

UNITED
NATIONS

CAT



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/NZL/CO/5
4 June 2009

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Forty-second session

Geneva, 27 April-15 May 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture

NEW ZEALAND

1. The Committee considered the fifth periodic report of New Zealand (CAT/C/NLZ/5) at its 875th and 876th meetings (CAT/C/SR.875 and 876) held on 1 and 4 May 2009, and adopted, at its 892nd meeting (CAT/C/SR.892), the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of New Zealand as well as the replies to the list of issues which provided additional information on the legislative, administrative, judicial and other measures taken by the State party to implement the Convention. The Committee also welcomes the constructive dialogue held with a competent and multi-sectoral delegation.

B. Positive aspects

3. The Committee notes with appreciation:

(a) The ratification of the Optional Protocol to the Convention, on 14 March 2007, and the establishment of National Preventive Mechanisms coordinated by the New Zealand Human Rights Commission;

(b) The ratification of the Convention on the Rights of Persons with Disabilities on 25 September 2008;

(c) The accession to the Convention on the Reduction of Statelessness on 20 September 2006;

(d) The ratification of the Rome Statute of the International Criminal Court on 7 September 2000;

CAT/C/NZL/CO/5

page 2

- (e) The reviews of the legislation governing policing and corrections, which have resulted in improvements to the law in those areas, notably through the Policing Act 2008;
- (f) The enactment of the Crimes Amendment Act 2007 which repeals the legal defence for the use of reasonable force “by way of correction” in section 59 of the Crimes Act 1961 and prohibits corporal punishment; and
- (g) The abolition of the death penalty under the Abolition of the Death Penalty Act 1989.

C. Main issues of concerns and recommendations

Incorporation of the Convention in national legislation

4. While appreciating the steps the State party has taken to bring its domestic laws into compliance with its obligations under the Convention, the Committee is concerned that the Convention has not been fully incorporated into domestic law. The Committee notes with concern that the New Zealand Bill of Rights, while giving effect to a number of provisions of the Convention, including article 2, has no higher status than ordinary legislation in the domestic legal order, which may result in the enactment of laws that are incompatible with the Convention. The Committee further notes that judicial decisions make little reference to international human rights instruments, including the Convention. (art.2)

The State party should:

- (a) Enact comprehensive legislation to incorporate into domestic law all the provisions of the Convention;**
- (b) Establish a mechanism to consistently ensure the compatibility of domestic law with the Convention; and**
- (c) Organize training programmes for the judiciary on the provisions of the Convention and the jurisprudence of the Committee.**

Protection of minorities from torture and ill-treatment

5. While taking note of the Maori Strategic Plan developed by the Department of Corrections, as well as the various initiatives undertaken by the Ministry of Justice to reduce Maori offending, the Committee is alarmed at the disproportionately high number of Maoris and Pacific Islands people incarcerated, in particular women who, according to information available to the Committee represent 60 per cent of the female prison population. The Committee is further concerned at the over-representation of Maoris at all levels of the criminal justice process, as well as at the insufficient safeguards in place to protect the rights of minorities from discrimination and marginalization, which put them at a higher risk of torture and ill-treatment. (art.2)

The Committee recalls that the protection of certain minorities or marginalized individuals or populations especially at risk of torture is a part of the obligation of the State party to prevent torture and ill-treatment. In this regard, the State party should take further measures including legal, administrative and judicial measures, to reduce the over-representation of Maoris and Pacific Islands people in prison, in particular women. The State party should also provide adequate training to the judiciary and law enforcement personnel that takes into account the obligation to

protect minorities, and integrates a gender perspective. Also, the State party should undertake an in-depth research on the root causes of this phenomenon in order to put in place adequate safeguards to ensure full protection of minorities from discrimination and marginalization, which put them at a higher risk of torture and ill-treatment.

Non-refoulement and detention of asylum seekers and undocumented migrants

6. While noting that the Immigration Bill has incorporated the language of article 3 of the Convention, the Committee notes with concern that asylum-seekers and undocumented migrants continue to be detained in low security and correctional facilities. The Committee is further concerned at the continued issuance of security-risk certificates under the Immigration Act, which could lead to a breach of article 3 of the Convention, as the authorities may remove or deport a person deemed to constitute a threat to national security, without having to give detailed reasons or disclose classified information to the person concerned. The Committee is also concerned that the use of classified information by the State party for purposes of detention of asylum-seekers and undocumented migrants may result in a violation of their fundamental rights to due process, and may expose them to removal to countries where they might be at risk of torture. (arts. 2 and 3)

The State party should consider putting an end to the practice of detaining asylum-seekers and undocumented migrants in low security and correctional facilities, and ensure that grounds upon which asylum may be refused remain in compliance with international standards, especially the 1951 Convention relating to the Status of Refugees. Where there is a risk that a person may be subject to torture if returned to his or her country of origin, the State party should undertake a thorough assessment of his or her claim, in full compliance with the provisions of article 3 of the Convention. The State party should also ensure, as indicated by the delegation, that the right of detained asylum-seekers and undocumented migrants to habeas corpus and to an effective appeal is guaranteed under the Immigration Bill.

