United Nations CAT/C/NZL/CO/7*

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

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Committee against Torture

Concluding observations on the seventh periodic report of New Zealand**

1. The Committee considered the seventh periodic report of New Zealand[1] at its 2022nd and 2025th meetings,[2] held on 18 and 19 July 2023, and adopted the present concluding observations at its 2033rd meeting, held on 26 July 2023.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure and submitting its periodic report thereunder, as this improves the cooperation between the State party and the Committee and focuses the examination of the report and the dialogue with the delegation.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the delegation of the State party and the responses provided to the questions and concerns raised during the consideration of the periodic report.

B. Positive aspects

4. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 22 September 2022;

(b) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 4 October 2016;

(c) The United Nations Convention against Corruption, on 1 December 2015.

5. The Committee also welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, including the following:

(a) The Abortion Legislation Act, in 2020, which decriminalizes abortion and allows women to seek an abortion without restrictions within the first 20 weeks of pregnancy;

(b) The Family Violence Act and the Domestic Violence – Victims' Protection Act, in 2018;

(c) The Children, Young Persons, and Their Families (*Oranga Tamariki*) Legislation Act, in 2017;

* Reissued for technical reasons on 25 October 2023.

** Adopted by the Committee at its seventy-seventh session (10–28 July 2023).

[1] CAT/C/NZL/7.

[2] See CAT/C/SR.2022 and CAT/C/SR.2025.

(d) The Crimes Amendment Act, in 2015, which criminalizes slavery, servitude, forced labour and trafficking in persons within, into and out of the country;

(e) Immigration Amendment Act (No. 2), in 2015, making it an offence to exploit temporary migrant workers;

(f) The Victims' Rights Code, in 2015.

6. The Committee further welcomes the State party's initiatives to amend its policies and procedures in areas of relevance to the Convention and to ensure greater protection of human rights, including:

(a) The establishment, in 2022, of the *Whaikaha* – Ministry of Disabled People;

(b) The establishment, in 2021, of an interministerial human rights mechanism to better coordinate the reporting on, implementation of and follow-up to the State party's treaty obligations;

(c) The establishment, in 2021, of the independent Mental Health and Well-being Commission;

(d) The establishment, in 2018, of the Royal Commission of Inquiry into historical abuse in State care and in the care of faith-based institutions;

(e) The adoption, in 2018, of the Safe and Effective Justice Programme, which is aimed at reforming the criminal justice system, and the adoption, in 2020, of the *Te Ao Mārama* – Enhancing Justice for All programme;

(f) The establishment, in 2018, of a stand-alone agency to strengthen engagement between Maori and the Government (*Te Arawhiti* – Office for Maori Crown Relations);

(g) The release, in 2017, of the *Waitangi* Tribunal report, *Tū mai te Rangi!*, aimed at addressing the disparity in reoffending rates between Maori and non-Maori;

(h) The establishment, in 2017, of the *Oranga Tamariki* – Ministry for Children, with a child-centred operating model and increased focus on the needs of Maori children;

(i) The adoption, in 2015, of the Migrant Exploitation Prevention Strategy (2015–2018).

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

7. In its previous concluding observations, the Committee requested the State party to provide information on the implementation of the Committee's recommendations on the national preventive mechanism, the Independent Police Conduct Authority and the excessive use of seclusion in mental health facilities.[3] In the light of the replies submitted by the State party on 3 June 2016,[4] the information contained in the State party's seventh periodic report and the additional information provided by the delegation during the dialogue, the Committee is of the view that the recommendations set out in paragraph 15 of the previous concluding observations on the excessive use of seclusion in mental health facilities have not yet been implemented. Those issues are covered in paragraphs 41 and 42 of the present concluding observations.

Legal status and territorial application of the Convention

8. While taking note of the fact that New Zealand has a dualist legal system and that a combination of policies and legislation has been put in place to give effect to the Convention, the Committee remains concerned that the State party has not yet fully incorporated the Convention into the domestic legal order. It also notes that judicial decisions make little reference to international human rights instruments, including the Convention. The

[3] CAT/C/NZL/CO/6, paras. 9, 10 and 15.
[4] CAT/C/NZL/CO/6/Add.1.

Committee is further concerned about the information provided by the State party's delegation during the dialogue that the Convention does not apply to the Non-Self-Governing Territory of Tokelau (art. 2).

9. **The State party should intensify its efforts to incorporate the Convention into its domestic legislation and should strengthen the existing mechanisms to ensure the compatibility of domestic law with the Convention. It should also increase training programmes for the judiciary on the provisions of the Convention and the relevant practices of the Committee. Furthermore, it should extend the application of the Convention to the Non-Self-Governing Territory of Tokelau and refer the Committee to the relevant legislation if it has already been extended, and encourage the self-governing Cook Islands and Niue to accede to it.**

Customary law and domestic application of the Convention

10. Notwithstanding the delegation's explanations regarding the importance of customary law, or *tikanga Maori*, in New Zealand and its influence on common law, the Committee is concerned about a lack of clarity regarding the relationship of customary law with international legal norms in general and with provisions of the Convention in particular (art. 2).

