



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

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## Committee against Torture

### List of issues prepared by the Committee prior to the submission of the sixth periodic report of New Zealand (CAT/C/NZL/6)\* adopted by the Committee at its forty-eighth session, 7 May–1 June 2012

#### Specific information on the implementation of articles 1- 16 of the Convention, including with regard to the Committee's previous recommendations

##### Article 2<sup>1</sup>

1. In light of the previous recommendations of the Committee<sup>2</sup> (para. 4), please provide updated information on the enactment of comprehensive legislation to incorporate into domestic law all the provisions of the Convention. Also, please update on the establishment of a mechanism to ensure consistently the compatibility of domestic law with the Convention.

2. Please provide information on the steps taken by the State party to guarantee the rights of persons in police custody from the very outset of detention, including prompt access to a lawyer, being informed of the charges against them in a language that they understand and having their detention duly registered, the right to have access to an independent doctor, if possible of their own choice, as well as the right to notify family

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\* The present list of issues was adopted by the Committee at its forty-eighth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No. 2 (2007) on implementation of article 2 by States parties, paragraph 3, states “the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture....In practice, the definitional threshold between ill-treatment and torture is often not clear.” See further chapter V of the same general comment.

<sup>2</sup> Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol (CAT/C/NZL/CO/5).

members or persons of their choice about their detention. Please indicate how this is implemented in practice and any restrictions that may be imposed on these rights.

3. Please provide information on the provision of safeguards put in place to protect the rights of minorities from discrimination and marginalization, including bias in the criminal justice system,<sup>3</sup> with a view to reducing their risk of torture and ill-treatment. Please provide information on the implementation of section 27 of the Sentencing Act 2002 which provides for the courts to hear submissions relating to the offender's community and cultural background and its results.<sup>4</sup>

4. In light of the previous recommendations of the Committee (para.17), please provide statistical data on the number of incidents of violence against women, including domestic violence, since the consideration of the last periodic report in 2009, including the number of complaints, investigations, prosecutions of alleged perpetrators and convictions, including penalties applied to those found guilty, as well as a breakdown by ethnicity of the victims of violence and whether they were accorded adequate redress. Please indicate if the State party has taken additional protective measures for women during the period under review. Also, please indicate if the police is able to issue protective orders. Please provide statistics on rates of reporting and of prosecution of violence against women<sup>5</sup> and on any public awareness and sensitization campaigns aimed at preventing and eradicating violence against women undertaken since the consideration of the last periodic report.

5. Please provide information on legislative and other steps taken by the State party to prevent and eradicate violence, sexual abuse, neglect, maltreatment or exploitation of children within the family, in schools and in institutional or other care, as well as data disaggregated by gender and ethnicity on child victims of sexual exploitation and other abuses. Also, please provide information on the training of teachers, social workers, medical professionals and members of the police and judiciary to report and take appropriate action in suspected cases of domestic violence against children.<sup>6</sup> Please provide information about the functioning and efficiency of the three child helplines, including whether they are accessible 24 hours and free of cost.<sup>7</sup>

6. Please provide information on the measures taken by the State party to combat trafficking in persons, including on the implementation of the Plan of Action to Prevent People Trafficking, on the actions of the Interagency Working Group on People Trafficking and of the working group established in February 2011 by the Department of Labour.<sup>8</sup> Please provide information on the number of persons trafficked in the State party, including breakdown by age, gender, professional category and country of origin, since the consideration of its previous periodic report in 2009.

7. Please provide information about the introduction of a new section into the Terrorism Suppression Amendment Act 2007 which allows courts to receive or hear classified security information against groups or individuals designated as terrorist entities in their absence.<sup>9</sup> Also, please provide information on the measures taken to ensure that the

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<sup>3</sup> Concluding observations of the Human Rights Committee (CCPR/C/NZL/CO/5/Add.1), para. 6.

<sup>4</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/NZL/CO/17), para. 22.

<sup>5</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/NZL/Q/7/Add.1), p. 7.

<sup>6</sup> Concluding observations of the Committee on the Rights of the Child (CRC/C/NZL/CO/3-4), para. 36.

<sup>7</sup> *Ibid.*, para. 53.

<sup>8</sup> CEDAW/C/NZL/Q/7/Add.1, p. 9.

<sup>9</sup> CCPR/C/NZL/CO/5, para. 13.

