

**IN THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**IN THE MATTER**

of New Zealand's Historical Abuse of Children and Vulnerable People in State Care

**AND**

**IN THE MATTER**

of New Zealand's 4<sup>th</sup> Periodic Review under the International Covenant on Economic, Social and Cultural Rights

**AND**

**IN THE MATTER**

of a submission on behalf of **TE ENGA HARRIS** on behalf of the **WIREMU HEMI HARRIS AND MERI OTENE** Whānau

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**SUBMISSION OF TAMAKI LEGAL TO THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Dated: 15 February 2018**

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## INTRODUCTION

- 1 These submissions to the Committee on Economic, Social and Cultural Rights (“the Committee”) are made by Tamaki Legal on behalf of our client Te Enga Harris, who represents the Wiremu Hemi Harris and Meri Otene whānau (“the Harris family”).
- 2 The issue to be covered by these submissions is the historic abuse of members of the Harris family by state agents during their time as wards of state care. The Harris family has presented evidence regarding this abuse to the Waitangi Tribunal as part of the Tribunal’s Northland/Te Paparahi o Te Raki Inquiry (“the inquiry”). The Crown has briefly replied to the evidence given in the inquiry but claims that the Harris family has entered into settlement agreements regarding these claims.<sup>1</sup> We note that Te Enga Harris and one of her sisters has settled in part. However, we note that the compensation given was inadequate and the whānau felt forced to settle due to the drawn-out nature of the settlement process and outside financial pressure. Further, we note that the Human Rights Commission has found that any settlement payment received by members of the Harris family from the Ministry of Social Development for the purpose of resolving claims of historic abuse out of Court has been made without conditions, and recipients of such payments are “not required to waive any legal case he or she may have”.<sup>2</sup>
- 3 The Harris family welcome this opportunity to make this submission to the Committee to inform its development of recommendations to the New Zealand Government (“the Government”) regarding what redress can be made for victims of state care abuse. This submission sets out the details of the Harris family’s claim of the violence and abuse they suffered at the hands of state agents and the relief they now seek from the Government.

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<sup>1</sup> Closing submissions of the Crown, Wai 1040, #3.3.409, paragraph 220.

<sup>2</sup> Human Rights Commission, *Draft: Review of the State’s Response to Historic Claims of Abuse and Mistreatment Suffered While Under the Care of the State*, dated 12 July 2011, at paragraph 3.30.

## BACKGROUND TO HISTORICAL ABUSE CLAIMS

- 4 Government agents separated members of the Harris family from their parents when they were children and placed them against their will in an environment where they were physically, mentally and sexually abused for a number of years. When they came out of the state wards system and made their way back into society, their mental and social functions had been irrevocably impaired. As a result of the harm they suffered whilst in the care of the Government, the Harris family became social pariahs—within society in general and within their wider whānau, their hapū (whānau group) and iwi (tribal group).
- 5 The Harris family's story begins in 1964 with the family living together under the same roof. The family was not wealthy. Mrs Harris had her eight young children in her care at the time. The eldest was nine and the youngest was under one year old. She had little support from her husband who was drinking heavily at the time. In these difficult circumstances, Mrs Harris then learned that her father had died. The shock of his death was compounded when it was made known that he had already been buried. She suffered a mental breakdown.
- 6 Child Welfare officers had been alerted to Mrs Harris' difficult circumstances and they began to enquire after her. Events escalated and soon the Police were involved. Te Enga Harris was a child of 9 years at the time but she vividly remembers the Police suddenly arriving at their home and breaking down the front door. They grappled with her mother, forced her mother to the ground and then they handcuffed her. Following that, the children were forcibly removed from the house.
- 7 The children were placed with different foster families. Te Enga Harris and two of her brothers were placed with a family which already had five children, and which added another two children while she was there. The Harris children were made to get up at 5am to clean the house, do the clothes washing, hang the clothes, and make breakfast and lunches, all before they were to head off to school. On frequent occasions, both foster parents and their children physically abused the Harris children by hitting them with

straps, brooms, cords and their fists. Ms Harris was raped by her foster father. Ms Harris complained to the Police and although there was evidence that Ms Harris had been sexually violated, the foster father denied that allegation and no action was taken against him.