11. **The State party should guarantee the rights set forth in the Convention to all persons within its territory and should take all measures necessary to ascertain the compatibility of traditional and customary norms with the Convention, ensuring, in the case of a conflict between them, that appropriate steps are taken to ensure that the Convention prevails. It should also ensure that the provisions applied by all courts in the State party are in harmony with the Convention.**

Definition and criminalization of torture

12. While considering the definition of the offence of torture enshrined in section 2 of the Crimes of Torture Act 1989 to be broadly in line with the provisions of article 1 of the Convention, the Committee is concerned that no mandatory minimum penalty is provided for acts of torture, allowing a very broad margin of discretion to the sentencing judge, as the sentence may range from 14 years' imprisonment to a non-custodial penalty that would not be commensurate with the gravity of the crime (arts. 1 and 4).

13. **The State party should consider amending the Crimes of Torture Act with a view to introducing mandatory minimum or graduated penalties leading up to the maximum penalty for acts of torture, including by citing aggravating factors, which take into account the gravity of the nature of the acts, as set out in article 4 (2) of the Convention.**

Fundamental legal safeguards

14. While taking into account the procedural safeguards set forth in domestic legislation, the Committee regrets the scant information provided on the measures and procedures in place to ensure that, in practice, detained persons, including children and young people, enjoy all fundamental legal safeguards from the very outset of deprivation of liberty, in particular the rights to be informed immediately of the reasons for arrest, of the nature of any charges against them and of their rights, to have access to a lawyer and to an independent medical examination and to notify a relative or a person of their choice of their detention. The Committee also notes with concern reports about the use of spit hoods in police detention contexts (art. 2).

15. **The State party should ensure that all fundamental legal safeguards are guaranteed, both in law and in practice, for all detained persons from the outset of their deprivation of liberty, including the right to:**

(a) **Be informed immediately in a language that they understand of the reasons for arrest, of the nature of any charges against them and of their rights;**

(b) **Be assisted by a lawyer, including before and during the interrogation stages, and, if applicable, be provided with free legal aid;**

(c) **Request and receive a medical examination by an independent medical doctor free of charge, or by a doctor of their choice, upon request, that is conducted out of hearing of police officers and prison staff;**

(d) **Have their medical record immediately brought to the attention of a prosecutor whenever the findings or allegations may indicate torture or ill-treatment;**

(e) **Inform a family member or another person of their choice of their detention;**

(f) **Challenge the legality of their detention at any stage of the proceedings.**

16. **The State party should also take all measures necessary to end the use of spit hoods in all circumstances, to provide adequate and regular training for those involved in detention activities on legal safeguards and to monitor compliance and penalize any failure on the part of officials to comply.**

Counter-terrorism measures

17. While acknowledging the State party's need to adopt measures to respond to the risk of terrorism and the steps taken to address the root causes of the phenomenon, including implementing the recommendations made by the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain, the Committee is concerned that the State party's counter-terrorism legislation, in particular the Counter-Terrorism Legislation Act (2021),[5] policies and practices still provide for excessive restrictions on the rights of persons suspected or accused of involvement in terrorist acts, including the right to due process and a fair trial and the right to liberty and security of person. The Committee is also concerned about the broad interpretation of the definition of terrorism and terrorist act, the limited oversight role of the judiciary regarding intelligence services and the reported lack of conformity of certain counter-terrorism powers with the provisions of the Convention (arts. 2, 11, 12 and 16).

18. **The State party should consider reviewing its interpretation of the definition of terrorism and terrorist act contained in its domestic legislation to ensure that its counter-terrorism and national security legislation, policies and practices are fully in line with the Convention and that adequate and effective legal safeguards are in place. Furthermore, the State party should carry out prompt, impartial and effective investigations into all allegations of human rights violations, including acts of torture and ill-treatment, committed in the context of counter-terrorism operations, prosecute and punish those responsible and ensure that victims have access to effective remedies and full reparation.**

Gender-based violence, in particular violence against Maori and Pasifika women and girls

19. While noting the various measures taken by the State party to address gender-based violence, including the adoption of *Te Aorerekura* – the National Strategy to Eliminate Family Violence and Sexual Violence and its associated Action Plan (2021–2023) and the establishment of the Minister for the Prevention of Family Violence and Sexual Violence and the *Te Puna Aonui* Interdepartmental Executive Board for the Elimination of Family Violence and Sexual Violence, the Committee remains seriously concerned about:

(a) The persistent high level of violence against women and girls, including family violence and sexual violence, which disproportionately affects Maori women, women belonging to ethnic minority groups and women with disabilities and significantly increased during the coronavirus disease (COVID-19) pandemic;

(b) The lack of comprehensive legislation criminalizing all forms of gender-based violence;

[5] See communication NZL 1/2021, available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26910.

(c) Underreporting and the high rate of recidivism, in particular within the Maori community;

(d) The lack of systematic specialized capacity-building programmes on the strict application of legal provisions on gender-based violence and on gender-sensitive investigation methods for judges, prosecutors, law enforcement officials and social welfare personnel (arts. 2 and 16).

