



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

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Committee against Torture

Seventy-seventh session

Summary record of the 2025th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 19 July 2023, at 3 p.m.

Chair: Mr. Heller

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Seventh periodic report of New Zealand (continued) (CAT/C/NZL/7; CAT/C/NZL/QPR/7)

1. *At the invitation of the Chair, the delegation of New Zealand joined the meeting.*
2. **A representative of New Zealand**, replying to questions put at the Committee's 2022nd meeting, said that the Public Service Act 2020 required senior public servants to take responsibility for developing and maintaining the capacity of the public service to engage with Maori and to understand Maori perspectives. The Office for Māori Crown Relations supported government agencies in developing the cultural sensitivity of all public servants, increasing the number of employees with Maori relations skills and making workplaces comfortable and supportive for Maori staff. The Government currently had the highest number of Maori senior managers in its history.
3. Regarding the development of Maori-led approaches, the Government had launched Whakaoranga te Mana Tangata, a family-centred initiative designed and delivered by local tribes or tribal-mandated service providers to support Maori offenders, victims and their families in court proceedings. The overarching aims of the initiative were to reduce offending and imprisonment rates among Maori by fostering community involvement and providing judges with better information about offenders' backgrounds and circumstances. Furthermore, the Māori Pathways Programme, which was facilitated by the Department of Corrections in partnership with Maori, promoted the use of Maori-centred practices in the corrections system and included a range of initiatives to lower the proportion of Maori prisoners. It also aimed to broaden access to other initiatives facilitated by the Department. Around a third of all district court judges in New Zealand were of Maori descent.
4. **Mr. Kibblewhite** (New Zealand) said that, under the country's dualist legal system, international human rights law was not directly applicable unless it was incorporated into statute law. *Tikanga Māori* was a distinct body of customs that formed part of the common law of New Zealand, and *tikanga Māori* terms were used in statutory provisions and government policies. Although the courts had yet to consider the influence of international law on *tikanga Māori*, future cases would likely yield approaches to reconciling any possible tensions between *tikanga Māori* and other sources of law. *Tikanga Māori* could be a factor in the interpretation of statutes or form the basis of operative or substantive rules, depending on the circumstances.
5. The former Minister of Justice had reached the decision to surrender Kyung Yup Kim to China to stand trial on two separate occasions, in 2015 and in 2016, after obtaining assurances from China in relation to protection against torture and the right to a fair trial. The decision to surrender Mr. Kim had been subject to rigorous scrutiny by the High Court, the Court of Appeal and the Supreme Court and had been upheld by the latter in April 2022, after further assurances had been obtained from China in relation to trial processes and visitation. The New Zealand authorities considered concerns about torture and the appropriateness and reliability of assurances on a case-by-case basis. Both parties – the New Zealand authorities and Mr. Kim – were currently awaiting the response of the Human Rights Committee to their respective submissions.
6. Following the most recent universal periodic review of New Zealand, the Government had agreed to consider increasing the minimum age of criminal responsibility in accordance with international best practice. As the age of criminal responsibility depended on the seriousness of the offence, no person aged under 12 years had been convicted of a crime since 1983. Every year, however, around 30 persons aged 14 years were prosecuted for a range of offences, including serious crimes such as ram-raiding. The Government would report to the Human Rights Council on the matter at the country's next universal periodic review.
7. The New Zealand courts recognized section 9 of the New Zealand Bill of Rights Act 1990 as a domestic expression of the Government's obligations under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In 2021, the Supreme Court had stated that there was no significant difference between the terms “disproportionately severe”, in section 9 of the Bill of Rights Act, and “inhuman”, in the Convention against Torture. The courts had interpreted “disproportionately severe” as treatment or punishment that was so excessive that it would shock the conscience of properly informed New Zealanders. Treatment was assessed with reference to its duration and physical and mental effects and the gender, age and state of health of the victim.

8. Section 8 of the Bill of Rights Act broadly reflected article 6 of the International Covenant on Civil and Political Rights, except that it permitted deprivation of life on grounds established by law and consistent with the principles of fundamental justice. Those grounds had been interpreted to include, for example, self-defence. New Zealand had yet to explore in depth other grounds that might be consistent with the principles of fundamental justice.

