



Criminal Lawyers Association of the Northern Territory (CLANT)

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Ms Megan Mitchell
National Children's Commissioner
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

By email to: kids@humanrights.gov.au

30 May 2016

Dear Commissioner,

Re: Submission for ratification of the Optional Protocol to the Convention Against Torture

Thank you for inviting the Criminal Lawyers Association of the Northern Territory (CLANT) to make a submission on this important issue. We strongly support the urgent ratification by Australia of the Optional Protocol to the Convention Against Torture (OPCAT).

CLANT

For over 25 years, the CLANT has been an effective and powerful voice for the improvement of the criminal justice system in the Northern Territory, representing both defence lawyers and prosecutors, practitioners from the public sector, the private profession and the independent bar.

In a jurisdiction where offending rates, incarceration rates and recidivism rates are higher, and growing faster, than anywhere else in Australia, there are enormous challenges for the criminal justice system.

CLANT is strongly committed to addressing these problems. Among our Objects and Purposes are:

- to promote and advance the administration of the criminal justice system and development and improvement of criminal law throughout the Northern Territory
- to actively contribute in public debates in issues relating to the criminal justice system
- to promote and encourage the protection of human rights and compliance with international human rights principles in the Northern Territory

The Northern Territory youth detention system

CLANT members are highly troubled by the treatment of children and young people in detention in the Northern Territory (NT), particularly those who identify as Aboriginal or Torres Strait Islanders. Aboriginal children and young people in the NT suffer significant disadvantage. Although only approximately 30% of the NT population identify as indigenous, 96% of youths detained on remand or after sentence are Aboriginal. These are often very vulnerable youth. For example, 88% of children in out of home care during 2014-15 identified as indigenous¹ and 81% of families interacting with the Department of Children and Families (DCF) identified as indigenous.² Many of those children end up in detention. Indeed, 60% of people in youth detention in the NT are in the care of DCF.³

Over the four years to June 2013 the rate of incarceration of young people in the NT increased by an astonishing 50%: from 12.2 per 10,000 to 18.7 per 10,000.⁴ Over the same period the national trend declined from 3.6 to 3.3 per 10,000.⁵ The NT rate of youth incarceration is now 6 times the national average. Roughly 30% of youths under justice system supervision in the NT are in detention. That is twice the national rate.⁶ 75% of youths in detention in the NT are unsentenced, compared to 50% nationally. The NT picture, and in particular the NT trend, is both disturbing and unsustainable.

¹ Office of the Children's Commissioner, Northern Territory, *Children's Commissioner Northern Territory Annual Report 2014-2015* (2015) 55.

² Office of the Children's Commissioner, Northern Territory, *Children's Commissioner Northern Territory Annual Report 2014-2015* (2015) 55. See also forthcoming Honours paper from CDU Law student Rebecca McLennan.

³ Sharp, J "Does the NT Youth Justice deliver justice for vulnerable young offenders or their victims?" Conference paper (15th CLANT conference, June 2015) accessed at http://clant.org.au/images/images/the-bali-conference/2015/Sharp_ppt.pdf

⁴ Australian Institute of Health and Welfare, *Youth detention population in Australia 2013* (Juvenile Justice Series no. 13), p 50

⁵ Ibid, p 4

⁶ Australian Institute of Health and Welfare, *Youth justice in Australia 2013-14* (AIHW bulletin no. 127, 2015)

Recent events cause particular concern in relation to the detention, treatment and questioning of young people in the NT. This has included the high numbers of Aboriginal Youth currently detained, the placing of youth in a detention centre condemned as unfit for adult occupation, a Bill to remove the presumption in favour of bail for repeat property offenders (a high proportion of whom are young people), and the increased use of restraint techniques and devices in youth detention.

The findings of a recent report into the NT youth detention system are in equal measure straightforward and chilling:

Youth detention facilities in the Northern Territory are struggling to maintain service level standards in the absence of a coherent operating philosophy, staff training, direction, appropriate infrastructure, leadership and resourcing.⁷

In this rudderless environment, the youth detention system is particularly vulnerable to the encroachment of poor and even dangerous practices. Furthermore, the recent demonisation of young offenders both by politicians and sections of the media serves to lend a patina of legitimacy to increasingly punitive responses by custodians reacting to persistently provocative and defiant behaviour by detainees. Features of this vicious circle include: extended periods of isolation and lockdown in dilapidated cells; the use of force restraints (handcuffs, shackles, the cutting off of clothing, dogs, and in at least one incident, tear gas); the limitation or withdrawal of educational, recreational and other rehabilitative programs; the increased use of adult prisons to detain youths; and the abandonment of individualised case management.⁸

There is also a lack of cultural integrity in our criminal justice systems, as reported by Sharp:

Our justice system is not meeting the needs of Aboriginal people. We have a system of imposed justice, where Aboriginal people feel little sense of ownership or engagement. Decisions are made about Aboriginal people, not together with them. Aboriginal defendants are not engaged in court processes. They often don't