20. **The State party should redouble its efforts to prevent and combat all forms of violence against women by, inter alia:**

(a) **Adopting comprehensive legislation criminalizing all forms of gender-based violence and ensuring that all cases of gender-based violence, in particular against Maori women, women belonging to ethnic minority groups and women with disabilities, and especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately and that the victims receive redress, including adequate compensation;**

(b) **Strengthening capacity-building for judges, prosecutors, law enforcement officials and social welfare personnel on gender-sensitive responses to gender-based violence, including domestic violence;**

(c) **Continuing to conduct public awareness-raising programmes to promote understanding of the criminal nature of gender-based violence against women and take the measures necessary to encourage and facilitate the lodging of complaints by victims and to address effectively the barriers that may prevent women from reporting acts of violence against them;**

(d) **Ensuring that survivors of gender-based violence, including domestic violence, have access to safe and adequately funded shelters and receive culturally appropriate medical care, psychosocial support and legal assistance adapted to the special needs of Maori women and girls and women and girls belonging to ethnic minority groups;**

(e) **Allocating adequate resources for the implementation of *Te Aorerekura* – the National Strategy to Eliminate Family Violence and Sexual Violence and its Action Plan (2021–2023).**

Trafficking in persons

21. While noting the amendment of section 98D of the Crimes Act 1961, which aligns the definition of trafficking in persons with that of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the adoption of the Plan of Action against Forced Labour, People Trafficking and Modern Slavery, the Committee is concerned that trafficking in persons remains a significant matter of concern, as the State party reportedly continues to be a destination country for women, men and children trafficked from abroad for the purposes of forced labour and sexual exploitation. It is also concerned about the low rates of prosecutions and convictions in trafficking cases and prevailing attitudes among members of the judiciary, law enforcement officials and immigration and border control officers, who regard to victims of trafficking as offenders and migrants with irregular migration status, rather than as victims, constituting an obstacle to reporting and to the early identification and referral of victims of trafficking to the appropriate social and legal services (arts. 2, 12–14 and 16).

22. **The State party should continue and strengthen its efforts to combat trafficking in persons. In that respect, it should:**

(a) **Ensure the effective implementation of existing legislation and promptly, thoroughly and effectively investigate, prosecute and punish, with appropriate penalties, trafficking in persons and related practices, ensuring the allocation of all means required for such purpose;**

(b) **Encourage reporting by raising awareness of the risks of trafficking among vulnerable communities and train judges, law enforcement officials and immigration and border control officers in the early identification of victims of trafficking and their referral to appropriate social and legal services;**

(c) **Ensure that victims of trafficking are not prosecuted, detained or punished solely on the grounds of being trafficked, and consider offering immigration status options to such victims;**

(d) **Ensure that victims of trafficking are provided with adequate protection and support, including by establishing separate, well-equipped shelters with trained staff to address their specific needs and concerns, strengthen long-term reintegration measures for such victims and ensure that they receive redress, including adequate compensation;**

(e) **Enhance international cooperation to prevent and combat trafficking in persons, including through bilateral agreements, and monitor the impact of such cooperation.**

Asylum and non-refoulement

23. While noting the information provided by the State party on the applicable standards and the safeguards in place, the Committee remains concerned about policies and practices currently applied in relation to persons who, absent proper documents, arrive or attempt to arrive in the State party, without affording full protection against refoulement. It is particularly concerned that the Extradition Act 1999 does not comply fully with the non-refoulement standards set out under article 3 of the Convention, in particular when determining whether there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture upon removal (art. 3).

24. **The State party should:**

(a) **Ensure that no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that the individual concerned would be in danger of being subjected to torture;**

(b) **Ensure that all asylum-seekers and other persons in need of international protection who arrive or attempt to arrive in the State party, regardless of their legal status and mode of arrival, have access to fair and efficient refugee status determination procedures and non-refoulement determinations;**

(c) **Consider amending the Extradition Act 1999 to introduce a legal obligation to ensure that the removal of an individual must always be consistent with the State party's non-refoulement obligations;**

(d) **Ensure that effective measures are in place to identify, as early as possible, all victims of torture and violence among asylum-seekers and other persons in need of international protection and provide them with priority access to the refugee determination procedure and access to treatment for urgent health conditions.**

Diplomatic assurances

25. While taking note that the State party carried out only one extradition on the basis of diplomatic assurances during the reporting period, the Committee regrets that the State party did not provide information on post-return monitoring arrangements between New Zealand and the receiving State. It also notes that, in *Minister of Justice v. Kyung Yup Kim*, the Supreme Court decided, in its final judgment of 13 April 2022,[6] to reinstate the initial decision of the Minister of Justice to surrender the respondent to the requesting State under section 30 of the Extradition Act 1999. The Committee takes note of reports alleging that the State party failed to take into account all relevant considerations when determining whether there were substantial grounds for believing that Mr. Kim would be in danger of being subjected to torture if extradited to the requesting State. It also takes note of the information

[6] See https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-44.pdf.

provided by the State party relating to *Minister of Justice v. Kyung Yup Kim*, which is currently being considered by the Human Rights Committee, that the State party has agreed to accept the interim measures until 31 December 2023. The Committee recalls that, as indicated in paragraph 20 of the Committee's general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, diplomatic assurances should not be used as a loophole to undermine the principle of non-refoulement as set out in article 3 of the Convention (art. 3).

