



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

Distr.
GENERAL

CAT/C/SR.875
23 July 2009

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 875th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 1 May 2009, at 3 p.m.

Chairperson: Mr. GROSSMAN

CONTENTS

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

Fifth periodic report of New Zealand

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.875/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Fifth periodic report of New Zealand (CAT/C/NZL/5; CAT/C/NZL/Q/5;
CAT/C/NZL/Q/5/Add.1)

1. At the invitation of the Chairperson, the members of the delegation of New Zealand took places at the Committee table.
2. Mr. MACKAY (New Zealand) said that his country had always supported the United Nations commitment to promoting and protecting human rights and had played a leading role in the adoption of new instruments, such as the Optional Protocol to the Convention against Torture. At the national level, successive Governments had constantly striven to create and preserve the necessary conditions for the enjoyment by all of individual rights and freedoms, regardless of race, gender, disability or religion.
3. New Zealand's previous reports gave an account of the legislative, judicial, administrative and other measures already adopted for the implementation of the Convention, including for example the establishment of universal jurisdiction with regard to crimes of torture and the strengthening of protection for the rights of detained persons. Over the period covered by its fifth report, New Zealand had taken a number of measures to further address its obligations under the Convention, including accession to the Convention on the Reduction of Statelessness and the enactment of the Citizenship Amendment Act 2005, the Corrections Act 2004 and the Crimes of Torture Amendment Act 2006.
4. There had been several major developments since the submission of the fifth periodic report, the most significant one being the ratification, in March 2007, of the Optional Protocol to the Convention against Torture. Pursuant to the Protocol, five national preventive mechanisms had been designated: the national Human Rights Commission, the main body responsible for coordinating the activities of the other designated mechanisms and ensuring liaison with the Subcommittee on Prevention of Torture; the Ombudsmen; the Children's Commissioner; the Independent Police Conduct Authority; and the Inspector of Service Penal Establishments. Their first report, published at the end of 2008, contained recommendations concerned inter alia with ensuring that detention facilities were suited to their purpose, the need for adequate levels of properly trained staff and the need for particular attention to be paid to protecting the rights of vulnerable groups such as children and young people, asylum-seekers and the disabled. The Government had already started reflecting on ways of giving effect to those recommendations and had expanded the mandates of those mechanisms by authorizing them to conduct visits to residences and other establishments for minors.
5. An interim report on implementation of the Action Plan for Human Rights drawn up by the Human Rights Commission and publicly released in 2005 showed that important reforms had been undertaken in almost all areas identified as having priority.
6. Given its belief in the importance of having an effective and independent mechanism to monitor conditions of detention and examine the complaints made by prisoners, in

September 2007 the Government had decided to entrust responsibility for such monitoring to the Office of the Ombudsmen, which had long acted as an independent complaints and review mechanism. In the context of their new functions - visits to places of detention, opening of inquiries - the Ombudsmen gained familiarity with the situation on the ground, which was conducive to broader reflection on ways of improving the conditions of detention.

7. The resources and mandate of the Independent Police Conduct Authority had recently been strengthened; it could henceforth have up to five members and was vested with the same powers as commissions of inquiry, including the authority to gather evidence and summon witnesses.

8. The Policing Act 2008 consolidated the framework of police operations and made respect for human rights central to police functions.

9. Pursuant to the recommendations made by the Committee following consideration of the previous report, the Government had taken steps to include the non-refoulement obligation contained in article 3 of the Convention in national legislation. An Immigration Bill based on the language of article 3 of the Convention and articles 8 and 9 of the International Covenant on Civil and Political Rights had been submitted to Parliament in August 2007 and the legislative process was running its course.

10. The custodial regime under public health legislation had been reviewed to ensure full respect for the rights and freedoms of persons placed in quarantine. A new Public Health Bill containing various safeguards (time limits, mandatory review and rights of appeal) was currently before Parliament.

