UNITED
NATIONS

CAT

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

Distr.
GENERAL

CAT/C/SR.607
18 May 2004

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 607th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 12 May 2004, at 3 p.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

CONTENTS

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.607/Add.1.

GE.04-41670 (E) 140504 180504

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of New Zealand (continued) (CAT/C/49/Add.3; HRI/CORE/1/Add.33/Rev.2, written replies)

1. At the invitation of the Chairperson, the members of the delegation of New Zealand took places at the Committee table.

2. The CHAIRPERSON invited the delegation of New Zealand to present their replies to the Committee's questions.

3. Mr. QUIRK (New Zealand) said that it had not been necessary to incorporate article 3 of the Convention, on non-refoulement, into the Immigration Act, as it was implemented administratively and reinforced by a common law requirement for decision makers to consider the obligation in relevant cases, and in New Zealand only five claims had ever been made under article 3. The Government intended to review certain aspects of the Immigration Act and would consider the Committee's interest in seeing the obligation incorporated into domestic legislation. Of the five claims made, one to the Removal Review Authority had been denied, but the decision was currently subject to judicial review and appeal. Two claims made to the Minister of Immigration had been denied, but temporary work permits had been issued to the people concerned. The remaining two cases had been made to the Minister of Immigration and were yet to be decided.

4. In the year ended 30 June 2003, 1,603 persons had been removed or deported from New Zealand. The delegation had provided the Committee with statistics on the nationalities of those persons in written form. Statistics on the destinations to which the persons had been sent were not currently available, and would require a review of each individual case file. It was possible that in the future New Zealand would conclude bilateral agreements with other countries regarding the return of their nationals.

5. The primary means by which New Zealand obtained cooperation from other countries in respect of returning persons who had been refused admission into New Zealand was as a signatory of the International Civil Aviation Organization, which prescribed the obligation of its member States to facilitate the transit through, or return to, their borders.

6. Gender-related violence that amounted to persecution was considered grounds for asylum in New Zealand. The Refugee Status Appeals Authority had found that women at risk of persecution on the basis of their gender could form a particular social group for the purposes of the United Nations Convention relating to the Status of Refugees. There had been eight instances in which appeals had been granted for that reason, and further information had been presented to the Committee in written form. In the case of the Sri Lankan girl, who had been returned to Sri Lanka where she had been sexually abused, the Refugee Status Appeals Authority had found that the Sri Lankan child protection authorities could and would protect her from sexual violence. The Authority had therefore dismissed her appeal for refugee status. The girl had been removed in February 2004 after the New Zealand Immigration Service had initiated

comprehensive plans to ensure her follow-up care in Sri Lanka. During her return she had been accompanied by her grandmother, two female police officers and a registered nurse. The New Zealand Immigration Service had monitored her care arrangements for some time, before handing over responsibility to the Sri Lankan authorities. A television programme had reported that the girl had been reunited with her mother in Hong Kong.

7. The security risk certificate process had been established to allow relevant classified security information to be used in immigration decision-making. The Inspector General of Intelligence and Security oversaw the use of classified security information in the making of the security risk certificate. In the event that the Inspector General did not confirm the certificate, the case could be taken no further. If the Inspector General did confirm the certificate, however, the individual concerned could appeal to the Court of Appeal on a point of law. Following the Inspector General's confirmation of the certificate, the Minister of Immigration had three working days to decide whether to rely on it and order the removal or deportation of the person concerned. The decision to rely on a security risk certificate and the decisions to remove or deport could be judicially reviewed.

8. Regarding the case of Mr. Ahmed Zaoui, the Refugee Status Appeals Authority did not have access to the classified information that was available to those involved in the security risk certificate process. Despite having been granted refugee status, Ahmed Zaoui was deemed a threat to national security and would therefore be held in detention, in accordance with the Immigration Act, until the security risk certificate process had been concluded. The Government intended to review the legislation in respect of that process when the Zaoui case had been resolved.

9. Mr. McCARTHY (New Zealand) said that a detailed summary of Mr. Zaoui's treatment in custody had been submitted to the Committee in writing. Although there was no formal link between a security risk certificate and the security conditions under which a person was held, the issue of a certificate represented a statement of extreme concern by the New Zealand intelligence community, and was highly likely to result in maximum security management. For those reasons, and through concern for Mr. Zaoui's own safety, he had been placed in a non-voluntary segregation regime, which was in fact more lenient than solitary confinement.