26. **The State party should take all necessary measures to ensure compliance with its obligations under article 3 of the Convention and under no circumstances expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The State party should thoroughly assess the situation of each individual case, including the overall situation with regard to torture in the country of return or extradition.**

Conditions of detention

27. While appreciating the measures taken by the State party to improve conditions of detention in general, including the introduction of the High Impact Innovation Programme, which is aimed at reducing the prison population, and the development of a strategy to improve mental health services for prisoners, the Committee is concerned about reports that overcrowding, poor material conditions and staff shortages remain problems in many places of detention. It is also concerned about reports that, in a number of places of deprivation of liberty, health-care services, in particular mental health services, remain inadequate, and that recreational and educational activities to foster the rehabilitation of detainees remain limited. It is further concerned about reported arbitrary practices, which disproportionately affect Maori and Pasifika inmates and inmates with intellectual or psychosocial disabilities, in particular the continued use of prolonged and indefinite solitary confinement, the use of spit hoods and pepper spray, including in confined spaces and on vulnerable prisoners, and the excessive use of various means of physical or chemical restraint, especially in units housing prisoners of extreme risk. Moreover, it is concerned about reports of a high incidence of inter-prisoner violence in penitentiary institutions. Finally, it remains concerned about reports indicating a high rate of incarceration of inmates with disabilities, in particular intellectual or psychosocial disabilities, and that correctional institutions lack the appropriate capacity, resources and infrastructure to manage mental health conditions (arts. 2, 11 and 16).

28. **The State party should:**

(a) **Continue its efforts to improve the conditions of detention in all places of deprivation of liberty and alleviate the overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In this regard, the Committee draws the State party's attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(b) **Adopt practical measures to remedy the lack of meaningful recreational and educational activities to foster the rehabilitation of detainees;**

(c) **Improve the provision of gender- and age-specific and culturally appropriate medical services to all persons deprived of their liberty, particularly those with intellectual or psychosocial disabilities;**

(d) **Increase the number of trained and qualified prison staff, including medical staff, and strengthen the monitoring and management of inter-prisoner violence;**

(e) **Ensure that means of restraint are used only as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain the risk;**

(f) **Restrict the use of pepper spray in law enforcement operations and in places of detention, including by ensuring that it is fully regulated in line with the**

principles of necessity and proportionality, and explicitly prohibit its use in confined spaces and on vulnerable persons, including minors and pregnant women, and in health-care settings, including mental health institutions;

(g) **Ensure that solitary confinement is used only in exceptional cases as a last resort, for as short a time as possible (and in no case for more than 15 consecutive days for adults) and subject to independent review, and only pursuant to the authorization by a competent authority, in accordance with rule 45 (1) of the Nelson Mandela Rules. The State party should also ensure that instances of solitary confinement are properly registered and documented. The Committee wishes to draw the State party's attention to rule 45 (2) of the Nelson Mandela Rules, under which solitary confinement should be prohibited in the case of prisoners with intellectual or psychosocial or physical disabilities when their conditions would be exacerbated by such measures. In addition, rule 43 (3) of the Nelson Mandela Rules provides that disciplinary sanctions or restrictive measures must not include the prohibition of family contact and that the means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.**

Pretrial detention

29. While taking note of the information provided by the State party on the measures taken to address the issue of pretrial detention, the Committee is concerned that pretrial detention is still frequently used in New Zealand and that no maximum time limits for pretrial detention are stipulated in law. It is also concerned that the number of persons being held in pretrial detention has increased during the period under review, which has largely been driven by increases in the rate of pretrial detention of Maori people (arts. 2, 11 and 16).

30. **The State party should ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods of time, taking into account the principles of necessity and proportionality, in particular for minors. It should also intensify efforts to significantly reduce the number of pretrial detainees by making more use of alternatives to detention, in particular with regard to Maori and Pasifika adults and children, in accordance with the Tokyo Rules and the Bangkok Rules.**

Indigenous Peoples in the criminal justice system

31. While noting the numerous strategies, programmes and initiatives to reduce the disproportionately high number of Maori in the prison system and to improve their conditions of detention, the Committee is concerned that Maori, including women and young people, continue to be disproportionately affected by incarceration, reportedly representing about 50 per cent of the total prisoner population, while constituting 17 per cent of the total population of New Zealand. In this respect, the Committee notes that the delegation acknowledged that a transformational change was required to reverse this trend and that, in order to achieve that change, the State party needed to implement comprehensive measures that included legislative and policy reforms. The Committee remains, concerned, however, that access to culturally sensitive legal assistance services, including interpretation and translation services, for marginalized and disadvantaged peoples, such as Maori and Pasifika, remains insufficient (arts. 2, 11 and 16).

32. **The State party should increase its efforts to reduce the disproportionately high number of Maori in prisons and to reduce recidivism, including by identifying its underlying causes, by revising regulations and policies leading to the high rates of incarceration of Maori and by enhancing the use of non-custodial measures and diversion programmes. It should take all measures necessary to give judges the discretion to reduce sentences or to rely on alternatives to incarceration on the basis of relevant individual circumstances. It should also give due consideration to the recommendations contained in the *Waitangi* Tribunal report, *Tū mai te Rangi!*, which are aimed at addressing the disparity in reoffending rates between Maori and non-Maori. Moreover, the State party should intensify its efforts to eliminate direct and indirect discrimination against Maori in the administration of justice, including through human rights training programmes for law enforcement officials, the judiciary**

and penitentiary personnel. Finally, it should ensure that adequate, culturally sensitive, qualified and accessible legal services are available to Maori.

Deaths in custody

33. While taking note of the information provided by the State party's delegation, the Committee regrets the lack of comprehensive information and statistical data on the total number of deaths in custody for the period under review, disaggregated by place of detention, the sex, age and ethnic or national origin or nationality of the deceased and the cause of death. It also notes with concern the information provided by the State party's delegation that the causes of death in custody included excessive use of force, a lack of health care and suicide (arts. 2, 11 and 16).