9. **A representative of New Zealand** said that the country’s criminal law did not generally provide for mandatory minimum penalties, as that could result in penalties being disproportionately severe depending on the case. Rather, the courts evaluated the circumstances of the offence and the offender, among other things, to ensure that sentencing remained fair. Under the Sentencing Act 2002, if a court sentenced an offender to a determinate sentence of imprisonment of more than 2 years, it might order the offender to serve a minimum period in prison, subject to other criteria set out in the Act. Therefore, a minimum period of imprisonment would be possible for crimes of torture. No judicial or administrative practice had been established in that regard, as no sentence had ever been handed down for torture under the Act.

10. The independence of prosecutors was a key principle of the Solicitor-General’s Prosecution Guidelines. To prosecute crimes of torture, the consent of the Attorney-General, who held a ministerial position, was required under section 12 of the Crimes of Torture Act 1989, owing to the seriousness of the offence and the need to ensure that the prosecution was in the public interest. The New Zealand authorities considered that requirement an important safeguard and were not currently considering its removal. At any rate, in practice, the Attorney-General delegated the decision to prosecute crimes of torture to the Solicitor-General, who was the highest non-political law officer in the country, providing a safeguard against political influence. The involvement of the Attorney-General did not disincentivize the prosecution of crimes of torture and was not contrary to the Convention against Torture. The Attorney-General’s consent was also required by law for the prosecution of other serious offences, such as terrorism.

11. **A representative of New Zealand** said that New Zealand had become a party to seven core human rights treaties and remained committed to implementing the obligations it had thus assumed. Since New Zealand habitually ratified or acceded to a treaty only where its national laws were consistent with that treaty, the Government was considering what legislative and other changes might be necessary in order for New Zealand to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the International Convention for the Protection of All Persons from Enforced Disappearance. Work was under way to assess the implications of accession to the latter treaty, in line with the commitment given at the most recent universal periodic review of New Zealand. Accession to the Migrant Workers Convention was not currently being considered.

12. The Government was considering withdrawal of the reservation entered by New Zealand to article 14 of the Convention against Torture. National law had not previously provided for a comprehensive remedy for torture victims. Since the enactment of the New Zealand Bill of Rights Act, however, the courts had ruled that compensation could be awarded for breaches of the Act. Withdrawal had yet to be considered by the Cabinet and Parliament.

13. **A representative of New Zealand** said that the Crimes of Torture Act 1989 did not apply in the Cook Islands, Niue or Tokelau. As self-governing States in free association with New Zealand, the Cook Islands and Niue established their own laws and were themselves responsible for implementing any international obligations they undertook. New Zealand was responsible for implementing international obligations that applied in Tokelau, a Non-Self-

Governing Territory of New Zealand. However, consistent with its constitutional arrangements with Tokelau, New Zealand generally did not legislate for that Territory.

14. **A representative of New Zealand** said that New Zealand had made significant changes to its health system since submitting its report ([CAT/C/NZL/7](#)). The Pae Ora (Healthy Futures) Act 2022 provided for the transformation of health and disability services and the establishment of new entities, such as Health New Zealand, which served as a single national health organization, leading and coordinating the delivery of health services throughout the country; the Ministry of Disabled People, which ensured a broader, cross-government approach to disability and drove transformation of the disability support system; the Māori Health Authority, which promoted better health among Maori in partnership with the Ministry of Health and Health New Zealand and in consultation with Maori leadership bodies, health providers and professionals, tribes and communities; and the Public Health Agency, which aimed to improve public health, placing greater emphasis on equity and social determinants of health such as income, education and housing.

15. New Zealand had also made significant changes to the mental health system. The Mental Wellbeing Long-Term Pathway, established in 2021 in response to the Report of the Government Inquiry into Mental Health and Addiction, underlined the need for strong social, cultural, environmental and economic foundations for mental well-being and set out measures for strengthening mental health and addiction services, including cross-government actions to enhance mental health leadership, policy, investment and information systems. Mental well-being units had been established in all parts of the country to provide tailored support for different target audiences, including Maori, Pacific and young persons. Work was under way to repeal and replace the Mental Health (Compulsory Assessment and Treatment) Act 1992 with legislation that reflected a human rights-based approach. The Mental Health and Wellbeing Commission had been established to provide oversight of the whole system. Moreover, the Suicide Prevention Office had been established to strengthen national leadership in the area of suicide prevention. In 2023, the Government had established the Oranga Hinengaro System and Service Framework to identify the core components of a contemporary mental health and addiction system over a 10-year time frame, with due regard for key principles identified by Maori and people with lived experience of mental health and addiction problems.