- 8 Ms Harris was then placed in a succession of Social Welfare institutions, to eventually wind up at Fareham house. While there, Ms Harris witnessed inmates being subjected to drug trials. She was placed in a security cell for the first three weeks because she kept running away. To prevent her from escaping, Ms Harris was kept in her underwear. Whenever she escaped, the staff at the institution used dogs to track her down. Ms Harris' education, which had been intermittent due to the numerous transfers between institutions, was cut short just before she turned 15 when she was sent to work on a farm. She stayed on the farm for three years until she left the State system at age 17 with no education. She wound up going through a series of unskilled jobs.
- 9 Ms Harris gave evidence of what happened to the rest of her family. Of the two brothers sent to the foster home with her, one developed rheumatic fever which left him with a heart condition from which he eventually died. Both brothers spent time in prison and joined gangs. The surviving brother has a problem with violence and now has no fixed abode. Her sister was sexually molested while in foster care and also ended up at Fareham House. Another brother who was placed with a different family, tried to burn his school down and was committed to a mental institution. As a young man he was sexually abusing his young nieces but was institutionalised in the end. The family has lost touch with him. Her twin sisters were repeatedly raped by their foster father from the age of six. One sister had two children by the age of 17, both of whom were taken from her. She became mentally unwell and was institutionalised. She now has a severe head injury as a result of what is assumed to be a suicide attempt. Her other sister fell pregnant to her foster father at 13. That child was placed into foster care and was also raped. Ms Harris' sister's other two children both committed suicide. Her youngest

brother was raped by his foster sister. He ended up becoming a patched gang member. As Ms Harris has concluded:<sup>3</sup>

*The experiences of my family as wards of the state have been horrific. The Crown failed to care for and protect me and my siblings. As a result, my siblings and I are estranged and we have significant coping issues. Of the 8 children, one has passed away, two are currently subject to the Mental Health Act and two are vagrants with no fixed abode. One is looking after her foster mother, the same foster mother who turned a blind eye when her husband was raping her. And then there is me. I have a lot of coping and trust issues.*

- 10 Mereani Harris gave similar evidence. Her young mind was traumatised when the Police took her mother away in the manner they did. She was sent to a foster family where she was beaten. From the age of seven she was molested by a boarder at the foster home. At the age of eight, a party-goer at the foster home raped her. After her foster family sent her to school with a burned arm, for which she received no medical attention, Social Welfare sent her to a receiving home and then to Fareham House.
- 11 Joyce Harris gave evidence that she has no memory of her natural parents before being placed into foster care. Whilst in that foster home, she and her twin sister were sexually molested and raped by their foster father over a period of four to five years. This continued until she fell pregnant at age twelve. Her new foster family was unable to care for her and so she was sent to a Salvation Army home for teenage mothers. Joyce would run away to be with her family. As a result she was moved to Allendale where, at 12 years old and heavily pregnant, she was put in a cell for two weeks. Her baby was taken away from her without her consent and she was moved to another foster home. After a spell living on the streets with her twin sister, she was moved to Fareham House where she was beaten with a piece of 4x2 by one of the workers. From Fareham House she was moved to Weymouth for a short period before her sister took her in. She had her second child at 16. That child spent time in State care and eventually committed suicide. All of

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<sup>3</sup> Evidence of Te Enga Harris, given on 22 April 2016, Wai 1040 #V2, page 24.

her children were taken from her in the end. One was adopted and the others went into state care.

12 Lee Harris, Te Enga Harris' daughter, gave evidence that her mother and her mother's siblings were separated from their parents and from each other and how this had adversely affected her generation and even the following generation.

13 When the Harris family was released from being wards of the state, they continued to suffer. Unable to function in accordance with social norms, they found themselves estranged from each other, struggling to fit into society, and trying all sorts of coping mechanisms, most of them harmful. The Harris family have tried to overcome these issues, however without adequate assistance they have struggled to survive:

*I am trying to break the cycle but at each turn I am being thwarted by various Crown agencies such as the Ministry of Social Development, Child, Youth and Family, Work and Income, Housing New Zealand, the New Zealand Police, the Department of Corrections, ACC, the Ministry of Health and so forth. It is a constant battle with them. I cannot trust them after what has happened to us.<sup>4</sup>*

14 The Harris family is not the only family to have suffered through the state system. At least 100,000 children and disabled adults were taken from their families and held in state institutions between the 1960s and 1990s, and many of them were subject to sexual, physical and psychological abuse.<sup>5</sup> The extent of abuse is unknown as the abuse has never been fully or publicly investigated. Māori children were particularly targeted, with some state homes reporting that upwards of 80 per cent of youngsters were Māori. This was a result of state-sponsored action and pursuant to relevant legislative child welfare regimes. Many Māori have given evidence of being placed in institutions where abuse was common, of having no grounding, of being separated from whānau and culture and of finally leaving the system with no

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<sup>4</sup> Evidence of Te Enga Harris, given on 22 April 2016, Wai 1040 #V2, paragraph 85.