Terrorism Suppression Amendment Act is not applied in a discriminatory manner and does not lead to excessive use of force<sup>10</sup>

8. Please provide information on the functioning of the National Protective Mechanism and whether it has been provided with the necessary human, material and in particular financial resources to enable it to fully comply with its mandate.

### Article 3

9. Please provide data which are disaggregated by age, sex and nationality, on:

(a) Number of asylum applications registered and accepted, including on grounds that they had been tortured or might be tortured if returned to their country of origin;

(b) Number of applicants in detention;

(c) Number of cases of refoulement or expulsion;

(d) Countries to which these persons were expelled;

(e) How the risk of torture is assessed in the determinations;

(f) How individuals can appeal an extradition, refoulement, return or expulsion decision;

(g) Does the State party rely on diplomatic assurances when extraditing and, if so, under which conditions?

10. Please provide information on the detention of asylum seekers and undocumented migrants in correctional facilities and indicate whether they are detained together with convicted prisoners. Also, please provide updated information on the State party's "safe third countries" policy which allows for a refusal to consider a claim for protection or refugee status on the basis that the person could have lodged such a claim in another country, which may lead to breaches of the principle of non-refoulement.<sup>11</sup> Please provide information on the measures taken by the State party to ensure that grounds upon which asylum may be refused remain in compliance with international standards. Please indicate whether health and character grounds continue to be a basis under the Immigration Act upon which to exclude or expel asylum seekers.<sup>12</sup>

11. In light of the previous recommendations of the Committee (para.6), please indicate if security-risk certificates continue to be issued under the Immigration Act which allows the authorities to remove or deport a person deemed to constitute a threat to national security, without providing detailed reasons of disclosing classified information to the person concerned. Also, please indicate whether asylum seekers and undocumented migrants continue to be detained in low security and correctional facilities. Please provide information whether detained asylum seekers and undocumented migrants have the right to habeas corpus and to an effective appeal under the Immigration Bill.

### Articles 5 - 9

12. Since the consideration of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution

<sup>10</sup> Ibid., para. 14.

<sup>11</sup> Ibid., para. 16.

<sup>12</sup> CERD/C/NZL/CO/17, para. 24

proceedings as a result. If so, please provide information on the status and outcome of such proceedings. Also, please provide information on the existence of any agreements on judicial cooperation concluded by the State party.

13. Please provide detailed information on the exercise of jurisdiction by the State party over offences referred to in article 4 of the Convention for all acts of torture during the reporting period regardless of the nationality of the victim or perpetrator or the territory in which the act of torture was committed. In particular, please provide information on cases where the State party has exercised universal jurisdiction over alleged war crimes and crimes against humanity.

#### **Article 10**

14. In light of the previous recommendations of the Committee (paras. 4 and 5), please provide information on the organization of training programmes for the judiciary and law enforcement personnel on the provisions of the Convention and the jurisprudence of the Committee, in particular with regard to the protection of minorities and the integration of a gender perspective. Please indicate whether the mandatory human rights and refresher training for the Department of Corrections staff<sup>13</sup> includes training on the provisions of the Convention and especially the absolute prohibition of torture and cruel, inhuman and degrading treatment or punishment.

15. Please provide information on the measures taken by the State party to train police officers, border guards, judges, lawyers and other relevant personnel to identify victims of trafficking in persons<sup>14</sup> and to record and document cases of trafficking in women and children, as well as exploitation of migrant women and girls in prostitution.<sup>15</sup>

16. In light of the previous recommendations of the Committee (para. 7), please provide information on the education and training of immigration officials and personnel, including medical personnel, employed at immigration detention centres, on the provisions of the Convention and in particular the absolute prohibition of torture and cruel, inhuman and degrading treatment or punishment. Please indicate if there are programmes to train medical personnel in recognizing and treating physical and psychological torture injuries resulting from torture or cruel, inhuman and degrading treatment. Please provide an assessment of the training on the “Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol) provided by the International Rehabilitation Council for Torture Victims (IRCT) in collaboration with Refugees and Survivors New Zealand from 23 to 25 June 2011 to 35 multi-disciplinary participants, as well as on any training on the Istanbul Protocol outside the refugee and immigration context.

#### **Article 11**

17. Please provide information on any new interrogation rules, instructions, methods and practices, as well as arrangements for the custody of persons subject to any form of arrest, detention or imprisonment, that may have been introduced since the consideration of the last periodic report, and the frequency with which they are reviewed, with a view to preventing any cases of torture or ill-treatment.