16. The Report of the Government Inquiry called for a holistic approach to psychiatric care that eschewed the medical model and allowed patients to take control of their own recovery. Peer support workers and Maori and Pacific cultural workers had made a positive impact on the recovery of persons with lived experience of mental health and addiction problems. Revised guidelines on the Mental Health Act had been published in 2021. They had the force of secondary legislation and were intended to ensure respect for the obligations of the State under the Treaty of Waitangi, access to gender-affirming mental health care, respect for cultural identity and adherence to a supported decision-making approach in the mental health-care system. In January 2023, the National Workforce Centre for Mental Health, Addiction and Disability had launched a national training programme, which had been developed in close cooperation with Maori people and persons with experience of treatment under the Mental Health Act, to assist with implementing the guidelines.

17. In early 2021, the Government had established the Mental Health Infrastructure Programme to address the poor state of repair of some mental health facilities, improve planning and delivery of projects on mental health and addiction, and ensure that new and refurbished mental health facilities were physically safe, culturally sensitive and met the needs of the community. Two of the 16 infrastructure projects launched under the Programme had been completed and over 1 billion New Zealand dollars (\$NZ) had been allocated to the 14 ongoing projects.

18. Health New Zealand had been established as the sole mental health service provider, with full responsibility for planning and funding, to tackle the problems caused by the high occupancy rate of mental health-care facilities. A capacity-planning process was under way to enhance community services and minimize the need for and reduce the time spent in inpatient care. In the 2022 budget, \$NZ 100 million had been allocated over a four-year period to increase the availability and capacity of specialist mental health and addiction services and trial new support models to better meet users' needs and ease pressure on the

services. Additional staff were being recruited and existing employees were being upskilled to ease staffing shortages in the mental health and addiction sector.

19. Overall, the number of people who had been subjected to seclusion and the amount of time spent in seclusion in mental health facilities had decreased since 2009, when a seclusion reduction policy had been introduced. Provisional data for the period 2021/22 had shown that the number of people subjected to seclusion had declined by 4 per cent. At the same time, the number of hours spent in seclusion had increased by almost 6 per cent compared to 2020/21. The statistics for the 2021/22 period had likely been influenced by staff's response to the outbreak of the Omicron variant of the coronavirus disease (COVID-19), especially in the first six months of 2022. In 2019, the Health Quality and Safety Commission had launched a project to eliminate the use of seclusion, and some services had successfully done so. It was permitted in health and disability facilities only in the circumstances outlined in the Mental Health Act or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. In April 2023, the Ministry of Health had published guidelines on the use of seclusion and restraint under the Mental Health Act to ensure that the reduction of seclusion did not result in an increased use of restraint. Under the guidelines, which conformed to the requirements of the 2021 health and disability services standard, the preferences, needs and cultural values of individuals must be taken into account when making decisions on treatment and support. Seclusion was monitored by district inspectors, independent officials who were responsible for ensuring respect for human rights under the Mental Health Act, and the outcomes of the inspections were published in a report by the Director of Mental Health.

20. A training course on safe practice and effective communication was provided to discourage the use of restraints in mental health units. It covered areas such as de-escalation, collaborative working methods and personal restraint and breakaway techniques that did not cause pain, in accordance with health and disability services standards. Inpatient services were regularly audited to monitor compliance with those standards, including whether staff had received up-to-date training.

21. The Health and Disability Commissioner was an independent authority that received and investigated complaints from persons receiving treatment under the Mental Health Act or the Intellectual Disability Act, whose rights were laid down in the Code of Health and Disability Services Consumers' Rights. Persons who were detained while receiving compulsory mental health treatment could lodge complaints with a district inspector. Health and disability services standards had been revised to improve patients' access to fair and responsive complaints mechanisms that took their values and beliefs into account.

