



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

Distr.  
GENERAL

CAT/C/NZL/Q/5  
12 February 2009

Original: ENGLISH

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COMMITTEE AGAINST TORTURE

Forty-second session  
27 April – 15 May 2009

**List of issues to be considered during the examination of the  
fifth periodic report of NEW ZEALAND (CAT/C/NZL/5)**

**Article 2**

1. Please provide detailed information on the content of the General Instructions issued by the Commissioner of Police for police officers with regard to the use of force in arresting and detaining offenders, in particular the use of restraining holds.
2. Please provide updated information on the status and content of the Police Bill which the Government intended to introduce to Parliament in 2008. Please also indicate the progress made with respect to the comprehensive review of the Police Act 1958 and the Police Regulations 1992.
3. Please provide more information on the rights of the persons detained in police custody, in particular their right of access to a counsel and to a doctor of their choice, to be informed of their rights and to inform their family promptly of their detention. Please also indicate whether any new legislation against terrorism has affected these rights.
4. The Corrections Act 2004 requires that decisions to segregate prisoners for the purpose of good order and discipline expire after 14 days unless extended by the Chief Executive, and that decisions to segregate for more than three months be approved by a visiting justice. Please indicate the maximum duration that a prisoner can be segregated for the above-mentioned purposes.
5. The Corrections Act 2004 provides for a more consistent approach to the use of non-lethal weapons with a requirement that any such weapons can be used if allowed by regulation. Please indicate to the Committee which non-lethal weapons are authorized under the Act. Please also explain under which circumstances these weapons are used and how the Minister of Corrections monitors their use to ensure that it does not breach articles 2 and 16 of the Convention.
6. The report indicates that the New Zealand Police were undertaking a 12-month trial period of the Taser weapon in four districts. Please explain whether an assessment has been made following the trial period and, if so, kindly provide information on the outcome of such

evaluation. Please also provide information on the number of persons on whom the Taser weapon was used, as well as on the circumstances justifying such use. Please also indicate whether a study of the consequences of the Taser weapon on the health of these persons has been conducted and, if so, kindly provide information on its findings.

7. Please inform the Committee on measures taken to reduce the time and improve the conditions of non-voluntary segregation (solitary confinement) which can be imposed on asylum-seekers, prisoners and other detainees, as recommended by the Committee in its previous conclusions and recommendations (CAT/C/CR/32/4, para. 6 (d)).

### Article 3

8. Please indicate progress made towards incorporating the *non-refoulement* obligation of article 3 of the Convention into the immigration legislation of the State party, as recommended by the Committee in its previous conclusions and recommendations (CAT/C/CR/32/4, para 5(a)).

9. Please indicate whether the State party envisages putting an end to the practice of detaining asylum-seekers in correctional facilities, as recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/NZL/CO/66, para. 24).

10. In relation to immigration detention, please indicate:

- a) What are the avenues to challenge the lawfulness of immigration detention;
- b) Whether legal aid is accessible for detainees with financial difficulties;
- c) Whether defence lawyers can participate in the hearings of the Deportation Review Tribunal;
- d) Whether appeals filed against decisions not to grant asylum have suspensive effect on expulsion orders;
- e) Whether the State party has a list of “safe third countries” for removal; and, if so, how this list is created and maintained.

11. Please indicate whether the State party seeks assurances, including diplomatic assurances, before extraditing or returning an individual to another State as a way of preventing the return to a country where he/she would be in danger of torture. If so, please also indicate whether there is any follow-up mechanism in place to assess whether these assurances are honoured.

12. The report indicates that fewer than 20 people are known to have claimed protection under article 3 in New Zealand of which one claim has been successful. Please indicate on which grounds the above-mentioned claims were rejected and how the information provided by the claimants was assessed.

13. Please provide updated information on Mr. Zaoui’s case. Please also indicate any steps taken to review the legislation relating to the security-risk certificate in order to ensure that appeals can effectively be made against decisions to detain, remove or deport a person, extend the time given to the Minister of Immigration to adopt a decision and ensure full respect of article 3 of the Convention, as recommended by the Committee in its previous conclusions and recommendations (CAT/C/CR/32/4, para 6 (c))

14. Please provide data, disaggregated by age, sex and nationality, covering the reporting period on:
- a) The number of asylum requests registered and the number of requests granted;
  - b) The number of forcible deportations or expulsions;
  - c) The number of rejected asylum-seekers and/or irregular/undocumented migrants who are held in administrative detention in immigration detention facilities and alternative detention arrangements;
  - d) The countries to which these persons were expelled.