<sup>5</sup> Human Rights Commission, *Justice for state abuse survivors* (6 July 2017), URL: <https://www.hrc.co.nz/news/justice-state-abuse-survivors-6-july-2017>, accessed 14 March 2018.

qualifications, no support and no place to go. Many academics have also written about the state taking children from their families and the abuse they suffered.<sup>6</sup>

- 15 The prejudice the Harris family has suffered when they were children as wards in state care has deeply affected them on a continual basis throughout their lives. Their experience as wards has adversely impacted on their children and it is now impacting on their mokopuna (grandchildren). This was not a single incident in the lives of members of the Harris family that came and went and from which they have made suitable recoveries. The harm the Harris family has suffered has persisted since 1964, and the harm they have suffered will not be ameliorated until such time that the Government acknowledges its role in their suffering and provides the necessary relief to address the prejudice.
- 16 In addition to failing to protect the Harris family from abuse, the Crown also failed to implement a process whereby complaints made by the Harris family as wards of the state were investigated and the offenders prosecuted. Te Enga Harris gave evidence that she was being physically and sexually abused. When she made a complaint, the Police and social workers didn't believe her so she was checked medically. The medical check confirmed that she had been sexually violated. Instead of assisting her and prosecuting the offender, Te Enga Harris was placed in the cells at Allendale Road Girls Home.

## **NEW ZEALAND'S OBLIGATIONS TO PROTECT CHILDREN**

- 17 New Zealand ratified the International Covenant on Social and Economic Rights ("the Covenant") on 28 December 1978. In terms of New Zealand's obligations regarding child welfare, Article 10 of the Covenant states that:

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<sup>6</sup> Elizabeth Stanley, *The Road to Hell: State Violence against Children in Postwar New Zealand* (Auckland University Press, Auckland, 2015); Bronwen Dalley, "Moving Out of the Realm of Myth: Government Social Welfare Services to Māori", (1998) 32(2) *New Zealand Journal of History*; Margaret McClure, *A Civilized Community: A History of Social Security in New Zealand, 1944-1970* (Auckland University Press, Auckland, 1998); Bronwyn Labrum "Developing 'The Essentials of Good Citizenship and Responsibilities' in Māori Women: Family Life, Social Change and the State in New Zealand 1944-1970, (2004) 29(4) *Journal of Family History*; Bronwyn Labrum "Negotiating an Increasing Range of Functions: Families and the Welfare State" in B Dalley and M Tennant (eds) *Past Judgment: Social Policy in New Zealand History* (University of Otago Press, Dunedin, 2004).



1. *The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.*

...

3. *Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation.*

18 The Government has also committed to at least a certain level of care of children by ratifying the United Nations Convention on the Rights of the Child. Although this is a comparatively recent development, we submit that the history of legislation<sup>7</sup> shows that the New Zealand government considered from an early stage that it had some responsibility to care for children. Having made that decision, it was and still is obliged to deliver that service to Māori in a manner that complies with the UNCESCR.

19 The Government, through the Crown, also owes to the Harris family a duty of active protection under the principles of the Treaty of Waitangi, which is an assurance that the Government will protect existing rights in the utmost good faith<sup>8</sup> and to the fullest practicable extent.<sup>9</sup> We submit that the Government breached its duty to actively protect the Harris family when they were wards of the state. In support of this submission, we refer to the evidence set out above. The facts of this claim present a heart-rending account of horrific proportions. The extreme violence and abuse the Harris family was subjected to is almost beyond belief. And as if that wasn't bad enough, the victims were mere children at the time and some were very young. Clearly the Harris family has suffered significant harm as a result of the mistreatment. Notably, all of the harm suffered occurred while the Harris

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<sup>7</sup> The Child Welfare Act 1925; The Child Welfare Amendment Act (No 2) 1954; The Department of Social Welfare Act 1971; The Children and Young Persons Act 1974.

<sup>8</sup> *New Zealand Māori Council v Attorney General* [1987] 1 NZLR, page 715.

<sup>9</sup> Waitangi Tribunal, *Turanga Tribunal* (Wai 814, 2004), Vol 1, page 120.

family members were in the care of the state. Having taken on the responsibility of caring for the Harris family, the Government had the responsibility of ensuring their welfare. Clearly as their welfare was not upheld, the Government has breached the Harris family's right to active protection, as well as their rights under the Convention.