10. Regarding the Committee's questions on the Taunoa case, it had not taken eight months to begin an investigation. Complaints had been made by several inmates of a maximum security facility that conditions on a programme known as the "Behaviour Management Regime" amounted to psychological torture or cruel, degrading or disproportionately severe treatment or punishment. Prior to the proceedings being filed, the complaint made by Taunoa had been investigated by the Office of the Ombudsman. A separate investigation had not been initiated after the court proceedings had been filed as it had been considered inappropriate to intervene at that stage. Taunoa had also filed a complaint, including the same allegations concerning administrative or non-voluntary segregation. The case had been the subject of an eight-week High Court hearing. A detailed summary of the Court's decision, issued 7 April 2004, was being presented to the Committee in written form. The Department of Corrections took very seriously any Court findings that stated it had failed to treat inmates with humanity and respect. It did not, however, accept all the findings of the Court, and was currently appealing aspects of the decision in the Court of Appeal.

11. The avenues for inmates to file complaints had been included in paragraph 28 of New Zealand's third periodic report (CAT/C/49/Add.3) and further detailed information had been provided to the Committee in writing. The Ombudsman's report of 2003 had expressed concern about delays in reporting and investigating allegations of assault on inmates by prison staff, particularly in the Auckland maximum security prison. The Department of Corrections acknowledged that reporting delays had occurred. Those experienced at Auckland prison had been addressed by the implementation of an improved regional tracking and monitoring system and increased comprehensive training for those involved in investigative procedures. Video cameras were being progressively installed in prisons and staff were filmed when using control and restraint. Statistics on assaults had been submitted to the Committee.

12. Allegations of any assault on an inmate, including sexual assault, were recorded through the Corrections Incident Reporting System. All incidents were also reported to an Operations Adviser at National Office, within one hour of discovery. In the event that an Ombudsman was the first to receive an allegation, a report would be made to the Incident Reporting System. All allegations of assault were also referred to the police for criminal investigation and to the Inspectorate and Ombudsman. If an allegation had been made involving an inmate, immediate action was taken to reduce the risk of harm or further harm to the inmate. All allegations of assault by a prison officer were thoroughly investigated by the Department of Corrections and the complaint would be lodged with the police. Prison staff were suspended from duty during the investigation of cases with witness support or other corroborating evidence. Prison officers were prohibited from developing close friendships, financial or business arrangements, or sexual relationships with inmates, and from using inmates for personal or professional gain. All allegations in that regard were investigated and disciplinary measures were taken against staff if a case was proven. Such cases almost invariably led to dismissal.

13. Ms. SIM (New Zealand) said that in the event of child abuse or mistreatment, a child, their lawyer, parents, family or whanau (extended family groups), or members of the public could report to either the Police Complaints Authority, or the Office of the Commissioner for Children, or the Grievance Panels operated by all Department of Child, Youth and Family residential services. The recommendations of the United Nations Committee on the Rights of the Child on raising the age of criminal responsibility were currently under active discussion. The Government considered that before making a decision to change the age of criminal responsibility, it was necessary to improve the current systems and processes for dealing with children below that age.

14. Children in the care of the Department of Child, Youth and Family had rights to family access, and the department had recently received additional funding to extend family visits for children and young people in residential placements. Specialist education programmes were provided by the Ministry of Education, for all children and young people in Department of Child, Youth and Family residential services.

15. Legislative changes had been made to ensure that children could be strip searched only if there were reasonable grounds to believe that a child was in possession of a harmful item, and a strip search was necessary to detect it, following a search by less intrusive means. The Government acknowledged that there had been cases of children being held in police cells due to a shortage of residential facilities. Such cases occurred if there were no detention facilities available for a young person, who had been arrested and charged with an offence and was likely

to be violent or abscond. Efforts were being made to increase the number of residential facilities available, in order to prevent such situations arising in future. The Department of Child, Youth and Family reported one case of a 12 year old child having been detained for manslaughter in a department residence for five years. The child had subsequently been sentenced to a term of imprisonment, the first stage of which would be served in the criminal justice unit of a department residence.

16. Mr. McCARTHY (New Zealand) said that all young male offenders under the age of 18 who were not detained in Department of Child, Youth and Family residences were held in specialist youth offender units within prisons. In situations where remand inmates under the age of 18 could not immediately be placed in such a unit, they were kept separate from adult remand prisoners at all times. Male prisoners aged 18 or 19 were placed in adult prison units, unless they were deemed vulnerable to intimidation or suicide, in which case they remained in youth offender units. Formal assessment processes ensured that any such prisoner would be unlikely to pose a risk of sexually assaulting other young prisoners.

17. Mr. QUIRK (New Zealand) said that no appeals, including from asylum-seekers, had been made on the basis of habeas corpus. The Amnesty International report that all asylum-seekers, including children, were detained was incorrect. The United Nations High Commissioner for Refugees had commended the Mangere Accommodation Centre for providing access to excellent education, health and recreation services and for not separating parents and children.