34. **The State party should:**

(a) **Ensure that all deaths in custody are promptly, effectively and impartially investigated by an independent entity, including by means of independent forensic examinations, in line with the Minnesota Protocol on the Investigation of Potentially Unlawful Death and, where appropriate, apply the corresponding sanctions;**

(b) **Assess and evaluate the existing programmes for the prevention, detection and treatment of chronic, degenerative and infectious diseases in prisons and review the effectiveness of strategies for the prevention of suicide and self-harm, including the Suicide Prevention Strategy 2019–2029 and its Action Plan 2019–2024;**

(c) **Compile detailed information on cases of death in all places of detention and their causes and the outcome of the investigations into the deaths.**

Monitoring of detention facilities

35. While welcoming the work of the five designated institutions forming the national preventive mechanism, which are coordinated by the Human Rights Commission of New Zealand, and the express inclusion in the Ombudsman's mandate of private aged-care facilities and court cells, the Committee is concerned about reports that the mechanism's access to prisoners in high-risk units is sometimes restricted. It is also concerned that the human and financial resources allocated to each component of the mechanism may be insufficient to allow them to effectively discharge their respective mandate (arts. 2, 11 and 16).

36. **The State party should:**

(a) **Ensure that each member body of the national preventive mechanism has the human and financial resources necessary to fulfil its preventive mandate in accordance with the Optional Protocol to the Convention, including access to all places of deprivation of liberty as prioritized by the bodies themselves;**

(b) **Intensify its efforts to build the capacities of the Human Rights Commission of New Zealand in coordinating the work of the five designated institutions composing the national preventive mechanism with a view to ensuring the effective and independent monitoring, including regular and unannounced visits and confidential interviews of detainees, of all places of deprivation of liberty;**

(c) **Ensure the effective follow-up and implementation of the recommendations made by the various components of the national preventive mechanism as part of their monitoring activities, in accordance with the guidelines on national preventive mechanisms adopted by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**[7]

(d) **Encourage cooperation between the national preventive mechanism and civil society organizations.**

[7] CAT/OP/12/5, paras. 13 and 38.

Juvenile justice

37. While noting the various measures taken by the State party to improve the situation of children in conflict with the law, including the establishment of *Aroturuki Tamariki* – the Independent Children's Monitor and the Children and Young People's Commission, in 2019 and in 2022, respectively, and the adoption of the Child and Youth Well-Being Strategy, in 2019, the Committee remains concerned about:

(a) The very low age of criminal responsibility, which is set at 10 years;

(b) Reports that children aged 14 to 17 years can be remanded in police custody after their first court appearance in the youth justice system for an indeterminate duration pending transfer to another facility;

(c) Reports that children do not always have access to legal assistance, which is mandatory, from the outset of their deprivation of liberty and that they are sometimes interrogated without the presence of a lawyer;

(d) The persistence of disproportionately high numbers of Maori children in the juvenile justice system and the disproportionately high number of Maori young people who die by suicide in institutions;

(e) Reports that children in detention are frequently subjected to verbal abuse and racist remarks and restrained in ways that are potentially dangerous;

(f) The practice of keeping children in solitary confinement;

(g) Children's lack of awareness about their rights and how to report abuses (arts. 2, 11 and 16).[8]

38. **The State party should bring its child justice system fully into line with the Convention and:**

(a) **Raise the minimum age of criminal responsibility, in accordance with international standards;**

(b) **Repeal the practice of remanding children into police custody and reduce the proportion of children in secure youth justice residences who are on remand, including by investing in the development of community-based residences and strengthening the availability and use of non-custodial measures;**

(c) **Actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences, such as probation or community service;**

(d) **Ensure that all children have access to mandatory legal assistance from the outset of their deprivation of liberty and that they are never interrogated without the presence of a lawyer;**

(e) **Ensure that detention conditions comply with international standards, including with regard to access to education and health services, and, for pretrial detention, that detention is reviewed on a regular basis with a view to its withdrawal;**

(f) **Take all measures necessary to reduce the incarceration rate of Maori children and ensure that their detention undergoes regular judicial review;**

(g) **Explicitly prohibit the use of force, including physical restraints, and of pepper spray and spit hoods against children under supervision and promptly investigate all cases of abuse and ill-treatment of children in detention and adequately sanction the perpetrators;**

(h) **Immediately end the practice of solitary confinement for children in detention, including informal solitary confinement;**

(i) **Provide children in conflict with the law with information about their rights, ensure that they have access to effective, independent, confidential and accessible**

[8] CRC/C/NZL/CO/6, paras. 42 and 43.

complaint mechanisms and legal aid and protect complainants from any risk of reprisals.