Training of law enforcement personnel and immigration officials

7. The Committee notes that training on human rights obligations is provided for police recruits, prison personnel and armed forces. It is however concerned at the insufficient training provided to immigration officials and personnel employed at immigration detention centres. (art. 10)

The State party should ensure that education and training of all immigration officials and personnel, including medical personnel, employed at immigration detention centres, are conducted on a regular basis. The State party should also continue to ensure adequate training for personnel to detect signs of physical and psychological torture and ill-treatment of persons deprived of their liberty, and integrate the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment) in the training of all professionals involved in the investigation and documentation of torture. In addition, the State party should continue to assess the effectiveness and impact of all its training programmes on the prevention and protection from torture and ill-treatment.

Juvenile justice

8. While welcoming the statement by the State Party whereby the Department of Corrections built four specialist youth units in male prisons in 2005, the Committee is concerned that juvenile offenders are not systematically separated from adult offenders, and in some cases, are still detained in police cells for several months. Furthermore, the Committee is concerned at the low age of criminal responsibility, and at the fact that special protection under the Children, Young Persons and their Families Act of 1989 is not accorded to all persons under 18 in conflict with the law. The Committee is also concerned that the State party has maintained its reservation to article 37 (c) of the Committee on the Rights of the Child on the mixing of young and adult offenders. (arts. 11 and 16)

The State party should

- (a) Ensure the full implementation of juvenile justice standards as well the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and consequently raise the age of criminal responsibility in compliance with accepted international standards;**
- (b) Ensure that the Bill amending the Children, Young Persons and their Families Act of 1989 is adopted in order to ensure that all persons under 18 in conflict with the law are accorded special protection;**
- (c) Ensure the availability of sufficient youth facilities so that all juveniles in conflict with the law are held separately from adults in pre-trial detention, as well as after correction;**
- (d) Expedite the changes in legislation and administrative procedures necessary for the withdrawal of its reservation to article 37 (c) of the Convention of the Rights of the Child.**

Conditions of detention

9. The Committee notes with concern the insufficient number of prison facilities in light of the forecasted growth in prisoners numbers which may lead to inter-prisoners' violence. The Committee is also concerned at the inadequate provision of mental health care and legal services to mentally ill inmates in prisons. The Committee is concerned at the use by prison authorities of instruments of physical restraint that may cause unnecessary pain and humiliation. (arts. 11 and 16)

In order to improve the arrangements for the custody of persons deprived of their liberty, the State party should undertake measures to reduce overcrowding, including consideration of noncustodial forms of detention in line with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), and in the case of children in conflict with the law ensure that detention is only used as a measure of last resort. It should also provide adequate mental health-care and legal services for all persons deprived of their liberty, particularly to inmates suffering from mental illnesses. The State party should keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation, and ensure that they are used only when necessary, and that their use is appropriately recorded.

Ensuring prosecution

10. The Committee is concerned that the Crimes of Torture Act 1989 provides that no proceedings for the trial and punishment of a person charged with torture under the Act shall be instituted without the consent of the Attorney-General. The Committee is further concerned that if it were alleged that a member of the New Zealand Armed Forces had committed an offence under the Crimes of Torture Act, the commanding officer of that person might decide not to record a charge under that Act or refer the allegation to the appropriate civil authority for investigation if he considered that the allegation is not well-founded. Lastly, the Committee is also concerned that if it were alleged that a serious crime such as an offence under the Crimes of Torture Act had been committed, the decision to prosecute the alleged perpetrator, subject to the Attorney-General's consent, would be left to the police if found to be in the public interest. (art. 12)

The State party should consider abandoning the system which gives the Attorney General discretion to decide whether or not to prosecute, even in cases in which there is reasonable ground to believe that an act of torture has been committed, as well as the discretion given to the police to prosecute alleged perpetrators on the basis of public interest. In addition, the State party should ensure that where there is reasonable ground to believe that an act of torture has been committed, impartial and effective investigations should be launched immediately, even in cases where a commanding officer considers that the allegation is not well-founded.