18. In response to a question regarding the training of immigration staff, he said that the instructions concerning the treatment of claims for refugee status contained in the Immigration Service's Operational Manual had been updated in the light of consultations in December 2003. Staff received training commensurate with their roles and responsibilities and the Service ensured that they maintained a high level of theoretical and practical familiarity with the procedures. The instructions took into account United Nations treaties and the Court of Appeal decision in the New Zealand Refugee Council and Ors v. Attorney-General case, overturning a High Court decision to the effect that earlier instructions had been unlawful. The Court of Appeal decision had confirmed the lawfulness of the operational instructions and the Government had incorporated suggestions for improvements by one judge in its subsequent updating of the instructions.

19. Restrictions on the freedom of persons claiming refugee status, if applied at all, were minimal and of brief duration. The absence of valid travel documents or other evidence of identification was just one factor that might be taken into consideration. The level of restriction was carefully judged by an officer, who took into account the risk of a claimant committing an offence, absconding or presenting a danger to national security and public order.

20. Ms. SIM (New Zealand) said that there was no defence of superior orders under New Zealand law. Section 24 of the Crimes Act 1961 protected from criminal responsibility a person who committed an offence under threat of imminent death or grievous bodily harm, provided that he or she was not party to any association or conspiracy giving rise to the coercion.

21. Mr. McCARTHY (New Zealand) said that the Penal Institutions Act allowed the Government to award contracts for the private management of penal institutions. There was one such company operating at the Auckland Central Remand Prison. It was subject to the same regulations, approval mechanisms, policies, procedures and inspections as publicly managed institutions. A monitor employed on a full-time basis had free and unfettered access to the prison at all times. However, private management of prisons was contrary to the Government's policy and the Corrections Bill that was about to be introduced would remove the power of the Crown to contract for such management. If the Bill was passed in its current form, the management of Auckland Central Remand Prison would probably also revert to the Public Prisons Service in July 2005.

22. Mr. QUIRK (New Zealand) said that since 2002 no private-sector company provided services at the Mangere Accommodation Centre. Support for the operation of the Centre was provided by Immigration Service residential officers, who were public servants. The Government had never had contractual or legal responsibility for the operation of asylum-seeker facilities on the island of Nauru in the Pacific.

23. Mr. McCARTHY (New Zealand) said that the Department of Corrections did not record information on citizenship when offenders were remanded or sentenced to imprisonment. However, he had circulated statistics on the ethnicity of the prison population.

24. Ms. SIM (New Zealand) said that the Attorney-General was the Government's principal law officer and, like other members of the Government, was bound by the principles of Cabinet collective responsibility. However, when performing judicial functions under, for example, the Crimes of Torture Act 1989, the Attorney-General was required to put aside political considerations and to act in the public interest. His or her decisions under that Act would almost certainly be subject to judicial review.

25. New Zealand was currently considering what administrative and legislative changes would be necessary for ratification of the Optional Protocol to the Convention. There would probably be a number of preventive mechanisms, with one - in all likelihood the Human Rights Commission - performing a centralized overview role. It would receive reports from the subordinate mechanisms, coordinate visits by the Subcommittee for the Protocol, conduct enquiries and make recommendations to the Government on systemic issues. The Ministry of Justice had not identified any difficulties so far that would impede ratification of the Optional Protocol.

26. The Supreme Court Act, which had entered into force on 1 January 2004, had abolished the right of appeal to the Privy Council in respect of decisions by New Zealand courts after 31 December 2003. The Supreme Court would begin to hear appeals on 1 July 2004. The Act gave broader rights of appeal, particularly in criminal cases, and appeals to the Supreme Court would be less costly and more accessible than those to the Privy Council.

27. The right of arrested or detained persons to have access to medical care was not embodied in a statute but it was regarded as part of the State's duty to treat such persons with humanity and respect. Detainees were given access free of charge to a health professional selected from a list of medical practitioners if the police considered it necessary or at the request of the detainee. Reasonable endeavours were made to accommodate requests from detainees to consult a private doctor at their own expense.

28. Prisons were required by law to provide inmates, free of charge, with a standard of health care that was reasonably equivalent to that available to the public. Health professionals, including nurses and doctors, were employed by, or contracted to, prisons, and inmates were referred to appropriate external health providers for specialist treatment. Inmates could consult other health-care professionals at their own expense provided that security considerations were met.

29. Mr. CAUGHLEY (New Zealand) said that the constitutional relationship with the Cook Islands and Niue provided for the exercise by New Zealand of certain responsibilities for defence and external relations. However, the Government had no legislative or executive power in those or any other areas. Any action by the New Zealand Government was based on delegated authority and preceded by full consultation. The Cook Islands and Niue maintained their own justice and police authorities. There was a prison on Raratonga in the Cook Islands and smaller places of detention elsewhere in both the Cook Islands and Niue.