11. The Government had adapted its anti-terrorism legislation to bring it into line with international standards on the subject and guarantee the protection of its population, while ensuring that the new provisions did not unduly curtail the rights of individuals accused of terrorist activity. Several New Zealand associations had criticized some of the measures taken to combat terrorism, arguing that they were contrary to the Convention against Torture or had been applied unfairly. The arrest of a number of individuals in October 2007 for unlawful possession of firearms and other weapons requiring a permit pursuant to the Arms and Terrorism Suppression Act had been strongly criticized, particularly from the standpoint of discrimination, and complaints had been filed with the national Human Rights Commission. A judicial inquiry had been opened.

12. On the recommendation of the Solicitor-General, the New Zealand Law Commission was undertaking a review of existing legislation in order to determine whether it properly dealt with conduct constituting a threat or a danger to public safety and security, or whether amendments were required, subject to the vital need to guarantee an appropriate balance between the preservation of public safety and security and respect for individual rights and freedom. When it had completed its work, the Commission would prepare a report for publication.

13. New Zealand had ratified the Convention against Torture with one reservation whereby the Attorney-General had sole discretion to award compensation to torture victims. Successive legislative reforms and developments in the common law had strengthened the right of torture victims to obtain compensation and other forms of redress. The Government had thus begun preparing to put itself in a position of compliance with its obligations under article 14 of the

Convention if it decided to withdraw its reservation. The right to compensation for torture and other inhuman or degrading treatment or punishment was, however, expressly provided for in domestic law, and other types of reparation, such as rehabilitative assistance, were available under the accident compensation scheme. The New Zealand courts had found in favour of claimants in many such cases.

14. Since the consideration of the previous report, the Supreme Court had delivered two important judgements from the standpoint of the Convention. In the case Taunoa and others v. Attorney-General, it had upheld the awards of compensation to the claimants for breach of the right to be treated with humanity. The case had given rise to a thorough review of prison practices and a cross-examination, by claimants' counsel, of the prison staff concerned, with the costs being defrayed by public legal aid. In the Zaoui v. Attorney-General case, the Supreme Court had endorsed the Government's position that the claimant would not have been deported if he had been at risk of torture or arbitrary execution in the country of return. There, too, the proceedings had been funded through public legal aid. In both cases, the Supreme Court had drawn on the provisions of the Convention and the views of the Committee.

15. New Zealand had maintained its reservation to article 37 (c) of the Convention on the Rights of the Child, but the separation of children from adults required by that article was respected in the country's prisons. In 2005, the Department of Corrections had set up four youth units in male prisons. In the case of women, prisoners aged under 18 were separated from the others, unless it was in their best interest to be housed with older detainees. In some cases, the separation of minors from adults was not always guaranteed, especially in court cells where it was not always possible to separate minors aged 17 and under from adults because of the lack of space, particularly in small, remote courthouses.

16. While various policies had been implemented on behalf of Maori for a number of years, they continued to be disproportionately represented in the criminal justice statistics, since offences committed by Maori tended to incur heavier penalties. In April 2009, the Minister of Justice and the Minister of Maori Affairs had organized a summit meeting devoted to the causes of crime, with a view to proposing solutions to that problem. The Department of Corrections had drawn up a strategic plan for Maori prisoners aimed at deterring them from crime by helping them to rediscover the principles and values of their own culture.

17. The Government considered that the opening up of prison management to competitive tendering was one way of renewing prison administration methods. The recent introduction of legislation authorizing private operators to manage prisons was without prejudice to the obligation of respect for international standards relating to the treatment of prisoners, and the legislation included a set of provisions safeguarding prisoners' rights.

18. The New Zealand Police had authorized the use of the Taser electric stun gun following a detailed analysis of international studies on the subject and the performance of numerous technical tests which had led to the conclusion that the Taser was less likely to cause death than firearms. That decision had been taken as a result of a democratic and transparent process with the participation of key civil society stakeholders, such as Amnesty International, with whom consultations were continuing.

19. New Zealand actively supported the work of human rights defenders and had thus been one of the co-sponsors of the Human Rights Council resolution on that subject. The Government maintained close links with the national Human Rights Commission and numerous national and international human rights NGOs. Moreover, some of the NGOs active in New Zealand had submitted shadow reports to the Committee for the purposes of the current review proceedings, and the delegation was prepared to respond to any questions the Committee might wish to ask on the basis of the information contained in those reports.