Mandatory immigration detention, including of children

39. While welcoming the information provided by the State party on the comprehensive system put in place to assist asylum-seekers, the Committee remains concerned about reports that, in practice, non-citizens who enter the territory of the State party irregularly continue to be mandatorily detained. The Committee is particularly concerned about reports of the continued application of mandatory detention in respect of children and unaccompanied minors. It is also concerned about the poor material conditions of detention in some facilities, restrictions on access to social, educational and health services and the reported excessive use of force, including physical restraints, perpetrated with impunity by security guards against migrants and asylum-seekers. It is further concerned about a bill, introduced by the Government, which would allow for the detention of large groups of asylum-seekers arriving in New Zealand by sea for up to 28 days (up from 4 days under the current legislation) without a warrant and six months with a warrant, and about reports that the bill would prevent asylum-seekers from obtaining the entry permissions or temporary visas conferred on other travellers to New Zealand. Moreover, the Committee is concerned by reports that there is no legal limit for the duration of immigration detention for undocumented migrants and asylum-seekers. The Committee is also concerned about the lack of adequate procedural safeguards for undocumented migrants and asylum-seekers to meaningfully challenge their detention (arts. 2, 11 and 16).[9]

40. **The State party should take the measures necessary:**

(a) **To repeal the legal provisions establishing the mandatory detention of persons entering its territory irregularly;**

(b) **To ensure that detention is applied only as a last resort, when determined to be strictly necessary and proportionate in the light of the individual's circumstances, and for as short a period as possible, and to intensify its efforts to expand the application of non-custodial measures;**

(c) **To ensure that children and families with children are not detained solely because of their immigration status;**

(d) **To review the bill on immigration to ensure that it complies with the Convention and other international standards;**

(e) **To improve the conditions of detention in immigration facilities, in case it is necessary and proportionate that a person be detained, including by guaranteeing access to adequate social, educational and mental and physical health services, refraining from applying force, including physical restraints, against migrants and asylum-seekers and ensuring that all allegations of excessive use of force are promptly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions and that victims are offered adequate redress;**

(f) **To ensure that undocumented migrants and asylum-seekers are not held in detention indefinitely, including by resorting to alternatives to closed immigration detention and by providing for judicial review or other meaningful and effective avenues to appeal against such indefinite detention;**

(g) **To ensure that individuals held in immigration detention can bring complaints to an effective, independent, confidential and accessible oversight mechanism.**

Psychiatric institutions

41. While noting the measures taken by the State party to improve the situation of persons with disabilities detained in psychiatric institutions, including the publication, in 2023, of the *Guidelines for Reducing and Eliminating Seclusion and Restraint under the Mental Health*

[9] CERD/C/NZL/CO/21-22, paras. 31 and 32; and CCPR/C/NZL/CO/6, paras. 37 and 38.

(Compulsory Assessment and Treatment) Act 1992 to shift practices towards a seclusion-free environment in mental health facilities; the establishment, in 2018, of the Government Inquiry into Mental Health and Addiction; and the adoption, in 2016, of the New Zealand Disability Strategy 2016–2026 and its related action plans, the Committee is concerned about:

(a) Legislation that allows for involuntary detention and compulsory treatment on the basis of impairment, including the Substance Addiction (Compulsory Assessment and Treatment) Act 2017;

(b) The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, which includes extensions to compulsory care orders and exposes persons with intellectual disabilities to detention for periods of time exceeding the maximum length of the sentence to which they would be liable in the criminal justice system;

(c) The continued and, in some cases, prolonged use of solitary confinement, seclusion, physical and chemical restraints and other restrictive practices on persons with psychosocial or intellectual disabilities, in particular Maori, in health and disability places of detention;

(d) The lack of effective, independent, confidential and accessible channels for lodging complaints (arts. 2, 11 and 16).[10]

42. **The State party should:**

(a) **Consider repealing any legislation, including the Substance Addiction (Compulsory Assessment and Treatment) Act 2017, that enables deprivation of liberty on the basis of impairment and that enables forced medical interventions for persons with disabilities, in particular Maori persons with disabilities and persons with intellectual or psychosocial disabilities;**

(b) **Consider repealing provisions within the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 that allow for persons with disabilities to be detained for periods of time exceeding the maximum length of the sentence to which they would be liable in the criminal justice system;**

(c) **Prohibit the use of solitary confinement for persons with psychosocial or intellectual disabilities, including children, and ensure that instruments of restraint and force are used in accordance with the law, under appropriate supervision, for the shortest time possible and only when strictly necessary and proportionate;**

(d) **Establish an effective, independent, confidential and accessible national oversight, complaint and redress mechanism for persons with disabilities who have experienced violence, abuse, exploitation or neglect in any settings;**

(e) **Conduct prompt, impartial and thorough investigations into all allegations of ill-treatment in health-care institutions, both public and private, prosecute persons suspected of ill-treatment and, if found guilty, ensure that they are punished according to the gravity of their acts and provide effective remedies and redress to the victims;**

(f) **Provide regular training to all medical and non-medical staff, including security personnel, on methods of non-violent and non-coercive care.**

Investigation of acts of torture and ill-treatment and prosecution and punishment of perpetrators

43. The Committee is concerned about the allegations of ill-treatment recorded in places of detention, including prisons, police cells, immigration detention centres, youth justice residences and health and disability places of detention, during the reporting period. In that regard, it regrets that the State party has not provided comprehensive information on the number of cases that have resulted in investigations and prosecutions of or disciplinary action against officials, or on the penalties and disciplinary measures imposed upon the persons convicted for acts of torture and ill-treatment during the period under review. Furthermore,

[10] CRPD/C/NZL/CO/2-3, paras. 25–30.

the Committee is concerned that there is still no effective, independent and confidential mechanism for the receipt of complaints of torture or ill-treatment in all places of deprivation of liberty. The Committee is also concerned that no public officials or other persons acting in an official capacity have been prosecuted under the Crimes of Torture Act 1989 to date and that section 12 of the Act requires the Attorney-General's consent before any person can be prosecuted for committing an act of torture, which may disincentivize prosecutors from pursuing torture charges under the Act (arts. 2, 7, 12, 13 and 16).