22. **Mr. Kibblewhite** (New Zealand) said that the report of the government inquiry into Operation Burnham, which New Zealand forces had undertaken as part of the International Security Assistance Force in Afghanistan, had been released in July 2020. The inquiry had concluded that the Operation had been carefully planned and had been conducted in accordance with the rules of engagement and the principles of international humanitarian law applicable to non-international armed conflict. However, it had also found that the country's detention practices had been flawed, since the New Zealand forces had not considered that they owed the same obligations to protect detainees from torture and ill-treatment in operations that were conducted in cooperation with an Afghan partner force as in those that were not. In accordance with the four recommendations contained in the report, the Government had formed a group of experts, which had released a report in 2021, to review the organizational structure, record-keeping and information retrieval processes of the New Zealand Defence Force to ensure that they conformed to international best practice; passed legislation in 2022 establishing an independent office of the inspector-general of defence to facilitate independent oversight of the New Zealand Defence Force and enhance accountability; promulgated an order on how to deal with allegations of civilian casualties; and, in December 2022, published a policy framework for the humane treatment of detainees in offshore deployments, which was available on the website of the Ministry of Foreign Affairs and Trade.

23. The New Zealand Defence Force was developing an online training course on torture and ill-treatment for all its members, which was expected to be completed by the end of 2023. It was based on fundamental standards for the treatment of detainees and, although it did not refer specifically to the Convention or the Manual on the Effective Investigation and

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), it covered obligations and measures for the prevention of torture and ill-treatment and the duty to record, report and investigate complaints from detainees. Most of the training currently provided within the Defence Force was imparted by legal officers.

24. As part of their induction training, immigration officers received specific training on the Convention in the context of asylum claims at the border. Where a migrant who had been detained for the purpose of deportation made an asylum claim or expressed a fear of torture if returned, immigration compliance officers immediately contacted the Refugee Status Unit for advice and instructions. Training for refugee protection officers covered the Istanbul Protocol and the handling of reports prepared by medical professionals under the Protocol. No assessment had been carried out of the effectiveness of training to prevent torture and ill-treatment.

25. There had been a dramatic decrease in the number of prisoners, particularly young prisoners, in recent decades, owing to the use of community service and other alternatives to short prison terms. Increased random drug testing and availability of electronic monitoring equipment had made managing and ensuring the safety of community-based sentences easier. In the courts, greater recognition of the role of addiction in drug-related offences had significantly reduced the women's prison population.

26. Conversely, the number of remand prisoners had risen owing to technological improvements that better detected violations of bail conditions, longer case processing times because of the greater complexity of cases, larger numbers of defendants choosing trial by jury, and resource constraints within the public prosecution and defence services. Another factor was the increase in the number of family violence cases brought before the courts, in which defendants were more likely to be placed in pretrial detention. Under the Criminal Process Improvement Programme, the Police Prosecution Service had been allocated an additional \$NZ 26 million to allow decisions on cases to be made earlier, which would reduce case processing times and thus the time that defendants spent on remand. In addition, the judiciary was making better use of data to determine with greater accuracy where judicial resources were most urgently needed with a view to reducing backlogs in the busiest courts. Bail support services were being made available nationwide to assist defendants with their applications and ensure that they complied with their bail conditions. Lastly, legislation was being debated that would allow remand prisoners to participate in therapeutic programmes, without compromising the presumption of innocence. Similar programmes were already available to prisoners serving longer sentences to support them in achieving parole.

27. **A representative of New Zealand** said that all young people entering youth justice residences underwent comprehensive individual needs assessments, after which their social worker devised a care plan. Contact with the young person's family, culture and community was maintained to the greatest extent possible. Contractors in the health and education sectors ensured that the health-care and educational needs of young people were met and assessed any risks or existing problems. Young people were given the opportunity to take responsibility for their own behaviour and to resolve issues through a restorative justice approach. Violence was not tolerated in the residences and risk assessments were undertaken to keep the most vulnerable young people safe from violent and aggressive behaviour.

28. **A representative of New Zealand** said that the Department of Corrections had a zero-tolerance policy towards violence in prisons and that robust mechanisms were in place for reporting violent incidents. During the reporting period, there had been 4,918 cases of assault by prisoners of other inmates. The Office of the Inspectorate had received 19 complaints of such assaults in the period 2021/22 and 10 in the period 2022/23 as at late June 2023. If the Office was concerned about the safety of a prisoner following a complaint, the authorities of the prison in question were notified immediately. In other cases, the complaint was investigated or referred to the appropriate authority. In 2022, a programme had been launched to reduce violence and aggression and mitigate the impact of violence on prison staff. Under the programme, measures had been introduced to enhance custodial officers' skills and capacities in managing situations of conflict and aggression, and national action plans to combat violence had been introduced. For interviews, prisoners in high security facilities were moved to a secure but private interview room with a partition between the prisoner and

interviewer that allowed face-to-face conversation. Such facilities were available in all the country's prisons.