20. Mr. KOVALEV (Rapporteur for New Zealand) welcomed the numerous legislative measures taken by the State party to strengthen the system of protection against torture and other cruel, inhuman or degrading treatment or punishment, both at the national level, *inter alia* through the Corrections Act 2004 and the Crimes of Torture Amendment Act 2006, and at the international level, through the ratification of the Optional Protocol to the Convention against Torture.

21. He asked how the State party incorporated the provisions of ratified international instruments in its domestic law and guaranteed their enforcement by the courts. As only some provisions of the Convention against Torture had been included in domestic law, it should be ascertained whether it was planned to include the remaining provisions. The fact that the Bill of Rights Act 1990 did not have the status of a supreme enactment meant that laws inconsistent with its provisions could be adopted. It was true that the Governor-General was required to monitor the compatibility of any draft legislation with the Bill of Rights Act, but his opinions were not binding. In that context, it appeared difficult to guarantee the implementation of the Act, and it would be useful to know whether any action was envisaged to remedy that situation.

22. In its report, the State party indicated that, under the Crimes of Torture Act 1989, no proceedings for the trial and punishment of a person charged with torture could be instituted without the consent of the Attorney-General, but that to date the latter had not been seized of any application to that effect. It should therefore be explained whether no case of torture had been placed before him, or whether the procedure prescribed by the 1989 Act had not been complied with.

23. The protection of minorities against discrimination was one of the obligations placed on the State party under the Convention. The statistics showed that 42 per cent of offences were attributed to Maori and that, in 50 per cent of those cases, those responsible were sentenced to terms of imprisonment. Such disproportionate figures gave the impression that, for one and the same offence, a Maori was more easily and more severely punished than someone of another origin, and it should therefore be explained what steps the State party intended to take to combat that discrimination.

24. It would be helpful to know whether those responsible for acts of violence committed against prisoners had been punished on the basis of the Bill of Rights Act, the Crimes Act 1961 and the International Crimes and International Criminal Court Act 2000, and what sentences, if any, they had incurred. The delegation could also indicate how article 2 of the Convention, which provided that no exceptional circumstances could be invoked as a justification of torture, was implemented in domestic law.

25. Concerning the “National Preventive Mechanism” provided for by the Optional Protocol to the Convention against Torture, the delegation should be asked to explain why several entities had been designated as national preventive mechanisms and whether they had the necessary resources for the proper exercise of their functions.

26. The delegation could also indicate when the Parliament would adopt the 2007 Bill to raise the age of criminal responsibility to 17 and whether steps had been taken to put a stop to the practice of holding young people alongside adults in police cells.

27. The delegation should provide supplementary information on measures taken to give effect to the Committee’s recommendation that the principle of non-refoulement should be incorporated in domestic legislation. According to some sources, immigrants in an irregular situation or asylum-seekers were allegedly detained alongside ordinary prisoners; it would therefore be necessary to ascertain whether data on the number of asylum-seekers held in such circumstances were available, what was the average duration of application procedures for refugee status and what action the State party was taking to ensure that the children of asylum-seekers or persons unlawfully present in New Zealand had access to education and health care.

28. The delegation should respond to reports that asylum-seekers whose applications had been rejected were sent back to their country of origin, even though they were at serious risk of being subjected to torture, and it should explain what was the nature of the instructions to immigration officers regarding New Zealand’s obligations under the Convention against Torture, as referred to in paragraph 75 of the report, and whether those instructions were followed in practice.

29. According to information received by the Committee, the 2007 Immigration Bill allowed the Immigration Service to hold minors for up to 96 hours, and it would appear that refugee status was not clearly defined. The delegation could indicate whether asylum-seekers received the assistance of a lawyer and interpretation services, what appeals procedure applied to rejected asylum-seekers, what action the State party had taken to bring refugee holding centres into conformity with the relevant international standards, and whether the State party followed the guidelines of the Office of the United Nations High Commissioner for Refugees (UNHCR) on applicable criteria and standards relating to the detention of asylum-seekers.

