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NEW ZEALAND

Briefing for the UN Human Rights Council Universal Periodic Review – 5th session (2009)

Executive summary

Key issues: change in legislation concerning mothers with imprisoned babies; sharing of practices

1. Friends World Committee for Consultation (Quakers), an international non-governmental organisation in General Consultative Status with the UN Economic and Social Council, is concerned that children of persons alleged to or having infringed the penal law are a neglected group whose identification, let alone best interests, are often ignored or overlooked.

2. Human Rights Council Resolution on the Rights of the Child (A/HRC/7/RES/29 Rights of the Child, adopted on 28 March 2008) addressed this issue for the first time:

Children of persons alleged to have or recognized as having infringed penal law

33. *Calls upon* all States to give attention to the impact of parental detention and imprisonment on children and, in particular:

(a) To give priority to non-custodial measures, when sentencing or deciding on pretrial measures for a child's sole or primary carer, subject to the need to protect the public and the child, and bearing in mind the gravity of the offence;

(b) To identify and promote good practices in relation to the needs and physical, emotional, social and psychological development of babies and children affected by parental detention and imprisonment.

3. This briefing provides information about the change in legislation in New Zealand in 2008 concerning mothers with imprisoned babies, and recommends that the Government be asked to provide information about the reasons for their change in policy, process for the drafting of the legislation and its practical implications for mothers and babies, as well as for the prison system.

Legislative Framework

4. On 11 September 2008, the Corrections (Mothers with Babies) Amendment Act 2008 was adopted. The new legislation raises the age until which a baby can stay with the imprisoned mother from six months to two years, and opens this possibility to all women prisoners with dependent children under two years, and not only those with a minimum security classification.

5. New Zealand is a party to the Convention on the Rights of the Child, and the purpose of the Act is explicitly stated to be to provide for the best interests of the child. However this was a Private Members Bill rather than a Government initiative, which raises concerns about how quickly it will be implemented and whether adequate funding will be made available.

6. Friends World Committee for Consultation (Quakers) welcomes this commitment to the best interests of the child in situations where the parent is imprisoned, but remains concerned about the possible separation of mother and child during pre-trial detention or while a decision is reached about permitting the child to stay with the imprisoned mother, whether non-custodial measures are prioritised and whether the best interests of the child (including those more than two years old) are taken into account when making such decisions.

Issues, questions and recommendations:

In line with the HRC resolution on the Rights of the Child, Friends World Committee for Consultation (Quakers) recommends to the Human Rights Council to request to New Zealand:

1. To share their experience in relation to the drafting and application of the new legislation on the Corrections (Mother and babies) Amendment Act 2008. In particular on:
 - (i) the reasons for and experience of New Zealand in changing its policy in relation to the age to which babies and young children can accompany a parent into prison could usefully be shared and;
 - (ii) on the established procedures to allow the baby/child to accompany the parent into prison, interim arrangements and whether the legislation also applies to pre-trial detention.
2. To provide information on provisions made for mother and baby/child in prison.
3. On how the principle of the best interests of the baby/child are assessed. On how the best interests of other children are taken into account in relation to an imprisoned/detained parent, and whether the best interests of the child are taken into account in sentencing and decisions on pre-trial detention.