29. Mental health care was provided on the basis of prisoners' individual needs, which were divided into three categories: mild to moderate, moderate to high, and severe and enduring. In 2016, funds had been allocated to improve mental health and family support services and assign care providers, including trauma counsellors and social workers, to prisoners with mild to moderate mental health-care needs. In 2017 and 2019, the Department of Corrections had received additional funding to establish support teams for persons with moderate to high mental health-care needs at four prisons. Support teams had been set up at an additional four prisons in 2021 and 2022. Specialist clinical nurses had been assigned to seven prisons that did not have support teams to provide care to persons with moderate to high mental health-care needs. Persons assessed as having severe or enduring mental health-care needs were typically referred to forensic mental health services funded by Health New Zealand. Such services were available at all prisons and were delivered by a range of professionals, including nurses, psychologists, psychiatrists and social workers. Prisoners were entitled to the same specialist treatment as persons in the wider community. Prison health staff were required to report suspected assaults to the relevant authorities, such as the prison administration, the police or the Ministry for Children.

30. Segregation was used when required and in accordance with the Corrections Act 2004 and the Prison Operations Manual. Prison directors must base decisions on segregation on the facts of the case at hand and on the legislative provision under which the prisoner concerned would be segregated. They must not automatically restrict or deny the prisoner's association with other prisoners, and they must clearly state why and how the association status selected would mitigate the risk posed by that individual. Prisoners could request voluntary segregation or voluntary protective custody; such requests would be assessed by corrections officers and the final decision would be made by the prison director. Prisoners in voluntary segregation were normally held in environments in which they could mix with one another. Prolonged solitary confinement was prohibited under the Act. Prisoners in mandatory or voluntary segregation could have their association with others restricted or denied owing to health and safety concerns; however, some contact with others, such as religious or cultural practitioners, remained possible. Furthermore, such measures were often lifted before the expiry of the maximum period of 15 days provided for in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) following which solitary confinement was defined as "prolonged".

31. Amendments to the Corrections Act and the Corrections Regulations 2005 were being considered with a view to clarifying the existing provisions that prevented the use of solitary confinement in certain circumstances, providing further safeguards for prisoners, reviewing the categories of segregation and ensuring that the Act and the Regulations were aligned with international human rights obligations. In addition, a long-term, system-wide programme of work was being developed to incorporate recommendations from the Chief Ombudsman and the Office of the Inspectorate to ensure that segregation approaches were safe and humane and that prolonged isolation was limited. The Department of Corrections had accepted all recommendations put forward in a report by the Office of the Inspectorate issued in June 2023, which had covered a series of investigations conducted between October 2020 and June 2022.

32. **Mr. Kibblewhite** (New Zealand) said that the general approach taken to the COVID-19 pandemic at the national level, including in relation to hygiene practices, social distancing and restrictions on social interaction, had been followed in places of detention. In addition, audiovisual systems had been put in place to allow prisoners to speak to their lawyers and family members. Emphasis had been placed on coordinating actions among the police, correctional institutions and the courts, as well as the Ministry for Children where appropriate, to ensure the provision of comprehensive care for all those in custody. A bespoke implementation and response team had been established to strike a balance between public health imperatives and human rights considerations.

33. Some of the apparent advantages of having a single independent complaints mechanism for persons deprived of their liberty, in particular the ability to gain a more comprehensive overview of complaints made, were already available under the current

system in New Zealand. The national preventive mechanism was effectively a coordinating body, and the various entities that constituted it worked together, including by testing their own practices against those employed by their counterparts. In addition, those entities were able to address complaints on the basis of their specialist knowledge and in the light of the specific circumstances in different settings, leading to better outcomes overall.

34. The Government's intention was to respond to, and follow up on, all recommendations of the national preventive mechanism that it accepted. Nonetheless, in the light of competing priorities, it sometimes took longer to respond to certain recommendations than expected or hoped by interested parties, which could result in hurt or harm in cases of human rights violations. It was important for the Government to acknowledge that fact, to hold itself accountable and to be held to account in its dialogues with bodies such as the Committee.