30. The delegation should indicate whether diplomatic assurances were requested in the context of removal proceedings, how many asylum-seekers had obtained refugee status in recent years and to what countries rejected applicants were returned, and it should respond to the report that immigrant support groups were constantly subjected to harassment. It would be useful to know what measures the Government planned to take to remedy the gaps in the current Immigration Bill which, according to some observers, did not fully reflect the provisions of article 3 of the Convention.

31. Given that the report indicated that no proceedings for the trial and punishment of a person charged with an act of torture could be instituted without the consent of the Attorney-General, the delegation should specify whether exceptions were allowed to that principle, particularly where it was found that an act of torture had been committed. It could also indicate whether suspected perpetrators of acts of torture present on its territory had been extradited to another country for trial and what steps were taken to ensure respect for the rights of mentally impaired prisoners.

32. Ms. KLÉOPAS (Alternate Rapporteur for New Zealand) welcomed the State party's ratification of the Optional Protocol to the Convention against Torture and the Convention on the Rights of Persons with Disabilities, as well as the amendments introduced to the legislation on the police and the banning of corporal punishment in the home.

33. She noted with satisfaction that prison guards received training on the Standard Minimum Rules for the Treatment of Prisoners and that the Law of Armed Conflict Manual dealt in depth with the prohibition against torture. The delegation could indicate whether other professionals working with prisoners, such as medical staff, received training to enable them to detect acts of physical and psychological torture and, if so, whether the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) was used in that context, whether the training provided to all persons who dealt with prisoners was continuous and whether there were regular assessments of its results.

34. Information on the training of staff responsible for mentally impaired prisoners would also be desirable, as the national Human Rights Commission, in its observations on the implementation of the Convention by New Zealand, had noted with concern that such prisoners were cared for by supervisors with less than two years' professional experience.

35. The Committee would like to know whether the restraining hold whereby prisoners' hands were chained to their hips during transportation, which had aroused the concern of the Ombudsman in his 2008 annual report, was still in use, and what action the State was taking to deal with prison overcrowding, which led to the use of unsuitable premises to cope with the substantial increase in the number of detainees, who were forced to share cells, thus increasing the risk of violence among them.

36. While welcoming the efforts made by the State party to strengthen its reception capacity for young offenders, the Committee considered that the aim should be to put an end to the practice of placing minors in detention alongside adults or in police cells. The delegation could indicate whether studies had been carried out to determine the reasons for the high proportion of Maori detainees in prisons. The State party's attention was drawn to the fact that the use of the Taser could amount to an act of torture or ill-treatment.

37. The establishment of the Independent Police Conduct Authority, responsible for investigating allegations of acts of torture and ill-treatment, could only be welcomed, but in view of the fact that the investigations were conducted by former police officers or even serving police officers, there could be doubts about the actual extent of its independence. In its report, the State party indicated that, pursuant to a provision of the Crimes of Torture Act 1989, no proceedings could be instituted against a person suspected of torture without the consent of the Attorney-General, whose ruling would be based on indications that an act of torture had been committed, so that the possibility of the proceedings being discontinued in defiance of the letter and the spirit of the Convention could not be ruled out. The State party should therefore be called upon to repeal that provision. In its written replies (para. 119), the State party indicated that the independent authority could choose to decide to take no action on a complaint concerning an act of torture if it had taken place more than 12 months earlier, but that, given the seriousness of the offence, such a decision was unlikely. The State party should repeal that provision which contravened the treaty principle of the non-applicability of statutory limitation to the crime of

torture. It was a matter of concern that, under the new legislation on the taking of evidence, the fact that statements had been obtained under torture was not enough in itself to have them declared inadmissible.

38. It should be ascertained whether the State party, in order to give effect to a previous Committee recommendation, had made an in-depth study of the causes of violence against women and had compiled statistical data broken down by type of violence, ethnic origin and age, which were an essential tool for formulating more effective policies. It would also be useful to know what action the State party had taken to combat cases of child abuse, the number of which reportedly remained high.