⁷ Vita, M *Review of the Northern Territory Youth Detention System Report* (February 2015), p 11

⁸ Sharp, J [*Does the NT Youth Justice deliver justice for vulnerable young offenders or their victims?*](http://clant.org.au/images/images/the-bali-conference/2015/Sharp_ppt.pdf) Conference paper (15th CLANT conference, June 2015) accessed at http://clant.org.au/images/images/the-bali-conference/2015/Sharp_ppt.pdf

understand technical language used in court, or have a shared understanding of Western legal concepts they are subjected to. In other ways, our processes do not create a culturally supportive environment for Aboriginal people. Courts seldom have detailed cultural information about an Aboriginal defendant when making life-changing decisions such as whether to sentence an Aboriginal person to prison or refuse them bail.

Aboriginal restorative justice practices like mediation that promote healing, restore relationships and repair harm done, are rarely part of how our justice system resolves a matter, with the consequence that relationships and underlying issues are left unaddressed.⁹

It is against this background that NT young people end up in detention with little access to effective and culturally appropriate rehabilitation, and in a cycle of criminalisation and recidivism.

In addition, there are significant health issues amongst those detained. CLANT refers as follows to its submission to the Senate Inquiry on the indefinite detention of those with cognitive and psychiatric impairment in Australia (citations omitted):¹⁰

The long term effects of colonialism (including brutal dispossession, forced removal and institutionalisation of children, and mass killings within living memory), failures to follow properly researched recommendations to address disadvantage, poverty, alcohol and abuse, particularly in relation to indigenous people, has led to high crime rates, high detention rates and a culture of cruelty. People with complex cognitive and psychiatric needs and offending behaviours, or who are assessed as a risk to the community, are incarcerated and held indefinitely in maximum-security prisons in the NT largely because there is no or no sufficient alternative provision and no services to effect crime prevention through health and welfare.

⁹ Sharp, J *Churchill Fellowship Report* (2013), accessed at: http://www.aic.gov.au/media_library/conferences/2013-youthjustice/presentations/sharp-paper.pdf

¹⁰ http://www.clant.org.au/images/images/Senate_Inquiry_on_cognitively_impaired_submission.pdf

A National Preventative Mechanism

Despite a plethora of reports in recent years into the NT youth justice system,¹¹ there appears to have been no substantial progress in addressing the identified problems. The repeated calls by stakeholders including CLANT for the establishment of an NT Independent Custodial Inspector¹² have been rebuffed. Part 9 (“Official Visitors”) of the *Youth Justice Act* (NT) provides a scheme for the oversight of youth detention centres which is rudimentary, limited in scope, lacking in independence and power, and inadequate and ineffective in practice.

Similarly, the Youth Justice Advisory Committee (YJAC), which is established by Part 13 of the *Youth Justice Act* (NT), lacks the resources and teeth to be an effective advocate and change agent in the youth justice system: the YJAC Chairman’s frustration about this in the YJAC 2014-2015 Annual Report is palpable.¹³

There is in our view a pressing need for effective, continuous, independent and strong oversight into the detention of young people in the Northern Territory. Attempts to provide this have to date been depressingly unsuccessful. What is required is a system of oversight backed by Northern Territory, Commonwealth and international law, together with the associated institutional framework which can best, and perhaps only, be achieved by ratifying OPCAT.

¹¹ Including: Carney, J *Review of the Northern Territory Youth Justice System: Report* (2011); Vita, M *Review of the Northern Territory Youth Detention System Report* (February 2015); Gwynne, C, *Own Initiative Investigation Report Services Provided By The Department Of Correctional Services At The Don Dale Youth Detention Centre* (August 2015) accessed at

<http://www.childrenscommissioner.nt.gov.au/publications/Childrens%20Commissioner%20DDYDC%20-%20Report%20to%20Minister%20170915.pdf>

¹² *Joint Statement* (2 October 2014), accessed at

<http://www.clant.org.au/images/images/youthdetentionjointstatement1014.pdf> ;

and *Joint Statement* (2 June 2015) accessed at

http://www.clant.org.au/images/images/New_Youth_Detention_Crackdown_Not_the_Answer.pdf

¹³ https://www.nt.gov.au/_data/assets/pdf_file/0008/238715/YJAC-Annual-Report-2014-15-web.pdf

Age of Criminal Responsibility

In October 2015, as part of the “Too Much Too Young” campaign led by Jesuit Social Services, CLANT joined many other organisations calling for the age of criminal responsibility to be raised to 12 years.¹⁴

A handwritten signature in blue ink, appearing to read 'R. Goldflam', with a long horizontal flourish extending to the right.

Russell Goldflam

PRESIDENT

CLANT

¹⁴ http://www.clant.org.au/images/images/Doli_letter_221015.pdf