35. **Mr. Tuzmukhamedov** (Country Rapporteur) said that he would be interested to hear whether Malcolm Richards and Paul Zentveld, who had filed individual communications regarding their abuse at the child and adolescent unit at Lake Alice Hospital, had received compensation for non-pecuniary damages. The delegation had reported that the Committee's decisions in those cases had been published on the website of the New Zealand police force. However, he wondered whether the website was widely known and how often it was visited by the general public. The State party had been urged in those decisions to disseminate their content widely. Had that instruction been followed?

36. The Committee had received reports comparing the ongoing case of Kyung Yup Kim to a previous case involving the removal from New Zealand of Ahmed Zaoui, who had allegedly posed a national security risk. In the latter case, however, the final judgment handed down had been in favour of the appellant. As he understood it, it had been claimed in the case of Mr. Kim that, while the prohibition of torture was a *jus cogens* norm of international law, the principle of non-refoulement was not. The delegation might wish to furnish further comments in that regard.

37. The news that the State party was considering accession to the International Convention for the Protection of All Persons from Enforced Disappearance was encouraging. However, the delegation had not explained why New Zealand had yet to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. National regulations aimed at protecting the human rights of crews of fishing vessels operating in the country's exclusive economic zone appeared to be inconsistent with the relevant provisions of the United Nations Convention on the Law of the Sea, which New Zealand had signed and ratified. The matter was of relevance because, according to the definition of migrant workers contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, those crews might qualify as migrant workers, which would afford them protection under that Convention should New Zealand become a party.

38. Given the legal and political connections between the State party and the Cook Islands and Niue, he wondered whether New Zealand could bring any influence to bear on those States regarding their ratification of or accession to the Convention against Torture, without infringing their sovereign rights. The suggestion that the State party did not bear responsibility for legislation in Tokelau was perplexing.

39. The delegation's explanation regarding Operation Burnham was appreciated. However, it was important to acknowledge that the operation had indeed taken place in the context of an international armed conflict.

40. Further details of the State party's efforts to provide training on the Istanbul Protocol would be welcome, along with information on any methodology developed in the State party to assess the effectiveness of training on matters relating to the Convention.

41. **Ms. Pūce** (Country Rapporteur) said that she wished to know the rationale for the proposal to allow 12- and 13-year-olds to be charged with certain offences in youth courts rather than in family courts, a change that would disproportionately affect children of Maori descent. Probation often had a better long-term impact on children than did a custodial

sentence, despite the latter being the easier option for States; the delegation might wish to give its view in that regard. She would be grateful to learn more about the proposed construction of two new juvenile detention facilities. Was the intention to close existing facilities in favour of more modern institutions where detainees could engage in education and training?

42. Statistics on the use of pepper spray against young people, in particular in 2022 and 2023, would be welcome. It would also be useful to hear the reasons for, and measures envisaged to address, the disproportionate use of pepper spray, other means of restraint and force against women in prisons, most of whom were victims of violence and abuse and were thus at risk of compounded trauma. She wished to underline that the use of spit hoods with children was unacceptable.

43. She would be interested to hear whether the best practice guidelines, protocol and care pathways for intersex children developed by the Child and Youth Intersex Clinical Network had been finalized and, if so, whether they contained guarantees in respect of the mental and bodily autonomy and self-determination of such children. It would also be helpful to learn whether the State party had adopted clear legislative provisions explicitly prohibiting the performance of non-urgent and non-essential medical or surgical treatment on intersex children before they reached an age at which they were able to make their own decisions and provide free, prior and informed consent. She would appreciate information about measures taken to provide redress, including appropriate compensation, to intersex persons who had undergone unnecessary surgical or medical treatment and to ensure that all intersex children, adolescents and their families had access to adequate counselling and support.

44. The delegation might wish to comment on the continued practice of placing asylum-seekers in criminal detention facilities when no crime had been committed. She would like to know how long people could be held in such facilities and how vulnerable people, such as those who had been subjected to torture, were identified and what measures were taken to support them. Information on the situation facing unaccompanied minors on arrival in New Zealand would also be welcome, as would statistics on the placement of people, including unaccompanied minors, in prisons on account of migration issues.