#### **Article 4**

15. The report indicates 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. Please indicate whether there are mechanisms in place to ensure that where there is reasonable ground to believe that an act of torture has been committed, the alleged perpetrator would be tried including in the absence of the Attorney General's consent.

#### **Article 5**

16. Please clarify whether the State Party considers that the Convention applies to persons under its jurisdiction in cases where New Zealand troops or police officers are stationed abroad.

#### **Articles 6, 7, 8 and 9**

17. Please provide information on cases, if any, where the State party rejected a request for extradition by another State for an individual suspected of having committed a crime of torture, and thus has engaged its own prosecution as a result.

#### **Article 10**

18. Please elaborate on what kind of training is provided to officials dealing with the expulsion, return or extradition of asylum-seekers.

#### **Article 11**

19. Please provide information on the findings of the investigations conducted by the Public Prisons Service and the Department's Inspectorate initiated in 2006 regarding deaths in custody. Kindly indicate whether the Office of the Ombudsman has also conducted an independent investigation into the procedures around the escorting of prisoners in custody. If so, please provide information on the findings of such investigation.

20. Please indicate whether the new independent prison complaint mechanism referred to in the report has been established and, if not, please explain the reasons for the delay.

21. Please provide information on the number of persons and the occupancy rate of the places of deprivation of liberty in the criminal justice system.

22. Please inform the Committee on measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably women, indigenous peoples, persons suffering from mental illnesses and children.

### **Articles 12 and 13**

23. The report indicates that if it were alleged that an act of torture has been committed the police would undertake the investigation (CAT/C/NZL/5, para. 188). Please explain whether the State party is envisaging the establishment of independent mechanisms to conduct investigations in such cases. Kindly indicate whether investigations on grounds of torture have been conducted during the reporting period and, if so, please provide information on their findings.

24. The report indicates that if it were alleged that a member of the New Zealand Armed Forces has committed an offence under the Crimes of Torture Act, the commanding officer of that person would be required to record a charge or refer the allegation to the appropriate civil authority for investigation, unless the commanding officer considered that the allegation was not well founded (para. 200). Please explain what mechanisms are in place to ensure that in cases of allegation of torture an independent investigation takes place even if the commanding officer considers that the allegation is not well-founded.

25. Please provide further information on the Police Complaints Authority, in particular its ability to conduct independent investigations in cases of allegations of torture by members of the police.

26. Under Section 17 of the Police Complaints Authority Act, the Police Complaints Authority may choose to decide to take no action on the complaint in circumstances where the complainant has had knowledge of the matters for more than 12 months before the complaint was made. Please indicate whether this provision also applies to the crime of torture. Please inform the Committee on the number of complaints registered, if any, by the Police Complaints Authority on grounds of torture, or cruel, inhuman or degrading treatment during the reporting period. Kindly provide information on the number of investigations undertaken, as well as on their outcome.

27. According to the report, if a complaint were filed under the Crimes of Torture Act, the police would have to determine whether there is admissible, reliable and strong evidence to establish a prima facie case (para. 204). In addition, if the police consider it is in the public interest to prosecute, and the alleged perpetrator can be located, he or she can be arrested subject to the Attorney General's consent (ibid.). Please explain in which cases the police could consider it contrary to the public interest to prosecute if there are serious reasons to believe that an act of torture has been committed.

28. Please provide updated information on any specific cases of torture or cruel, inhuman or degrading treatment or punishment, or similar offenses committed by armed forces and other personnel, including contractors, stationed abroad, notably in Afghanistan.

### **Article 14**

29. Please provide updated information on the final decision of the Government regarding the withdrawal of the reservation to article 14.

**Article 16**

30. Please indicate whether following the release of the first report of the Task Force for Action on Violence within Families established by the Government in 2005, there have been concrete steps to prevent violence against women and children in the family.

31. Please provide information, disaggregated by sex, age, ethnicity or origin of victims, on the number of investigations, convictions and sanctions that have been applied in cases of human trafficking and commercial sexual exploitation. Please inform the Committee of the number of Witness Protection Visas issued to victims of trafficking and how many victims of trafficking have benefited from recovery assistance.

**Other**

32. Please indicate whether there is legislation in New Zealand aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, please provide information about its content or implementation. If not, please indicate whether the adoption of such legislation is being considered.

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