18. In light of the previous recommendations of the Committee (para.5), please provide an update on the implementation of the Maori Strategic Plan developed by the Department

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<sup>13</sup> CCPR/C/NZL/CO/5/Add.2, para. 3.

<sup>14</sup> CCPR/C/NZL/CO/5, para. 15.

<sup>15</sup> A/HRC/12/8/Add.1, para. 36.

of Corrections as well as on any legal, administrative and judicial measures taken to reduce the overrepresentation of Maori and Pacific Islands people in prison, and in particular of Maori women who represent 60 per cent of the female prison population. Please indicate whether the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) are applied by the State party. Please explain the Maori overrepresentation in the criminal justice system<sup>16</sup>. Please provide updated statistical data on the composition of the prison population disaggregated by sex, age and ethnicity. Also, please provide information on the accomplishments of the Department of Corrections' Rehabilitation and Reintegration Service established in January 2009.<sup>17</sup>

19. In light of the previous recommendations of the Committee (para. 8) and taking note that the State party did not accept that it is necessary to increase the age of criminal responsibility<sup>18</sup>, please indicate whether all persons under 18 in conflict with the law are accorded special protection in compliance with international standards. Also, please inform on the application by the State party of the Beijing Rules and the current availability of sufficient youth facilities and whether all juveniles in conflict with the law are held separately from adults in pretrial detention and after conviction<sup>19</sup>.

20. In light of the previous recommendations of the Committee (para. 9), please provide updated information on the steps taken by the State party to reduce overcrowding in places where people are deprived of their liberty and consider non-custodial forms of detention in line with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules). With reference to the information provided by the State party that the Corrections Act 2004 requires that all prisoners' sentences are administered in a safe, secure, humane and effective manner and that the proposed amendments to the Act allowing for privatization of prisons will uphold these requirements,<sup>20</sup> please provide updated information on the privatization of prison management.<sup>21</sup> Please provide information about the plan of the Department of Corrections concerning the reduction of the time prisoners are held in custody on remand; on changes in policing and sentencing practice; on the effects of measures designed to reduce offending; and on the results of the "Addressing the Drivers of Crime" approach.<sup>22</sup>

### Articles 12 and 13

21. In light of the Committee's previous concluding observations (para. 18), please provide detailed statistical data, disaggregated by crime committed, ethnicity, age and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials as well as on related investigations, prosecutions, convictions and on criminal and disciplinary sanctions applied.

22. In light of the previous recommendations of the Committee (para. 10), please indicate if the State party has abandoned the system which gives the Attorney General discretion whether or not to prosecute, even in cases in which there is reasonable ground to believe that an act of torture has been committed. Please indicate if investigations are conducted if there is reasonable ground to believe that an act of torture has been committed,

<sup>16</sup> CEDAW/C/NZL/Q/7/Add.1, p. 16.

<sup>17</sup> A/HRC/18/35/Add.4, para. 63.

<sup>18</sup> A/HRC/12/8/Add.1, para. 32.

<sup>19</sup> CRC/C/NZL/CO/3-4, para. 55.

<sup>20</sup> A/HRC/12/8/Add.1, para. 31.

<sup>21</sup> CCPR/C/NZL/CO/5, para. 11.

<sup>22</sup> CAT/C/NZL/CO/5/Add.1, paras. 3 and 5.

even in cases where a commanding officer considers that the allegation is not well-founded. Also, please inform whether the police continue to have discretion to prosecute alleged perpetrators of offences under the Crimes of Torture Act on the basis of public interest.

23. In light of paragraph 13 of the previous recommendations, please provide information on measures taken to ensure that the crime of torture is not subject to the 12 months limitation and that the Independent Police Conduct Authority takes action on complaints so that allegations on grounds of torture are promptly and impartially investigated, alleged perpetrators duly prosecuted and punished if found guilty and victims adequately compensated. Also, with reference to paragraph 12 of the Committee's previous recommendations, please provide information about the measures taken to strengthen the independence of the Independent Police Conduct Authority by introducing independent experts from outside the Police.

#### **Article 14**

24. Please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture, or their families, since the examination of the last periodic report in 2009. This information should include the number of requests made, the number granted, the amounts of compensation ordered and those actually provided in each case.