45. Lastly, it would be interesting to hear about the impact of the National Plan of Action to Prevent People Trafficking and any developments in that regard. She would also like to receive statistics on the number of cases of trafficking in persons identified and the number of convictions handed down, as well as details of measures to assist victims, such as the provision of treatment, compensation or accommodation in shelters.

46. **Mr. Buchwald**, noting that the Human Rights Committee had granted Kyung Yup Kim's request for interim measures of protection, said that he would appreciate clarification as to whether the New Zealand Government had indeed agreed only that it would not extradite Mr. Kim prior to 31 December 2023. He would also be interested to learn about the context of, and rationale for, that decision and whether the State party was of the view that extradition would be acceptable after that date.

The meeting was suspended at 4.55 p.m. and resumed at 5.15 p.m.

47. **Mr. Kibblewhite** (New Zealand) said that the State party was considering how it would provide compensation to Mr. Zentveld and Mr. Richards for the harm they had suffered at Lake Alice Hospital. The decisions of the Committee regarding those cases were publicly available on the websites of the Ministry of Foreign Affairs and Trade and the Ministry of Justice, as well as that of the New Zealand police force, and were now widely known to the general public. The extradition of Kyung Yup Kim had been suspended pending the consideration of the case by the Human Rights Committee; the date of 31 December 2023 had been set for the expiry of the interim measures to ensure that the case progressed in a timely manner.

48. Articles 53 (2) and 59 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families posed an obstacle to accession by New Zealand, since visas to enable the families of temporary workers to reside in the country were not automatically granted and priority would not be given to family members of migrant workers over other work visa applicants. The rights of migrant workers and members of their

families were adequately protected by the core human rights instruments to which New Zealand was a party and by the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. In addition, under the Immigration Act 2009, migrant workers in an irregular situation were able to appeal deportation orders before a competent authority. Training for personnel working with detained persons incorporated the key principles and requirements of the Istanbul Protocol, rather than addressing any of its specific articles.

49. **A representative of New Zealand** said that the Cook Islands and Niue were able to ratify or accede to treaties in their own right. New Zealand was a member of the Convention against Torture Initiative and paid particular attention to promoting the Convention in the Pacific region. The Government was not aware of any cases of torture in Tokelau. The Criminal Code of Tokelau included provisions on offences against the person and there was an administrative mechanism for the protection of human rights.

50. Fishing vessels in the exclusive economic zone were required to operate in line with the legislation of New Zealand and with the United Nations Convention on the Law of the Sea. Only registered New Zealand vessels were permitted to fish commercially in the zone and, as such, workers on those vessels were under the State's jurisdiction.

51. **A representative of New Zealand** said that the recently announced measures to tackle youth and gang crime focused on prevention, protection and accountability. To help break the cycle of offending, posting offending behaviour online would become an aggravating factor in sentencing. Victims of offences committed by children over the age of 10 would be allowed to attend family group conferences, in order to make offenders more accountable, and there would be a new streamlined process for referring young offenders to such conferences. Family group coordinators would be assigned to address youth crime issues. Family courts would be able to require young offenders to attend educational or recreational activities and undertake community activities such as litter-picking. Further measures would facilitate swift responses to breaches of family court orders, and funding would be available for the equivalent of up to 78 extra full-time police staff to help with in-court work. In addition, a bill had been tabled to make ram-raiding a specific offence, with a maximum sentence of 10 years applicable to both the driver and passengers of a vehicle used to enter a shop to steal goods or to cause damage.

52. While 12- and 13-year-olds who committed serious offences could indeed be charged in youth courts, those courts were diversionary and did not hand down criminal convictions. Charges were brought at the discretion of the Police Prosecution Service, which applied the principle that the least restrictive action appropriate for a case should be taken, in line with the Oranga Tamariki Act 1989. Offenders could be held in the custody of the Ministry for Children, so as to facilitate their reintegration into school, training, work and the community. A fast-track intervention programme was in place in some parts of the country to ensure that individual support plans were put together for young offenders within 48 hours of arrest. Almost 75 per cent of the young offenders who had benefited from the programme had not reoffended. The programme would be rolled out to other parts of the country. Under a proposed long-term intensive programme, social workers would develop individual support plans for up to 60 of the country's most prolific young offenders, while two new youth justice residences would provide intensive support for 30 higher needs young offenders.