44. **The State party should:**

(a) **Ensure that all complaints of torture and ill-treatment are investigated in a prompt and impartial manner by an independent body and that there is no institutional or hierarchical relationship between that body's investigators and the suspected perpetrators of such acts;**

(b) **Ensure that the authorities open an investigation ex officio whenever there are reasonable grounds for believing that an act of torture or ill-treatment has been committed;**

(c) **Ensure that, in cases of torture or ill-treatment, suspected perpetrators are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, take reprisals against the alleged victim or obstruct the investigation;**

(d) **Ensure that the suspected perpetrators of acts of torture and ill-treatment and the superior officers responsible for ordering or tolerating the acts are duly tried and, if found guilty, punished in a manner commensurate with the gravity of their acts;**

(e) **Ensure the effective enforcement of the Crimes of Torture Act 1989 and the relevant provisions of the New Zealand Bill of Rights Act 1990, in particular in the investigation and prosecution of acts of torture and ill-treatment. The State party should oversee the establishment and effective operation of all prosecutors' offices to ensure their autonomy, the allocation of adequate resources and the training of their personnel. It should also consider amending section 12 of the Crimes of Torture Act to ensure that decisions regarding the prosecution of torture are made in the same manner as decisions regarding any other offences of a serious nature under the law of the State party;**

(f) **Compile and publish statistics on the number of investigations and prosecutions carried out, convictions handed down and penalties imposed in cases of torture or ill-treatment.**

Allegations of complicity in torture and ill-treatment overseas

45. While welcoming the establishment, in 2018, of the Government Inquiry into Operation Burnham and the adoption, in 2022, of the New Zealand Policy Framework for the humane treatment of detainees in offshore deployments, the Committee takes note of reports indicating that the State party may have been involved in torture and ill-treatment overseas, including by means of complicity, as a result of the deployment of the armed forces of New Zealand in Afghanistan. It is concerned about reports that the State party has not yet implemented all the recommendations contained in the report of the Government Inquiry, despite having accepted them in principle, and that no recommendations have been made to hold the alleged perpetrators of torture and ill-treatment to account (arts. 2, 12–14 and 16).

46. **The State party should:**

(a) **Take all measures necessary to establish responsibility and ensure accountability for any acts of torture and ill-treatment of detainees held in Afghanistan committed by, at the instigation of or with the consent or acquiescence of military officials of New Zealand. In this regard, it should ensure that all perpetrators of torture and ill-treatment in the context of the inquiry are duly prosecuted and punished appropriately and that all victims obtain redress;**

(b) **Swiftly implement the recommendations contained in the report of the Government Inquiry;**

(c) **Ensure the effective implementation of the New Zealand Policy Framework for the humane treatment of detainees in offshore deployments to clearly prohibit prisoner transfers to another country where there are substantial grounds for believing that the individuals to be transferred would be in danger of being subjected to torture. The State party should bear in mind that diplomatic assurances and monitoring arrangements should not be relied upon as loopholes to justify transfers where such substantial risk of torture exists.**

Historical abuse in State care and in the care of faith-based institutions

47. While noting the establishment, in 2018, of the Royal Commission of Inquiry into historical abuse in State care and in the care of faith-based institutions and that some survivors have received ex gratia payments and apologies from the State party, the Committee expresses its profound concern about the findings in the Royal Commission of Inquiry's interim report on progress (December 2020), its interim report on redress (December 2021) and its report into abuse allegedly perpetrated at the State-run Child and Adolescent Unit at Lake Alice Hospital (December 2022), which revealed the extent of the physical, psychological and sexual child abuse perpetrated in State care and in the care of faith-based institutions. The Committee is seriously concerned that some of the recommendations arising from the inquiry have not yet been implemented, that no individual has been held accountable for the numerous allegations of torture and ill-treatment in State care and in the care of faith-based institutions, and that victims identified through the inquiry have not been awarded full redress, including compensation and rehabilitation. While noting that the State party has completed the prosecution and trial of an alleged perpetrator of abuse at Lake Alice Hospital, the Committee is concerned that the State party has failed to implement the Committee's decisions under article 22 of the Convention regarding the cases of *Zentveld v. New Zealand* and *Richards v. New Zealand*[11] and to conduct prompt and impartial investigations, proceed with prosecutions and provide adequate compensation and rehabilitation for the torture and ill-treatment suffered by the two complainants at Lake Alice Hospital (arts. 2, 13, 14 and 16).

