooti Rangatahi* (Ministry of Justice, 17 Dec 2012).

¹³ This Recommendation was previously made by the Committee due to their concern at the poor statistics of Māori offending. Specifically the Committee noted,

“while noting the measures that have been taken by the State party to reduce the incidence and causes of crime within the Māori and Pacific Island communities, the Committee remains concerned at the disproportionately high representation of Māori and Pacific Islanders in correctional facilities. The State party is invited to ensure appropriate funding for the measures envisaged or already initiated to address the problem.”

Office of the High Commissioner for Human Rights, ‘Concluding Observations of the Committee on the Elimination of Racial Discrimination: New Zealand, 01/11/2002, A/57/18 paras 412-434, Sixty-first session, 5-23 August 2002, at 426.

ERJA submits that the government has not committed sufficiently to the implementation of this recommendation. See also EN 6, above.

¹⁴ The number of children and young people charged in court has decreased by 16 percent since 2011 (from 3,579 to 3,018). In the last five years the number of children and young people charged in court has decreased by 40 percent. The number of children and young people convicted in the adult court in 2012 was 199 compared with more than 500 five years ago. Nine children and young people were sentenced to imprisonment for very serious offences in 2012 compared with 15 in 2011. Ministry of Justice, ‘Trends in Child and Youth Prosecution in New Zealand 2002-2011’ (July 2012).

¹⁵ The Principal Youth Court Judge has described this over representation in the following terms,

“To be involved in the Youth Court is to daily confront the tragically disproportionate involvement of young Māori within the system. Māori comprise approximately 17% of the Youth Court age range, yet account for nearly 50% of total apprehensions (Chong, 2007). Alarming, Māori figure even more disproportionately in custodial remands, where the figure approaches 60%.....Regrettably, this issue is all too easily avoided. In my view, it is the single most important issue facing our youth justice system.... We can do better to address disproportionate rates of offending amongst Māori young people.”

A Becroft, ‘Are there lessons to be learned from the youth justice system?’ (May 2009) 5(2) *Policy Quarterly* 9, at 14.

¹⁶16% of dependent children were in households of incomes below the 60% threshold (with equalised disposable income net of housing costs) Social Report 2008. The difference in poverty rates in 2007 and 2008 for children in workless households was greater (around seven times higher than those in households where at least one adult was in full-time work) than from 1992 to 2004 (three to four times higher).

Office of the Children’s Commissioner, *This is how I see it: Children, Young People and Young Adults Views and Experiences of Poverty* (Jan 2010).

¹⁷ Research conducted by Owen found that,

“The young people and whanau we spoke to were generally negative or ambivalent about their experiences in the justice system. They suggested that the system generally contributes to an increase in offending by Māori youth. Many found that the process of interaction with police, family group conferences courts and prisons was alienating and intimidating, or at least ineffective in addressing their problems.”

V Owen, ‘Whanake Rangatahi: Programmes and Services to Address Māori Youth Offending’ 92001) 16 *Social Policy Journal of NZ*, 175, at 181. See also: K L McLaren, *Tough is not Enough- Getting Smart about Youth Crime: A Review of Research on What Works to Reduce Offending by Young People* (Ministry of Youth Affairs, 2009).

¹⁸ Rangatahi (Youth) have experienced positive early outcomes from the Rangatahi Courts. A government commissioned report noted that positive outcomes were: Levels of attendance by rangatahi and whānau were high; Rangatahi felt welcome and respected; Positive relationships between rangatahi/ whānau and youth justice professionals and the marae community were seeded; Rangatahi experienced a sense of pride and achievement as a result of delivering their pepeha; Rangatahi understood the court process and what was required of them and felt

included and actively engaged in the court process; took responsibility for their offending and its impact.

Kaipuke Ltd, *Rangatahi Court: Evaluation of the Early Outcomes of Te Kooti Rangatahi* (Ministry of Justice, 17 Dec 2012).

¹⁹ Research has shown that up to 75-80% of Youth offenders have drug or alcohol problems. Judge Andrew Becroft, “What causes youth crime, and what can we do about it?” (paper presented to NZ Bluelight Ventures Inc - Conference & AGM, Queenstown, 7 May 2009).

²⁰ Currently, education/rehabilitation makes up only 2% of the order type for children and young people in the youth court. Ministry of Justice, ‘Trends in Child and Youth Prosecution in New Zealand 2002-2011’ (July 2012).

²¹ The Report for the Office of the Commissioner for Children has an extensive list of recommendations. M Fletcher and M Dwyer, *A fair go for all children: actions to address child poverty in New Zealand* (Office of the Commissioner for Children and Barnados, August 2008). The latest report by the Expert Advisory Group on Solutions to Child Poverty *Solutions to Child Poverty in New Zealand: Evidence for Action*, (Office of the Children’s Commissioner, December 2012), makes 78 recommendations to alleviate child poverty. The complex and comprehensive approach taken by this expert group is not reflected in the government’s latest budget, nor have they demonstrated any concerted approach to addressing the issue.

Appendix Two – QUESTIONS FOR THE NEW ZEALAND GOVERNMENT

1. What measures is the government taking to address the problem of over-representation of Māori in New Zealand prisons, and what steps they have taken to provide Māori with adequate rehabilitation?
2. What steps is the government taking to ensure that the justice system reflects the bicultural commitment made to Māori?