53. **Mr. Kibblewhite** (New Zealand) said that there was a whole-of-government approach to identifying individuals at risk of coming into conflict with the law and taking preventive action.

54. **A representative of New Zealand** said that, under section 83 of the Corrections Act, corrections officers were able to use force in adult prisons when reasonable, necessary and proportionate to the circumstances. Since 2019, there had been 8,464 incidents of the use of force, ranging from non-threatening physical contact to the use of non-lethal weapons. The Corrections Amendment Regulations 2023 included updated processes for monitoring the health of prisoners who had been subjected to pepper spray. Recent updates to the standard practices for the use of force had promoted the use of de-escalation as an alternative measure and, since 2019, there had been an increased focus on engaging with mental health experts before resorting to the use of force. Following a 2022 review of the framework for assessing

incidents of the use of force, the relevant authorities must now review video footage and documents and consider lessons learned.

55. **A representative of New Zealand** said that pepper spray had been used 108 times on persons under 18 years of age in 2022 and 454 times altogether in the period 2018–2022. Spit hoods were used only as a last resort and if there were concerns about disease transmission, particularly in the context of the COVID-19 pandemic. In 2022, spit hoods had been used 21 times on persons under 18 years of age; following each incident, a report was filed and was reviewed by a supervisor and at the national police headquarters.

56. **Mr. Kibblewhite** (New Zealand) said that over \$NZ 2.5 million had been allocated from the 2022 national budget for the implementation of a rights-based approach to health care for intersex children. Clinical guidelines for the provision of care would be developed, health-care professionals would receive capacity-building, and support tools would be developed for intersex children and their families to ensure that they could make informed decisions regarding medical interventions. The planned measures had been developed in consultation with members of the intersex community and were based on the conclusions reached by the clinical reference group of the Child and Youth Intersex Clinical Network. Compensation and support were available for those dealing with the consequences of intersex surgeries. The Ministry of Health would not pursue the legislative prohibition of unnecessary medical or surgical treatment of intersex persons, since the same procedure might be considered necessary or unnecessary depending on the specific circumstances.

57. Between 2015 and 2020, 86 asylum-seekers had been detained in New Zealand; however, no asylum-seekers had been held in administrative detention in refugee resettlement centres since 2019 or in prisons since 2020. In April 2022, an independent review had been undertaken of the processes and procedures relating to the detention of asylum-seekers in New Zealand. Eight of the operational recommendations arising from the review had been or were being implemented; one of the three legislative changes recommended would be introduced in 2023, while the remaining two would be addressed as part of a review of the Immigration Act. Pursuant to one of the key operational recommendations, decisions to detain asylum-seekers were now reviewed by a panel. The panel had conducted 40 reviews to date, 20 of which had resulted in asylum-seekers being released without restrictions and 20 in asylum-seekers being released subject to reporting conditions. Policies were in place to ensure compliance with the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention and, in March 2023, the Government had announced that electronic monitoring would be introduced as an alternative to detention. Members of mass arrival groups were held in prison cells only in extreme circumstances in which individuals had been identified as security risks; procedural protections were in place to ensure that such detention was of minimal duration.

58. In March 2023, a trafficking in persons investigation unit had been established to improve identification, prevention, response and inter-agency collaboration in trafficking cases. In 2021, the Government had developed a training programme on recognizing, responding to and investigating trafficking in persons, which had been completed by more than 480 priority government staff and was included in the training programme for trainee detectives. Training on a trauma-informed approach was also provided to staff of Immigration New Zealand. Since 2019, there had been 42 investigations of suspected trafficking, including the high-profile case of Joseph Matamata, who had been convicted in 2020 of 10 counts of trafficking and slavery.

59. **A representative of New Zealand** said that signing the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights would entail a complex assessment of national law. A further complication was the fact that the New Zealand Bill of Rights Act did not address economic, social and cultural rights.

60. **Mr. Kibblewhite** (New Zealand) said that the delegation appreciated the constructive dialogue with the Committee and the opportunity to reflect on the country's commitments under the Convention, which would prove to be a valuable experience as New Zealand continued to strive for stronger protections against all forms of torture and ill-treatment.

The meeting rose at 5.55 p.m.