25. Please provide information on the functioning and achievements of the Whare Oranga Ake ("House of Renaissance") rehabilitation and reintegration programme for prisoners aimed at significantly reducing reoffending and promoting successful reintegration into local communities. Please provide statistical data on how many Maori and other prisoners who meet the eligibility criteria have benefitted from the programme.<sup>23</sup>

26. In light of the previous recommendations of the Committee (para. 11), please provide statistical data on the number of "historic cases" of cruel, inhuman or degrading treatment which have been processed since the consideration of the last periodic report, disaggregated by civil claims in courts; criminal complaints to the New Zealand Police; the Office of the Ombudsman; and through the Independent Police Conduct Authority, as well as any other competent body, including through the optional alternative process<sup>24</sup> with the assistance of the Care Claims and Resolution Team (CCRT).<sup>25</sup> Also, please provide information on the number of cases dealt with by bodies which can provide compensation, apologies and other remedies such as the Confidential Listening and Assistance Service (CLAS) and the Alternative Resolution Process<sup>26</sup>; as well as on the number of prosecutions and convictions of perpetrators and redress, including compensation and rehabilitation, provided to the victims. Please indicate how compensation is dealt with in cases where limitation restrictions bar claims.<sup>27</sup>

27. Please provide information concerning the number of cases of patients in psychiatric hospitals processed since the consideration of the last periodic report in 2009 and the redress, including compensation and rehabilitation, provided to the victims. Also, please indicate how many claims have been discontinued as a result of the Supreme Court decision of September 2009 on the application of a statutory<sup>28</sup> provision in the Mental Health Act 1969 whereby claims relating to events prior to 1972 can no longer be pursued through the

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<sup>23</sup> CCPR/C/NZL/CO/5/Add.1, paras. 41-44.

<sup>24</sup> CAT/C/NZL/CO/5/Add.1, para. 33.

<sup>25</sup> Ibid., paras. 19 and 30.

<sup>26</sup> Ibid., para. 22.

<sup>27</sup> Ibid., para. 23.

<sup>28</sup> Ibid., para. 42.

courts. While the Confidential Forum established in 2004<sup>29</sup> cannot award compensation, please provide information on compensation awarded through individual complaints.<sup>30</sup>

28. In light of the previous recommendations of the Committee (para. 14), please provide an update regarding any further steps taken by the State party with regard to withdrawing its reservation to article 14 of the Convention in order to ensure the provision of fair and adequate compensation to victims of torture through its civil jurisdiction. Also, please provide information about the two current reform projects relating to victims of crime.<sup>31</sup> Please update on any review of the Victims' Rights Act 2002 which was to have been completed in 2011. In addition, please provide updated information on the recommendations to the Government made by the Law Commission regarding the State party's system for compensating victims of crime.<sup>32</sup>

#### **Article 15**

29. In light of the previous recommendations of the Committee (para. 15), please provide information on steps taken to amend the Evidence Act which came into force in 2007 in order to ensure that evidence to be adduced in judicial proceedings is in line with the provisions of article 15 of the Convention and that it explicitly excludes any evidence obtained as a result of torture.

#### **Article 16**

30. In light of the Committee's previous recommendations (para. 16), please provide information on the experience of Taser use in the post-trial period since the consideration of the last periodic report in 2009, including any incidents that may have had serious consequences for the health of the persons against whom Tasers were used. Also, please provide information on how often Standard Operating Procedures for the use of Tasers are assessed and revised and on the periodicity of refresher courses provided to trained and certified staff. Please provide disaggregated data on the age, sex and ethnicity of persons against whom Tasers were used during the reporting period and the reasons for use.

31. In light of the previous recommendations of the Committee (para. 9), please indicate whether the mental health screening and the establishment of the mental health status of prisoners upon arrival in prisons is carried out by qualified personnel in addition to the registered primary health nurses.<sup>33</sup> Please provide updated information on the number of waitlisted acutely mentally unwell prisoners who cannot be accommodated in the District Health Board (DHB) forensic inpatient beds and on the measures taken by the State party to remedy the situation and place them in appropriate health-care facilities.<sup>34</sup>

#### **General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

32. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the consideration of the previous report, including any relevant judicial judgments.

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<sup>29</sup> Ibid., para. 51.

<sup>30</sup> Ibid., para. 56.

<sup>31</sup> Ibid., para. 62.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid., paras. 9 and 10.

<sup>34</sup> Ibid., paras. 11 and 12.

33. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, since the consideration of the fifth periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

34. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of fifth periodic report in 2009, including the necessary statistical data.

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