39. Mr. GAYE took note with satisfaction of the positive steps the State party had taken in connection with the incorporation of the provisions of the Convention in domestic law, as well as the criminalization, under the Crimes of Torture Act, of the commission or omission of an act for the purpose of aiding any person to commit an act of torture, inasmuch as it constituted zero tolerance for torture.

40. Although access to justice appeared generally speaking to be guaranteed, it was a matter of concern that legal proceedings for the trial and punishment of a person charged with torture could not be instituted without the consent of the Attorney-General, and the Committee wished to be informed whether, where appropriate, it was possible to challenge a refusal by the Attorney-General to institute proceedings. It had been indicated that the Police Complaints Authority could decide not to bring proceedings in certain cases where there was a possibility of redress or a right of appeal, which led to the question whether there were cases where neither one nor the other was available.

41. It could be asked whether prison overcrowding was responsible for the fact that detainees sentenced to 28 days' imprisonment or less could be held in police cells which were not designed for that purpose. In any event, it would be useful to look into the causes of that phenomenon.

42. It would be useful to ascertain what could be done to obviate the risk of contradictory conclusions being reached by the three authorities to which one and the same complaint of torture in a prison environment could be referred (prison management, the inspector of corrections and the Office of the Ombudsmen).

43. It appeared that, in Tokelau, criminal and civil offences came within the purview of the New Zealand High Court and Court of Appeal, which had never exercised their jurisdiction over that territory; that led to the question whether Tokelau was a no-rights zone.

44. Ms. BELMIR asked what criteria were used to define what was meant by "reasonable" searches, as that concept was very vague.

45. She asked whether interrogation rooms were equipped with permanent video recording equipment of the type recommended by the Ombudsman in 2002 for volatile prison units, in order to ensure the safety of prisoners and provide a safeguard for prison staff in the event of false allegations being made against them.

46. The delegation could explain what the State party meant by police “misconduct”, in particular whether the term covered professional misconduct, which came under administrative law, and criminal activity, which came under criminal law, and what procedures were used to punish the two types of offence.
47. Given the seriousness of the crime of torture, it was a matter of concern that, according to the Crimes of Torture Act, proceedings could be instituted only with the consent of the Attorney-General, as the latter’s position as both judge and party was suggestive of a no-rights situation. It would be helpful to obtain clarifications on that question and to be informed whether New Zealand, like other countries, used a direct committal procedure.
48. The State party justified the use of the Taser gun with the argument that, in many cases, it made the use of a firearm unnecessary and was a tactical option with “minimal risk” to the public, whereas it had not been established to date that the weapon in question really did pose only minimal risk. On the contrary, its use had in several cases led to the death of the person targeted and it was therefore worrying that New Zealand used that type of weapon, even if only on a trial basis.
49. Like other treaty bodies, the Committee urged New Zealand to reconsider its position on the age of criminal responsibility, which was too low. It would also appreciate receiving an explanation as to why a New Zealand national might need a visa to return to his or her country.
50. Mr. MARIÑO MENÉNDEZ asked whether the Taser gun was used against minors.
51. He wished to know what means of appeal were available against decisions of the various bodies authorized to receive complaints of torture, but particularly in respect of alleged offences by members of the armed forces, and whether, in case of refusal by the Attorney-General to authorize the commencement of torture proceedings, domestic remedies were considered to have been exhausted, so that the case could be referred to the International Criminal Court.
52. In the light of the Zaoui case, it would be useful to receive details of the operations of the commission responsible for evaluating New Zealand’s security interests, and more particularly, whether it had been tasked with drafting new legislation on the subject, or merely amending existing laws.
53. The fact that lawyers could not use certain information to defend a person suspected of terrorist acts because it had been declared confidential or a security risk certificate had been issued against the person concerned was troubling because it impaired the relationship of trust between a suspect and his/her lawyer.
54. It was worrying that one of the bodies responsible for implementing the Convention was tasked at the same time with conducting prison visits, preparing reports and investigating possible complaints, as that meant that it was acting simultaneously as judge, party and investigator.
55. It would be useful to know whether it was planned to hold a referendum on the possible reintroduction of corporal punishment, which was prohibited by an amendment to the relevant law.