Allegations of ill-treatment

11. 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. (arts.12, 14 and 16)

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 the victims accorded redress, including adequate compensation and rehabilitation.

Independent Police Conduct Authority

12. In spite of the assurances given by the State party, the Committee remains concerned that the impartiality of the Independent Police Conduct Authority might be hampered by the inclusion of both current and former police officers regarding impartial and effective investigations into alleged acts of torture and ill-treatment by members of the police, in accordance with the provisions of the Convention. (art.12)

The State party should further strengthen the independence of the Independent Police Conduct Authority which should be staffed with independent experts drawn from outside the Police.

13. The Committee is concerned that the Independent Police Conduct Authority may decide not to take action on complaints, including on grounds of torture or ill-treatment, in circumstances where the complainant has had knowledge of the matters under complaint for more than 12 months before the complaint was made. (art.12)

The State party should take all necessary legal and procedural measures to ensure that the crime of torture is not subject to the twelve months limitation, that allegations on grounds of torture are promptly and impartially investigated, alleged perpetrators duly prosecuted and punished if found guilty, and victims adequately compensated.

Withdrawal of reservation to article 14

14. The Committee is concerned that the State party has maintained its reservation to article 14 of the Convention, which is incompatible with the letter and spirit of the Convention, as well as with its obligation to ensure the rights of victims of torture to a fair and adequate compensation including the means for as full rehabilitation as possible. The Committee is also concerned that the Prisoners and Victims Claims Act 2005 limits the award and payment of compensation to prisoners. (art. 14)

The State party should consider withdrawing its reservation to article 14 of the Convention and ensure the provision of fair and adequate compensation through its civil jurisdiction to all victims of torture.

Use of statements obtained as a result of torture

15. The Committee notes that the Evidence Act 2006 provides that if the defence raises in proceedings an issue as to whether a statement made by the defendant has been influenced by oppression, the Judge must exclude that statement unless the prosecution can prove beyond reasonable doubt that the statement was not influenced by “oppression”. Furthermore, if evidence is obtained improperly, the admissibility of the statement is weighed against factors enumerated in the Act. The Committee is concerned that the Act does not fully incorporate article 15 of the Convention whereby the State party should ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. (art. 15)

The State party should bring the existing legislation concerning evidence to be adduced in judicial proceedings into line with the provisions of article 15 of the Convention so as to exclude explicitly any evidence obtained as a result of torture.

Use of taser weapons

16. While taking note of the assurances by the State party whereby tasers are only to be used by trained and certified staff and only when the officer has an honest belief that the subject is capable of carrying out the threat posed and that the use of the taser is warranted, the Committee is deeply concerned about the introduction of these weapons in the New Zealand police. The Committee is concerned that the use of these weapons causes severe pain constituting a form of torture, and that in some cases it may even cause death. In addition, the Committee is concerned at reports whereby during the trial period tasers were predominantly used on Maoris and youths. (arts. 2 and 16)

The State party should consider relinquishing the use of electric taser weapons, the impact of which on the physical and mental state of targeted persons would appear to violate articles 2 and 16 of the Convention.

Violence against women

17. While appreciating the various initiatives taken by the State party to eliminate violence against women, the Committee remains concerned about the continued prevalence of violence against women, particularly Maori, Pacific and minority women, and the low rates of prosecution and convictions for crimes of violence against women, as also stated by the Committee on the Elimination of Discrimination against Women (CEDAW/C/NZL/CO/6, para. 24) (art. 16).

The State party should ensure that all reasonable allegations of violence against women are promptly and impartially investigated, alleged perpetrators duly prosecuted, and punished if found guilty, and victims accorded adequate redress, including compensation and rehabilitation. The State party should also put in place additional protective measures for women, such as enabling the police to issue protective orders. The State party should continue to launch programmes of public awareness and sensitization to prevent and eradicate of violence against women.

Data collection

18. The Committee regrets the lack of data and statistical information, especially on alleged cases of torture, the type and number of complaints, prosecution and conviction of perpetrators, if found guilty, as well as on compensation and rehabilitation of victims. (arts 2, 12, 13, 14 and 16)

The State party should provide detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as on the related investigations, prosecutions and criminal and disciplinary sanctions.

19. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

20. The State party is encouraged to disseminate widely the reports submitted by the State party to the Committee and the latter's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

21. The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee's recommendations, as contained in paragraphs 9, 11, 14 and 16.

22. The State party is invited to submit its next report, which will be considered as its sixth periodic report, by 15 May 2013.