48. **The State party should urgently:**

(a) **Implement the recommendations of the Royal Commission of Inquiry in order to provide victims of torture and ill-treatment in State care and in the care of faith-based institutions with full redress, including compensation and the means for as full a rehabilitation as possible;**

(b) **Implement the Committee's decisions under article 22 of the Convention concerning the cases of *Zentveld v. New Zealand* and *Richards v. New Zealand*, including by conducting prompt, thorough, impartial and independent investigations into all allegations of torture and ill-treatment made by the complainants, prosecuting the alleged perpetrators and, if convicted, punishing them with appropriate penalties, providing the complainants with access to full redress, including fair compensation and rehabilitation, and intensifying its efforts to disseminate the content of the Committee's decisions widely.**

Redress

49. While noting that cases of ill-treatment have been brought before the civil courts as claims of a breach of the New Zealand Bill of Rights Act 1990, the Committee regrets not having received sufficient information on the redress and compensation measures ordered by the courts and other State bodies and actually provided to the victims of torture or ill-treatment or their families since its consideration of the previous periodic report. Moreover, it remains concerned that the State party has not yet revised the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013, which restricts the circumstances in which the courts are able to award compensation to prisoners who are victims of acts that amount to torture and ill-treatment. The Committee recalls that victims may, inter alia, seek and obtain prompt, fair and adequate compensation, including in cases in which the civil

[11] See CAT/C/68/D/852/2017 and CAT/C/73/D/934/2019.

liability of the State party is involved, as suggested by the Committee in its general comment No. 3 (2012) (art. 14).

50. **The State party should ensure that, in law and in practice, all victims of torture and ill-treatment obtain redress, including by ensuring an enforceable right to fair and adequate compensation and the means for as full a rehabilitation as possible. The State party should compile and disseminate up-to-date statistics on the number of victims of torture and ill-treatment who have obtained redress, including medical or psychosocial rehabilitation and compensation, and on the forms of such redress and the results achieved. Furthermore, the State party should review the provisions of the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013 that might be inconsistent with article 14 of the Convention. Finally, the State party should consider contributing to the United Nations Voluntary Fund for Victims of Torture.**

Withdrawal of reservation to article 14

51. While noting the explanations provided by the delegation, the Committee is concerned that the State party has maintained its reservation to article 14 of the Convention, leaving at the discretion of the Attorney-General of New Zealand the right to award compensation to victims of torture, which is incompatible with the letter and spirit of the Convention and with the State party's obligation to ensure the rights of victims of torture to fair and adequate compensation, including the means for as full a rehabilitation as possible (art. 14).

52. **The Committee reiterates its previous recommendation**[12] **and urges the State party to consider withdrawing its reservation to article 14 and ensure the provision of fair and adequate compensation through its civil jurisdiction to all victims of torture.**

Intersex persons

53. While noting the establishment, in 2017, of the Child and Youth Intersex Clinical Network, the Committee is concerned about reports of cases of unnecessary surgery and other medical treatment with lifelong consequences, including severe pain and suffering, to which intersex children have been subjected before they reach an age at which they are able to provide their free, prior and informed consent. It is also concerned about the inadequate provision of support and counselling for the families of intersex children and of redress and rehabilitation for victims (arts. 2 and 16).[13]

54. **The State party should:**

(a) **Finalize the guidelines and protocol being developed by the Child and Youth Intersex Clinical Network, ensuring that they set out guarantees for the mental and bodily integrity, autonomy and self-determination of intersex children;**

(b) **Consider adopting legislative provisions that explicitly prohibit the performance of non-urgent and non-essential medical or surgical treatment of intersex children before they are of sufficient age or maturity to make their own decisions and provide free, prior and informed consent;**

(c) **Ensure independent oversight of decision-making to ensure that medical treatments for children with intersex traits who are unable to consent are necessary and urgent and the least invasive option;**

(d) **Provide redress to victims of non-urgent and non-essential treatment, including appropriate compensation and rehabilitation, and ensure that all intersex children and adolescents and their families receive professional counselling services and psychological and social support.**

[12] CAT/C/NZL/CO/6, para. 20.

[13] CEDAW/C/NZL/QPR/9, para. 9; CEDAW/C/NZL/CO/8, paras. 23 and 24; CRC/C/NZL/CO/6, para. 25; and CRPD/C/NZL/CO/2-3, paras. 35 and 36.

Training

55. The Committee acknowledges the efforts made by the State party to develop and implement educational and training modules on human rights, including on the Convention and on the absolute prohibition of torture, for law enforcement officers, prison staff, judges, prosecutors, immigration officers and members of the armed forces. However, it regrets the lack of training on the contents of the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, as revised. The Committee also regrets the lack of information on mechanisms for evaluating the effectiveness of training programmes and the absence of regular and specific training for staff employed in care institutions for children and young people, youth justice residences and health and disability places of detention and for forensic doctors and relevant medical personnel (art. 10).

56. **The State party should:**

(a) **Further develop mandatory initial and in-service training programmes to ensure that all public officials, in particular law enforcement officers, prison staff, immigration officers, military personnel, medical staff employed in prisons and personnel employed in care institutions for children and young people, youth justice residences and health and disability places of detention are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted and, if convicted, appropriately punished;**

(b) **Ensure that all relevant staff, including judges, prosecutors and medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Istanbul Protocol, as revised;**

(c) **Develop and apply a methodology for assessing the effectiveness of educational and training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation and investigation of such acts and the prosecution of those responsible.**

Follow-up procedure

57. **The Committee requests the State party to provide, by 28 July 2024, information on follow-up to the Committee's recommendations on conditions of detention, Indigenous Peoples in the criminal justice system, juvenile justice and historical abuse in State care and in the care of faith-based institutions (see paras. 28 (c), 32, 38 (c) and 48 (b) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the present concluding observations.**

Other issues

58. **The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.**

59. **The Committee requests the State party to submit its next periodic report, which will be its eighth, by 28 July 2027. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its eighth periodic report under article 19 of the Convention.**