30. Mr. MAVROMMATIS (Country Rapporteur) thanked the delegation for its detailed and comprehensive answers to the Committee's questions.

31. The three-day limitation on the power of the Minister of Immigration to review cases was, in his view, extremely short since it afforded time for only one briefing or at most two. He wondered whether the court could rectify errors in cases where it considered that, on the face of the record, the Minister had exercised his discretionary or decision-making powers erroneously.

32. He hoped that there would be an official investigation into the Taunoa case as soon as the legal proceedings were completed.

33. He stood by his view that, in the light of the findings of the immigration authorities, the Zaoui case might well fall within the scope of article 3 of the Convention. The authorities should bear that in mind if they decided to deport him.

34. Notwithstanding the delegation's response, he still had the impression that the number of people whose freedom of movement was restricted, for example in a receiving centre, had increased since the recent terrorist events. The circumstances of the restriction entailed, in his view, a potential violation of the Convention.

35. Mr. QUIRK (New Zealand) said that the numbers had been swelled by the opening of the Mangere Accommodation Centre in 2001.

36. Mr. EL-MASRY (Alternate Country Rapporteur) expressed appreciation of the delegation's meticulous and well structured responses to the Committee's questions.

37. With regard to the procedure for review by the Inspector General of Intelligence and Security of decisions by the Minister of Immigration, he noted that the Inspector General would not state the reasons for a decision if there was a risk of disclosing classified security information. It was difficult to see how justice was served or how an appeal could be successful under those circumstances. He requested statistical information on the detention of children in police cells.

38. Mr. CAUGHLEY (New Zealand) said that the Inspector General would provide as much information as was available publicly but would withhold sensitive information. He undertook to provide a more considered response in due course.

39. Mr. RASMUSSEN said he was concerned to hear that young people who were likely to be violent or to abscond could be placed in a police cell if no facility was available for their safe detention. Where young people showed signs of being mentally disturbed, it was preferable to place them in psychiatric care. According to a recent newspaper report, a 16 year old had been held in a small cell for 10 days because the Department of the Child, Youth and Family had no beds available.

40. Noting that 18 and 19 year olds were placed in adult units or wings unless they were deemed vulnerable to intimidation or suicide, he suggested again that a suicidal person probably required psychiatric assistance. Moreover, while it might be in the interest of such 18 or 19 year olds to be placed with juveniles, it might not be in the interest of juveniles to have disturbed or suicidal adults in their midst.

41. The CHAIRPERSON, referring to the annex provided by the delegation providing statistics on removal or deportation orders, expressed surprise that Australia did not figure among the 75 countries in the table. He asked whether diplomatic assurances were sought during proceedings leading to a deportation decision based on a security risk certificate.

42. Mr. McCARTHY (New Zealand) said that he wished to reassure the Committee that the spirit of Mr. Rasmussen's concerns was reflected in the way that decisions were made. He noted that the vast majority of those held in prison youth units were 16 or 17 years of age. Because children developed at different rates, the authorities had to accommodate intimidating and violent 16 year olds who needed placing in the youth unit, as well as 18 or 19 year olds who represented significantly less of a threat. The system used to identify persons at risk of suicide was based on a precautionary approach, which meant that if there was any indication at all that individuals might be at risk, they were treated as though they were. He emphasized that those who exhibited violent behaviour or signs of mental illness would not be placed in a youth unit, but would be referred to mental health facilities.

43. Mr. QUIRK (New Zealand) said that because Australian citizens enjoyed the right of residence in New Zealand under long-standing trans-Tasman agreements, Australian citizens did not come within the ambit of immigration removals in the event that they were asked to leave as a result of misdemeanours or criminal activities. New Zealand did not tend to conclude diplomatic or other arrangements with destination countries with respect of persons who were removed either under escort or voluntarily. However, the Government preferred to engage in such arrangements with countries where difficulties were encountered. New Zealand was careful not to return people to places where they would face difficulties; he knew of one case, for example, in which an unsuccessful claimant was in New Zealand on a continuing temporary permit because the Government would not return him to Somalia. In the case of the individual under the security risk certificate, it appeared that attempts to find a solution with other countries had not been successful, which made it difficult to predict the outcome of the case.

44. Mr. CAUGHLEY (New Zealand) said that his Government aspired to the highest international standards in the implementation of the Convention and he therefore looked forward to learning the Committee's conclusions and recommendations.

The public part of the meeting rose at 4.20 p.m.