56. Mr. GALLEGOS CHIRIBOGA said that it was essential to ensure that refugees and asylum-seekers were not detained in police stations or other places of detention unless there were reasonable grounds for doing so, and that action should be taken to combat statelessness, in accordance with the Convention on the Reduction of Statelessness.

57. He asked what standard of proof was applied by the State party in cases covered by article 3 of the Convention, and whether it intended to incorporate in its domestic law certain international standards relating to the treatment of asylum-seekers and refugees placed in detention, particularly the UNHCR revised guidelines. Asylum-seekers, who were already fleeing a difficult situation in their countries, should not be subjected to detention and forced to suffer the physical and psychological consequences that such detention inevitably entailed.

58. According to a report of the national Human Rights Commission, places of detention located in airports and other border terminals that held illegal immigrants, among others, were not always subject to surveillance. It would be useful to hear the delegation's opinion on that point and on the recommendations by the Commission to the effect that the Government should review immigration legislation to ensure full compatibility with human rights standards, and that it should repeal the provision that prevented the Commission from dealing with immigration-related issues.

59. Ms. SVEAASS requested up-to-date information on the allegations of sexual abuse of children in a psychiatric hospital, dating back several years. Given that a shadow report indicated that there was no national preventive mechanism to protect minors held in detention who suffered mental health problems, she asked what controls were applicable to psychiatric hospitals.

60. Considering that the State party had not done enough to disseminate the Committee's concluding observations, she urged it to redouble its efforts in that regard, and to withdraw its reservation to article 14 of the Convention.

61. The CHAIRPERSON noted that the State party, in its written replies, argued that non-voluntary segregation was not equivalent to solitary confinement as it was a carefully designed and managed procedure for protecting prisoners from direct or indirect harm resulting from a breakdown of order caused by other prisoners within the institution. However, that characteristic should not be a distinctive feature but a common denominator of non-voluntary segregation and solitary confinement. The delegation might wish to provide clarifications on that point.

62. Given the apparent contradiction between the information that only asylum-seekers posing a threat to internal security could be detained and the statement that the vast majority of asylum-seekers under detention were held in low security facilities administered by the Department of Labour/Immigration, it would be useful to obtain statistics on the number of asylum-seekers held in those facilities and to know whether there was a typology of low risk.

63. It would be useful to ascertain whether the Immigration Bill referred to in the written replies contained provisions guaranteeing appeal procedures whereby immigrants deprived of their liberty could challenge the lawfulness of their detention and, if appropriate, what type of body would be authorized to hear such appeals. According to the written replies, proceedings

before the Deportation Review Tribunal were not criminal proceedings, and that body was empowered to hear appeals by immigrants facing deportation for having obtained a residence permit by fraudulent means; it should be explained whether those proceedings were administrative or judicial in nature, and what criteria were used to determine whether or not there had been fraudulent conduct.

64. Given that only seven persons had relied on article 3 of the Convention in order to apply to the New Zealand State for protection, and that all those applications and all the appeals lodged subsequently had been rejected, the Committee wished to know whether or not the independent Refugee Status Appeals Authority was a purely administrative body. That was a factor of key importance since, in cases related to article 3, the Committee could only rely on the assessment of the authorities of the State party, and that assessment had to have been made by a judicial body if it was to qualify as resulting from a thorough review conducted in full conformity with due process safeguards. It would be useful to know whether any domestic statutory provisions prohibited the use of classified information in the context of asylum proceedings.

65. The delegation should specify whether compensation had been awarded to Ahmed Zaoui, since his detention in solitary confinement for a period of several months had constituted cruel and inhuman treatment.

66. He thanked the New Zealand delegation for its presentation and invited it to respond to the Committee's questions at a later meeting.

The public part of the meeting rose at 5.15 p.m.