- 20 The United Nations Committee against Torture has made the following observation regarding redress:<sup>10</sup>

*The Committee is concerned that allegations of cruel, inhuman or degrading treatment, inflicted by persons acting in an official capacity against children in State institutions, and against patients in psychiatric hospitals have not been investigated, perpetrators not prosecuted, and victims not accorded redress, including adequate compensation and rehabilitation ...*

*The State party should take appropriate measures to ensure that allegations of cruel, inhuman or degrading treatment in the "historic cases" are investigated promptly and impartially, perpetrators duly prosecuted and victims accorded redress, including adequate compensation and rehabilitation.*

- 21 Where the State has failed to protect the rights of people such as the Harris family, we submit that the State must provide the Harris family with specific redress including adequate compensation and rehabilitation. The Government has recently announced that there will be a Royal Commission of Inquiry into Historical Abuse in State Care.<sup>11</sup> We would like the Committee to note that there have been public calls for this inquiry into historical abuse for many decades, and we submit that the Government's failure to make proper inquiry into these claims until now demonstrates its failure to provide adequate redress.

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<sup>10</sup> Concluding observations of the Committee against Torture URL: <http://www.converge.org.nz/pma/CAT.C.NZL.CO.5.pdf>, page 5, accessed 18 May 2017.

<sup>11</sup> Royal Commission into Historical Abuse in State Care, The Department of Internal Affairs, URL: <https://www.dia.govt.nz/Royal-Commission-into-Historical-Abuse-in-State-Care>, accessed 13 March 2018.

- 22 The Human Rights Commission Report (“the HRC Report”) on the state response to claims of historic abuse made the following observations with regard to the Government’s measures:
- a. There has been no comprehensive, independent investigation of the claims of historic abuse.
  - b. Despite a raft of inquiries and reports dating back to the late 1960s, there has been no authoritative review of the system or services that had responsibility for children and young people in state care.
  - c. None of the current agencies with authority to investigate and settle claims is independent. The one independent mechanism, the Confidential Listening and Assistance services, is barred from investigating and has no mandate to settle.
  - d. While the Courts are independent and offer an avenue to test the validity of claims, a number of factors have contributed to limiting their utility in historic abuse cases.
  - e. The HRC Report was told that a public inquiry is not an appropriate mechanism because the Government has determined that the claims generally do not involve broad systemic or institutional failure but are, predominantly, concerned with particular incidents and experiences of individuals.
- 23 The HRC Report concluded that New Zealand only partly meets the human rights standards that apply to historic claims of abuse and mistreatment while under the care of the state:<sup>12</sup>

*As the Review has shown there are a number of barriers to fair settlement of historic claims of abuse through the Courts, the most obvious being the adversarial nature of the process, the evidential standards required, the existence of time-bar defences, and New*

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<sup>12</sup> Human Rights Commission, *Draft: Review of the State’s Response to Historic Claims of Abuse and Mistreatment Suffered While Under the Care of the State*, dated 12 July 2011, at paragraph 6.10.

*Zealand's accident compensation regime. These have been fully used in the Crown's approach to vigorously [defend] the claims. The extent of the use of time-bar defences results in the systemic disenfranchisement of even acknowledged victims.*

## **RECOMMENDATIONS SOUGHT**

- 24 The HRC Report has noted that the priority must be to establish an independent process to hear, investigate, evaluate and offer redress to those with claims of historic abuse and mistreatment while in state care. Although the right of these claimants to elect to take their claims to the courts for determination must be preserved, an alternative framework could more swiftly and economically enable claims to be impartially investigated, and for appropriate redress (including adequate compensation and rehabilitation) to be accorded. The HRC Report recommended that the Government:
- a. Commit to resolving all historical claims of abuse within five years by establishing an independent body with the power to provide support for rehabilitation, compensation and an apology.
  - b. Cease the use of time-bar defences in relation to claims of abuse and ill treatment whilst in the care of the state.
- 25 The Government has failed to implement any of these measures. We note that the Government has recently announced that there will be a Royal Commission of Inquiry into Historical Abuse in State Care commencing this year.<sup>13</sup> We therefore respectfully ask the Committee to recommend that the Government give effect to the HRC Report recommendations as part of any redress provided for by this Royal Commission of Inquiry. We also ask for a recommendation that the Government compensate the Harris family both adequately and specifically. Any historical Treaty claims settlement with the family's iwi Ngapuhi should entail specific redress to the Harris family as part of New Zealand's obligations under its membership of the United Nations.

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<sup>13</sup> Royal Commission into Historical Abuse in State Care, The Department of Internal Affairs, URL: <https://www.dia.govt.nz/Royal-Commission-into-Historical-Abuse-in-State-Care>, accessed 13 March 2018.